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A Comprehensive Study of Section 89 of the CPC, 1908: The Role of Alternative Dispute Resolution in Civil Litigation

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ABSTRACT

There was need for another forum to reduce the burden of the court as there were increase in the number of lis pendent in the court. Some people found that the court proceedings were complicated and involved a lot of technicalities. The court process was found to be more rigid for the given situation. The main objective of Alternative dispute resolution is to have a different method to resolve a conflict between parties in an amicable manner. This process will lead to satisfaction for both the properties and will aid them to reach a settlement out of the court. This has been in practice for a long time in the form of panchayat where a neutral third party who is an elder of a particular community. The 222nd Report of the Law Commission of India highlights the significant barriers to accessing justice, particularly for the economically and socially disadvantaged. Recognizing the challenges posed by poverty, illiteracy, and ignorance, the legal system has promoted Alternative Dispute Resolution mechanisms to provide quicker, more cost-effective, and less adversarial solutions.

Section 89 of the Code of Civil Procedure (CPC), 1908, introduced ADR methods such as arbitration, mediation, conciliation, and judicial settlement. The primary objective is to reduce the burden on courts and ensure timely justice. Similarly, the enactment of the Arbitration and Conciliation Act, 1996, was a significant step towards modernizing arbitration laws in line with international standards under UNCITRAL. ADR offers a more accessible platform for dispute resolution, especially for individuals who cannot afford prolonged litigation. It also promotes amicable settlements, which is particularly beneficial in civil, commercial, and family disputes. The government's support for ADR showcases its commitment to making justice accessible for all, aligning with the constitutional mandate of Article 39A.

I. INTRODUCTION

Alternative Dispute Resolution (ADR) offers several advantages over traditional litigation. It is generally more affordable and quicker, saving both time and money. Unlike the formal

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court system, ADR procedures are simpler and free from complex technicalities. A key benefit is that parties can openly express their views without fearing that their statements will be used against them in court. This promotes honest dialogue and collaborative problem-solving. Additionally, since ADR does not result in a clear winner or loser, it minimizes hostility between parties. As a result, relationships are often preserved, making it easier for them to continue working together in the future. ADR is particularly effective for resolving multi-party disputes. All parties can present their perspectives simultaneously, reducing the need for multiple court appearances and providing a more comprehensive understanding of the issue. Furthermore, participants often have the flexibility to choose both the type of ADR method that suits their needs and the individuals or institutions that will facilitate the resolution. Confidentiality is another significant advantage, allowing parties to address sensitive matters privately. ADR also focuses on practical and mutually beneficial solutions, considering the long-term interests of all involved. It encourages risk management by promoting tailored agreements that are less likely to result in further disputes.

II. EVOLUTION OF SECTION 89 OF CPC, 1908

Previously, structured mediation was not available in India. Section 89 of the Code of Civil Procedure (CPC) was introduced to incorporate alternative dispute resolution (ADR) practices from other countries into the Indian legal system. This provision, along with the corresponding rules under Order 10 Rules 1A, 1B, and 1C, was added through the Code of Civil Procedure (Amendment) Act, 1999 (Act No. 46 of 1999), which came into effect on July 1, 2002. The 129th Report of the Law Commission of India had recommended establishing a conciliation court system, emphasizing the importance of mediation and conciliation as effective ADR methods. Similarly, the Malimath Committee, also known as the Arrears Committee, proposed changes in the law to promote ADR mechanisms. Based on these recommendations, the legislature introduced the CPC Amendment Bill in 1997.

While Section 89 initially existed in the CPC, it was repealed with the enactment of the Arbitration Act, 1940 (Act 10 of 1940), which consolidated arbitration laws. The original Section 89 primarily addressed arbitration, referring to its procedures outlined in the now-repealed Second Schedule. After the Arbitration Act came into force, it was believed that Section 89 had become redundant. However, the provision was later reintroduced to accommodate various ADR options beyond arbitration. Notably, the amendments made by the CPC Amendment Act of 1999 are not retrospective. They do not apply to cases where issues were settled before the effective date of Section 7 of the Amendment Act. In such instances, it

is as though Sections 7 and 20 of the Act were never enacted.

III. ANALYSING SECTION 89 OF CPC, 1908

89. Settlement of disputes outside the Court.--(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:--

(a) arbitration

(b) conciliation.

(c) judicial settlement including settlement through Lok Adalat: or

(d) mediation.

(2) Were a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

There were issues with the definitions under Section 89. In practice, a judge may mediate a settlement meeting by advising the parties about the strengths and weaknesses of their case and encouraging them to settle. However, Section 89(2)(c) inaccurately defined "judicial settlement" as a court referring the case to a body assumed to be a Lok Adalat. Similarly, the definition of "mediation" under Section 89(2)(d) was misleading. It suggested that the court itself would facilitate a settlement using an approved method, whereas actual mediation

involves a neutral third party helping the parties negotiate a mutually acceptable solution.

Another major flaw in Section 89 was the requirement for the court to draft the terms of settlement before referring the case to an ADR process. This would necessitate the judge to examine all case details and hear the lawyers' arguments, which contradicts the purpose of ADR — to reduce the court's workload. By pre-emptively formulating settlement terms, the judge may restrict the parties and the mediator from exploring more flexible and creative solutions. This would undermine the effectiveness of ADR.

Section 89 also incorrectly distinguished between conciliation and mediation, treating them as two separate procedures. It specified that conciliation should follow the Arbitration and Conciliation Act, 1996, while mediation settlements would be implemented through court procedures. This distinction did not reflect reality. Most countries treat conciliation and mediation as synonymous, with the terms often used interchangeably. Historically, "conciliation" was the preferred term until "mediation" gained wider acceptance in the 1970s. The unnecessary differentiation created confusion for judges, legal practitioners, and disputing parties. Section 89 of the Code of Civil Procedure (CPC) outlines five forms of Alternative Dispute Resolution (ADR). Among them, arbitration is an adjudicatory process, while the remaining four — conciliation, mediation, judicial settlement, and Lok Adalat settlement — are non-adjudicatory methods.

However, conciliation has been unnecessarily divided into four categories, resulting in inconsistencies. For instance, when a settlement is labelled a "conciliation settlement," a "Lok Adalat settlement," or a "judicial settlement," and is authenticated by the conciliator or Lok Adalat members, it is considered equivalent to a court decree. In contrast, a "mediation settlement," even if confirmed by a mediator, does not carry the same legal standing as a decree. Legally, there is no substantive difference between conciliation and mediation. The two terms are often used interchangeably to describe an informal dispute resolution process where a neutral third party assists the disputing parties in reaching an agreement. In both cases, the role of the conciliator or mediator is to listen to the parties, analyse the facts and circumstances of the dispute, identify the root cause of the conflict, suggest possible solutions, and facilitate a mutually acceptable resolution. Additionally, under Section 73 of the Arbitration and Conciliation Act, 1996, a conciliator has the authority to propose settlement terms. Therefore, in the Indian legal context, conciliation and mediation are fundamentally the same. According to subsection (2) of Section 89 of the Code of Civil Procedure (CPC), when a dispute is referred to arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 apply. Similarly, when a dispute is directed to a

Lok Adalat, the Legal Services Authority Act, 1987 governs the process. These aspects are clear and straightforward. However, ambiguity arises in clauses (c) and (d) of subsection (2). Clause (c) states that for a "judicial settlement," the court must refer the matter to a suitable entity or individual, who will be treated as a Lok Adalat. On the other hand, clause (d) describes "mediation" as a process where the court itself facilitates a settlement between the parties using an approved procedure. This terminology is problematic. Referring to a court-mediated compromise as "mediation," as stated in clause (d), is misleading. Likewise, calling the court's referral to an external party for settlement a "judicial settlement," as per clause (c), is also incorrect. In legal practice, particularly in the United States, a "judicial settlement" refers to a resolution facilitated by a judge who is not presiding over the case. Black's Law Dictionary defines it as the resolution of a civil dispute with the help of a judge not assigned to adjudicate the case. In contrast, "mediation" involves an impartial third party or institution assisting the disputing parties in reaching a settlement.

The incorrect use of these terms in Section 89 contradicts their commonly understood legal definitions. This inconsistency seems to have resulted from a clerical or typographical error, leading to confusion and complicating the implementation of the provision. By inadvertently swapping the terms "judicial settlement" and "mediation" in clauses (c) and (d), Section 89 has introduced unnecessary ambiguity.

IV. SETTLEMENT AND ENFORCEMENT

Once a dispute is resolved through ADR under Section 89, the enforcement depends on the mode of settlement:

1. Arbitral Awards shall be enforced like a decree of a court under Section 36 of the Arbitration and Conciliation Act, 1996 and it cannot be challenged except under Section 34 (setting aside an award on limited grounds like fraud or bias).
2. Conciliation Agreements shall be treated as a settlement agreement under Section 73 of the Arbitration and Conciliation Act, 1996 which is enforceable like an arbitral award under Section 74.
3. Mediated Settlements, if recorded as a compromise decree under Order 23, Rule 3 of CPC, it is enforceable like a court decree, where Mediation settlements in Lok Adalats are final and non-appealable under Section 21 of the Legal Services Authorities Act, 1987.

4. Judicial Settlement & Lok Adalats awards are deemed to be a decree of a civil court and is binding. No appeal lies against the Lok Adalat award except for filing a fresh suit in case of fraud or coercion.

V. JUDICIAL PRECEDENCE

1. Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)

Facts: A dispute arose between Afcons Infrastructure Ltd. and Cherian Varkey Construction Co. regarding a construction contract. The case was pending in court when the question arose whether it could be referred to ADR under Section 89 of CPC.

Issues:

1. Whether all types of cases can be referred to ADR under Section 89 of CPC.
2. What categories of disputes are not suitable for ADR.

Judgment: The Supreme Court clarified the procedure for referring disputes to ADR. The court held that only non-compoundable offenses (serious criminal cases) and disputes involving public interest (such as constitutional matters, election disputes) should not be referred to ADR. Stressed the need for judicial discretion in selecting ADR methods.²

2. Salem Advocate Bar Association v. Union of India (2005)³

Facts: The amendments made to Section 89 of CPC were challenged on the grounds that they were unclear and impractical for implementation. Lawyers argued that the provision lacked clarity on how courts should refer cases to ADR.

Issues:

1. Whether Section 89 of CPC was constitutionally valid.
2. Whether guidelines were needed for effective implementation of ADR.

Judgment: The Supreme Court upheld the constitutional validity of Section 89 CPC where they recognized the importance of ADR in reducing court backlog. Directed the formulation of mediation and conciliation rules to ensure that ADR was implemented effectively.

3. Bashir Ahmad v. Mehboob Alam (2022)

Facts: A dispute arose regarding the enforcement of an ADR settlement. One party refused to comply with the mediated settlement agreement.

Issues:

² (2010) 8 SCC 24

³ (2005) 6 SCC 344

1. Whether an ADR settlement agreement is binding and enforceable like a court decree.
2. Whether the settlement could be challenged on grounds of fraud or coercion.

Judgment: The Supreme Court held that ADR settlements are final and enforceable. Clarified that settlements reached through mediation, conciliation, or Lok Adalats must be treated as binding agreements. Exception on fraud, coercion, or misrepresentation is proven, the settlement may be challenged.

VI. CONCLUSION

Section 89 of the Code of Civil Procedure (CPC), 1908, plays a crucial role in promoting Alternative Dispute Resolution (ADR) in India. By encouraging methods such as arbitration, conciliation, mediation, and judicial settlement, this provision aims to reduce the burden on courts, expedite dispute resolution, and provide cost-effective justice.

The judicial interpretations in cases like *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.* (2010) and *Salem Advocate Bar Association v. Union of India* (2005) have clarified the scope, applicability, and procedural framework of Section 89. These rulings ensure that ADR is used appropriately, while protecting cases that require judicial intervention.

Furthermore, the enforcement mechanisms for ADR settlements—such as treating arbitral awards as decrees under Section 36 of the Arbitration and Conciliation Act, 1996 and giving Lok Adalat awards finality under Section 21 of the Legal Services Authorities Act, 1987—highlight the effectiveness of ADR in delivering binding and enforceable decisions.
