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***Title: Settlement of Disputes Outside the Court Under Section 89 of Civil Procedure Code, 1908: An Analytical Study, Authored By: Ms. Nandita Sridhar (B.B.A., LL.B (Hons), & Co-Authored By: Ms. Malavika M (B.B.A., LL.B (Hons), VIT School of Law, VIT Chennai Campus.  
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## **I. ABSTRACT**

*“Section 89, Civil Procedure Code, 1908 explains about Settlement of Dispute Outside the Court. Section 89 came into being in its current form on account of the enforcement of the CPC (Amendment) Act, 1999 with effect from 1/07/2002. The judges provide the choice of opting for out of court settlement to the parties when elements of such settlement are identified in the case. The purpose of this Section is to bring about the settlement of conflicts between parties, mitigate costs, and minimize the burden of the courts with the inclusion of a third party who helps in resolving the dispute. The four mechanisms of Alternate Dispute Resolution, Arbitration, Conciliation, Mediation, and Judicial Settlement including settlement through Lok Adalat are mentioned under Section 89 of the Code. Out of court settlements don't confine to Section 89 of the Code, it has a wider scope and deals with various subject matters. The authors have conducted an empirical study to analyse the Section 89, Civil Procedure Code and to understand the efficacy of section 89. The authors have made recommendations to improvise these mechanisms, for the society to move from traditional way to a modern way of approaching the court through Alternate Dispute Resolution. The objective of incorporation of ADR into the code for welfare of the parties to attain economic and speedy justice.”*

**Keywords:** *Section 89, ADR, Dispute, Resolution, Settlement, Mechanism, Proceedings, Negotiation.*

## **II. HISTORY OF SECTION 89:**

The historical growth or evolution of Section 89 can be traced back to 1989. The Code of Civil procedure, 1859 can be considered as the first legislation which laid down the groundwork for Alternate dispute resolution in India. Section 312-317 of the Code dealt with ADR. Furthermore, such arrangements likewise enabled the courts to allude to the question for the assertion, which has authority over arbitral procedures and arbitrates on the legitimacy

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of grants. In 1940 the Arbitration Act came into being for the purpose of providing a simple, speedy, and less expensive mode of resolution and to reduce the burden of the courts. However, the purpose was achieved. The reason behind this was the immense power vested upon the courts which resulted in the interference of awards passed by the arbitrators. The failure of the 1940 Act paved the way for change in the current system. Recommendations were made by the Law Commission which proposed radical changes in the existing law.

The policymakers are believed to have made proactive strides in featuring not just the lacuna in the current legitimate system yet besides underscoring the need to structure another system. It is subsequently, in the assessment of the creators, this could be viewed as a stage that could be classified as the *raison d' etre* for the order of Section 89. As such, it is from here that the order of Section 89 began in full stream.

The Arbitration and Conciliation Act, 1996 came into being after this. However, many were of the opinion that it was similar to the 1940 Act. This Act tried to diminish the weight of the forthcoming cases on courts. The enactment of this Act was viewed as a revolution regarding the evolution of Section 89 C.P.C.

In *H.V. Venkatesh vs. Oriental Insurance Company Limited and Ors.*<sup>1</sup> the court discussed the problems with litigation. The concern faces in the proportion in the number of cases increasing every year due to which there is a delay in delivering justice. This delay could affect the party. Especially in Commercial litigation, if the case goes on many years it may affect the performance of the company. In such situations, the parties tend to prefer solving disputes outside the legal framework. Many believe that such resolution is swifter and easier. Hence, recognition of Out of Settlement by the court of law becomes a necessity.

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<sup>1</sup> H.V. Venkatesh v. Oriental Insurance Company limited and Ors. 2002 (2) KarLJ 519.

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### **III. OBJECTIVE OF SECTION 89:**

Parliament promulgated several amendments to the Civil Procedure Code of 1908 in the year 1999 to Section 27 and Section 100. The court directs the party to opt for ADR under Section 89 which are arbitration, conciliation, mediation, and Judicial Settlement including settlement through Lok Adalat. If the court believes that out of court settlement is possible then the court would refer the dispute to any one of the various modes of mechanisms. The objective of this Section is to bring about the resolution of disputes between parties, minimize costs, and reduce the burden of the courts.

### **IV. FORMULATING AND REFORMULATION TERMS OF SECTION 89:**

Section 89(1) of Civil Procedure states that the court needs to frame the issues. The court is responsible to formulate the terms and conditions of settlement if there are elements of settlement present in the case before them. The formulated terms and conditions are given to the parties for observation who later come to the court after observing of the same. After careful considerations, the courts may reformulate the terms and conditions and refer the case to any of the ADR forums. This results in ADR not being used effectively since there is nothing left to be done by the ADR forum. The isn't obligated to give a detailed reasoning for referring the case to ADR, the court can explain the reasons and mention the elements of settlement in three to four lines.<sup>2</sup> It is the duty of the court to ensure that the parties have the option to opt for such settlements.

### **V. MECHANISMS OF SECTION 89:**

#### **V.I Arbitration:**

Arbitration is one of the modes of dispute resolution mentioned under Section 89, CPC. In India, Arbitrator is considered to be an unbiased independent third party who resolves

<sup>2</sup> Basheer vs. Kerala State Housing Board, AIR 2005 Kerala 64.

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conflicts between the parties. Before establishment of Section 89 of CPC, arbitration was an option available to the parties of the suit, with consent, which was sub judice before the court of law under Arbitration and Conciliation Act, 1996.<sup>3</sup> Many prefer Arbitration as a mode of resolution as it is an institution which has autonomy and there is minimum judicial intervention. It observed that the regime of the Arbitration Act outlines that once an arbitrator has been appointed; all objections and issues are to be decided by the arbitrator.<sup>4</sup> No party to any suit be coerced to give consent for opting out of court settlement, and such reference to arbitration would not be accepted under Section 89, CPC.<sup>5</sup>

In *Afcons Infrastructure Case*, it was held that the consent of both the parties was essential in order to refer the dispute under Section 89. The parties to a contract can sign a pre-existing agreement to solve any dispute arising through arbitration. On the other hand, if no such agreement has been made, one party can't be forced to agree for out of court settlement.<sup>6</sup>

## **V.II Conciliation:**

Conciliation is a private dispute resolution where a third party who is an expert is appointed to reach an amicable settlement. Conciliation is a form of alternative dispute resolution (ADR) in which a person or panel of persons assisting the parties must act independently and impartially for a harmonious dispute resolution. According to the Supreme Court, any dispute referred to Conciliation as a forum of ADR, the consent of the parties is a necessity.<sup>7</sup> Where a dispute has been referred: for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act. The *UNCITRAL Rules of Conciliation, 1980*, acknowledged “the value of conciliation as a method of amicably settling

<sup>3</sup> AnandGajapathiRaju vs. P.V.G Raju (2000) 4 SCC 539.

<sup>4</sup> Uttarakhand Purv Sainik Kalyan Nigam Ltd. vs. Northern Coal Field Ltd Order dated 27 November 2019 Special Leave Petition © No. 11476 of 2018.

<sup>5</sup> Jagdish Chander vs. Ramesh Chander, (2007) 5 SCC 719.

<sup>6</sup> Afcons Instructure and Ors vs. CherainVerkay Construction and Ors. 2010 (8) SCC 24.

<sup>7</sup> *supra* note 6.

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*dispute arises in the context or subject of international commercial relations and that adoption of conciliation rules by countries the difference in legal, social and economic systems give for the development of amicable economic relations in international level”.*<sup>8</sup>

The conciliator strives in generating options and finding a compatible solution for both parties to reach an amicable settlement. The Conciliator is bound to abide by certain norms of objectivity, fairness and justice. In regards to Conciliation, a party may terminate proceedings at any point of time but in arbitration termination of proceedings is not possible. In Arbitration, the termination is possible only when the other party agrees to terminate, otherwise, they are bound to wait for the decision of the arbitrator.

### **V.III Mediation:**

Mediation is where an independent third party assists the parties in the suit in reaching a negotiated resolution by resolving the dispute. Mediation was legally recognized under the Industrial Dispute Act, 1947 before the Code of Civil Procedure amendment act was passed by the parliament in 1999. Under the provision in CPC, the consent of the parties is mandatory for referring cases. ***Under rule 5(f) (iii) of the Civil Procedure - Mediation Rules, 2003***<sup>9</sup>, it was made mandatory for referral of mediation. Hence, the courts refer to parties through the mediation process without their consent. It is a non-adversarial approach towards dispute resolution and is a well-recognized ADR process all over the globe. The role of the mediator is to facilitate the parties to find solutions on their own and in a pragmatic manner. The main objective behind this is to guide the parties with problem solving, helping them communicate with each other effectively and ultimately negotiate the dispute. When the agreement is made with the consensus of the parties the mediators send the report of such a

<sup>8</sup> United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Conciliation Rules*, <https://www.uncitral.org/pdf/english/texts/arbitration/conc-rules/conc-rules-e.pdf>.

<sup>9</sup> *Civil Procedure Alternative Dispute Resolution And Mediation Rules, 2003*, available at [http://chdsla.gov.in/right\\_menu/rules\\_regulationslsa/pdf\\_files/cpadrm-rules-2003.pdf](http://chdsla.gov.in/right_menu/rules_regulationslsa/pdf_files/cpadrm-rules-2003.pdf).

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settlement to the court. The court after hearing the parties regarding the dispute shall give effect to the compromise and the decree is passed based on the terms and conditions agreed by the party.<sup>10</sup>

It was said in *Moti Ram (D) Tr. Lrs. & Anr. vs. Ashok Kumar & Anr*<sup>11</sup>, the court tries to explain the need for confidential proceedings. The court has observed that if mediation fails, the mediator has to inform the court that it was unsuccessful and shall not give any reasons for the failure of consensus. During mediation the parties might make offer, counteroffer and various proposals, if the reason is disclosed then it would destroy the purpose of opting out of court settlement. Mediation is considered to be a simpler form of dispute resolution as it facilitates the discussion between the parties, communicating through a mediator who helps in identifying the issues and in reaching a solution for the dispute.

#### **V.IV Settlement Through Lok Adalat:**

Lok Adalat is governed by *Legal Services Authorities Act, 1987*. It is a mechanism in which the case at pre-litigation stage is settled through compromise. Under the said Act, the award (decision) made by the Lok Adalat is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure, in exercise of their right to litigate.<sup>12</sup>

#### **Venkatesh vs. Oriental Insurance Co. Ltd**<sup>13</sup>,

The Karnataka High court held that at the request of any one of the parties the Court can refer to Lok Adalat under section 89. However, this is done if the Court believes that the case to be

<sup>10</sup> Salem Advocate Bar Association vs. Union of India [2005] 6 SCC 344.

<sup>11</sup> (2011) 1 SCC 466.

<sup>12</sup> *Lok Adalat*, available at <https://nalsa.gov.in/lok-adalat>.

<sup>13</sup> 2002 (2) KarLJ 519.



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a “fit case” for the referral of Lok Adalat. The court in this case said that, the Bench has the duty to identify the elements in those situations which deserves negotiation.

***Punjab National Bank vs. Lakshmi Chand Rai<sup>14</sup>***

In case, the parties to the suit had agreed upon settlement of dispute through Lok Adalat. The award granted was challenged by the party under Section 96 of CPC. (Appeal from original decree). The High Court of Madhya Pradesh held that no appeal can be executed under Section 96 of the code. The court stated that the right to appeal is governed under Legal Services Authorities Act. However, this judgement was passed before the enforcement of Section 89 of CPC.

***State of Punjab & Anr. vs. Jalour Singh<sup>15</sup>***

In this case, the court discussed the remedy available to the aggrieved part of the award passed by the Lok Adalat. The Supreme Court stated that an appeal can be filed against an order passed by the Lok Adalat. The exception to this is when the parties have already agreed upon to arrive at a settlement through Lok Adalat. In such situations, the aggrieved party can file a petition under Article 226 and/or Article 227 of Constitution of India, which is subject to limitations.

***Bharvagi Constructions vs. Kothakapu Muthyam Reddy<sup>16</sup>***

The Supreme Court states that in order to challenge the award through writ petition, the plaintiff has to file the same before the High Court challenging the case regarding the legality of the award.

***Manju Gupta vs. National Insurance Co. Ltd<sup>17</sup>***

In this case, a 3-year-old child met with an accident and sustained permanent disability. Before the Motor Vehicle Claims Tribunal, the child’s father made a claim for Rs. 2,20,000. When this matter was referred to Lok Adalat, settled the dispute with an award of Rs 30,000. The claimant criticized this award on the grounds that it was non-meritorious. The code

<sup>14</sup> AIR 2000 MP 301.

<sup>15</sup> (2008) 2 SCC 660.

<sup>16</sup> Civil Appeal No.11345 OF 2017).

<sup>17</sup> (1994) AA 242, 1994 ACJ 1036.

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protects the minor child under Order 32 Rule 7. The High Court observed that Rs 30,000 was inadequate and enhanced the compensation to Rs 1, 10,000. The High Court stated in this case that the justice shouldn't be sacrificed due to pressure of time or expenditure. It is the responsibility of the court to ensure the settlement claim made in Lok Adalat especially when the case involves minors and persons of unsound mind.

#### **V.IV.I Permanent Lok Adalat:**

Permanent Lok Adalat describes a permanent institution. It hears disputes only related to public utility. In this type of Lok Adalat, the aggrieved party can challenge the award granted. The public utility includes, transportation, electricity, telecommunication services, dispensary services. In this case, it was found that there was a criminal element even though the dispute was regarding commercial transactions. The Apex court stated that the PLA can't pass any award beyond its jurisdiction and has to deal with issues regarding public utility only. These cases are tried under Section 22A and 22B of the Act.<sup>18</sup>

#### **V.IV.II Judicial Settlement:**

Under the said draft *Civil Procedure - ADR and Mediation Rules, 2003*, Judicial settlement was defined as : *"'Judicial settlement' means a final settlement by way of compromise entered into before a suitable institution or person to which the Court has referred the dispute and which institution or person are deemed to be the Lok Adalats under the provisions of the Legal Service Authority Act, 1987 (39 of 1987) and where after such reference, the provisions of the said Act apply as if the dispute was referred to a Lok Adalat under the provisions of that Act."*<sup>19</sup>

In this dispute process, the court suggests the party to another judge who maybe more appropriate for resolving the dispute. Since another judge is involved in the process, the

<sup>18</sup> United India Insurance Co. Ltd vs. Ajay Sinha 2008.

<sup>19</sup> *supra* note 9.

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settled matter has to be produced before the court again and the decree shall be passed accordingly. In *Afcons case*, one of the anomalies is that the definitions of terms mediation and judicial settlement are interchangeable. Meaning of clauses (c) and (d) of section 89(2) were found to be interchangeable.<sup>20</sup> Post *Afcons* judgment it was interpreted that there needs to be a prescribed procedure of judicial settlement. The procedure can be prescribed by the High Court under Part X of CPC for framing rules.

## **VI. DIFFERENCE BETWEEN MEDIATION AND CONCILIATION:**

The basic difference between mediation and conciliation is that, in mediation, a third party assists the aggrieved parties to arrive at an agreement whereas in Conciliation, an expert is appointed to reach a settlement. Mediation is regulated by the Code of Civil procedure, 1908 and conciliation is regulated by Arbitration and Conciliation act 1996

## **VII. DIFFERENCE BETWEEN LOK ADALAT AND PERMANENT**

### **LOK ADALAT:**

From the word itself we can interpret that Permanent Lok Adalat is a permanent institution whereas Lok Adalat is temporary in Nature. A permanent Lok Adalat hears disputes only related to a public utility whereas Lok Adalat hears all civil and other disputes except the ones which fall under non-compoundable offences. Regarding the award passed, in a permanent Lok Adalat the party aggrieved can challenge the award but, in a Lok Adalat, whatever award is passed is final and binding on the respective parties.

## **VIII. PROCEDURE FOR REFERRAL OF SECTION 89:**

### **VIII.I Order 10 Rule 1A:**

*Direction of the Court to opt for any one mode of alternative dispute resolution. After recording the admissions and denials, the Court shall direct the parties to the suit to opt*

<sup>20</sup> Supra note 6.

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*either mode of the settlement outside the Court as specified in sub-section (1) of section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties<sup>21</sup>.*

### **VIII.II Order 10 Rule 1B:**

*Appearance before the conciliatory forum or authority. Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit<sup>22</sup>.*

### **VIII.III Order 10 Rule 1C:**

*Appearance before the Court consequent to the failure of efforts of conciliation. Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.<sup>23</sup>*

A judge should not remain silent spectators under the guise of remaining neutral; he opts to remain passive to the proceedings before him. He has to always keep in mind that every trial is a voyage of discovery in which truth is the quest. In order to bring on record the relevant fact, he has to play an active role, no doubt within the boundaries of the statutorily defined procedural law.<sup>24</sup> It is necessary for the judges to have a complete grasp over the facts of the case as it's his duty to identify the elements of settlement before framing the issues.

In **Salem Advocate Bar Association Case**, the Supreme Court has observed that clause (d) of Section 89 (2) questions the arrival of settlement through a mediator or the court.<sup>25</sup> The

<sup>21</sup> *Direction of the court to opt for any one mode of alternative dispute resolution*, available at <https://www.lawzonline.com/bareacts/civil-procedure-code/order10-rule1A-code-of-civil-procedure.htm>.

<sup>22</sup> *Appearance before the conciliatory forum or authority*, available at <https://www.lawzonline.com/bareacts/civil-procedure-code/order10-rule1A-code-of-civil-procedure.htm>.

<sup>23</sup> *Appearance before the Court consequent to the failure of efforts of conciliation*, available at <https://www.lawzonline.com/bareacts/civil-procedure-code/order10-rule1A-code-of-civil-procedure.htm>.

<sup>24</sup> A Shanmugam vs. Sriya K.R.K.M.N.P. Sangam in Civil Appeal No.4012-1013.

<sup>25</sup> *supra* note 9.

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mechanisms of ADR under this code are meant to be outside the court and not before it. With regard to Conciliation, the dispute can be sent back to the court under Order 10 Rule 1-C. On the other hand, the mediator has to approach the court to pass the decree, after giving notice to the parties, in effect of the settlement agreed upon by the parties. In situations where there is a failure to reach a settlement, the dispute can be referred back to the court and the judge cannot dismiss the case on the ground that it was to be resolved through settlement.

In *Afcons case*, the court explained the cases that are suitable and unsuitable for out of court settlements. Considering Rule 1A of Order 10 the court should unalterably refer to ADR process. It is the duty of the court to examine the nature and facts of the case to check if it can be settled through ADR.<sup>26</sup>

## **IX. OUT OF COURT SETTLEMENT IN RELATION TO OTHER SUBJECT MATTERS:**

***The Out of Court settlement in relation to other subject matters are:***

- *Industrial Disputes Act, 1947*, provides the provision both for conciliation and arbitration for the purpose of settlement of disputes<sup>27</sup>.
- *Section 23 (2) of the Hindu Marriage Act, 1955*, can be recognised as Conciliation process. According to this provision it is the duty of the court to bring in the process of reconciliation between the parties before granting any relief under the said act. For this purpose, the Court adjourns the proceeding for a considerable period of time and the parties are instructed to come back to the court after the result of reconciliation<sup>28</sup>.
- *The Family Court Act, 1984*, promotes the ADR process of Conciliation as it tries to resolve the dispute differently from normal civil proceedings.<sup>29</sup>

<sup>26</sup> *supra* note 6.

<sup>27</sup> *Sec 10A (Voluntary reference of disputes to arbitration) & Sec 4 (Conciliation officers)*, Industrial Disputes Act, 1947.

<sup>28</sup> *Decree in proceedings*, available at <https://indiankanoon.org/doc/542052/>.

<sup>29</sup> *K.A. Abdul Jalees vs. T.A. Sahida* (2003) 4 SCC 166.

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- *Section 80(1) of CPC*, deals with notice given to the public officer when a suit is instituted against him. A public officer is served notice under Section 80 of the code. This is to provide him an option to settle the dispute without litigation or recourse to the court of law.<sup>30</sup>
- *Order 27 Rule 5B CPC*, also deals with the same<sup>31</sup>.
- *Order 23, Rule 3*, permits Court to record a compromise and pass a decree in terms of it<sup>32</sup>.
- *Order 32A, Rule 3 deals*, with suits relating to family matters. The concept behind this difference is that the family matters are personal and sensitive in nature. This Order restricts all family disputes. Rule 3 imposes a duty on the Court to make an effort of settlement by way of providing assistance where it is possible to do so. Rule 4 of the order engages an expert for the welfare of the family<sup>33</sup>.

## **X. PROBLEMS WITH INTRODUCING ADR IN CPC:**

***The ADR in the Code of Civil Procedure 1908 is a totally new initiative which leads to a lot of problems in the application of the ADR. The main problems are:***

- 1) Under Order 1 of the Civil Procedure Code, the court can add/strike off parties with regard to the subject matter in question. Once the dispute is referred to arbitration, it can't be transferred back to court. Though arbitrators are chosen by the parties, they can be timid and may compromise on the decision given due to the time constraint.
- 2) The major problem faced by the mediators is there is no general or specific guideline created for them. Also, there is no explicit provision on review of agreement between the parties and the mediator.

<sup>30</sup> Ghanshyam Dass vs. Domination of India, (1984) 3 SCC 46.

<sup>31</sup> *Duty of court in suits against the government or a public officer to assist in arriving at a settlement*, available at <https://www.lawsonline.com/bareacts/civil-procedure-code/order27-rule5B-code-of-civil-procedure.htm>.

<sup>32</sup> *Compromise of suit*, available at <https://www.lawsonline.com/bareacts/civil-procedure-code/order23-rule3-code-of-civil-procedure.htm>.

<sup>33</sup> *Duty of court to make efforts for settlement*, available at <https://www.lawsonline.com/bareacts/civil-procedure-code/order32A-rule3-code-of-civil-procedure.htm>.

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- 3) Mediation lacks statutory framework unlike Arbitration and Conciliation.
- 4) Under Section 89A, no penalty regarding withdrawal from mediation unreasonably is provided. This tends to happen where the party is given the liberty to not give any reason. Therefore, the mediator has no choice but to declare the case to be a failure of mediation and this often happens when one of the parties opt out of the mediation process.
- 5) When a dispute is referred to Lok Adalat and the parties did not arrive at a consensus, the dispute is returned to the court and this results in unnecessary delay in judgement.
- 6) Lok Adalat is not treated as a court, and is vested with certain powers of civil court. Awards by Lok Adalat cannot be challenged. Even though the purpose is to provide speedy justice, matters resolved maybe through mere compromise.
- 7) Lok Adalat has the power to specify its own procedure in order to resolve the dispute. Since it is not bound to any specific procedure, parties may represent themselves. Ultimately this results in chaos.
- 8) With regard to Judicial Proceedings, the parties do not have any control over the process. The remedies available are limited because of the formal procedure followed by the courts. The major drawback of Judicial Proceedings is the lack of confidentiality.

## **XI. MALIMATH COMMITTEE REPORT AND THE 129TH LAW**

### **COMMISSION:**

129th Report mentioned the need for settlement of disputes outside the court. It recommends making this kind of dispute resolution mandatory if elements of settlement were identified. The Malimath Committee recommended these for reducing the number of commercial litigations, and the number of appeals also mentioned that implementation of this would improve the efficiency of the courts. The committee also recommended the establishment of conciliation courts for the efficient working of the judicial system. This committee recommended that only with a failure of such settlement, the institution of court should be

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initiated. This was the main aim and objective of introducing section 89 of the Civil Procedure Code.<sup>34</sup>

## **XII. EMPIRICAL STUDY: EFFICACY OF SECTION 89<sup>35</sup>:**

The authors conducted an online survey wherein they took a sample of 100 people pursuing their career in the field of Law. The survey was conducted to get a wider perspective on the subject and to ascertain efficacy and in-depth knowledge on Section 89 of Civil Procedure Code.

**From the survey conducted, the following are the findings:**

1. It was identified that 100% of the respondents were aware of the term Alternative Dispute Resolution.
2. 99% of the Respondents said that they think ADR is a necessity and 1% of them didn't agree with it.
3. While 96% of the respondents agreed that "ADR is one medicine to curb many types of disorder and disputes efficiently" and the remaining 4% didn't agree to the same.
4. While questioned about the factors which influence ADR with relation to judicial fairness: Evidence Factor - 29%, Social Factor - 52%, Legal Factor - 55%, Arbitrator Factor 50%.

**Evidence Factor:** The Indian Evidence Act does not apply to Arbitral tribunals. The admissibility and relevancy are decided by the Arbitrator himself. The authors agree that Evidence has a negative influence on ADR as the power vested upon the Arbitrator has to be circumscribed within the principles of Natural Justice.

**Social Factor:** There is great influence on the mindset of the people. In India, the society is traditionally bound and out of court settlement which is a relatively new concept that has lower acceptance rate from the people as they have more faith over such

<sup>34</sup> Report available at <https://lawcommissionofindia.nic.in/101-169/Report129.pdf>.

<sup>35</sup> This survey was conducted by the authors online using Google Forms and findings of the same are mentioned in this research paper.



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proceedings. Indians believe that the judiciary system, which involves court proceedings provides better justice.

**Arbitrator Factor:** This factor can be viewed from two different perspectives. Firstly, to a common man, ADR and Arbitration might be perceived in the same sense. So, to someone who does not want to approach the court, this might be a preferable choice. Secondly, experts in MNC's also prefer this when they want to resolve the dispute quickly and to maintain confidentiality.

**Legal Factor:** There is no proper structure provided by the law. Hence, it is considered to be an influential factor on ADR.

5. With regard to the most prominent weaknesses of ADR, the respondents chose -autonomy of judges - 53%, Conflict of Advocates - 46%, Recent changes - 40 %, misconduct of employees - 32% and Others – 2%.

**Autonomy of Judges:** Arbitrators, Conciliators and Mediators have no power to order a party to appear before them. On the other hand, a judge has the right to do so. A judge need not ask any party to the suit to comply with the judgment. While Arbitrators, Conciliators and Mediators act as third parties who ensure that both the parties benefit from the settlement.

**Conflict of Advocates:** It can be noticed in judicial settlements as the judge appoints another judge who might be more suitable in giving the award.

**Recent Changes:** The changes can be noticed in the Arbitration and Conciliation Act, 2019. The 2019 Act aims in establishing an independent body called "*The Arbitration Council of India*" (ACI). The purpose of this body was to frame policies, oversee timely and cost-effective disposal of Arbitral cases. The Act has proposed that the Arbitral proceedings were to be completed within 12 months. The ACI is to be chaired by a Supreme Court Judge and/or the Chief Justice of the High Court or any eminent person. It was necessary to include knowledgeable people to establish the standard of ADRs. This was with reference to the calibre of the Arbitrators, their qualifications, experience,

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intellectual competence and various other factors were considered. The Act also understands the need for imparting knowledge through training, workshop etc., for promotion of institutional arbitration. The ultimate goal was the growth of this institution. The authors believe that this Act has a positive influence on ADR.

**Others:** It may not always be an amicable settlement, which defeats the predominant purpose of ADR.

**Misconduct of employees:** Only Arbitrators and Conciliators are bound by law to maintain confidentiality. However, mediators aren't bound by law.

**Others (Suggestion given by the respondents):** It always does not lead to an amicable settlement; not everyone is capable of accessing ADR

6. With regards to having a separate legislation to ADR, 89% of the respondents agreed for the separate legislation and 11% disagreed.

**The authors believe that through ADR, people get to know their rights and can enforce them effectively at a reasonable and a predictable cost.**

### **XIII. RECOMMENDATIONS:**

- 1) Each court must have an Arbitration and Conciliation centre. This would help in increasing the number of cases taken over by the ADR forum. The Arbitration and Conciliation centres in India mostly cater commercial disputes. The scope of these centres can include non-commercial disputes such as family disputes etc.
- 2) Judicial Review and Revision by the High court is required to avoid the compromise of the aggrieved party.
- 3) Section 80 of Civil Procedure Code makes it mandatory that no suit shall be instituted against any Public Officer in respect of any act purporting to be done by such Public Officer in his official capacity until the expiration of two months after notice in writing

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has been issued. <sup>36</sup>Conciliation upon receipt of notice under Section 80 of the Civil Procedure Code has been made mandatory.

- 4) The fast-track courts in India have been working successfully. By strengthening these courts and increasing the number of these courts can increase the chances of reducing the number of pending cases.
- 5) Judges and Lawyers should undertake proper training in understanding the procedure about the functionality of ADR.
- 6) Mediation being non-adversarial in nature helps in achieving the settlement with ease. Authors believe that a legislative backup by providing a set of guidelines to be followed by the mediators is necessary.
- 7) The legal system in India is Litigation centric. Lawyers often do not suggest their clients about the ADR mechanism available to them. There is a primary need to create awareness among the lawyers. A simple solution to this can be introducing more subjects on various types of ADR forum at the graduation level. The merits and demerits of ADR need to be communicated to the parties so that they make an informed decision.
- 8) A regular audit regarding the success and failure of referring cases to these forums can be maintained.

#### **XIV. CONCLUSION:**

The objective of inclusion of Section 89 was to reduce the burden of the court, but it not only reduces the burden of the court but also reduces the burden of the parties by providing a settlement that the party seeks. However, the essence and the intention of Section 89 are right but the purpose of it is defeated due to lack of awareness and legal intricacies.

The authors are of the view that there needs to be a distinction between the cases addressed to out of court settlements and those which are not addressed. A proper clarity of this is to be acquired by the advocate and this should be reproduced to their clients. As a society, we need

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<sup>36</sup> Civil Procedure Code, 1908.

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to move from traditional approach towards the modern approach with time. By inclusion of these mechanisms into CPC helps in moving towards the modern era which helps the parties economically to obtain speedy justice.

The concept of Section 89 is a give and take policy. We can say that application of ADR is an art and not science as it exclusively focuses on the welfare of the parties.