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A COMPREHENSIVE STUDY OF SECTION 89 OF THE CPC, 1908-THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN CIVIL LITIGATION

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Abstract

This paper explores Section 89 of the Code of Civil Procedure, 1908. It promotes the concept of Alternative Dispute Resolution (ADR) in India, which reduces the burden of pending cases on the judiciary. This paper thoroughly explains the historical background of ADRs in India, which includes the traditional dispute resolution practices in India and the major developments introduced in the 2002 amendment. This paper explains the working of ADR methods like arbitration, mediation, conciliation and judicial settlements, with a special reference to their impact on litigation. This paper also explores the procedural framework of Section 89 and the impact of this Section in civil cases. The paper also addresses the importance of ADR, which saved a lot of court time and judges' burden on pending cases, and it encourages peaceful settlements, which underlines the need to increase public awareness to make ADR more effective in the Indian legal system.

Key words: Section 89, Alternative, Dispute, Resolution, Civil, Cases, Pending cases.

Introduction

"Justice Delayed is Justice Denied" was stated in the 90s, but this phrase is still used in many serious offences. The phrase talks about the delay in judgment, the delay in the court's final answer to all the pending matters, and the pendency in litigation putting a burden on the judiciary, which has continued to grow for many years. Sometimes, it will go on for decades. To solve these issues, which only increases the burden on the court, the judiciary found the solution to resolve all these issues. The solution to these issues is *Alternative Dispute Resolution [ADR]*, which tries to settle the matter faster and more efficiently; Section 89 of the Code of Civil Procedure, 1908¹, this section was added in 2002 with the concern of many people handling the issue financial and emotional stress during court proceedings which got

¹ Code of Civil Procedure, 1908, § 89 No.5, Acts of Parliament, 1908 (India).

delayed many times and for that judiciary provided this section which helps through the process of *Alternative Dispute Resolution [ADR]*. Our Indian legal system has many pending cases, and it will take a lot of time to provide justice to everyone to resolve all these problems. The judiciary provided Section 89 of CPC, which says, "*Settlement of disputes outside the court.*" With the help of various factors of alternative dispute resolution, the methods provided during the process are Arbitration, Mediation, Conciliation, and Judicial Settlement. The main object of this section is to decrease the burden on courts and provide justice as soon as possible to the person. The courts value this section more because, according to the long-term courtroom battles judiciary wants to first resolve issues through the ADR, which settles the issue in a different manner where a full court will not present the process of judges hearing all these things., Here are the methods, and on behalf of these methods, ADR works:

- Arbitration: This is the process where a neutral person listens to both parties' sides and provides a decision fairly, and both parties must follow that decision.
- Mediation: This is the process where both parties sit, and the person who sits as a neutral is called a mediator, and the parties discuss their problems. Everything will be covered, and after that, the solution on which both parties will work.
- Conciliation: In this process, the person who sits as a neutral is called a conciliator, and that person helps the parties to reach an agreement, but there is no force to accept the agreement.
- Judicial settlement [includes Lok Adalat]: This process is very friendly. A retired legal expert will present and help the parties resolve the disputes in this resolution process.

This section helps a lot in the judiciary and in the case of a person who does not have enough financial status to wait for the term court battles; the process in this section helps in numerous ways. It reduces the number of cases, saves a lot of time and money, provides the chance to resolve the issue peacefully, and ensures fair and quick justice. It also includes that the process of Arbitration or conciliation follows the rules which are set under the Arbitration and Conciliation Act of 1996. Lok Adalat follows the rule set in *Section 20(1) of the Legal Services Authority Act, 1987*.²

² Legal Services Authorities Act, 1987 § 20(1), No. 39, 1987

Historical Background

Evolution of ADR in India

Before the British rule in India, Indians resolved all the issues by a very informal process, and currently also, there are a few villages where they are still following the same process. The method used at that time was either village panchayats or informal arbitration; in village panchayats, the eldest person would listen to both sides and make a fair decision. In the informal arbitration process, the most trustworthy person will be appointed as neutral. That person will listen to both sides and help the parties with their disagreements. When the Britishers started their concepts of settling the issues, then, the people went through that process, and before that, these were the resolution methods where issues were settled.

Malimath Committee Report and Law Commission Report³

In 2000, the Malimath committee was formed by the home minister, and the object of this committee was to provide justice and development changes in the process of court proceedings. The committee talks about the ADR, which reduces the courtroom burdens and is compulsory so the court can focus on other serious offences that must be resolved as soon as possible.

Amendment in 2002

As per the increasing hurdles in the judicial system toward litigation, courts were flooded with pending cases. People waited for years. Sometimes, it went on for decades. After these delays in litigant instances, the legal experts realized that reforms were needed in our judicial system, and then they inserted Section 89 of the CPC⁴ through the 2002 amendment. This section first puts the courts' responsibility to resolve the alternative dispute after that full trial. This change helps many litigants stuck in long-term court procedures or people who don't have financial value, so this ADR resolves all of the factors that affect long-term court proceedings. This amendment helped many people get justice faster and reduced the number of court cases; most importantly, dispute resolution is less costly, and time is not wasted.

³ DEEPALAKSHMI, K. "The Malimath Committee's recommendations on reforms in the criminal justice system". 28 Nov 21, <https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article61493071.ece>

⁴ Code of Civil Procedure, 1908, § 89 No.5, Acts of Parliament, 1908 (India).

Procedural Framework of Section 89

Before we understand the procedure according to Section 89, we need to understand that it only works in disputes of civil matters because if the matter is criminal, then the procedure of a full-fledged courtroom will be applicable during matters of serious offenses. Legal experts decide matters with the help of long-term procedures that benefit society. When a civil matter is brought up, the first thing that needs to be done is understanding the matter's strength. Will the matter close in civil length or increase to criminal? Suppose the matter is only on the basis of civil criteria. In that case, the parties should know the alternative dispute resolution procedure. After that, the parties will only decide if they need to resolve out of the courtroom through the settlement or if they need a long-term process of the court. Types of alternative dispute resolution according to the Section 89 of CPC:

- **Arbitration:** The Act of Arbitration and Conciliation, 1956, hears the cases that start with the origin of the arbitration process and the cases that are commercial disputes. The disputing parties agree to resolve the dispute through arbitration, and then the process starts. It is a faster and more flexible process than the traditional court; the parties are not forced to follow it. If the disputing parties are comfortable with the process, then the neutral person, who is the arbitrator, listens to both sides of the parties.
- **Conciliation:** This process is very informal in this scenario, both parties come and talk about their dispute and the challenges they are facing for their future settlement; the person who is present as a neutral party does not give the decision, unlike the arbitration process in conciliation process the neutral party only guides the parties and suggest the solutions on which they can think about their future settlement.
- **Mediation:** This process is very highly flexible both parties come with their own wills, and here, one person presents as a mediator who is not biased toward any of the parties. The person who is a mediator first listens to both parties' problems and the facts and what the problem is that they are not agreeing on. This mediation process is mostly seen in family disputes where the family first goes to the mediators and tries to resolve the issue through mediation only.
- **Judicial settlement:** This is basically a Lok Adalat where experienced and retired judges come, and they listen to the disputes of parties and, in an effective way, try to resolve it; settlements basically come in this Lok Adalat are claims, for example, any motorcycle compensation or any compensation.

Impact of ADR on civil litigation

We all know about the pendency of cases in court, and this pendency takes a lot of time; the person's patience was tested in our judicial system; lots of people face these issues, and then alternative dispute resolution ideas come up, and role of alternative dispute resolution is not just to faster clarifies everything. There are many matrimonial disputes that come into court before the actual trial judiciary always asks for a mediation session when the dispute is based on divorce. There are a lot of times it was seen that a couple impulsively decides to get a divorce, and the mediation period resolves this issue. Many couples take a step back from divorce during mediation because they find that their family love ties are far stronger than ego clashes. This alternative dispute resolution process not only helps the judicial system reduce cases but also prevents many families from tearing up because of divorce. Companies' dispute also plays a crucial role long long-term court proceedings impact on the company image, and the through alternative dispute resolution, the settlement becomes very easy and the disputes easily resolved; apart from all these things, this is very true that our Indian courts are very expensive and hectic the person who is not well educated firstly they don't understand how to approach the litigation for their dispute and while the process of approach the money which is used all things are very expensive paying the lawyers, court fees and the others costs which are involved during courtroom proceedings. Alternative dispute resolution is cheaper, and it also settles the issues quicker. there are no more rules and regulations that must be followed during the process; it doesn't require appeals, all of which are generally required in normal court cases. ADR also focused on reducing the court timings every day. Many crimes happen, and disputes also increase. All these disputes focused on serious offenses that needed to be addressed for the benefit of the party and society. Alternative dispute resolution not only focuses on ending the dispute easily but also on peacefulness between parties involved in the dispute. When the dispute went to the court, already an enemy grew between party and at that time, alternative dispute resolution helped the parties to resolve peacefully, which also tried to remove the feeling of enemies; neutral party tries to resolve the issue in a very friendly way so the issue couldn't increase a more, alternative dispute resolution helps a lot in divorce case and the people firstly took the help of mediation where parties sit together and express their feelings what are the issues which create a log of disagreements between parties. All of the above ADRs are very helpful in every factor for the judicial system and the parties also who are involved in disputes.

Conclusion

Section 89 of the Code of Civil Procedure, 1908 helps a lot of people, and the judicial system in the Indian legal system has many pending cases. We need a committee that helps us, and ADR is like a committee that helps a lot with the long-term court proceedings. Many people prefer first ADR, and then after that dispute isn't resolved, they go for further court proceedings. Normal court cases take a lot of years to resolve the dispute after ADR reduces a time of costs and the parties, this process makes justice more accessible to people who cannot afford the court fees, and this is found that many business disputes also resolved easily through the ADR many companies firstly go for the mediation and tries to settle the dispute outside the court which benefited to the parties and business reputation also maintains there is no harm caused to the reputation of a company. Overall, the ADR plays a crucial role and benefits many people, but a few things show criticism. Many people are uneducated, and they don't know about alternative dispute resolution. If the file for the case is mandatory, they first go for an alternative dispute because they don't have the actual knowledge. This is the biggest wrongful impact of the alternative dispute, making it useful for every government to do a survey center and try to spread more legal knowledge about every aspect of our judicial system, which benefits the people. Improving every aspect of the law increases fairness and fastness in legal disputes, which helps many people get justice.

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