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MEDIATION AND ORDER X RULES 1A–1C CPC:
ASSESSING THE EFFICACY OF COURT-ANNEXED ADR IN
CIVIL LITIGATION — A TRIAL COURT PERSPECTIVE

AUTHORED BY - VISHNU DUBEY

ABSTRACT

This paper examines the practical operation of Section 89 of the Code of Civil Procedure, 1908 read with Order X, Rules 1A to 1C CPC, from the vantage point of a trial court judge administering civil litigation at the district level. While judicial pronouncements such as *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344, upheld the constitutional validity of the CPC (Amendment) Acts of 1999 and 2002 that introduced ADR mandates, and *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24, provided an expansive interpretation clarifying the procedural aspects of Section 89, the actual implementation at the trial court level continues to be marked by hesitancy in referral, uneven mediator panel quality, and infrastructural gaps at the district level. The paper further undertakes a comparative analysis of the pre-2023 Section 89 and the Section 89 substituted by the Mediation Act, 2023, and evaluates whether the new framework addresses the criticism that the potential of Section 89 CPC for resolving disputes has remained largely untapped on account of mediation becoming a product of the volition of the parties, as observed by the Supreme Court in *M/s Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, (2022) 10 SCC 1. Drawing on doctrinal analysis and field-level observations, the paper argues that legislative reform alone cannot cure the efficacy deficit unless referral practice, mediator training, and monitoring at the district judiciary level are simultaneously strengthened.

Keywords: Section 89 CPC, Order X Rules 1A–1C, court-annexed mediation, Mediation Act 2023, trial courts, ADR referral practice.

I. INTRODUCTION

Civil litigation in the Indian district judiciary is characterised by chronic docket congestion, and the legislative response embodied in Section 89 of the Code of Civil Procedure, 1908 (“CPC”) was intended to relieve that pressure by channelling suitable disputes out of the adversarial track and into consensual modes of resolution. Inserted by the CPC (Amendment) Acts of 1999

and 2002,¹ Section 89 obliges a court, where it appears that elements of a settlement exist, to formulate or reformulate terms of settlement and refer the parties to arbitration, conciliation, judicial settlement (including through Lok Adalat), or mediation. Order X, Rules 1A to 1C, inserted by the same amendment, operationalise this mandate at the first hearing: Rule 1A requires the court, after recording admissions and denials, to direct the parties to opt for one of the modes of settlement; Rule 1B fixes the date of appearance before the forum so chosen; and Rule 1C permits the suit to be referred back to the court where the presiding officer of the ADR forum considers that it is not suited for that process.

Two decades on, however, an assessment confined to statutory text and appellate doctrine would present an incomplete picture. This paper adopts the vantage point of a trial court presiding over original civil jurisdiction at the district level, where Section 89 is not an abstract constitutional question but a recurring procedural choice made afresh in every suit at the first hearing. Part II sets out the statutory architecture. Part III traces the judicial trilogy of *Salem Bar*, *Afcons* and *Patil Automation* that has shaped the interpretation of Section 89. Part IV turns to implementation realities at the trial court level. Part V undertakes a comparative analysis of the pre-2023 and post-2023 texts of Section 89. Part VI assesses whether the 2023 reform addresses the efficacy deficit identified by the Supreme Court, and Part VII offers suggestions before the paper concludes in Part VIII.

This paper is confined, deliberately, to civil suits proceeding on the original side of the district judiciary; it does not address mediation in matrimonial or family court proceedings, which operate under a partially distinct statutory and institutional framework, nor does it examine mediation in the commercial courts constituted under the Commercial Courts Act, 2015, which is governed by the separate pre-institution mediation regime considered in Part III below. The observations in Parts IV and VI draw on the ordinary experience of presiding over a general civil docket at the district level and are offered as illustrative of patterns reported more widely in the literature on court-annexed ADR in India, rather than as a claim to empirical or statistical rigour.

¹ Code of Civil Procedure (Amendment) Act, 1999 (Act 46 of 1999) and Code of Civil Procedure (Amendment) Act, 2002 (Act 22 of 2002), which came into force with effect from 1 July 2002.

II. STATUTORY ARCHITECTURE: SECTION 89 CPC AND ORDER X RULES 1A–1C

Prior to its substitution in 2023, Section 89(1) CPC provided that where it appeared to the court that there existed elements of a settlement acceptable to the parties, the court was to formulate the terms of settlement and give them to the parties for their observations, and thereafter, upon receiving such observations, could reformulate the terms of a possible settlement and refer the matter for arbitration, conciliation, judicial settlement (including settlement through a Lok Adalat), or mediation.² Sub-section (2) linked each mode to its governing statute: a reference to arbitration or conciliation attracted the Arbitration and Conciliation Act, 1996; a reference to Lok Adalat attracted the Legal Services Authorities Act, 1987; and — on account of a drafting anomaly later corrected by judicial interpretation, discussed in Part III — the definitions of ‘judicial settlement’ and ‘mediation’ in clauses (c) and (d) stood transposed.

Order X Rules 1A to 1C give this mandate procedural teeth at the trial court level.³ Rule 1A requires the court, after recording admissions and denials of documents under Order X Rule 1, to direct each party to opt for one of the modes of settlement outside the court and, upon their exercising that option, to fix the date of appearance before the forum so chosen. Rule 1B requires the parties to appear before such forum or authority on the date so fixed. Rule 1C provides that where the presiding officer of the ADR forum is satisfied that it is not appropriate to proceed with the matter, the suit shall be referred back to the court which shall proceed with it from the stage it had reached prior to the reference. Read together, the scheme contemplates a mandatory judicial screening exercise at the first hearing, followed by a genuine attempt at settlement outside the courtroom, with a safety valve permitting the litigation to resume in the event that ADR proves unproductive.

The design is sound in principle. The difficulty, as the following Part demonstrates, lies less in the statutory text than in the manner of its invocation — or, more often, its non-invocation — in the daily business of a district civil court.

² Code of Civil Procedure, 1908, s. 89, prior to its substitution by the Mediation Act, 2023 (Act 32 of 2023).

³ Code of Civil Procedure, 1908, Order X, Rules 1A, 1B and 1C, inserted by the Code of Civil Procedure (Amendment) Act, 1999.

III. THE JUDICIAL TRILOGY: SALEM BAR, AFCONS AND PATIL AUTOMATION

The constitutional validity of the 1999 and 2002 amendments, including the insertion of Section 89, was itself the subject of challenge before the Supreme Court. In *Salem Advocate Bar Assn., T.N. v. Union of India* ("Salem Bar I"),⁴ the Court declined to strike down the amendments but, recognising that the bar had raised genuine concerns about their practical workability, constituted a committee headed by a former judge of the Supreme Court to examine implementation and to frame model rules, including rules for court-annexed mediation. On the committee's report, the Court in *Salem Advocate Bar Assn., T.N. v. Union of India* ("Salem Bar II") upheld the constitutional validity of the Amendment Acts of 1999 and 2002 in their entirety, including Section 89, and approved the Civil Procedure Mediation Rules, 2003 framed pursuant to the committee's recommendations.⁵ Salem Bar II thus supplied Section 89 with both constitutional legitimacy and a procedural skeleton for court-annexed mediation, but it did not resolve the interpretational difficulties latent in the text of the section itself.

Those difficulties surfaced squarely in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*⁶ The trial court there had proceeded on an application filed by one party under Section 89 seeking a reference to arbitration, notwithstanding the absence of any arbitration agreement or the other side's consent, and had directed a reference on that footing. The Supreme Court used the occasion to construct a coherent procedural framework for Section 89 as a whole. It held that a reference to arbitration under Section 89 requires the consent of all parties, since arbitration removes the dispute permanently from the court's stream; by contrast, references to conciliation, judicial settlement or mediation may be made even in the absence of consent, since the matter remains capable of returning to the court under Order X Rule 1C if the ADR process does not succeed. The Court further identified a legislative drafting error in Section 89(2): the definitions of 'judicial settlement' and 'mediation' in clauses (c) and (d) had, on a plain reading, been interchanged, producing an unworkable scheme.⁷ It directed that the two definitions be read as transposed until the legislature corrected the error. Equally significantly for trial court practice, the Court clarified that the formulation of 'terms of settlement' contemplated by Section 89(1) does not require the court to draft a detailed

⁴ *Salem Advocate Bar Assn., T.N. v. Union of India*, (2003) 1 SCC 49 ("Salem Bar I").

⁵ *Salem Advocate Bar Assn., T.N. v. Union of India*, (2005) 6 SCC 344 ("Salem Bar II").

⁶ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

⁷ *Id.* The Court held that the definitions of 'judicial settlement' and 'mediation' in clauses (c) and (d) of s. 89(2) had been interchanged by drafting error and directed that they be read as transposed until legislatively corrected.

settlement document; a summary of the disputed issues suffices to enable the ADR forum to take the matter forward.⁸ Afcons therefore rendered Section 89 procedurally workable in a manner *Salem Bar II*, concerned principally with constitutional validity, had not attempted.

The third judgment in this trilogy approaches Section 89 from a different statutory neighbourhood but is instructive for present purposes precisely because of that vantage. In *M/s Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*⁹ the question before the Supreme Court was whether the pre-institution mediation mandated by Section 12A of the Commercial Courts Act, 2015 for commercial suits not seeking urgent interim relief was mandatory or directory in nature.¹⁰ The Court held the provision to be mandatory, declared that non-compliant complaints are liable to rejection under Order VII Rule 11 CPC — including suo motu — and gave the declaration prospective effect from 20 August 2022 so as not to unsettle suits already instituted.¹¹ In explaining why Parliament had felt it necessary to impose a mandatory pre-litigation mediation requirement in commercial disputes rather than leaving the matter to the general dispensation of Section 89, the Court made an observation of direct relevance to the present inquiry: it recorded that the potential of Section 89 CPC for resolving disputes has remained largely untapped on account of the fact that mediation has become the product of the volition of the parties.¹² That single sentence, arrived at in the context of a different statute altogether, is in many respects the most candid judicial acknowledgment of the efficacy deficit that this paper seeks to examine from the trial court's side of the bench.

The significance of *Salem Bar II* for present purposes extends beyond the bare holding of constitutional validity. By approving the Civil Procedure Mediation Rules, 2003 and directing their adoption across the country, the Court effectively required every High Court to establish, or provide for the establishment of, mediation centres attached to its district courts — the very institutions whose uneven capacity is examined in Part IV below. In this sense, *Salem Bar II* is properly read not merely as a case upholding a statutory amendment but as the origin of the institutional infrastructure of court-annexed mediation in India; the subsequent uneven quality

⁸ Afcons, (2010) 8 SCC 24, holding that the trial court need only formulate a summary of the dispute for the purpose of an ADR reference, not detailed terms of settlement.

⁹ *M/s Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, (2022) 10 SCC 1.

¹⁰ Commercial Courts Act, 2015, s. 12A, inserted by the Commercial Courts (Amendment) Act, 2018 (Act 28 of 2018).

¹¹ *Patil Automation*, (2022) 10 SCC 1, declaring the mandate of s. 12A of the Commercial Courts Act, 2015 to be mandatory with prospective effect from 20 August 2022, and holding that non-compliant complaints are liable to rejection under Order VII Rule 11 CPC, including suo motu.

¹² *Id.*, para. 62.

of that infrastructure across districts is a separate question from the soundness of the constitutional and procedural foundation the Court laid in 2003 and 2005. It may be noted, and is developed further in Part V, that these very 2003 Rules continue to govern court-annexed mediation even today, by express transitory provision of the Mediation Act, 2023, pending the framing of regulations under that Act.¹³

IV. VIEW FROM THE TRIAL COURT: IMPLEMENTATION REALITIES

The doctrinal architecture described above assumes a trial court that will, as a matter of course, apply its mind at the Order X stage to whether a given suit contains elements of settlement. In practice, at the district level, three recurring difficulties blunt this assumption.

First, hesitancy in referral. Order X Rule 1A is drafted in mandatory language, yet in the ordinary run of a crowded civil docket the Section 89 exercise is frequently reduced to a formal recital rather than a considered screening. Suits proceed directly from admission/denial to framing of issues with little more than a perfunctory query as to whether the parties are agreeable to mediation, to which a negative answer from either side is treated as dispositive. This is not necessarily contrary to *Afcons*, which itself confines a genuinely non-consensual reference to conciliation, judicial settlement or mediation — modes that in principle do not require consent — but the practical effect is that referral is negotiated informally at the bar rather than tested judicially against the character of the pleadings. A trial judge under docket pressure has limited incentive to press a reference that either side resists, particularly where the mediation centre attached to the court complex is itself under-resourced, a point developed below.

Second, uneven mediator panel quality. District mediation centres draw their panels from a mix of retired judicial officers, senior advocates empanelled after a short certificate course, and, in some districts, younger advocates seeking court-annexed exposure. The quality and consistency of mediation outcomes vary correspondingly. A mediator without adequate training in the specific subject-matter of the dispute — partition suits, specific performance

¹³ The Mediation Act, 2023, s. 57 (transitory provision): “The rules in force governing the conduct of court-annexed mediation shall continue to apply until regulations are made under sub-section (1) of section 15,” subject to a further proviso that such rules continue to apply to mediations pending as on the date the regulations come into force. Section 57 stands notified with effect from 9 October 2023, so that the Civil Procedure Mediation Rules, 2003 approved in Salem Bar II continue to govern court-annexed mediation in the interim.

actions, or money suits arising out of commercial dealings, to take three staple categories of district civil litigation — is prone either to a passive facilitation that produces no movement, or to an overreach that begins to resemble an unauthorised adjudication of the merits, undermining both party confidence in the process and its formal distinction from arbitration. Continuing education and periodic mentorship of panel mediators, rather than a one-time certification, would address this more directly than further legislative refinement of Section 89 itself.

Third, infrastructural gaps at the district level. Court-annexed mediation centres in many districts operate out of shared or borrowed premises, with mediation sessions scheduled around the availability of a room rather than around the convenience of the parties, and with limited administrative staff to track referred matters, issue notices to the ADR forum, or flag Order X Rule 1C references back to the court promptly when a mediation fails. Where a centre lacks the capacity to schedule a session within a reasonable period after reference, the delay itself becomes an argument against referral in future matters, producing a self-reinforcing cycle of institutional under-utilisation.

None of these three difficulties is answered by the statutory text of Section 89 or by the procedural clarifications in *Afcons*; they are administrative and cultural rather than doctrinal in character, and this is precisely the gap that the Supreme Court's observation in *Patil Automation* about mediation remaining “a product of the volition of the parties” captures. A provision that depends, at every stage, on the parties' willingness rather than on institutional design will under-perform relative to its statutory promise so long as the institutional supports for that willingness — trained mediators, adequately staffed centres, and a trial bench that treats referral as a substantive obligation rather than a procedural formality — remain uneven across districts.

It is also worth noting that the utility of Section 89 varies significantly by category of suit, a variation the statutory text does not itself acknowledge. Partition suits among family members, where the underlying relationship typically survives the litigation and the dispute concerns division rather than existence of an entitlement, are frequently well suited to mediation, and referral in such matters tends to meet with less resistance from counsel. Suits for specific performance of contracts for sale of immovable property, by contrast, often involve a binary question — whether the contract is to be enforced at all — that is less amenable to compromise, and a mechanical Section 89 referral in such suits can produce a mediation session that neither

side approaches in good faith, consuming the limited capacity of the district mediation centre without a realistic prospect of settlement. A trial court attentive to this distinction, referring partition and family-property disputes with greater rigour while exercising discretion more cautiously in specific-performance and title suits, is likely to secure a materially higher settlement rate than one that applies Section 89 uniformly across suit categories as a matter of routine.

V. THE MEDIATION ACT, 2023 AND THE SUBSTITUTED SECTION 89

A. The Substituted Text and Its Improvements

The Mediation Act, 2023 amends Section 89 CPC by way of substitution, the new text being set out in the Fourth Schedule to the Act and given effect through Section 59.¹⁴ The substituted provision dispenses with the requirement, criticised in *Afcons* as productive of confusion, that the court itself formulate or reformulate terms of settlement before making a reference; instead, where it appears to the court that the dispute may be settled and elements of a settlement exist, the court may refer the dispute to arbitration, to mediation (with the Mediation Act, 2023 thereafter applying to that reference), to Lok Adalat, or may itself effect a compromise between the parties by way of judicial settlement.¹⁵ The earlier four-fold taxonomy of arbitration, conciliation, judicial settlement and mediation, and with it the transposed-definitions anomaly that *Afcons* had been compelled to correct by interpretation, is thereby dispensed with; mediation as defined and regulated under the 2023 Act absorbs what the earlier Section 89(2) had split across ‘judicial settlement’ and ‘mediation’, conciliation is by a related amendment to the Arbitration and Conciliation Act, 1996 itself to be construed as mediation for CPC purposes, and Lok Adalat and judicial settlement are now set out as distinct, self-contained clauses rather than being run together through a cross-reference to the Legal Services Authorities Act, 1987. The substitution is, in this sense, squarely a legislative recognition of the drafting difficulty that *Afcons* had to resolve by judicial surgery; to that extent, it consolidates rather than departs from the interpretive position the Supreme Court reached in 2010. It does not, however, touch the voluntary, post-institution character of the general Section 89 reference, a point to which Part

¹⁴ The Mediation Act, 2023 (Act 32 of 2023), s. 59 read with the Fourth Schedule.

¹⁵ The Mediation Act, 2023, Fourth Schedule (see s. 59): the substituted s. 89 CPC reads, in material part: “Where it appears to the Court that the dispute between the parties may be settled and there exists elements of settlement which may be acceptable to the parties, the Court may — (a) refer the dispute to arbitration ...; or (b) refer the parties to mediation, to the court-annexed mediation centre or any other mediation service provider or any mediator, as per the option of the parties, and thereafter the provisions of the Mediation Act, 2023 shall apply ...; or (c) refer the dispute to Lok Adalat, in accordance with ... the Legal Services Authorities Act, 1987 ...; or (d) effect compromise between the parties and ... follow such procedure as deemed fit for judicial settlement.”

VI returns.

B. Commencement Status: Why the Amendment Is Not Yet Operative

Materially for present purposes, Section 59 of the Mediation Act, 2023 — the provision that gives effect to the Fourth Schedule substituting Section 89 — has not been brought into force.¹⁶ The only commencement notification traceable as on the date of this writing is dated 9 October 2023 and activates a defined subset of the Act confined to certain definitions, the constitution and functioning of the Mediation Council of India, and specified transitory and miscellaneous provisions; Section 59 does not figure in it, a position confirmed by the Legislative Department's own consolidated text of the Act. The substituted Section 89 therefore exists on the statute book but is not yet operative law, and the pre-2023 text of Section 89, as construed in *Afcons*, continues to govern trial court practice as of the date of this paper. This is not a minor point for a trial court perspective: any submission before a district court that invokes the substituted Section 89 as presently applicable would, on the material available, be premature. No official statement of reasons for withholding commencement of Section 59 appears to have been published, and the following is accordingly offered as reasoned inference rather than established fact. The pattern of the 9 October 2023 notification is itself suggestive: what was brought into force was confined almost entirely to the Mediation Act's own internal institutional machinery — the constitution of the Mediation Council of India, its composition, and allied provisions — together with saving and transitory clauses, while every substantive provision governing the actual conduct of mediation, its enforcement, and its interface with other statutes was left uncommenced.¹⁷ A plausible explanation is sequencing: the manner of conducting mediation under the Act is to be specified by regulations that only the Council can make, and only with the Central Government's prior approval;¹⁸ until the Council is

¹⁶ Ministry of Law and Justice (Department of Legal Affairs), Notification No. S.O. 4384(E), dated 9 October 2023, issued under s. 1(3) of the Mediation Act, 2023, brought into force only Sections 1, 3, 26, 31 to 38, 45 to 47, 50 to 54, and 56 to 57 of the Act, with effect from 9 October 2023. Section 59 (and, correspondingly, the Fourth Schedule substituting s. 89 CPC) does not figure in this notification, and no subsequent notification bringing Section 59 into force could be traced as on the date of this writing. The substituted s. 89 CPC has therefore been enacted but has not been brought into force; the pre-2023 text of s. 89, as construed in *Afcons*, continues to be the operative law. Readers should independently verify the current position against the Official Gazette before relying on the substituted text in any proceeding.

¹⁷ The Mediation Act, 2023, ss. 31–32 (establishment and composition of the Mediation Council of India) and s. 40 (mediation service providers, including a court-annexed mediation centre, “deemed to be” recognised by the Council).

¹⁸ The Mediation Act, 2023, s. 15(1) (manner of conduct of mediation to be as specified by Council regulations), read with s. 51 (Central Government's rule-making power) and s. 52 (Council's regulation-making power, exercisable only with the Central Government's prior approval). None of ss. 15, 51 or 52 figures among the provisions notified vide S.O. 4384(E).

functionally established, staffed, and in a position to frame such regulations, recognise mediation service providers, and accredit mediators and mediation institutes for training and certification,¹⁹ bringing the CPC amendment into force would refer parties under the substituted Section 89(b) to a Mediation Act regime without the regulatory scaffolding — accreditation, timelines, enforcement mechanics — that gives that regime its practical advantage over the pre-2023 position. On this reading, the sequencing is deliberate rather than an oversight: the Central Government appears to be building the institutional infrastructure the Act contemplates before switching on the CPC-facing provision that would route litigants into it. Whether or when that infrastructure will be regarded as sufficiently mature to justify notifying Section 59 is not a matter on which this paper can usefully speculate further, save to note that the interval since the Act's passage already exceeds the interval between the passage of the 1999 CPC amendment and its full operationalisation through Salem Bar II and the Civil Procedure Mediation Rules, 2003.

C. What Changes Once Section 59 Is Notified

It is nonetheless useful, for a trial court readership, to set out concretely what will change in day-to-day Section 89 practice once Section 59 is in fact notified, so that the transition can be anticipated rather than encountered as a surprise.

- (i) **A cleaner four-way menu at the point of reference.** The trial judge at the Order X stage will choose among arbitration, mediation, Lok Adalat, or judicial settlement as four distinct, clearly worded options, rather than negotiating the transposed 'judicial settlement'/'mediation' definitions that *Afcons* required to be read backwards. This is a modest but real gain in courtroom clarity: the order sheet recording a Section 89 reference will be able to track the statutory language directly rather than through an interpretive gloss.
- (ii) **Every mediation reference will attract a fixed statutory timeline.** A mediation under clause (b) will be subject to the Mediation Act's 120-day outer limit for completion, extendable by a further 60 days only by consent of the parties.²⁰ At present, by contrast, a Section 89 mediation reference under the pre-2023 text carries no statutory outer time limit at all; its duration is governed only by the Civil Procedure Mediation Rules, 2003

¹⁹ The Mediation Act, 2023, s. 40 (mediation service providers) and s. 42 (recognition of mediation institutes for training, continuing education and certification of mediators), both administered by the Mediation Council of India under s. 38.

²⁰ The Mediation Act, 2023, s. 18: mediation is to be completed within 120 days of the date fixed for first appearance before the mediator, extendable by a further 60 days by consent of the parties.

and by the practice of the particular mediation centre. Trial courts should expect, once notified, to build this fixed timeline into their Order X Rule 1C monitoring, since a matter referred to mediation will now have a statutorily anticipated date by which it must either settle or return to the court.

- (iii) **The limitation disincentive to referral will be removed by statute.** The period spent in mediation will stand excluded in computing limitation for any subsequent proceeding should the mediation fail.²¹ This directly answers a reluctance noted in Part IV: litigants and counsel who presently resist a Section 89 mediation reference for fear of losing time that could otherwise go towards prosecuting the suit will, after notification, have that concern addressed as a matter of law rather than of local practice.
- (iv) **Enforcement and challenge of a mediated settlement will follow a fixed statutory template.** A settlement reached in mediation under clause (b) will be enforceable in the same manner as a civil court decree, and will be open to challenge only on the narrow grounds of fraud, corruption, impersonation, or the mediation having concerned a dispute not fit for mediation under the Act's First Schedule.²² At present, the enforceability of a settlement reached before a court-annexed mediator proceeds on a comparatively thinner procedural footing under the 2003 Rules and general principles of consent decree; the fixed statutory template will reduce the scope for post-settlement satellite litigation over the validity of the mediated agreement itself.
- (v) **Mediator accreditation will run through the Mediation Council of India rather than through ad hoc empanelment alone.** Once the Council's regulations under Sections 15, 51 and 52 are framed and Section 59 is notified in consequence, district mediation centres will function as recognised mediation service providers within a national accreditation and continuing-education architecture, rather than as free-standing panels whose training standards vary by district as described in Part IV.²³ This is, in the author's assessment, the single change most capable of addressing the mediator-quality concern raised earlier in this paper — though, consistently with the argument in Part VI, only if the Council's standards are in fact applied with rigour at the

²¹ The Mediation Act, 2023, s. 29 (exclusion, in computing limitation, of the period from commencement of mediation under s. 14 to the submission of a non-settlement report under s. 21 or termination under s. 24).

²² The Mediation Act, 2023, s. 27 (enforcement of a mediated settlement agreement in the same manner as a decree of a civil court) and s. 28 (challenge confined to fraud, corruption, impersonation, or mediation of a dispute not fit for mediation under s. 6).

²³ The Mediation Act, 2023, s. 40 (mediation service providers) and s. 42 (recognition of mediation institutes for training, continuing education and certification of mediators), both administered by the Mediation Council of India under s. 38.

district level and not merely adopted on paper.

- (vi) **What will not change.** Notification of Section 59 will not alter the voluntary, post-institution character of the general Section 89 reference, nor will it, by itself, compel a reluctant trial court to refer a matter, or guarantee that a referred matter is handled by a competently trained mediator in a properly resourced centre. The four measures identified in Part VII — structured screening, continuing mediator education, administrative support at mediation centres, and district-wise monitoring — will therefore remain necessary irrespective of when, or whether, Section 59 is notified.

D. Interaction with the Commercial Courts Act Regime

It bears separate note that the Commercial Courts Act, 2015 amendment considered in *Patil Automation* proceeds on an altogether different logic from either the pre-2023 or the substituted Section 89. Section 12A of that Act mandates pre-institution mediation, independent of judicial screening, as a condition precedent to the very filing of a commercial suit not seeking urgent interim relief.²⁴ Where Section 89 (in either its old or new form) is a mid-litigation, court-triggered mechanism operating after institution and at the first hearing, Section 12A operates before institution and without any court involvement in the initial decision to mediate. The efficacy deficit that *Patil Automation* identified in Section 89 — its dependence on party volition — was, on this reading, one of the very reasons Parliament chose the mandatory pre-institution route for commercial disputes rather than simply strengthening Section 89 itself. The 2023 amendment to Section 89, by contrast, addresses the drafting infelicities identified in *Afcons* without altering the voluntary, post-institution character of the general civil reference; it is, in that sense, a textual clarification rather than a structural response to the volition problem, and it is worth noting that Section 12A itself has, since *Patil Automation*, been recast by the Mediation Act, 2023 to operate through mediation service providers under that Act once Section 64 and the Ninth Schedule are notified — a commencement question distinct from, but structurally parallel to, the Section 59/Fourth Schedule question examined above.

VI. DOES THE NEW FRAMEWORK CURE THE EFFICACY DEFICIT?

On the analysis above, the answer must be a qualified no. The substituted Section 89 is a genuine improvement in drafting clarity: it removes an anomaly that had required judicial correction for over a decade, and it aligns the CPC reference mechanism more closely with the

²⁴ Commercial Courts Act, 2015, s. 12A.

comprehensive regulatory framework — accreditation of mediators, timelines for completion of mediation, and enforceability of mediated settlement agreements — established by the Mediation Act, 2023 for mediation generally. To that extent, a trial court that will, once Section 59 is notified, come to refer a matter to mediation under the amended provision will operate within a more coherent statutory ecosystem than exists under the pre-2023 text presently in force.

What the amendment does not do, however, is alter the threshold question identified in Part IV: whether the reference is made at all, and if made, whether the mediation that follows is conducted by an adequately trained mediator within a reasonably resourced centre. The volition problem that *Patil Automation* identified is a problem of institutional culture and capacity at the point of first referral, not a problem of statutory drafting at the point of a completed reference. A litigant's or a court's reluctance to invoke Section 89 in the first place is untouched by a more elegant definition of 'mediation' in sub-section (2). Put differently, the 2023 reform improves the machinery that operates once the reference is made; it does not, by itself, improve the rate or the seriousness with which references are made in the first place. That latter task remains one of trial court administration — training of judicial officers in identifying suits with settlement potential at the Order X stage, sustained investment in mediator training and mediation centre infrastructure at the district level, and institutional monitoring of referral and settlement rates by the High Court administrative side — rather than one that further amendment of Section 89 can accomplish.

This distinction between drafting-level reform and institutional-level reform is not merely semantic. A statute can mandate a court to consider referral, and can, as the 2023 amendment does, streamline the modes to which a referral may be made and the regime that thereafter governs the reference; what a statute cannot itself supply is the trained personnel, the physical and administrative capacity, and the professional culture that make a referral meaningful once made. The experience of the Lok Adalat movement in India is instructive by comparison: the Legal Services Authorities Act, 1987 has, over nearly four decades, achieved a measurable settlement rate not principally because of any particular refinement of its enabling text but because of sustained institutional investment — permanent Lok Adalats, empanelled members, and a nationwide legal services authority structure with dedicated administrative capacity at every tier. Court-annexed mediation under Section 89, notwithstanding the 2023 clarification of its text, has not yet received a comparable institutional investment at the district level in most

States, and it is this asymmetry, more than any remaining drafting deficiency, that the trial court perspective in this paper seeks to foreground.

VII. SUGGESTIONS FOR STRENGTHENING REFERRAL PRACTICE

Four measures, none requiring further legislative amendment, would in the author's assessment address the implementation gap identified above more directly than textual refinement of Section 89:

- a) **Structured screening at Order X stage.** Judicial academies could develop a short, standardised checklist — nature of relationship between parties, divisibility of the relief claimed, presence or absence of a continuing commercial or family relationship — to assist trial judges in making a considered rather than perfunctory Section 89 determination at the first hearing, rather than treating the provision as satisfied by a bare query to counsel.
- b) **Continuing mediator education.** Empanelment should be treated as the beginning rather than the end of a mediator's training, with periodic refresher sessions and subject-specific modules (partition, specific performance, commercial money suits) to reduce the variance in panel quality noted in Part IV.
- c) **Dedicated administrative support at mediation centres.** Even modest administrative staffing — to schedule sessions promptly, track referred matters, and ensure timely Order X Rule 1C reporting back to the referring court — would materially reduce the delay that currently discourages referral.
- d) **District-wise monitoring of referral and settlement data.** Systematic tracking, at the level of each district judiciary, of the number of Section 89 references made, the modes chosen, and the settlement rate achieved would allow High Court administrative committees to identify and address under-performing centres, in a manner that neither the pre-2023 nor the substituted Section 89 text can achieve on its own.
- e) **Category-sensitive referral guidance.** Building on the variation across suit categories noted in Part IV, judicial training material could usefully distinguish suit types for which mediation has historically shown higher settlement rates — partition and family-

property disputes, and money suits between parties with an ongoing commercial relationship — from those, such as pure title or specific-performance disputes, where a more searching judicial assessment before referral is warranted, so that Section 89 is applied with discrimination rather than as a uniform procedural formality.

VIII. CONCLUSION

Section 89 CPC and Order X Rules 1A to 1C represent a considered legislative attempt to relieve the district civil docket by channelling suitable disputes into consensual resolution. *Salem Bar II* secured the provision's constitutional footing; *Afcons* supplied it with a workable procedural grammar; and Parliament, through the Mediation Act, 2023, has enacted — though, as of this writing, not yet brought into force — a legislative substitution that corrects the drafting anomaly that *Afcons* had been compelled to address by interpretation. Yet the observation of the Supreme Court in *Patil Automation* — that the potential of Section 89 has remained largely untapped because mediation depends on the volition of the parties — identifies a deficit that lies not in the text of the section but in the institutional practice surrounding it. From the vantage point of a trial court administering civil litigation at the district level, the more consequential reform is not a further redraft of Section 89, welcome as the 2023 clarification will be once operative, but a sustained institutional commitment to referral discipline, mediator training, and infrastructural investment at the district judiciary level. Legislative text can remove ambiguity; it cannot, by itself, supply the referral practice, mediator competence, and administrative capacity on which the efficacy of court-annexed ADR ultimately depends.

** Civil Judge (Junior Division) and Judicial Magistrate First Class, Madhya Pradesh State Judicial Service. The views expressed are personal.*