



The Mediation Act, 2023: Voluntary Pre-Litigation Mediation—Practical Feasibility and Challenges

Aditya Raj¹, Simran Kumari², Dr. Rajanarayanan S.³

^{1,2}BBA LLB, Central University of South Bihar

³Associate Professor, Department of Commerce and Business Studies, Central University of South Bihar

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Corresponding Author:

Aditya Raj

Abstract:

The Mediation Act, 2023 establishes a statutory framework for institutional, online and community mediation in India. A central feature of the Act is pre-litigation mediation, under which parties to civil or commercial disputes may voluntarily and with mutual consent attempt settlement before approaching a court. The Act also gives mediated settlement agreements a final, binding and enforceable status, subject to limited statutory grounds of challenge. This study evaluates the practical feasibility and challenges of the framework through doctrinal analysis, secondary literature and a primary Google Form survey of nine respondents collected on 10 and 14 September 2026 through convenience sampling. The respondents were predominantly law students and urban residents. Descriptive analysis indicates strong perceived support for awareness-building, mediator training, online-dispute-resolution infrastructure, prompt constitution of institutional bodies and stronger enforcement mechanisms. The results also identify lack of awareness, inadequate rural digital access, perceived power imbalance and incomplete institutional readiness as significant barriers. The study clarifies an important legal point: section 5 of the Mediation Act makes general pre-litigation mediation voluntary and consensual; it does not itself create a universal mandatory requirement. Mandatory pre-institution mediation continues separately for qualifying commercial disputes under section 12A of the Commercial Courts Act, 2015. The study concludes that effective case diversion will depend not merely on statutory recognition but on accessible mediation service providers, trained mediators, enforceable settlements, legal awareness, safeguards for weaker parties and reliable digital infrastructure.

Keywords: Mediation Act, 2023, pre-litigation mediation, mediated settlement agreement, access to justice, online mediation, judicial backlog, India.

1. INTRODUCTION

1.1 Background

India's judicial system continues to face substantial delays in the disposal of civil and commercial disputes. Mediation is therefore increasingly viewed as an important form of alternative dispute resolution because it enables parties to explore negotiated outcomes with the assistance of a neutral third person. In contrast to adjudication, mediation generally aims to preserve party autonomy, confidentiality and consensual problem solving.

The Mediation Act, 2023 was enacted to promote and facilitate mediation, particularly institutional mediation; provide for recognition and enforcement of mediated settlement agreements; establish a regulatory framework; encourage community mediation; and recognise online mediation as an acceptable and cost-effective process. The statute marks a significant development in Indian dispute-resolution law because it gives a comprehensive legal basis to a process that had previously developed through court-annexed programmes, the Legal Services Authorities Act, 1987, commercial dispute mechanisms and judicial decisions.

A necessary clarification is required at the outset. The title of this study uses the expression “mandatory pre-litigation mediation”, but the Mediation Act, 2023 itself does not impose a universal mandatory pre-litigation requirement. Section 5 provides that parties may voluntarily and by mutual consent undertake pre-litigation mediation before filing a civil or commercial proceeding. Mandatory pre-institution mediation exists in a different statutory setting: section 12A of the Commercial Courts Act, 2015 applies to commercial suits that do not contemplate urgent interim relief. The study accordingly examines the practical feasibility of the Act’s voluntary general framework while analysing the continuing debate around mandatory referral models.

1.2 Literature Review

The scholarship on mediation identifies both its capacity to reduce judicial burden and its dependence on institutional conditions. Kassam (2019) argues that compulsory referral can encourage early settlement in commercial disputes, but a rigid requirement may create procedural delay where mediator capacity is inadequate. Patil and Rao (2020) similarly report that mandatory pre-litigation mechanisms can secure settlements but become ineffective when parties regard mediation merely as a procedural formality.

Institutional capacity is a recurring concern. Narayana (2021) identifies shortages of trained mediators, inconsistent procedures and limited administrative support in court-annexed mediation centres. Menkel-Meadow (2021) highlights the paradox of mandatory mediation: compelling parties to attend an initial session may promote settlement opportunities, yet coercion may undermine the principle of party self-determination. A balanced model can require an informed initial engagement while preserving a meaningful right to decide whether settlement is appropriate.

Digital delivery adds further possibilities and risks. Susskind (2020) explains that online dispute resolution can improve speed and access where reliable technology and digital literacy exist. Yet unequal internet access, data privacy concerns and limited comfort with digital processes may exclude rural or low-income participants. These concerns are particularly relevant because the Mediation Act, 2023 recognises online mediation.

The enforceability of mediated settlement agreements may increase public confidence. The Act provides that a mediated settlement agreement is final and binding and enforceable in the manner of a judgment or decree, subject to specified grounds of challenge. Legal commentators nevertheless note that weak enforcement practice or expansive challenges based on fraud, corruption, impersonation or invalidity may undermine finality. The success of the framework therefore depends on both statutory drafting and implementation.

1.3 Research Gap

Previous studies often examine only one aspect of mediation: mandatory commercial mediation, institutional capacity, online dispute resolution, enforceability or party autonomy. There remains a need to connect the statutory framework of the Mediation Act, 2023 with practical implementation barriers such as awareness, institutional readiness, digital access, power imbalance and public confidence. This pilot study brings those dimensions together through doctrinal analysis and a small primary survey.

1.4 Research Questions

1. How does the statutory framework of the Mediation Act, 2023 attempt to address India’s judicial backlog through pre-litigation mediation and enforceable settlement agreements?
2. What are the legal and practical implications of the shift from a mandatory to a voluntary framework for dispute diversion?
3. What empirical, infrastructural and socio-economic challenges hinder the practical feasibility of pre-litigation mediation in India, and how can they be resolved?

1.5 Research Objectives

1. To analyse key statutory provisions of the Mediation Act, 2023 relating to pre-litigation mediation and mediated settlement agreements.
2. To evaluate judicial jurisprudence and available empirical material concerning pre-litigation settlement and case diversion.
3. To critique the relationship between mandatory and voluntary mediation models and their impact on dispute diversion.

4. To identify infrastructural, regulatory and socio-legal barriers to effective implementation.
5. To propose policy reforms for the effective operationalisation of mediation in India.

1.6 Hypotheses

The study treats practical feasibility as the dependent outcome. The independent variables are the pre-litigation mediation framework, infrastructural and regulatory readiness, and socio-legal awareness. The key quantitative indicators proposed are settlement rate, case-diversion rate and digital-access rate. Because the primary survey is small and descriptive, the hypotheses are presented as analytical propositions rather than claims of causal proof.

Hypothesis	Statement
H1	Lower rural digital access significantly reduces adoption of online mediation.
H2	Greater awareness among litigants is positively associated with perceived feasibility of pre-litigation mediation.
H3	Limited mediator and institutional capacity negatively affects practical feasibility.
H4	The voluntary and consensual model under section 5 may reduce coercion but may also reduce automatic case diversion when compared with a mandatory referral model.
H5	Enforceability of mediated settlement agreements increases confidence in mediation.

Source: Author's formulation from the research objectives.

2. RESEARCH METHODOLOGY

2.1 Research Design

The study uses a descriptive-exploratory design combining doctrinal legal research, secondary literature and a small primary perception survey. The doctrinal component examines the Mediation Act, 2023, the Commercial Courts Act, 2015 and policy material. The survey component explores how respondents perceive awareness, institutional readiness, online mediation, power imbalance, confidentiality, enforceability and overall feasibility.

2.2 Population, Sample and Sampling

The target population includes law students, legal professionals, litigants and persons familiar with legal proceedings. The questionnaire was circulated through the researcher's network through a Google Form. The available data contain nine complete responses submitted on 10 September 2026 and 14 September 2026. The sample is a non-probability convenience sample. It includes law students and one respondent from another category, with varied levels of familiarity with legal proceedings. The findings describe the respondents only and cannot be generalised to all Indian litigants or legal professionals.

2.3 Variables and Instrument

The independent variables are: (i) the pre-litigation mediation framework, (ii) infrastructural and regulatory readiness, and (iii) socio-legal awareness factors. The dependent variables are: practical feasibility, perceived case diversion and willingness to opt for settlement. The questionnaire included profile questions and eight substantive items on awareness, voluntary mediation, the Mediation Council of India, litigant awareness, enforceability, rural internet access, power imbalance, confidentiality and overall feasibility. It also included one open-ended question on policy measures.

2.4 Legal Framework

Section 5 of the Mediation Act, 2023 permits parties, whether or not a mediation agreement exists, to voluntarily and by mutual consent undertake pre-litigation mediation before filing civil or commercial proceedings. The process may be conducted through a mediation service provider. Section 18 provides that mediation should ordinarily be completed within 120 days from the first appearance before the mediator, extendable by up to 60 days by agreement of the parties. Sections 19 and 27 provide for mediated settlement agreements and their final, binding and enforceable status. Section 28 limits challenges to specified grounds, including fraud, corruption, impersonation or mediation in disputes not fit for mediation. The Act also addresses confidentiality and online mediation.

For commercial disputes, section 12A of the Commercial Courts Act, 2015 separately requires exhaustion of pre-institution mediation before a suit not contemplating urgent interim relief is instituted. This distinction is essential for accurate legal analysis: the Act's general section 5 framework is voluntary, while the Commercial Courts Act contains the mandatory pre-institution requirement for defined commercial disputes.

2.5 Data Analysis

The primary data were analysed descriptively through frequencies, percentages and thematic categorisation of open-ended responses. Given the sample size of nine, the analysis does not apply inferential tests or claim statistical generalisation. The legal analysis is doctrinal and interpretive. The survey is used to identify practical concerns and to illustrate the feasibility issues that require larger empirical research.

2.6 Ethical Considerations

The survey data were anonymised for reporting. Email addresses and other directly identifying details are not reproduced in this article. Results are presented in aggregate form. Participation was voluntary.

Variable Type	Variable	Illustrative Indicator / Level
Independent	Pre-litigation mediation framework	Voluntary/mandatory referral structure; awareness of section 5
Independent	Infrastructural and regulatory readiness	Mediator availability; mediation centres; MCI status; ODR systems
Independent	Socio-legal and awareness factors	Legal awareness; trust; language; party power imbalance
Dependent	Practical feasibility	Overall feasibility rating
Dependent	Rate of case diversion	Perceived reduction in court filings
Dependent	Willingness to settle	Preference for mediated settlement
Quantitative indicator	Settlement rate	Percentage of mediated matters settled
Quantitative indicator	Digital access rate	Internet availability / ODR accessibility
Qualitative indicator	Grounds for challenging MSA	Nominal categories under section 28

Table 1. Study variables and measurement. Source: Author's formulation.

3. RESULTS AND DISCUSSION

3.1 Respondent Profile

The available sample consists of nine respondents. Most were law students, and the majority were between below 20 and 30 years of age. Seven respondents lived in urban areas, two lived in semi-urban areas and one respondent lived in a rural area. Their experience or familiarity with legal proceedings ranged from not applicable to above ten years. The profile should be interpreted carefully because the sample is small and not representative of litigants, lawyers, mediators or court administrators.

3.2 Awareness and the Voluntary Framework

Responses show uneven awareness of the Mediation Act, 2023. Five respondents expressed agreement with awareness of the Act, two were neutral and two disagreed. The pattern supports the proposition that legal awareness remains an implementation barrier. If litigants do not understand the availability, confidentiality, cost and enforceability of mediation, they may continue to approach courts directly even where mediation could be beneficial.

Most respondents agreed that shifting from a mandatory to a voluntary pre-litigation model may reduce effectiveness in diverting disputes from courts. This perception reflects an important policy tension. A mandatory initial referral can bring parties to the mediation table, but compulsion may also produce formal participation without good-faith engagement. A voluntary model better preserves autonomy but depends more heavily on public awareness, lawyer advice, incentives and trust in the system.

3.3 Institutional and Regulatory Readiness

A majority of respondents agreed that the non-constitution of the Mediation Council of India adversely affects the framework's credibility and functioning. However, this question requires updating in the final legal analysis. The Central Government notified the establishment of the Mediation Council of India on 27 August 2026, with its head office in Delhi. The survey perception remains relevant because it was collected before or around the early stage of this institutional development, but the article should not state that the Council remains unconstituted as of October 2026.

The practical issue now is not merely whether the Council exists, but whether it can effectively develop standards, registration systems, accreditation procedures, training norms and institutional confidence across India. Institutional establishment is necessary but not sufficient. Implementation requires local mediation service providers, trained mediators, administrative personnel, accessible procedures and public-facing information.

3.4 Enforceability, Confidentiality and Party Confidence

Respondents generally agreed that enforceability of mediated settlement agreements as court decrees encourages parties to choose mediation. This finding is consistent with the statutory objective of creating confidence in negotiated settlements. A settlement that cannot be effectively enforced may simply add another stage before litigation. By giving a lawful mediated settlement agreement final and binding effect, the Act addresses a historic concern regarding the legal value of private settlement.

Respondents also generally agreed that confidentiality encourages honest participation. Confidentiality is particularly important because parties may be unwilling to make settlement offers, disclose commercial concerns or discuss personal disputes if statements made in mediation can later be freely used against them in court. At the same time, online mediation requires data-security safeguards, secure platforms and clear handling of records.

3.5 Digital Access and Socio-Economic Barriers

Most respondents agreed that limited internet access in rural areas restricts the practical effectiveness of online mediation. This result is significant because online mediation can reduce travel costs, scheduling barriers and geographical distance, but its benefits are unevenly distributed. Rural connectivity, device availability, language support and digital literacy may determine whether an online process is genuinely accessible.

The survey also identifies concern about power imbalance. Respondents tended to agree that mediation may disadvantage weaker parties in disputes involving unequal bargaining power, such as employer–employee or consumer–corporation disputes. This does not mean that mediation is unsuitable in every unequal relationship. It

means that procedural safeguards are necessary: informed consent, access to legal advice, screened cases, trained mediators, separate caucuses where appropriate and a clear right to withdraw from settlement discussions.

3.6 Overall Feasibility

The overall feasibility ratings were primarily “moderate effect”, with a smaller number of “slight effect” responses. The result suggests cautious optimism rather than a belief that the Act alone will immediately reduce civil-case backlog. The respondents’ open-ended answers were consistent: they called for more trained mediators, court-based mediation help desks, operationalisation of regulatory structures, stronger online infrastructure, public awareness, use of regional languages, incentives such as court-fee refunds and prompt enforcement of settlements.

3.7 Open-Ended Responses

The qualitative responses produced five principal themes: (i) institutional capacity and mediator training; (ii) awareness and public trust; (iii) ODR infrastructure and rural access; (iv) judicial and professional mindset change; and (v) enforceability and limited post-settlement challenges. These themes closely reflect the conceptual framework of the study. They show that practical feasibility depends on the interaction of law, institutions, technology and social behaviour rather than on statutory enactment alone.

Characteristic	Category	n	%
Age	Below 20 years	4	44.4
	20–30 years	4	44.4
	Above 45 years	1	11.1
Gender	Female	5	55.6
	Male	2	22.2
	Prefer not to say	1	11.1
	Other	1	11.1
Respondent category	Law student	8	88.9
	Other	1	11.1
Residence	Urban	6	66.7
	Semi-urban	2	22.2
	Rural	1	11.1

Table 2. Respondent profile (n = 9). Source: Primary survey data, September 2026.

Survey issue	Dominant response pattern	Interpretation
Awareness of the Mediation Act, 2023	Agreement, but with neutral and disagreement responses	Awareness is present but uneven; outreach is required.
Voluntary rather than mandatory framework	Most responses supported concern about reduced case diversion	Autonomy is protected, but uptake may depend on incentives and referral culture.

MCI and institutional readiness	Respondents perceived non-constitution/readiness as a concern	Council was established on 27 August 2026; operational effectiveness remains the issue.
Enforceability of MSAs	Predominantly positive	Finality and enforceability can increase party confidence.
Rural digital access	Predominantly positive concern	ODR requires connectivity, literacy, language and assisted-access measures.
Power imbalance	Predominantly positive concern	Safeguards are needed for weaker parties.
Overall feasibility	Mostly moderate effect	Implementation is perceived as possible but conditional on capacity and awareness.

Table 3. Summary of survey findings. Source: Primary survey data and author's analysis.

Theme	Illustrative respondent suggestion	Policy implication
Training and capacity	Train and certify more mediators; create court mediation help desks.	Expand accredited mediator workforce and local service providers.
Awareness and trust	Spread awareness so citizens trust and choose mediation.	Public legal education, legal-aid outreach and lawyer sensitisation.
ODR access	Build robust ODR infrastructure and ensure access.	Secure platforms, assisted digital facilities and regional-language support.
Professional culture	Train judges and lawyers to shift from adversarial to collaborative problem solving.	Continuing legal education and judicial referral protocols.
Finality of settlement	Strictly limit challenges to mediated settlement agreements.	Apply section 28 grounds narrowly and develop consistent procedure.

Table 4. Themes from open-ended responses. Source: Primary survey data, coded by the author.

4. FINDINGS AND IMPLICATIONS

4.1 Statutory Contribution to Case Diversion

The Mediation Act, 2023 contributes to dispute diversion by providing a coherent legal framework for mediation, recognising pre-litigation and online processes, regulating mediated settlement agreements and enabling institutional structures. Its strongest contribution is legal certainty: parties have clearer statutory recognition of the process and of the enforceability of lawful settlements. This may make mediation more attractive than informal negotiation where enforcement is uncertain.

However, the general pre-litigation model in section 5 is voluntary and dependent on mutual consent. It is therefore not equivalent to the mandatory pre-institution mediation regime in section 12A of the Commercial Courts Act. The voluntary model may protect party autonomy and reduce resentment, but it cannot ensure that every potentially

suitable dispute first reaches a mediator. Effective case diversion will depend on judicial referral practices, lawyer advice, information campaigns and incentives.

4.2 Practical Challenges

The central practical barriers are inadequate public awareness, limited mediator capacity, uneven infrastructure, delayed institutional operationalisation, unequal digital access, confidentiality and cybersecurity concerns in ODR, and power imbalance between parties. A formal statute cannot by itself resolve these problems. Mediation must be accessible, affordable, trusted and supported by competent neutral professionals.

4.3 Policy Recommendations

1. Establish and strengthen mediation centres and help desks at district courts, Legal Services Authorities and community locations.
2. Expand mediator training, accreditation and continuing professional education, especially outside metropolitan areas.
3. Develop multilingual and assisted-access ODR facilities for rural, elderly and digitally excluded participants.
4. Publish clear guidance distinguishing voluntary section 5 mediation from mandatory pre-institution mediation under section 12A of the Commercial Courts Act.
5. Introduce public-awareness campaigns through legal-aid authorities, bar associations, universities and local government institutions.
6. Create safeguards for vulnerable parties, including access to legal advice, screening for coercion and informed consent.
7. Ensure speedy enforcement of mediated settlement agreements and narrowly apply statutory challenge grounds.
8. Collect and publish reliable data on referrals, settlement rates, duration, costs, geographic coverage and user satisfaction.

4.4 Conclusion

The Mediation Act, 2023 has the potential to strengthen access to justice and reduce pressure on courts, but its success is conditional. The statute creates an important legal platform for voluntary pre-litigation mediation, enforceable mediated settlement agreements, institutional mediation, community mediation and online mediation. Yet practical feasibility depends on implementation. The pilot survey indicates cautious support for the framework while highlighting deficits in awareness, capacity, connectivity and trust. Mediation should therefore be treated not as a substitute for courts in every dispute, but as an accessible and safeguarded pathway for disputes capable of consensual resolution.

5. LIMITATIONS OF STUDY

This study is limited by a small convenience sample of nine respondents, most of whom were law students and urban residents. The survey therefore cannot represent litigants, mediators, judges, lawyers or the Indian population generally. The data are perception-based and do not measure actual settlement rates, case-diversion rates or court backlog reductions. Some questions use broad propositions and do not identify the respondent's detailed knowledge of specific statutory provisions. In addition, the survey premise concerning non-constitution of the Mediation Council of India became outdated after the Central Government notified the Council's establishment on 27 August 2026. This paper corrects that legal position while retaining the respondent perception as evidence of perceived institutional uncertainty.

6. SCOPE FOR FUTURE RESEARCH

Future research should examine administrative data from mediation service providers, Legal Services Authorities, commercial courts and district courts. A larger stratified study should include litigants, mediators, advocates, judges, MSMEs, rural users and legal-aid beneficiaries. Researchers should compare settlement rates, average duration, cost savings, enforcement outcomes and user satisfaction across court-annexed, private, community and online mediation. A separate study should test whether section 12A commercial mediation produces meaningful settlement or merely

procedural compliance, and whether voluntary section 5 mediation generates sustainable case diversion when supported by awareness and incentives.

References

1. The Mediation Act, 2023, No. 32 of 2023, India Code. <https://www.indiacode.nic.in/indiacode/bitstream/123456789/19637/1/aA2023-32.pdf>
2. Commercial Courts Act, 2015, section 12A (as amended).
3. Ministry of Law and Justice, Government of India. (2023). The Mediation Act, 2023: Key provisions. Press Information Bureau. <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1986723>
4. Government of India. (2026, August 27). Notification establishing the Mediation Council of India under section 31(1) of the Mediation Act, 2023.
5. Alexander, N. (2022). The Singapore Convention on Mediation and international commercial settlement agreements.
6. Bhardwaj, V. (2023). The Mediation Act, 2023: A legislative paradigm shift in Indian dispute resolution.
7. Chodosh, H. E. (2023). Mediating mediation: Reform and resistance in developing judicial systems.
8. Deshmukh, M., & Kulkarni, P. (2023). Evaluating the role of the Legal Services Authorities Act in pre-litigation Lok Adalats and mediations.
9. Iyer, M. (2025). Confidentiality protocols in online pre-litigation mediation: Data security under section 30 of the Mediation Act, 2023.
10. Kassam, A. (2019). Pre-litigation mediation in India: Examining the viability of mandatory referral mechanisms.
11. Kumar, D., & Joshi, R. (2024). Time-bound dispute resolution under the Mediation Act, 2023: Feasibility of the 120+60 days timeline.
12. Menkel-Meadow, C. (2021). To coerce or not to coerce: The paradox of mandatory mediation in civil justice.
13. Narayana, G. (2021). Institutional mediation vs. ad-hoc mediation: Structural readiness in the Indian legal ecosystem.
14. Patil, S., & Rao, V. (2020). Mandatory pre-litigation mediation under section 12A of the Commercial Courts Act: An empirical evaluation.
15. Roy, S., & Banerjee, P. (2025). Capacity building and accreditation of mediators in India: An empirical readiness assessment.
16. Sharma, R., & Gupta, A. (2022). Access to justice and constitutional validity of mandatory alternative dispute resolution in India.
17. Singhania, K., & Agarwal, N. (2024). Enforceability of mediated settlement agreements under the Mediation Act, 2023: Challenges and exceptions.
18. Susskind, R. (2020). Online dispute resolution and the transformation of civil justice systems.
19. Verma, A., & Sundaram, S. (2024). The Mediation Council of India: Autonomy, functions, and regulatory-overreach concerns.