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Settlement of Disputes Outside the Courtroom: A Critical Analysis of the Civil Procedure Code's Framework for Alternative Dispute Resolution

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ABSTRACT

The research paper examines the provision of alternative dispute settlement and its procedural characteristics, as provided by Section 89 of the CPC, 1908, by the 1999 Amendment Act. The amendment aimed to implement alternative dispute resolution in Indian legal systems in response to case backlogs and judicial inefficiency. The study examines the provision in question and discusses its flaws, while also taking into account the growing relevance of alternative dispute resolution procedures in worldwide legal systems and their impact on Indian legal systems. The inconsistencies found within the clause include ambiguity in the definition of ways of dispute resolution, reimbursement of money even in circumstances where there is no settlement, and the putting of an excessive burden on courts. Furthermore, the paper addresses the issue of public lack of awareness. The sources used include secondary ones, such as journal articles, committee reports, etc. The paper also considers the recommendations made by the 238th Law Commission Report, which emphasizes the need to redefine the provisions in order to remove ambiguity, create provisions to ensure that fees are not refunded if there is no settlement, and record the opinions of courts on ADR settlement before proceeding to trial. Furthermore, recommendations submitted include raising public knowledge in order to avoid inefficiencies in systems and further the aims of the amendment and the law in issue.

***Keywords**: ADR, Conciliation, Mediation, Arbitration, Judicial Settlement, Lok Adalat, Efficiency, Refund, Ambiguity.*

I. INTRODUCTION

Law is **one of the most integral components of an organization**. Since a civilization is a form of organization, law is considered to be **one of the most important elements of a civilization**. It is worth noting that there exist two **distinct sets of legislation that administrate civilizations – i) Substantive Laws, and ii) Procedural Laws.**

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The former establish **what rights the citizens can enjoy** and what obligations they have towards the State. On the other hand, procedural laws are the ones that **establish a procedure through which, substantive laws are executed.**

Over the years, it has been established that **procedural and substantive law must coexist to provide proper administration of justice.** They **cannot be said to contradict one another**, as one supplies the means for achieving the other's purpose. Thus, **both sets of laws operate in harmony**, with neither encroaching upon the other's realm.

The Code of Civil Procedure, 1908[2] (hereafter referred to as 'CPC') is a consolidated text that **serves as the basic procedural legislation in India** for all civil matters and disputes. TheCPC is a **compilation of every law that governs the procedures and systems followed by civil courts across the country** and the parties that appear before them. Following three distinct formulations that existed during the British rule in India, the CPC in its current form was finally enacted in 1908.

Over the course of its existence, a number of amendments have been introduced, owing to theneed to curb the issues that existed within the judicial system jurists and legal experts observed a **need to inculcate a system of amicable and efficient settlement without moving to courts**,[3] which resulted in the adoption of **Section 89** of the CPC,[4] which came into being through the **1999 Amendment Act**.[5] Although a provision for dispute settlement and resolution outside courts was provided in the original Code, it only referred to **arbitration**, and the provision was revoked through the introduction of the**Arbitration Act of 1940**.[6] Furthermore, the need to focus on other modes of settlement of disputes outside court, or alternative dispute resolution (ADR) was observed, culminating in the adoption of Section 89.[7]

II. Committee reports

As mentioned earlier, due to judicial lags, jurists and legal experts concluded that **there neededto be reforms in the procedural law pertaining to alternative dispute resolution**, so as to curb the issue of lags in the judiciary.

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[2] The Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India).
[3] Paul Randolph, *Compulsory Mediation?*, 4 (2) INDIAN ARBITRATOR 2 (Feb., 2012).
[4] The Code of Civil Procedure (Amendment) Act, 1999, § 89, No. 46, Acts of Parliament, 1999 (India).
[5] The Code of Civil Procedure (Amendment) Act, 1999, No. 46, Acts of Parliament, 1999 (India).
[6] The Arbitration Act, 1940, No. 10, Acts of Parliament, 1940 (India).
[7] A.R. Lakshmanan, *Settlement of Disputes Outside the Court under Section 89(1) read with Order X Rules 1A, 1B and 1C of the Code of Civil Procedure, 1908*, 5 M. L. J. 22 (2007).

The **129th Law Commission Report**[8] emphasized upon the importance of dispute resolution and settlement in an amicable and peaceful manner, while the **Malimath Committee Report**[9] focused on the requirement of courts to refer cases, after framing issues for resolution throughADR instead of litigation. The purpose of this was **to reduce the volume of commercial litigation cases in civil courts, curbing the large influx of appeals in higher courts, and ensuring that the courts regain their efficiency owing to such implementation**. The **Statement of Objects and Reasons** of the 1997 Amendment Bill states that the inclusion of Section 89 seeks to consider the recommendations made by the aforementioned reports.

Another recommendation made by the 129th Law Commission Report was **to establish Conciliation Courts**, in furtherance of the principles of justice, as well as to ensure efficiency.At that point, **conciliatory practices were seen in practice in the Himachal High Court**, before, during and after trials. **Positive results from the same** were responsible for the recommendations as mentioned above.[10]

III. Analysis

(A) The Provision

Section 89 of the Civil Procedure Code states that **whenever the Court is satisfied that there exist aspects of settlement that may be construed to be acceptable to the parties involved**, the Court **needs to create conditions for settlement** and **submit the same to the parties to allow their observations,** which shall be used to re-create the conditions for settlement. The dispute can be resolved in the ways prescribed under the said provision of the Code which are, **arbitration, mediation, judicial settlement (which also includes Lok Adalat settlements) and conciliation.**

Sub-section (2) of the Section highlights the statutes to be referred to in order to implement theprovision in question. The sub-section highlights the application of **Arbitration and Conciliation Act, 1996**[11] in case of arbitration or conciliation, **sub-section (1), Section 20 of Legal Services Authority Act, 1987**[12] in case of Lok Adalat, the designation of a suitable person or institution who shall be construed as a Lok Adalat in the case of judicial settlement,

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[8] Law Commission of India, 129th Report, Urban Litigation: Mediation as Alternative to Litigation (1988).
[9] The Malimath Committee Report (Aug. 1990)
[10] Ojasv Chitranshi, Daksha Bairwa, *Effectiveness of Section 89 of Code of Civil Procedure*, 4 INTL J. L.M. & H.2 (2021)
[11] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).
[12] The Legal Services Authorities Act, 1987, § 20(1), No. 39, Acts of Parliament, 1940 (India)

and a prescribed procedure of compromise in case of mediation.

(B) Judicial Purview concerning the Provision

Before delving into the provision itself, it is crucial to notice the judgments in which the question of law concerned Section 89 of the CPC.

The case of ***Salem Advocate Bar Association v. Union of India* (2005)**[13] was one in which theconstitutional legality of the clause in question was challenged. The court noted that it is obvious that Section 89 was introduced to ensure that not all cases filed in court must be decided by the court. Given the legislative delays and the limited number of available judges, it is necessary to use alternative dispute resolution processes to expedite litigation between theparties. The judgment implies that every effort must be made to establish an acceptable agreement between the parties, but if peaceful ways of settlement, i.e., ADR techniques, are unavailable, the matter will eventually move to trial.

Another case in which an observation about ADR under Section 89 of the CPC was made wasin, ***Salem Advocate Bar Association v. Union of India* (2005)[14]** where it was said that alternative dispute resolution is required to avoid misuse of court processes, as well as to ensurespeedy trials and reduced delay. The judgment also included a full study on the provision's feasibility under CPC.

An important case that throws light on the shortcomings of the provisions is the ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* (2010),**[15] wherein the Courtobserved that **a literal interpretation of the provision would be impractical**, and pointed outthe anomalies that exist within the said section. The court referred to the cases of ***Tirath Singh v. Bachittar Singh*,**[16] and ***Shamrao Parulekar v. District Magistrate***[17], wherein it was observedthat **in order to avoid impracticality arising out of literal interpretation of a statute**, the judge may **include or remove certain words and redress the case henceforth.**

(C) Anomalies inside the sections

As pointed out in the case of ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.,*** following are the anomalies that exist within Section 89:

- The court noted the intermixing of the definitions and explanations of the terms

[13] Salem Advocate Bar Association v. Union of India, AIR 2003 SC 189.
[14] Ibid
[15] Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., JT 2010 (7) SC 616.
[16] Tirath Singh v. Bachittar Singh, AIR 1955 SC 830.
[17] Shamrao Parulekar v. District Magistrate, AIR 1952 SC 324.

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‘mediation’and ‘judicial settlement’ under the provision and observed that the terms as defined (the former referring to a compromise resolved by the court, and the latter referring to a referralto an appropriate institution) had apparently been interchanged due to a drafting error, andthere will be correctness once this is resolved.

- The language present in **Section 73(1) of the Arbitration and Conciliation Act**[18] has beenincorporated into the provision in question, negating the purpose for which the section hasbeen formulated.
- The use of “shall” before the clause permitting the court to decide the terms and conditionsof settlement in the relevant section imposes an unreasonable burden and onus on courts. The formulation and construction of settlement conditions for referral to ADR, particularly arbitration, may render the role of an arbitrator redundant, because the purpose oappointing an arbitrator is to resolve the issue, not only the terms of settlement.
- Another inconsistency emerging from the interpretation of the passage in dispute is the issue of court fees. The clause allows for the return of fees in cases referred to ADR. However, thisclause is only applied in a few states, as other states have their own procedures and laws in place regarding court expenses. Furthermore, there is no possibility for imposing new costs if the issue has not been resolved through ADR methods.[19]

(D) Comparative Analysis

Most legal systems, including international law, now use Alternative Dispute Resolution as a standard practice.[20] Article 33 of Chapter VI of the United Nations Charter[21] requires disputingparties to settle their issues peacefully through dialogue, investigation, mediation, conciliation,arbitration, judicial settlement, resort to regional institutions or arrangements, or other peacefulprocedures of their choosing. The General Assembly Resolution 2625 (XXV) of October 1970encourages nations to use ADR processes to resolve international problems in a speedy and just manner.

The Manila Declaration of 1982 also underlines the importance of alternative dispute resolution(ADR). Furthermore, UNGA Resolution 40/9 of November 1985 emphasizes the

[18] The Arbitration and Conciliation Act, 1996, § 73(1), No. 26, Acts of Parliament, 1996 (India).
[19] Ojasv Chitranshi, Daksha Bairwa, *Effectiveness of Section 89 of Code of Civil Procedure*, 4 INTL J. L.M. & H.2 (2021).
[20] Roselle L. Wissler, Court-Connected Settlement Procedures: Mediation and Judicial Settlement Conferences, 26 OHIO ST. J. DISP. RES. 271 (2011)
[21] U.N. Charter art. 33.

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significanceof peaceful dispute resolution while establishing provisions for it.

Section 651 of the United States Code[22] authorizes courts to use alternative dispute resolution techniques in civil disputes. The code encourages the use of adversarial processes in bankruptcy proceedings. The statute also permits US district courts to use their own ADR programs for dispute **resolution**. Furthermore, the section summarizes the existing ADR initiatives as outlined in the ADR Act of 1998.[23] In addition to mediation and arbitration, the section focuses on the use of techniques such as early neutral evaluation and minitrials. The Delhi High Court has also pushed for early neutral evaluation as a type of ADR.[24]

Paragraph 8 of the UK Pre-Action Conduct Rules and Practice Directions emphasises the necessity of using ADR options before resorting to litigation. However, the paragraph containsno mandatory provision for ADR because the use of the phrase "should" can be interpreted asdiscretionary or directory rather than mandatory in character.

IV. Conclusion, Suggestions and Recommendations

Section 89 is an important provision of the CPC and an effective method of resolving disputes between parties in circumstances where it is permitted. The provision is correct in spirit, as thegoal has been to reduce the court's burden, ensure that parties reach an agreement, and move toward a more efficient/effective method of administering justice.[25] ADR is a mechanism for improving access to remedies and justice without sacrificing or compromising quality.

Nevertheless, as highlighted throughout the paper, **the provision is plagued by several abnormalities** that have **harmed its efficiency and impede its ability to provide speedy remedy** to the people. To resolve the same, **the 238th Law Commission Report**[26] was formulated. The suggestions mentioned in the 238th Law Commission Report **accurately describe and address the situation, and the Report specifies the necessity for modifications.**

The following are the ideas presented in the report: The Commission stated that considering Lok Adalat to be a kind of mediation would be incorrect, and that regarding a Lok Adalat award purely as an agreement on the Mediator's behalf would also be inappropriate.

[22] 28 U.S. Code § 651

[23] Caroline Harris Crowne, *The Alternative Dispute Resolution Act of 1998: Implementing A New Paradigm of Justice*, 76(6) NYU L.R. 1768 (2001).

[24] Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd., AIR 2007 Delhi 284.

[25] Sriram Panchu, *The Road Less Travelled-An Increasingly Attractive Path*, 19(2) SBR 31 (2007).

[26] Law Commission of India, 238th Report, Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions (Dec., 2011).

Furthermore, a better provision would be for the mediator to present settlement terms, following which the court would issue a ruling.

The Report recommended that the current provision be revised to reflect key improvements emphasised in the Afcons case judgment, namely, that the court must provide its opinion in favour of out-of-court settlement prior to determining the problems to be resolved, thereby relieving the court of its duty. **Conciliators must give copies of settlement agreements to the courts** in order to **correct any errors or omissions** therein with the approval of the parties.

Furthermore, a recommendation has been made regarding fee refunds, stating that because court fees can be refunded under the current system even without settlement, there is a need for amendment to ensure that the court receives its due fees in cases where ADR is not usedto settle. Aside from the legal reasons for the provision's inefficiency, another key element contributing to the section's inability to achieve its goal is a general lack of understanding and awareness of legal procedures among the public. Instead of exploring less expensive and time-consuming alternatives, citizens continue to pursue trial in the hopes of receivinga larger compensation on behalf of the Court.

Aside from the legal reasons for the provision's inefficiency, another key element contributingto the section's inability to achieve its goal is a general lack of understanding and awareness oflegal procedures among the public.

Instead of exploring less expensive and time-consuming alternatives, citizens continue to pursue trial in the hopes of receiving a larger compensation on behalf of the Court.

The various platforms and forms introduced under Section 89 are more economically viable due to lower transaction costs, hence there is a need to educate the public about them. Thus, while Section 89 is accurate in its essence, its goal is hampered by legal complications, wordingfaults, and a lack of understanding on the part of citizens.

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