

SECTION 89:

Section 89 of CPC states that: →

a) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement & give them to the parties for their observations & after receiving the observations of the parties, the court may reformulate the terms of a possible settlement & refer the same for —

- Arbitration
- Conciliation
- Judicial settlement including the settlement through Lok Adalat
- Mediation.

b) Where a dispute has been referred;

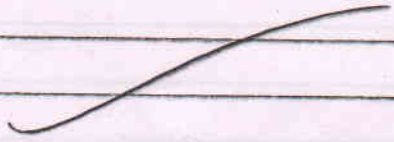
- For arbitration or Conciliation, Act the provisions of the Arbitration

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

→ to lok adalat, the court shall refer the same to the lok adalat in accordance with the provisions of sub section 1 of sec 20 of the legal services authority Act 1987 (39 of 1987) & all other provisions of that Act shall apply in respect of the dispute referred to the lok adalat;

→ for judicial settlement the court shall refer the same to a suitable institution or person & such institution or person shall be deemed to be a lok adalat & all the provisions of legal service authority Act 1987 (39 of 1987) shall apply as if the dispute were referred to a lok adalat under the provisions of that Act.

→ For mediation the court shall effect a compromise between the parties & shall follow such procedure as may be prescribed.



ANALYSIS OF SECTION 09

The language of section clearly states that there are 4 alternate resolution forums, including arbitration & all the 4 forums are treated identically & as such there is no distinction mentioned in the section. In arbitration the decision binding on parties is taken by a private judge (Arbitrator) while in the other 3 mediums party autonomy is final decision is still maintained. Amongst the five specified alternate forums the most sought after is arbitration. While at all the five are at the same footing in the eyes of the law. Arbitration is a process only available at the consent of the parties.

Arbitration or conciliation can only be on account of the consent of parties to a dispute & it is not within the

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powers of the Court to refer dispute for arbitration in the absence of consent of parties. In case of Arbitration, the case is moved out of the Court (Arbitration & Conciliation Act, 1996 will be applicable) but ~~resolving~~ resorting to Conciliation, judicial settlement or mediation won't result in the same as courts retain control / jurisdiction over such matters as the settlement agreement in Conciliation or the Lok Adalat award will have to be placed before the court recording it & disposing in its terms. When matter is settled through Conciliation or Lok Adalat both are as effect ~~ive~~ as a decree of a court as has been specified in relevant statutes.

The controversy under Sec 89 lies in the distinction between mediation & Conciliation

ANOMALIES

Section 89 suffers from many anomalies which need to be looked at to ensure the objective of the section is achieved & there is swiftness & speediness of justice. The drafting of Sec 89 was said to be done in a haphazard manner & then of the section was observed to be in the "Akon's Case," a trial judge's nightmare.

The wording of the section 73 (1) of the Arbitration and Conciliation Act is borrowed under this section defeating the objective with which the section was framed as was observed by the court in this case. Traditional courts having primary responsibility for making terms & settlements & than secondary responsibility

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falls on the alternate dispute resolution.

However the most consequential anomaly is related to court fees. The CPC Act 1908 by which Sec 89 was amended into the code also amended a new Sec 16 of Court Fees Act 1870, "Refund of fee": Where court refers parties to the suit to any of the mode of settlement of dispute in Sec 89 of CPC 1908 the Plaintiff shall be entitled to a Certificate from the Court authorizing him to receive back from the collector, the full amount of the fee paid in respect of such plaint.

The main problem arise when the dispute could not be resolved by ADR processes & is brought back to the same court & there has already been refund of the court fees before reference is made to ADR.

PROVISIONS OF LOK ADALAT ACT.

Sec 89 (2) (b) of the CPC also provides that where a dispute has been referred to the Lok Adalat the Court shall refer the same to the Lok Adalat in accordance with the provisions of Sec 20 of the Legal Services Authority Act, 1987 & all the other provisions of that Act shall apply in respect of the dispute so referred to Lok Adalat.

Parties are entitled to referring of full Court fee where the parties settled the matter without the intervention of court.

The Lok Adalats while resolving the disputes are guided by the principle of justice, equity & fair play.

CRITIQUE AND CONCLUSION

Section 89 is an important part of CPC and is an effective method to resolve dispute between parties where there is a scope for the same. The section is right in its spirit as the objective has been to reduce the burden of court, ensure a compromise is arrived at between parties & move towards speedier & effective methods of administering justice.

The section suffers from many anomalies which have reduced its efficiency & act as a hindrance in delivering justice to the people.

Apart from the legal aspects of the inefficiency of the provisions another major reason for section failing to fulfil its purpose is the lack of legal knowledge among the people.

The alternate forums accorded under sec 89 are economically more viable as there are relatively lesser amount of transactions costs & thus, there is a need to make people aware about the same.

Hence the provision under sec 89 is right in its essence but its purpose is defeated due to legal intricacies, draft men's error & lack of awareness among individuals.