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Factors Influencing the Success Rate of Pre-Litigation Mediation in China: An Empirical Study Based on Mediators and Case Parties

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Abstract: This study uses both qualitative and quantitative data to demonstrate that case types are not the only factor affecting the success rate of pre-litigation mediation in China. Instead, the type of cases is only a "symptom," and other factors are also at play. These factors include the expense of the lawsuit, its duration, the protection of the confidential information of the case, the friendliness of the parties and so on. In order to determine the variables that affect pre-litigation mediation's success rate and analyze their relative weights, the author used qualitative and quantitative methodologies in this research. By encouraging the use of intelligent technology in conflict resolution or by popularizing platforms, Chinese courts have promoted pre-litigation mediation. The empirical studies conducted in this article show that the general public in China is satisfied with the current mediation resources available, so Chinese courts should focus on resolving other issues that could improve the success rate of pre-litigation mediation.

Keywords: pre-litigation mediation, empirical study, Chinese courts

1. Introduction

1.1. Definition of Pre-litigation Mediation and Its Practice in China

In this paper, pre-litigation mediation refers to a consensual process in which the parties to a case come together to settle their differences amicably with the assistance of an impartial mediator, before the formal filing of a lawsuit. Specifically, when a dispute is brought to court, the conflict that can be resolved through mediation will be referred to the mediators with the parties' consent. Pre-litigation mediation can reduce the number of disagreements that proceed to court, lowering the cost of the legal system while increasing the chances of a successful resolution and the relationship preservation.

A rising number of nations have embraced such frameworks though with some different practicing regimes[1]. In China, the judge of the court will supervise and evaluate the mediation agreement reached by the parties with the help of the mediator, in order to determine whether it conflicts with any statutes. Once the mediation agreement has been verified by the court, the formal version, known as a civil judgment or ruling, will be written and issued by the judge. It is a document similar to a

[1] For example, Canada "requires parties to first pursue private resolution of their dispute before bringing it to court." Jean R. Stern light believes that mediation has achieved an exalted status within the hierarchy of ADR processes [1].

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judgment that can be used to initiate an enforcement process if one fails to perform his or her obligations under the agreement[2].

Pre-litigation mediation, on the other hand, is an innovative dispute settlement method developed in China under the direction of the party committee and the government as well as the court. It is closely related to a unique term used in China called "source governance" (Yuan Tou Zhi Li), which refers to the local government's handling of conflicts when litigation first surfaced. President Xi Jinping invents the concept of "source governance." This concept emphasizes the significance of social grassroots governance and the capacity of each person to resolve conflicts. The fact that a retired clerk, a housewife, or even a farmer can act as a mediator demonstrates the effectiveness of China's mediation procedures. What's more, "source governance" is used in an efficient manner to avoid conflicts from coming to court. Because people thought that filing a lawsuit and going to court would make everything public and subject them to public shame, mediation was highly popular in ancient China. Particularly in rural China, mediation has typically been carried out by the village head, a person of considerable status and regard among the residents.

Pre-litigation mediation is a novel method that is closely related to local governance, as many critics have noted. In her 2016 article, Lydia Nussbaum describes this phenomenon as a "paradigm that reshapes the relationship between public and private power" and a new type of "decentralized government [2]." It transfers dispute-resolution authority from the state to private parties, giving the contesting parties the chance to engage in direct negotiations. At the same time, disputes can be settled through the state-established channels in the absence of a governmental decision. Pre-litigation mediation, according to academics Zeng Lingjian, is evidence of the effective operation of multiple methods for settling conflicts and protecting rights, as well as the positive interaction between them [3]. Pre-litigation mediation, in his opinion, is one of the more informal and autonomous approaches to resolving legal issues. Pre-litigation mediation has the power to compel court-ordered enforcement. Furthermore, it occurred at the same time as China's 18th National Congress, which put forth a plan to create a large-scale autonomous society. According to Liao, this is a "shift from social management to social governance and from an 'all-powerful' government to a 'service-oriented' government and it draws on the wisdom of the private sector and incorporates private forces to deal with public affairs, and the pattern of pluralistic shared governance is slowly taking shape [4]."

1.2. Empirical Studies of Pre-litigation Mediation

The empirical faculty of law started concentrating on the effects of pre-litigation mediation, including both positive and negative aspects, when the pre-litigation mediation system was piloted in numerous regions of the country. Through empirical research, Zuo Weimin discovered that "pre-litigation mediation does minimize the frequency of cases going to trial [5]." He did empirical study in pre-litigation mediation system in W District Court (a district court in western China) with double-difference method. He concluded that courts implementing pre-litigation mediation "are indeed effective in reducing the number of civil and commercial cases received compared to the courts that do not implement the action [5]".

Empirical researchers have also discovered the "double-high phenomenon" of pre-litigation mediation, which refers to a high rate of mediation and a high rate of enforcement in courts, in addition to year-over-year comparisons of visual data. According to Qian Dajun [6], high mediation

[2]Civil Procedure Law of the People's Republic of China (2021 Amendment) Article 243 "The parties must comply with an effective civil judgment or ruling. If a party refuses to comply, the opposing party may apply to the people's court for enforcement, and the judges may also transfer the case to the enforcement personnel for enforcement."

"The parties must comply with a consent judgment and other legal instruments enforced by a people's court. If a party refuses to comply, the opposing party may apply to the people's court for enforcement"

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rates are like a "bubble" that quickly loses support. He examined the examples in Z Province (a province in China) and discovered that the number of mediation victories increased from 2009 to 2015 as a result of pre-litigation mediation. However, the execution rate of mediation cases, the rate of the cases executed by litigant's self-consciousness rather than court's compulsory enforcement, fell as well. This demonstrates the fact that the disputes being satisfactorily mediated are not genuinely resolved. People didn't follow the mediation clause's instructions and carry it out as decided. According to Qian, "the initial purpose of 'settling the case' has generated the bitter fruit of 'leaving conflict to the enforcement phase'". He also raised the concern about the national litigation resources being wasted on mediation costs.

Similar concerns have been expressed by Chen Weixing [7]. According to him, "the increasing use of court mediation has raised questions about the efficiency of case settlement, and the high rate of mediation agreements being enforced illustrates the discrepancy." The real cause of the double-high phenomena was investigated by Chen Weixing using Posner's Settlement Theorem, and like the author's investigation, he attempted to identify the variables that could boost the success rate of mediation. Inferring from Posner's Settlement Theorem, he discovered that many cases will be moved away from litigation when the costs of litigation are higher and the likelihood of a settlement between the parties is higher. Conversely, if litigation costs are reduced, more cases will be brought to trial because there will be less chance of a settlement between the parties before litigation. He argues that the Lawsuit Fee Payment Measures, which went into effect in 2007 and drastically lowered the civil lawsuit fee rate, are to blame for the less chance of a settlement between the parties before litigation. The average increase of the number of civil lawsuits filed in China is 8.3% between 2007 and 2012, which is significantly different compared to the average yearly increase of 4.5% between 2001 and 2006. Posner's theory clearly shows a significant connection between changes in China's litigation costs and case volume.

Tang Li also discusses the function of court costs [8]. He contends that the Civil Litigation Fee Scheme's implementation greatly decreases the cost of pursuing legal remedies, which led to an increase in lawsuits and an inappropriate use of judicial resources. This is especially true in cases involving labor disputes, where the filing costs are too low and thus the parties are encouraged to exploit their right to sue.

However, despite the fact that some recent study on pre-litigation mediation examines how the mediation system functions, the author did not find a lot of empirical research. There is essentially little in-depth analysis or theoretical description of any specific geographic practice.

The author concludes that the existing literature has the following limitations. First, the academic community has a biased definition of "pre-litigation mediation" in practice. Some academics, for instance, do not place as much attention on the distinction between "people's mediators" and "pre-litigation mediators." "The wide network of people's mediation can be considered a major benefit of modern mediation in China," claims Zhou Jianhua [9]. "It is with the assistance of the people's mediation network that the courts are able to successfully carry out invited mediation." However, "court mediators" and "people's mediators" are two entirely separate groups. The term "people's mediators" refers to mediators who work for local governments to settle problems in the neighborhood, whereas the term "court mediators" refers to people who handle issues in court.

Second, some conclusions were reached without solid evidence. On the one hand, Chen Weixing claims that "the social status of the plaintiffs and defendants also has a significant impact on mediation. For example, if the social status gap between the plaintiffs and defendants is greater, the mediation rate of the case is lower, like in financial lending cases. If the social status gap is greater in the reverse direction, the mediation rate of the case is higher, like in labor contract cases [7]". This article challenges Chen's conclusion. The author argues that Chen's recent assertions have been essentially supported by subsequent small-scale comparison of pertinent sample court mediation and verdict

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records. As a result, his assertion cannot be refuted in any other way. The objective case data offered in the remainder of this article refutes his claim.

Third, while some studies are based on a wide range of data from reliable sources, they may nevertheless contain some inaccuracies. Zuo Weimin only undertakes an empirical analysis in the first half of his paper, despite the fact that he uses empirical evidence to show that pre-litigation mediation can dramatically reduce litigation cases [4]. Zuo didn't do a lot of empirical study on the causes of mediation's success in the second half of his paper. In another study, in order to achieve a highly strong combination of data and legal science, Chen Weixing limited his study to four different types of contracts, evaluated 760,000 data, and utilized logistics regression to evaluate numerous changes [7]. Despite the fact that this type of historical data analysis can provide a broad overview of the mediation situation, it is based on secondary data collected, possibly by judicial statisticians, which means that the results may vary from year to year and may be influenced by the statistical preferences of various statisticians.

Fourth, the variables that affect mediation and their effects on its success rate have not been extensively investigated. For example, Qian Dajun discovered that from 1980 to 2015, a number of characteristics in civil cases involving marriage and family inheritance, contract, and tort disputes. He found that, compared to the other two case types, (1) the change in mediation rate of marriage and family inheritance cases is generally steady, (2) the contract dispute mediation rate curve has undergone the most drastic modification, and (3) mediation in ownership and tort issues has had a poor track record of success. Finally, he came to the conclusion that cases involving marriage, families, and inheritances are better suited for mediation and have a natural affinity for it. Furthermore, the success rate of contract dispute mediation has been declining recently, making it less appropriate for mediation [6]. However, in this article, the author discovers that Qian's result cannot be entirely validated and that there are several exceptions. For instance, this article shows that the success rate of contract mediation is relatively high, which is contrary to Qian's conclusion.

Although there has been a lot of theoretical research, this paper chooses to take a different and more empirical route. The author undertook in-depth interviews and surveys with mediators and case parties to ascertain the factors that have the greatest influence on the success rate of pre-litigation mediation. The basic idea is to use qualitative and quantitative research methodologies to precisely uncover the behavioral motivations of the mediators and the litigants, two significant pre-litigation mediation subjects. Then, the author determined the factors influencing pre-litigation mediation success rates. In this study, the author gathered first-hand information by interviewing participants in the mediation process. The author also made inferences that other mediators or legal professionals might miss. For instance, given their relationship, how willing are the parties who filed the lawsuit to negotiate? Do Chinese courts have sufficient means for mediating disputes?

The remainder of the article is organized as follows. In Section 2, to demonstrate if different case types have varied characteristics in the mediation rate, the author briefly described a few cases from various case types. The design of the qualitative and quantitative research methods is covered in Section 3. The design is specifically illustrated in Sections 4 and 5. In Section 6, the experiment findings are analyzed, and the experiment's ramifications and externality validity are covered. In Section 7, the author made some conclusions of this article.

2. Findings after Initial Classification of Cases

According to certain scholars [6,7], cases can be categorized based on their "suitability" for mediation. The author selected seven different types of disputes in accordance with the Civil Procedure Law , which are detailed below:

1.disputes over personality, reputation, and bodily rights

2.civil loan lending disputes

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3.commercial disputes, which include civil disputes related to companies, securities, insurance, bills

4.motor vehicle accident liability disputes

5.labor disputes

6.divorce disputes

7.contract disputes.[3]

From January 1st 2021 to November 23rd 2021, there are about 5095 cases in court G. Among them, about 7 kinds of cases are studied. The number of cases in each category can be seen in the table below.

Table 1: The number of cases in court G.

Case types	personality, reputation, and bodily rights	civil loan lending disputes	commercial disputes, which include civil disputes related to companies, securities, insurance, bills	motor vehicle accident liability disputes	labor disputes	divorce disputes	contract disputes
Number of cases	75	627	109	134	495	179	1671

The proportion of successful and unsuccessful mediation cases for each case category is below demonstrated among the various groups.

The commercial category has the lowest rate of mediation of all, in which none of cases is successfully mediated in 109 cases.

Contract and divorce cases have the highest mediation rates, the successful rates of them are 26% and 31% respectively. For motor vehicle accident liability disputes, about 22% is successfully mediated. For civil loan lending disputes, the successful mediation rates are about 15%. The successful mediation rates of labor disputes is rather low when compared to other cases, which is about 8%. For disputes over personality, reputation and bodily rights, the successful rate is 7%.

All in all, the success rate of mediation appears to be correlated with case types, as seen in the graphs. Divorce cases have the highest mediation rate, at 30.7%. The success rate for mediation in commercial issues is the lowest, at 0%, with none of the 109 cases successfully settled. There may be other factors that influence the success rate of mediation. That is, other factors may be at play, as the case type may be just a symptom of the impact.

[3] Notice of the Supreme People's Court on Issuing the Operating Rules of the Supreme People's Court on Distribution of Complicated Civil and Commercial Cases from Simple Ones and Mediation and Fast-track Sentencing (for Trial Implementation) ” Article 9 For the following disputes that are appropriate to be resolved through mediation , the parties shall be guided in entrusting mediation:
(1) disputes over family matters; (2) disputes over neighboring relations; (3) labor disputes; (4) disputes over traffic accident compensation; (5) medical disputes; (6) property disputes; (7) disputes over consumers' rights and interests; (8) disputes over small amounts of debts; and (9) disputes over application for withdrawing an arbitration award for labor disputes. For other disputes that are appropriate to be resolved through mediation, the parties may also be guided in entrusting mediation.

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3. Research Ideas and Experimental Design

3.1. Basic Experimental Process

Two empirical studies were conducted in this article. One is a qualitative study for full-time pre-litigation mediators, while the other is a quantitative study for the parties (including plaintiffs and defendants) in mediation.

3.1.1. Experimental Sites

A pre-litigation mediation center that serves as the experimental location is situated on China's eastern coast. The author was in charge of supervising pre-litigation mediation agencies and their mediators, as well as supporting judges in examining the validity and legality of pre-litigation mediation agreements. The author's key duties include managing and controlling the entire mediation process, keeping statistics on mediation rates, and using an online system to allocate pre-litigation mediation cases to mediators. As a result, the author have access to firsthand information about cases involving pre-litigation mediation.

3.1.2. Sample Selection

The sample under study consists of 5095 civil cases from the district court's January 1 to November 23, 2021. These cases share the following three traits:

a. The whole mediation process, including the mediator assignment, mediation process, and mediation results, are documented on the computer system. Since each of the processes involves distinct time points, the sample data has a high degree of objectivity and statistical precision.

b. A less than one-year time frame reduces the possibility of bias caused by outside factors like shifts in regional judicial policy regarding mediation activities.

c. The sample size is substantial. The study used 5095 samples, of which 7 different case types are chosen. Among these cases, about four were explored in depth, including contract disputes, divorce disputes, labor conflicts, and commercial civil disputes involving businesses, securities, insurance, and bills. Each case category contains more than 50 cases. The conclusions reached have a high level of scientific value.

3.1.3. Subjects Selected

The mediators and the case parties are the two types of subjects that the author chose to perform an empirical study on. Judges who preside over mediation are excluded from this study for three reasons. First, the functions of mediation judges remain unclear in China. Second, the court under consideration now has few mediation judges. Third, the mediation judge's role has not been adequately utilized[4].

Introducing the specific situation of mediators' experiment scenario and setup. In experiment 1, the author went to the mediation room and conducted some one-on-one individual questioning of

[4] Notice of the Supreme People's Court on Issuing Several Opinions on Further Implementing the Work Principle of "Giving Priority to Mediation and Combining Mediation with Judgment" article 21. "Establishing and improving the mechanism of stylized mediation. We shall constantly summarize mediation experiences, make efforts to explore the law of mediation, establish and improve a stylized mediation mechanism featuring case classification, professional judge and specialized methods, establish corresponding mediation modes, and increase the work efficiency and success rate in the mediation of similar cases." According to this document, the role of mediation judge is not the clear and only mentioned in some articles without detailed duties and regulations.

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mediators. To begin with, mediators were surveyed on their thoughts on pre-litigation mediation. They were then interviewed about the study questions in this paper.

All mediators interviewed belong to the same institution, which is responsible for their payment and worker protection. Such institutions are fast developing in China. The court-appointed mediators are generally full-time mediators. The number of mediators is big. G District Court has 14 mediators in total.

The goal of this paper is to conduct a survey of these full-time mediators, who typically have a wealth of mediation experience and have been in practice for at least six months. Some senior mediators have more than five years of experience. Even after retiring, some have continued to work in this field for more than 20 years. Therefore, an empirical investigation of these mediators can offer first-hand, factual data.

The profiles of the mediators are listed below:

Table 2: Profiles of the mediators in court G.

Mediator A	Mediator A has been involved in pre-litigation mediation for a short period of time, only five months since June 2021, but has been involved in community-based mediation in China for nearly 20 years. During her time in pre-litigation mediation, her mediation rate was very high, reaching about 50% in a month (the highest rate of all 14 mediators in Court G for that month).
Mediator B	Mediator B has been involved in pre-litigation mediation for 8 months. However, he has almost 20 years of experience in corporate management. His mediation rate was in average.
Mediator C	Mediator C is the most senior one with 5 years of experience in court-affiliated mediation.
Mediator D	Mediator D, although not a mediator for District Court G, has extensive experience in commercial mediation as a commercial lawyer. He has been a mediator for District Court Q for three years and has been involved in mediation and litigation of commercial cases for five years. He mediates mainly commercial cases.
Mediator E	Mediator E's mediation rate is in the middle to upper level of pre-litigation mediation, with rich mediation experience in divorce cases. Her main job before the pre-litigation mediation is to engage in marriage psychological counseling.

The parties to the mediation are included in the second group of subjects and the following are the reasons for researching the case's litigants. In order to have the most accurate understanding of the parties' perceptions of mediation, the author first tried to investigate parties who either succeeded or failed in mediation. The investigation of the parties was guided to fill in the blank in the recent study. This makes the author's study different from others because the author have not found any ongoing studies which conduct research on the litigants. Moreover, it is a kind of further validation of the

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mediator survey. A questionnaire was used for the quantitative study. The author refers to Lisa B. Amsler's study on evaluating the effectiveness of mediation. In labor cases, Lisa employed a Likert scale to get feedback from the interviewees [10].

Over the course of three months, about 100 questionnaires were gathered for this study. The questionnaire was delivered to the parties electronically, and they could complete it visually by scanning a QR code. Individuals' privacy and all information about them were firmly kept secret. The data collected for the parties and mediators is provided in a quantifiable manner once the qualitative and quantitative study has been finished. The author then attempted to identify the relationship between the phenomena and the many components involved, as well as the weight of each factor's influence on the success rate of mediation, with the use of statistical methods of mathematical analysis and graphical study.

The study seeks to shed light on the elements that influence mediation outcomes and their relative importance through the two phases of the study mentioned above. The author expects that the aforementioned findings will clarify some procedures or mechanisms governing pre-litigation mediation. For instance, a mandated mediation strategy can be used in particular case types with a high rate of mediation success. Additionally, if it is shown that the lower success rate of mediation results from a lack of faith in the mediation process, the court may allocate funds for procedural publicity.

4. Qualitative Research: In-depth Interviews (Study One)

4.1. Experimental Design

The Court G's Mediation Rooms 1 and 2 are used for the in-depth interviews. Face-to-face interviews with each mediator—A, B, and C—were done. The interviews with mediators A and B lasted 20 minutes each, whereas the interview with mediator C only lasted 10 minutes. The mediators D and E were the subjects of primarily telephone-based interviews.

4.2. Findings

a. Division of property: In divorce cases, if property can be divided in the mediation document, the success rate of mediation can be higher.

b. Degree of familiarity between the parties: Disputes between acquaintances are more likely to be successfully mediated.

c. Alternation of record: There aren't many problems that call for a court proceeding. The aim of the parties in most commercial disputes is to pursue litigation and win a judgment in order to submit an application to related Bureau for the alteration or deletion of business information. Parties are more inclined to mediate and fewer issues occur that demand a court trial if such business information can be altered by mediation documents.

d. Education level: The higher the education level of the parties, the higher the success rate of mediation.

e. Knowledge of law: The better the knowledge of law, the higher the mediation success rate.

f. Hostility: Refusal to mediate is due to being hostile towards the other party.

g. Confidential policy: The principle of confidentiality can promote the parties' willingness to mediate to a greater extent.

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4.3. Further Validation

In order to determine whether the aforesaid viewpoints are shared by other G District Court mediators, the author conducted a survey on 12 mediators in G Court in response to the above view and came up with the following data.

Table 3: Mediators in G Court in response to the views.

	In divorce cases, if property can be divided in the mediation document,the success rate of mediation can be higher.	Disputes between acquaintances are more likely to be successfully mediated.	Alternation of record: Commercial disputes usually seek for alternation of some information of their commercial record by judgement. If such information call be altered by mediation document, parties are more willing to mediate and not many disputes really arise that require a court trial.	Education has little effect on the success rate of mediation.	The master of legal knowledge had no effect on the success rate of mediation.	Refusal to mediate is due to hostility towards the other party.	Confidential Policy:The principle of confidentiality can promote the parties' willingness to madiate to a great extent.
Agreed	11	3	3	0	1	6	4
Netural	1	8	5	12	9	4	8
Disagreed	0	1	4	0	2	2	0

The results show that the group of mediators shares some of the hypotheses. For instance, all but one mediator agreed with view 1. With fewer objections, the majority of mediators also concurred with views 4 and 7, respectively. Fewer mediators agree with Viewpoints 3 and 8, raising the possibility that the perspective is untrustworthy. Regarding viewpoint 5, all mediators' responses are neutral. There is little agreement on viewpoint 4. It could imply that components 4 and 5 are unlikely to be significant.

However, the mediators can only have very limited view because they are only representing one subject in pre-litigation mediation. The litigants, another aspect of the mediation interaction, should be studied from a different perspective in order to evaluate the scientific validity and integrity of the aforementioned theory.

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5. Quantitative Research: Conduct of Questionnaire Survey (Study Two)

5.1. Experimental Design

The author used an electronic questionnaire to study the litigants in study two. A person was guided to scan a QR code on a mobile phone or computer to obtain a questionnaire to fill out in order to gather as many opinions from the parties as possible and to mitigate the effects of the pandemic of Covid 19. The results of the qualitative investigation mentioned above are incorporated into the questionnaire's design to have a further testing. The author conducted more than 200 interviews during the course of our three-month study and collected 173 valid surveys. After compiling the surveys, the author came to the following conclusions about the aforementioned hypotheses.

5.1.1. Successful Rate of Mediation Can Be Higher if Property Can Be Divided in the Mediation Document in Divorce Cases

A total of 28 questionnaires were obtained for this question (20/28 = 71.4%), of which about 71% of the parties wanted to divide property in the divorce. Therefore, if the property cannot be divided, parties will give up mediation and go to trial.

In some mediations, judges in different regions have different ideas about pre-litigation mediation for the division of property. Some judges think it can be divided, while other judges think it cannot be divided in this period. Therefore, different attitudes toward the property division affect the success rate of mediation. In this tested district court, 50% of the divorce cases went to trial because property cannot be divided in the mediation document.

5.1.2. Parties Are Willing to Mediate in Commercial Disputes if Company's Commercial Record Can Be Altered by Judgement

A total of 20 questionnaires were obtained for this question (11/20=55%), of which 50% of the parties believe they would refrain from litigation if they could be helped to solve the problem of business information correction. Less than 14% disagree. In most commercial conflicts, the parties' goal is to go through litigation and obtain a judgement so that they can apply to the Industrial and Commercial Bureau for a modification or deletion of business information. There aren't many issues that necessitate a judicial trial. Therefore, it seems that understanding the operation of business operation especially in the administration can be helpful in resolving commercial disputes.

5.1.3. Refusal to Mediate Is Due to Hostility towards the Other Party

A total of 173 participated in the research, with greater than 50% of the parties believing that the refusal to mediate itself was due to hostility toward the other party. According to the in-depth interviews, hostility includes that the two had been at odds, had fought, or that the other party felt that the person was not trustworthy. In some cases, they are even willing to pay more than the cost of the lawsuit.

5.1.4. Disputes between Acquaintances Are More Likely to Be Successfully Mediated

A total of 97 participated in the study, with about 30% of the parties believing that familiarity facilitates mediation to a large extent. 44% believed that familiarity had some effect. Only 20% thought familiarity had no effect.

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5.1.5. Education Has Little Effect on the Success Rate of Mediation

By an "XY" analysis of the selections conducted on the 173 participants in the study, the relationship between education and the success rate of mediation was found to be not significant.

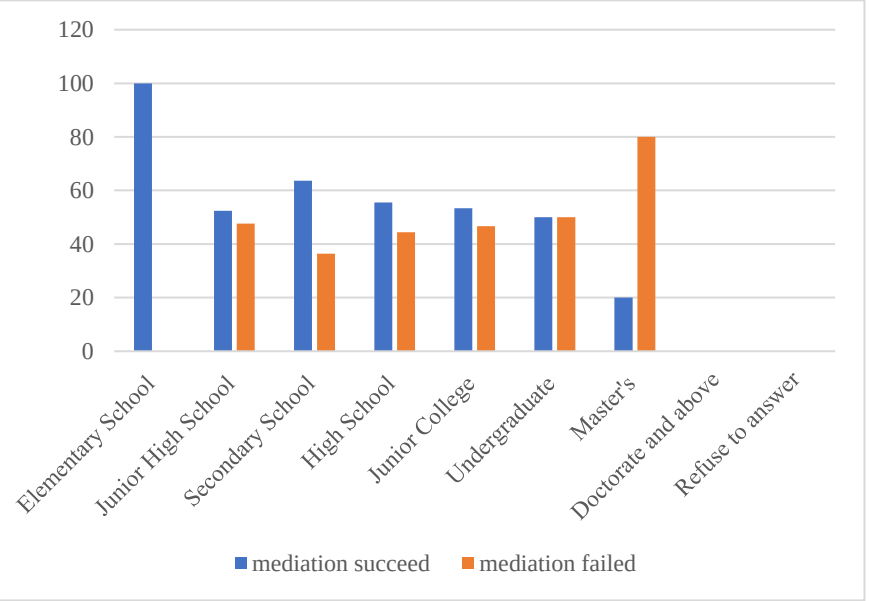

Figure 1: Relationship between litigants' education and mediation successful rate.

5.1.6. The Level of Legal Knowledge Has No Effect on the Success Rate of Mediation

The relationship between level of legal knowledge and the success rate of mediation was found to be not significant.

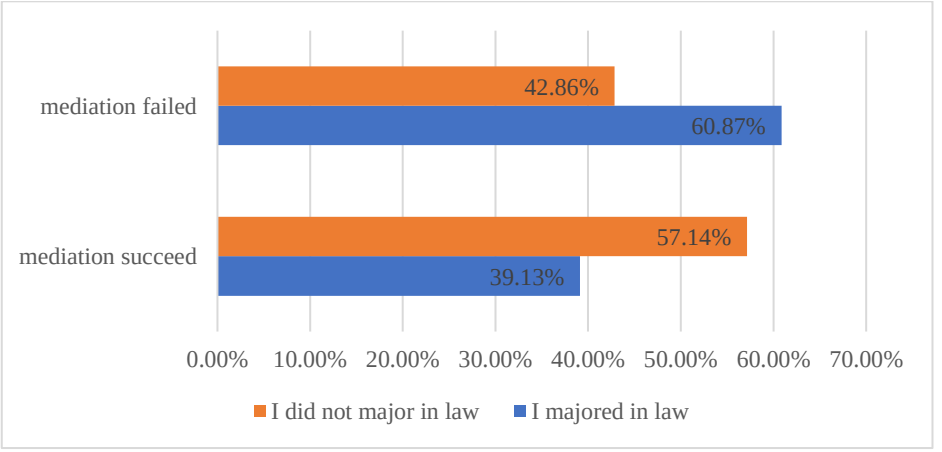

Figure 2: Relationship between litigants' law backgrourd and mediation successful rate.

5.1.7. Confidential Policy: The Principle of Confidentiality Can Promote the Parties' Willingness to Mediate to a Great Extent

A total of 93 people participated in the research on this question, of which 66.67% believed that confidentiality measures of information could help in choosing mediation rather than litigation. Only 1% saw confidentiality measures as not helpful in choosing mediation. Confidentiality measures, as a result, can be seen to increase the likelihood of a successful mediation.

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5.2. Other Findings

In addition, this research yielded extra information that was not gleaned via interviews with mediators, but rather from the research of litigants itself.

5.2.1. Overconfidence in Evidence Affects the Success Rate of Mediation

A total of 76 questionnaires were obtained for this question, in which more than 30% of the parties felt confident that they had sufficient evidence to win the lawsuit, making them choose to enter the litigation process rather than mediation. About 40% of the parties remained neutral. Thus, it is evident that if the parties are provided with an analysis of the evidence prior to litigation, they may lower their self-confidence and proceed with pre-litigation mediation.

Furthermore, it seems that mediators will benefit from having knowledge of evidence law in order to better guide parties by lowering their expectation in the result of litigation because of their over self-confidence.

5.2.2. The Parties Are Satisfied with the Mediation Resources Made Available by the Court

A total of 93 questionnaires were obtained for this question, of which more than 72% of the parties were satisfied with the mediation resources provided by the courts. This result also fills the gap of Jacqueline Nolan-Haley's study[5], which found that the mediation resources are limited and scarce in some countries [11]. This study demonstrates that the court's mediation resources in that region of China are adequate.

5.2.3. The Parties Are Willing to Choose Pre-litigation Mediation Next Time When They File a Case in the Future

A total of 173 questionnaires were obtained in this question, of which greater than 78% of the parties still preferred pre-litigation mediation and would choose it again.

This result suggests that the mediation running mechanism, which is a semi-auto mode, is well received in China. China's mediation mode tends to be more of an automatic one. For example, when parties file a lawsuit, the case is automatically assigned to mediation at the case filing stage, unless the parties explicitly refuse. This approach differs from some foreign judicial practices[6], and some academics have voiced concerns that this method violates people's right to choose whether or not to participate in mediation before going to court. A strong example is Halsey v. Milton Keynes General NHS Trust [12]. The issue in Halsey was whether the court could require unwilling parties to participate in mediation. The court stated that it would not require unwilling parties to participate in mediation because, in its view, compulsory referral would violate a litigant's fundamental right to have access to the courts and thus be in violation of Article 6 of the ECHtR [12]. Even if it did have jurisdiction to compel unwilling parties to mediate, the court found it difficult to identify the conditions under which "it would be appropriate to exercise it". Moreover, the court specifically rejected the notion that there should be a presumption in favor of mediation. Due to the lingering effects of the English Court of Appeal's 2004 decision, part of the E.U.is opposed to imposing a mandatory scheme.

Compared to the practice in other countries, it seems to show that the pre-litigation mediation in China runs more smoothly than in EU.

[5] For more information about your rights, visit https://fra.europa.eu/en/theme/access-justice.

[6] In 2016, the E.U. Parliament issued a further study on the implementation of the Mediation Directive. One of the reports in the study found that there was "great cultural and economic resistance to the promotion and use of ADR processes.

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5.2.4. The Fee of Litigation Can Affect the Success Rate of Mediation

A total of 173 questionnaires were obtained for this question, of which 130 parties believe that litigation fee has an impact on their decision to choose mediation or litigation. This conclusion is significant because it shows the close relationship between the cost of litigation and litigants' choice toward pre-mediation litigation. It also illustrates that when litigation fee is higher, litigants will be more willing to choose pre-litigation rather than mediation, preventing cases from going to trial.

The finding, on the other hand, confirms the conclusions of Chen Weixing and Tang li [7,8]. They both believe the litigation cost's reduction by the Measures for Payment of Litigation Costs implemented in 2007 contributes greatly to the rising of the number of cases[7] [13]. On the one hand, Chen Weixing found that from Year 2007 to Year 2012, the number of civil cases filed in China has increased significantly, with an average annual increase of 8.3%, much higher than the average annual increase of 4.5% from Year 2001 to Year 2006. From this, Chen concludes that the changes in the number of cases and litigation costs in China show a strong correlation as revealed by Posner's theorem. On the other hand, Tang Li also points out in his article that there is no difference in litigation costs between mediation and litigation, making it difficult to persuade parties to choose mediation. Therefore, the Measures for Payment of Litigation Costs[For example, (4) For each labor dispute case, 10 Yuan shall be paid. See Measures on the Payment of Litigation Costs], which is implementing the doctrine of "justice for the people" in China and inspiring enthusiasm of the people in judicial proceedings, calls for reform.

5.2.5. The Length of Litigation Affects the Success Rate of Mediation

A total of 173 questionnaires were obtained for this question, of which 140 of the participants believed that the extension of time for litigation would make them choose mediation instead of going to litigation, which means that the duration of litigation has an impact on their choice. This confirms Tang Li's statement [8]. In his article, he points out that the procedural law of civil cases exerts more pressure on judges, which requires them to issue judgement in a short time and discourages litigants from choosing mediation rather than litigation because the duration of litigation is acceptable.

In terms of time costs, the civil procedure law's strict trial time limit system, which regulates judges, is usually in half a year or a year, depending on the case complexity.

On the one hand, it had no effect on the parties' decision to prefer mediation over litigation. On the other hand, the law itself sometimes causes litigants to have expectations about when they will receive their judgment. Litigants will be dissatisfied if a trial or judgment is delayed, which will worsen their litigation experience.

5.3. Response to Controversial Views in Practice

In the research, in addition to the above-mentioned factors, other controversial points of view in practice were clarified.

Resources of mediation provided by the court (comparison between China and foreign countries) are adequate and the parties have a willingness to mediate.

[7] The introduction of the the Registration System for Case Docket in 2015 has led to a sharp increase in the number of cases received by the courts. In the first month of the registration system's implementation, the number of cases received by courts across the country increased by 29% compared to the same period last year.

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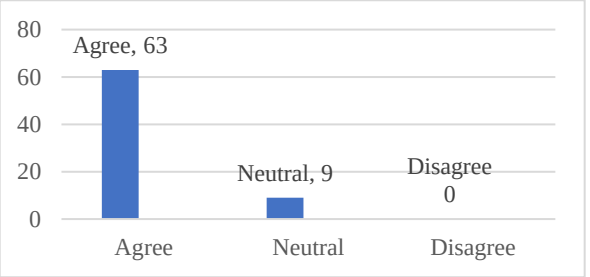

Figure 3: Do you agree with the following statement? “In general, I would like to see pre-litigation mediation in the future become more intelligent."

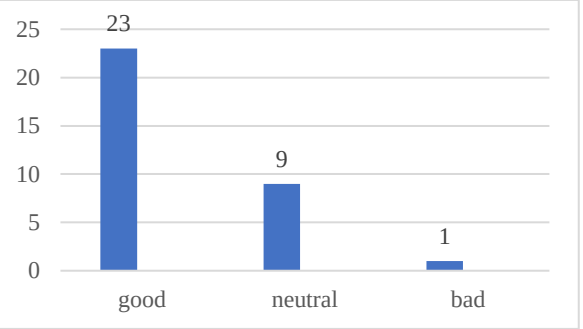

Figure 4: How was your experience using Mobile Micro Court mediation.

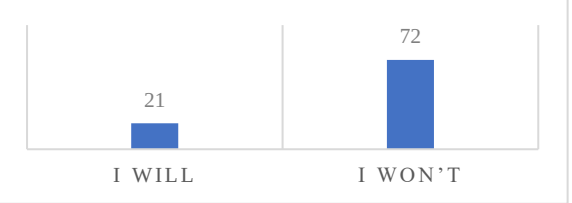

Figure 5: If you knew you could skip the pre-litigation mediation process and went to a trial directly, would you choose to skip the pre-litigation mediation this time?

From the result, it shows that people in China are rather satisfied with the resources the court provided and the "Mobile Micro Court" mediation platform is favored by them, with 87.5% of the people surveyed looking forward to more intelligent application in mediation and 69.7% enjoying their experience using the platform.

The situation is different from other countries. There is a large foreign literature studying the inadequate availability of court resources for mediation. Some foreign studies have noted that pre-litigation mediation is not well known in the United States and Russia. As Donna Shestowsky notes, one way to meet this unfamiliarity with mediation challenge, at least with represented parties, is to require that attorneys advise their clients of ADR options [14]. A recent multi-jurisdictional empirical study from the U.S showed that parties were unaware of ADR. Even when parties are aware of ADR options, they do not really understand how they operate. As Hendley notes, a study of Russian attitudes toward mediation showed the lack of popular knowledge about the mediation process, "both neophytes and court veterans were equally ignorant [11]." Jacqueline Nolan-Haley suggests that citizens in some E.U. countries may be unaware of their rights or have insufficient knowledge of the tools that are available to access justice [15]. In Africa, there is the lack of government funding for ADR and mediation [16].

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However, these issues do not appear to exist in China. . Parties are relatively satisfied with the resources provided by the courts. Although mediation is currently commonly criticized in some occasional reports for being a tool to hinder litigation, few quantitative studies have been conducted on the perceptions of parties (especially those who have already experienced mediation). This paper finds that despite these reports, parties in China are generally relatively satisfied with mediation, as evidenced by the fact that they will choose mediation for dispute resolution the next time when they are faced with the same situation.

6. Further Analysis of the Experimental Results

6.1. External and Internal Validity

The study, in the author's opinion, has a high level of internal validity. Face-to-face interviews were utilized for the mediators, and a randomized experiment was used for the parties' survey. Out of hundreds of cases, more than 200 parties were chosen at random, and roughly 100 legitimate surveys were received. However, keep in mind that, while conducting research online removes some barriers, it cannot guarantee that participants will pay attention to detail when filling out the survey.

The study's difficulty stems mostly from its lack of external applicability. Authors of experimental studies must inevitably recognize certain significant discrepancies between experiments and the actual world. For instance, the sample's data is concentrated in a certain court from a single data source. The findings of the data are not generalizable to courts in other regions because this court is situated in an economically prosperous coastal region in southeast China. As a result, certain results might not be applicable elsewhere. Furthermore, because some questions in the questionnaires only have a small number of respondents due to special case types, the results may not be completely reliable.

Despite these, the study shows a high level of external validity. This is due to the fact that certain challenges are common across the nation. For instance, the expense and duration of litigation, as shown by research, are conducted by other academics in different areas. Second, the research was conducted in a region with a highly mobile population. As a result, the results drawn are more objective due to the broad mix of persons the migratory population brings. The mobile population is somewhat nationwide, thus the conclusions it derives are more general.

6.2. The Role and Size of Influence Factors

Based on the findings above, the author summarizes factors influencing mediation success rates as follows.

Table 4: The role and size of influence factors.

1. the accessibility of property division (71.4%)
2. whether mediators have experience in dealing with the company's business and administrative registration matters of the commercial cases (55%)
3. whether the parties have had a disagreement (hostility) (50%)
4. familiarity with each other (31.9%)
5. education (none)
6. legal background (none)
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7. overconfidence about the evidence (36.8%)
8. the availability of confidentiality measures (66.7%) *
9. the litigation costs (75.1%)
10. the length of litigation (80.1%)

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The author have produced the following tables.

Table 5: Influence factors of different categories.

Evaluating court-connected mediation promoting elements: What works?
Favorable Elements
Availability of confidentiality measures (66.7%) *
Litigation costs (75.1%)
Length of litigation (80.1%)
Availability of property division (71.4%)
Favorable Preliminary Elements
Whether the company's business and administrative registration matters of the commercial case can be familiarly dealt with (55%)
Hostility (50%)
Unfavorable Preliminary Elements
Familiarity with each other (31.9%)
Whether overconfidence for evidence (36.8%)
Insufficient Evidence for Elements
Education (none)
Legal Background (none)

7. Discussion and Conclusion

Although researchers and practitioners disagree on the efficacy of pre-litigation mediation and the variables affecting mediation success rates, the author have validated and refuted particular claims made by a number of studies. More importantly, as the main focus of this paper, the author's conclusion identifies which elements can positively influence mediation and which factors are not as beneficial as policymakers or court officials believe. Instead of focusing solely on mediators, for instance, training for judges in mediation panels should be offered. Judges should receive training in case management so they can make better decisions about which clauses to include and which to exclude when they review the mediation agreements. This can help improve the success rate in divorce cases, which is verified in section 5 Quantitative Research, Experimental result.

7.1. Suggested Solutions for Future Pre-litigation Mediation

This article concluded that Chinese courts could improve pre-litigation mediation in a variety of ways in the future.

a. the appointment of mediators who are familiar with government policies and current business administration issues.

First, the emphasis should be on introducing people who are knowledgeable about government issues as mediators in commercial dispute resolution. Mediators coming from the insurance and consumer insurance sectors have proven successful, but not in the business sector yet. In fact, business disagreements can be brought before government mediators. These people could be retired clerks of the government sector or someone who previously handled related issues in a government department. The court should determine the key components of mediation in business cases and work with the

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government's business sector, to coordinate the hiring of the necessary professionals, like the retired staffs or some clerks to mediate and resolve the "formality problem" in business disputes.

b. the creation of a strong pre-litigation mediation confidentially system

Pre-litigation mediation cases can be coded in local courts as either "civil" cases or "pre-litigation mediation" cases, which has a significant impact on the confidentiality of the parties' collected information. The parties' litigation-related information will be exposed in the judicial documents if the court establishes the "civil" number; otherwise, it won't. The criteria are up to the discretion of each court. As a result, the "pre-litigation mediation" number method should be recommended for coding in pre-litigation in order to boost information confidential protection and guide people to choose pre-litigation mediation.

In both the European Union and the United States, pre-litigation mediation places a strong emphasis on confidentiality protections. In order to support the parties' intention to mediate, Chinese courts should be aware of the need to establish standard confidentiality protection.

c. mediators should gain a deeper understanding of evidence law

According to this study, parties may feel too confident in their evidence. As a result, they prefer to settle disputes through litigation rather than mediation. Mediators should be knowledgeable in evidence law in order to assist parties by lowering their expectations in the outcome of litigation if they submit their evidence at trial.

d. litigation fee reform

A full reform of the fees for pre-litigation mediation cases and litigation cases, according to this study, should take place. There has been a lot of recent scholarly discussion in this respect (jiaozhu) [17-19]. A more methodical, distinct, and long-term oriented strategy in the design of the lawsuit expenses should be adopted in the future.

e. easing the restriction on how long the trial period can be

Currently, whether excessing the length of the trial is a factor taking effect in judges' work evaluation. On the other hand, it affects parties' anticipation about how long the litigation will last. According to the civil procedure law, the time restriction for civil cases is currently half a year[8], which is substantially shorter and stricter than the time in other nations. Therefore, a fair and reasonable trial duration design is a crucial instrument for encouraging parties to resolve disputes through mediation and relieving the burden on judges. Moreover, it will lower party's anticipation to a reasonable ground and alleviate their anxiety about the length of waiting for the judgement.

7.2. A Summary and Analysis of this Research

The following, the author believes, summarizes the most important aspects of how this study responds to the findings of previous studies or addresses any gaps that may exist.

First, this study responds to earlier research findings. For example, the success rate of the parties' mediation is found to be lower when litigation costs are higher. This is in line with the finding made by Chen Weixing, who derived Posner's settlement theorem and concluded that the higher the lawsuit fee, the greater the chance of an effective solution between the parties [7]. Conversely, if the litigation

[8] Article 152 A people's court shall complete the trial of a case under formal procedure within six months after the case is docketed. If an extension of the period is necessary under special circumstances, the period may be extended for six months with the approval of the president of the court; and any further extension shall be subject to the approval of the superior of the people's court.

Article 164 A people's court which tries a case under the summary procedure shall complete the trial of the case within three months after the case is docketed. If an extension is needed under special circumstances, an extension of one month may be granted with the approval of the president of the court. Article 168 A case tried by a people's court under the small claims procedure shall be concluded within two months after the case is docketed. If an extension is needed under special circumstances, an extension of one month may be granted with the approval of the president of the court.

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price is low, there is a lower chance of a settlement between the parties, and a high percentage of cases will go to trial. This outcome of the litigation fee also supports Tang Li's conclusion that if court litigation fees are extraordinarily low, it encourages parties to overuse their right to suit [8].

Second, by filling some research gaps on pre-litigation mediation, this work advances academic knowledge. For instance, Zuo Weimin doesn't perform a lot of empirical study but comes to some conclusions based only on the judge's untested remark [5]. In order to gather the amount of quantitative data for this study, this article conducted in-depth empirical interviews with several court mediators as well as a questionnaire survey of the parties. Additionally, compared to earlier empirical investigations, the research data in this paper is more accurate and was gathered in a shorter amount of time. The data in Chen Weixing was out of date and covered a wider time period [7]. Additionally, the author's study cases are continuously documented and operated on a computer-based platform, and the data are directly entered into the computer, obviating any chance of data manipulation or human error.

Finally, this study provides some solutions and fixes several issues. Most litigants being studied in China are satisfied with the resources put in pre-litigation mediation, unlike other nations where the public calls for further funding. This article also shows the degree to which litigants are satisfied with online litigation and the likelihood that they would once again select pre-litigation mediation when confronting issues in the future.

The author hopes that this article will prompt the academic community to consider what can be done in the current climate of ADR to advance pre-litigation mediation in China, which has gained popularity but still needs more investigation. This article is only a flimsy start.

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