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Research Article

Examining The Adequacy of Referral System Under Section 89 Of Code of Civil Procedure [A Case Study in Jaipur (Rajasthan)]

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ARTICLE INFO **ABSTRACT**

In the present research the scope of the study is to critically analyse the perceptions of the basic actors (Judges, Advocates and Litigants) on the referral of cases under "Section 89 of the Code of Civil Procedure" for the settlement. In India, there are more than 40 million cases which are pending in the courts. To reduce this burden of the courts, "Sec 89 of Code of Civil Procedure" is there. Before 1999, "Sec 89" only has arbitration as an alternative dispute resolution mechanism, but in the year 1999, this Section got amended and the other mechanism such as Mediation, Lok Adalat etc. Were also included. The very essence of this Section is to provide the alternative mechanisms for dispute resolution. This "Sec 89" mandates the judges that "if there is any element of settlement between the disputed parties then the case shall be referred to any of the Alternative Dispute Resolution mechanism, depending upon the nature of the case". But still the burden of cases on the courts is not decreasing and this may be because of the improper implementation and the execution of the referral provision and referral system. The role of basic actors to the case is very essential in the proper implementation and execution of referral of cases. Further, this research study will emphasis on various ADR mechanisms, as the courts uses these dispute resolution mechanisms. In addition, the emphasis will also give to the two landmark judgements i.e. "***Salem Advocate Bar Association v. Union of India*** **(both 2003 and 2005 case)" and "*Afcons Infrastructure Ltd. Cherian Varkey Construction Co. (P) Ltd***", as they are the backbone of the referral process.

So, in this research study the author formerly uses doctrinal method of research to deal with the historical background of "Section 89 of CPC". While using this methodology the author focused upon several research paper, articles, books, etc. Further, the author also used empirical method of research to interpret and analyse the ideology of "litigants, advocates and judges upon the referral under Section 89". The aim of the research is to scrutinize the current referral system of the cases to the Alternative Dispute Resolution and perceptions of the basic actors on that system. To conclude the research study, the researcher will analyse that data and based on that analysis the researcher will propose the best suitable recommendations to enrich the referral system under "Sec 89 of CPC" and will also make recommendations for the basic actors so that this referral provision can be used properly which justifies the essence behind this "Section 89 of CPC".

Keywords: Basic Actors; Referral; Code of Civil Procedure; Alternative Dispute Resolution Mechanism; Arbitration; Mediation; Lok Adalat; Element of Settlement; Doctrinal method; Empirical method.

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INTRODUCTION

"ADR seems more like a grain of sand on the adversary system beach."

- By Frank E. A. Sander[3]

In the opinion of Frank Sander, "Alternative Dispute Resolution (hereinafter referred as 'ADR") is regarded as positive mechanism for resolving the disputes. With respect to his work on 'Future of ADR' he has regarded ADR as tiny grains of sand which is concurrent with the adversarial system i.e. The Court of Law. According to Frank Sander, the dispute resolution clauses are frequently used in the contracts as well as by different corporate dominion for resolving the disputes arising before them. Furthermore, he clarified that since ADR is not a new concept, it is the duty of the legal practitioners to educate their clients about the option of ADR for resolving the dispute. Though the cases are filed in the courts but there about 95% cases which gets settled through outside settlement processes rather than by the court. There is no such provision which restricts the parties to settle their dispute outside the court. It is noteworthy to understand that there are two separate roles of court, i.e., articulation of societal values & ethics and proper analysis & interpretation of various statutes & the Constitution, coupled with the very aim of resolution of disputes. It is also pertinent to mention the very idea of a multi-door courthouse system wherein a comprehensive justice institution is established which screens and analyses the cases in order for them to be referred to that process(s) which is best suited for providing the most optimal resolution.[4]

To address the growing delays and costs of litigation caused by an overburdened court system in the "United States", the ADR movement began in the 1970s as a social movement to resolve community-wide civil rights problems through mediation. ADR has now risen fast in the United States, and from experimentation to institutionalization is supported by the "American Bar Association, academics, courts, and the United States Congress and state governments". The "1990 Civil Justice Reform Act" mandated that all "U.S. federal district courts" prepare a strategy to decrease the expense and delay in civil litigation, and most district courts have approved or developed some kind of ADR. The United States now has the most court-connected ADR experience due to changes in ADR models, the expansion of government-mandated, court-connected ADR in state and federal systems, and an increase in disputants' interest in ADR. While the court-connected ADR movement thrived in the legal community in the United States, other advocates saw the use of ADR methods outside the court system as a means to generate solutions to complex problems that would better meet the needs of litigants and their communities to reduce reliance on the legal system, strengthen local civic institutions, preserve disputants' relationships, and teach alternatives to violence or litigation for dispute resolution. To accomplish these objectives, the San Francisco Community Boards programme was founded in 1976. This experiment has given rise to a slew of community-based ADR initiatives, including school-based peer mediation programmes and neighborhood justice centers. Demand for ADR in the commercial sector began to rise in the 1980s as part of an effort to discover more efficient and effective alternatives to litigation. Since then, the usage of private arbitration, mediation, and other kinds of ADR in the commercial world has increased considerably, as has the number of private firms offering ADR services. The shift in the ADR sector from experimentation to institutionalization has had an impact on administrative rule-making in the United States as well as federal litigation practice. Agency regulation and public consultation can be done more effectively with the use of negotiation and other types of ADR. In both developed and developing countries, the ADR movement is gaining momentum. ADR models might be straightforward imports of US methods or hybrid experiments that combine ADR models with traditional dispute settlement aspects. People use ADR techniques to achieve a wide range of social, legal, commercial, and political objectives. Several countries in the developing world are experimenting with ADR.[5]

Litigation is typically a time-consuming procedure wherein cases continue to pile up in the courts as a consequence of constant back and forth between parties and the legal counsels. However, in India over 41067841cases are pending, (10823972 civil cases and 30243869 criminal cases), 77.84% (8414145) civil cases and 77.97% (23581495) criminal cases are pending (more than a year) in different courts, wherein the average settlement time is 15 years (or more), there is a desperate need for ADR approaches.[6] ADR is referred to as a method for resolving up of the disputes which is arising between parties without the involvement of the court. ADR refers to any methods and tactics for resolving conflicts that occur outside the authority of any

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[3] Sander F., "Future of ADR" (Journal of Dispute Resolution - University of Missouri School of Law, April 16, 1999) <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1866&context=jdr> accessed March 16, 2022.

[4] Ibid.

[5] Brown S, Cervenak C and Fairman D, "Alternative Dispute Resolution Practitioners Guide" (usaid.gov) <https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf> accessed March 17, 2022.

[6] NJDG, *'National Judicial Data Grid (District and Taluka Courts of India)'* (October 20, 2021) <https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard> accessed March 19, 2021).

governmental authority.[7]Arbitration, Conciliation, Lok Adalat, and Mediation are some of the most well-known ADR processes.

The author of the study aims to critically assess the perspectives of the fundamental players of the legal fraternity (Judges, Advocates, and Litigants) on the referral of cases dealt under "Section 89 of the Code of Civil Procedure (CPC)" for settlement. Throughout India, there are approximately 41 million cases waiting before the courts to get resolve as stated above. The basic essence behind "Section 89 of the CPC" is to lessor down the burden on the courts. In order to reduce the number of cases which are pending before the judiciary, the government is taking appropriate steps such as expediting trial procedures, increasing the number of judges appointed, and so on. One of the most notable initiatives of the government was amending "Section 89 of CPC", which allowed for a mandatory requirement for the courts to attempt numerous feasible approaches to settle pending disputes via ADR proceedings. Prior to 1999, "Section 89" exclusively provided for arbitration; however, in 1999, this Section was revised to incorporate alternative mechanisms such as mediation, Lok Adalat, and so on. The purpose of this Section is to offer alternative dispute resolution options. Section 89 mandates courts to refer cases to different ADR mechanisms if any aspect of the case features a settlement present between the parties; however, which method is to be employed is based on the nature of the case. The caseload on the courts is not diminishing, which might be due to the improper implementation of the referral provision and referral system. The involvement of the basic actors in the case is important to the effective execution of case referral. This research will concentrate on two landmark judgments, namely ***"Salem Advocate Bar Association v. Union of India"***[8] and ***"Afcons Infrastructure Ltd. Cherian Varkey Construction Co. (P) Ltd"***[9]**.**

The primary reason for selecting the aforementioned subject of study is to investigate the present trend by which "Section 89 of the CPC" is being applied in the context of differing perspectives of judges, advocates, and parties. This research is also being conducted to determine how people perceive the recent changes to "Section 89 of the CPC". At the time when "Section 89" was revised in the year 1999, legal practitioners were hesitant to bring unresolved cases to the ADR procedure. The Supreme Court upheld Section 89's validity and created new standards for its effective and efficient application in the Salam Advocates Bar Association case. The Apex Court instructed all lower courts to draft rules on the mediation for proper and smooth functioning, and the said rules should be in reference with the Mediation Training Manual of the SC. It has been about 20 years since the adoption of "Section 89 of the CPC in 2002". However, the number of ongoing court cases grows by the day. In 2014, Justice Khan, the former judge of Allahabad High Court, advocated for a reassessment of the courts' existing execution of Section 89 of the CPC.[10] Despite training attorneys in ADR methods and the establishment of court-adjacent mediation facilities, disputants prefer the conventional court adjudication procedure for settling their conflicts.

However, the author has determined that Actors have change their behavior in order to comply with Section 89. Section 89 referral's efficacy is determined by the guidance of the advocate, the intention of the litigants, and the Judge's proper referral of the dispute. As a result, the author examined in this study that how the courts have implemented Section 89 in on-going and up-coming disputes, as well as how advocates and litigants have used this provision. The author further goes on to examine at which types of disputes were most frequently referred to Section 89, as well as which types of ADR mechanisms were chosen by the parties and courts. The author has further examined the possibility of various new ADR mechanisms into section 89 with regard to commercial courts, such as "Dispute Adjudication Board, Dispute Review Board and Early Neutral Evaluation".

The proposed study aims to ascertain the actual application scenario of ADR mechanisms, namely whether the opinion of the people about settling conflicts via ADR Referral has changed or not. For the sake of improved assessment, the present research is concerned with the different means of ADR as mentioned in Section 89. As noted previously, the fundamental objectives of this study is to comprehend and evaluate the attitude of litigants, advocates, and judges with respect to section 89 referral mechanism. It also takes into consideration the critical elements of Section 89 and relevant provisions.

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[7] Esmaili T and Gilkis KB, "Alternative Dispute Resolution" (Legal Information Institute November 2021) <https://www.law.cornell.edu/wex/alternative_dispute_resolution> accessed March 19, 2022.

[8] "Salem Advocate Bar Association v. Union of India", AIR [2003] SC 189; "Salem Advocate Bar Association v. Union of India", (2005) 6 SCC 344.

[9] "Afcons Infrastructure Ltd. v Cherian Varkey Construction Co. (P) LTD" [2010] 8 SCC 24.

[10] Justice Khan SU, "Judicial Settlement under Section 89 C.P.C." (International Journal for Transformative Research) <http://ijtr.nic.in/Article_chairman%20S.89.pdf> accessed March 22, 2022.

1.1 HISTORICAL BACKDROP AND OVERVIEW OF SECTION 89

"Section 89 of the CPC" was designed to encourage parties to negotiate an amicable, peaceful, and voluntary arrangement outside of the legal system.[11] Over ninety percent of litigation is settled outside of court in most countries around the world. As per this provision, if the parties cannot reach an amicable agreement, then only the dispute will proceed to trial. It was as a result of the "CPC (Amendment) Act, 1999", which took effect on July 1, 2002, that the current version of "Section 89" came into existence. From the start, the Code had a way for ADR to happen. The "Arbitration Act (Act 10 of 1940)" revoked the same under "Section 49 and Schedule 10". The prior provision merely mentioned arbitration and its procedures in the "Code's Second Schedule". It was thought that the legislation had been consolidated with the passage of the "Arbitration Act of 1940", and therefore "Sec 89" was unnecessary. However, the Section was revived with additional options that were not restricted to arbitration. "Section 7 of the CPC Amendment Act, 1999" inserted a new "Section 89 to the Code" to resolve disputes without going to trial, based on the recommendations of the "Law Commission of India and the Malimath Committee report".[12]

Section 89, as well as "Rules 1A, 1B, and 1C of Order X of the First Schedule, have been implemented by Sections 7 and 20 of the CPC Amendment Act" which covers the scope of the legislation pertaining to ADR. The "Order X" provisions are designed to guarantee that the court's jurisdiction is properly exercised. Subsection (1) provides for the reference of numerous channels for resolving the dispute alternatively, whereas Subsection (2) provides for the reference of numerous acts which pertains to the aforementioned alternate resolutions. The modifications made by the CPC (Amendment) Act, 1999 have no retrospective effect and shall have no bearing on any litigation in which questions were determined prior to the start of "Section 7 of the CPC Amendment Act, 1999", and shall be treated as if Section 7 and Section 20 of the CPC (Amendment) Act had never come into force. "Section 89" describes for the decision of the forum which must be effective as well as binding as court orders/decrees, but must be reached at a lower cost and in a shorter time frame.[13] The regulations made under "Order X" says that when the court can tell the parties to go to alternative dispute resolution forums, when they have to show up, and when the presiding officer has to do the right thing and send the case back to court if it's better suited for the court.

1.2 COMPULSORY SYSTEM OF ADR REFERRALS AND ITS OBSERVANCE IN DIFFERENT COUNTRIES

As previously noted, India is adopted certain new methods of ADR has also made ADR, a requirement under CPC, based on the success experiences of other countries. The contemporary obligatory ADR referral system began in the 1970's in the United States.[14] The "Conciliation Project of the Himachal Pradesh High Court (disposal of ongoing matters through Conciliation and pre-trial conciliation for new cases)" was inspired by way of the mediation systems employed in "Canada and Michigan (USA)".[15] In its 13th and 77th reports, the Law Commission of India issued several suggestions based on the project's achievements as well as its challenges, and advised other States to implement them. Later, this paradigm was expanded to encompass all additional ADR referrals under CPC.

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[11]Code of Civil Procedure (1908), "Section 89. **Settlement of disputes outside the Court"** - *"(1) 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 and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for: (a) arbitration; (b) conciliation; (c) judicial settlement including settlement through Lok Adalat: or (d) mediation. (2) Were a dispute has been referred- (a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act; (b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall, apply in respect of the dispute so referred to the Lok Adalat; (c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act; (d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."*

[12]Sarkar, S.C., and Prabhas C. Sarkar. The Law of Civil Procedure. 11th ed. Vol. 1. Delhi: Wadhwa and Company Nagpur, 2006. 498.

[13] "Justice Doabia, MLJ 's Code of Civil Procedure", 13th edn Vol. 1, Delhi: Wadhwa Nagpur, 2008. 468.

[14]Maiyaki TB & Uduak R, "ADR: An Appropriate Substitute to Litigation in the 21st Century" (Academia, 2018) <https://www.academia.edu/34551870/ADR_AN_APPROPRIATE_SUBSTITUTE_TO_LITIGATION_IN_THE_21_ST_CENTURY> accessed April 12, 2022.

[15]Bhargava A, "Conciliation: An Effective Mode of Alternative Dispute Resolution System" (thelawbrigade April 2017) <https://thelawbrigade.com/wp-content/uploads/2019/05/Aditi-Bhargava.pdf> accessed April 14, 2022.

The Commercial Courts Act's required mediation is likewise based on many nations' success stories. Italy has effectively implemented mandated commercial mediation. Under Italian law, if a plaintiff cannot demonstrate attendance at an initial mediation meeting, he or she will not have quick access to the courts. This concept is also used for a certain type of dispute in Lithuania, Luxembourg, the United Kingdom, and Ireland.[16]

1.3 RESEARCH QUESTIONS

The paper is basically concentrated upon the following research questions:
1. Whether Section 89 of Code of Civil Procedure sets out an efficacious process?
2. Whether Section 89 process as perceived by parties, judges and advocates is more effective in terms of time, cost, fair outcome than normal civil litigation?
3. Whether the guidelines provided in the case *"Afcons Infrastructure Ltd. Cherian Varkey Construction Co. (P) Ltd"* by the judiciary is being duly followed or not?

1.4 RESEARCH DESIGN

In this paper, the quantitative method of research is being used so as to examine the implementation of Section 89 of CPC by way of further examining the ideology of the judges, advocates as well as the parties for referring of the cases under Section 89 of CPC. The author herein is dealing with the comprehensive review of the legislation pertaining to ADR mechanisms so as to develop a better understanding of the inter-connected aspects incorporated in "Section 89 of the CPC". This study was limited to the District Courts and the High Court of Jaipur, Rajasthan and the data which has been collected reflects the ideology of litigants, legal practitioners and judges. The author is applying an empirical research method to collect data on the application of Section 89 of the CPC from litigants, advocates, and judges. A total of 153 samples were collected, out of which 63 samples were collected from the litigants, 83 samples were collected from the legal practitioners and the rest 7 samples were collected from the judges. This scope of study is limited as to what happened pre-referral to Section 89 and further does not deal with as what happened post-referral under Section 89.

So, in this research study the author formerly uses doctrinal method of research to deal with the historical background of Section 89 of CPC. While using this methodology the author focused upon several research paper, articles, books, etc. Further, the author also used empirical method of research to interpret and analyse the "ideology of litigants, advocates and judges" upon the referral under Section 89. The aim of the research is to scrutinize the current referral system of the cases to the Alternative Dispute Resolution and perceptions of the basic actors on that system. To conclude the research study, the researcher will analyse that data and based on that analysis the researcher will propose the best suitable recommendations to enrich the referral system under Sec 89 of CPC and will also make recommendations for the basic actors so that this referral provision can be used properly which justifies the essence behind this Sec 89 of CPC.

FUNDAMENTAL NUANCES OF SECTION 89 OF CIVIL PROCEDURE CODE

2.1 VACUITY IN SECTION 89

Despite the fact that this section was included with the intention of cutting down the outstanding cases and disposing off cases in a timely and effective way, there is still confusion in the section itself. However, if we follow the simple interpretation of "section 89", it is for the trial court to make the required settlement agreements, which should be accepted by the referral forum.

The "Supreme Court" further pointed out the fact that "Section 89 of the CPC" holds the following flaws:
a) "Judge's" duty in referring cases and recording settlements.
b) Duties of the court under Section 89 and the use of different mechanisms of ADR.
c) Choice of an appropriate mechanism of ADR process.
d) Lack of definition and clear explanation to the categories of ADR.[17]
e) New forms of ADR included.

2.1.1 ROLE OF THE JUDGE: SETTLEMENT OF THE DISPUTE

In simple terms the "Section 89" is that the terms of the settlement must be developed by the Courts which should be distributed to the parties for consideration before sending them to any ADR institution for

[16]Chellapa S and Ollapally T, "Mandatory Mediation under Commercial Courts Act - A Boost to Effective and Efficient Dispute Resolution in India" (Bar & Bench - Indian Legal news June 12, 2018) <https://www.barandbench.com/columns/mandatory-mediation-commercial-courts-act> accessed April 14, 2022.
[17] (n 7).

finalization. As a result, numerous anomalies may emerge. If the court decides the conditions of settlement, the aim of presenting the subject to an ADR institution is rendered futile.

In practice, the Court is not involved in the process of both the mediation as well as the conciliation. A successful mediation and agreement on settlement terms, as defined by "Section 89," will result in the mediator filing a report with the court, which will then 'effectuate' the compromise by issuing a decree in accordance with the terms of settlement agreed upon by the parties after giving the parties notice and an opportunity to be heard. Also, there is no doubt that the Court will not be able to hear the case if it is sent to mediation or conciliation and no agreement is reached. The judge who sends the case back only looks at whether there are good reasons to expect a settlement. Because of this, he can still try the case later if the parties can't come to an agreement.[18]

The words: "the Court shall formulate the terms of settlement and give them to the parties for their observations, and after receiving the parties' observations, the Court may reformulate the terms of a possible settlement" which is also regarded similar to that of the powers of the conciliator mentioned in the “Arbitration and Conciliation Act”.[19] Several Law Commission of India studies use nearly identical language to discuss other ADR methods, such as conciliation and mediation.

In the following words “Justice Raveendran has enlightened the drafting error of Section 89(1)”:

> *“If sub-section (1) of Section 89 is to be literally followed, every Trial Judge before framing issues, is required to ascertain whether there exist any elements of settlement which may be acceptable to the parties, formulate the terms of settlement, give them to parties for observations and then reformulate the terms of a possible settlement before referring it to arbitration, conciliation, judicial settlement, Lok Adalat or mediation. There is nothing that is left to be done by the alternative dispute resolution forum. If all these have to be done by the trial court before referring the parties to alternative dispute resolution processes, the court itself may as well proceed to record settlement as nothing more is required to be done, as a Judge cannot do these unless he acts as a conciliator or mediator and holds detailed discussions and negotiations running into hours.”*[20]

According to the interpretation of the SC, if a settlement can be reached through ADR (mediation or conciliation), the decision should be sent back to the court that referred the case, and the court should make its decision based on the outcome of the ADR process. The “Law Commission of India” incorporated the same notion in its 238th report and advocated the amendments in the following clause:

> *“Where it appears to the court, having regard to the nature of the dispute involved in the suit or another proceeding that the dispute is fit to be settled by one of the non-adjudicatory alternative dispute resolution processes, namely, conciliation, judicial settlement, settlement through Lok Adalat or mediation the court shall, preferably before framing the issues, record its opinion and direct the parties to attempt the resolution of dispute through one of the said processes which the parties prefer or the court determines.”*[21]

2.1.2 DUTY OF THE COURTS AND COMPULSORY REFERRAL OF THE DISPUTE UNDER SECTION 89

Section 89 states that “the Court shall formulate the conditions of settlement and ask to the parties for their views, and after receiving the parties’ observations, the Court may reformulate the parameters of a possible settlement and send the same for any ADR”.[22] The case referral to ADR is still unclear. However, the SC in “***Salem Advocate Bar Association”*** explained that:

> *“As can be seen from Section 89, its first part uses the word ‘shall’ when it stipulates that the ‘Court shall formulate terms of settlement’. The use of the word ‘may’ in the latter part of Section 89 only relates to the aspect of reformulating the terms of a possible settlement. The intention of the legislature behind enacting Section 89 is that where it appears to the*

[18] (n 6).
[19] The Arbitration and Conciliation Act 1996, s 73.
[20](n 7) at Para 15.
[21]Justice Reddi PV, “Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions” (238th Report on Law Commission of India December 2011) <https://lawcommissionofindia.nic.in/reports/report238. pdf> accessed April 18, 2022.
[22]Code of Civil Procedure (1908), (n 27).

> *Court that there exists an element of a settlement which may be acceptable to the parties, they, at the instance of the Court, shall be made to apply their mind so as to opt for one or the other of the four ADR methods mentioned in the section and if the parties do not agree, the Court shall refer them to one or the other of the said modes. Section 89 uses both the words 'shall' and 'may' whereas Order 10 Rule 1-A uses the word 'shall' but on harmonious reading of these provisions it becomes clear that the use of the word 'may' in Section 89 only governs the aspect of reformulation of the terms of a possible settlement and its reference to one of ADR methods. There is no conflict. It is evident that what is referred to one of the ADR modes is the dispute which is summarized in the terms of settlement formulated or reformulated in terms of Section 89."*[23]

The answer to the question of reference of ADR was given by Justice Raveendran in "Afcons infrastructure case" as follows:

> *"The court has to form an opinion that a case is one that is capable of being referred to and settled through the ADR process. Having regard to the tenor of the provisions of Rule 1A of Order 10 of Code, the civil court should invariably refer cases to ADR process. Only in certain recognized excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any of the ADR process, the court will have to briefly record the reasons for not resorting to any of settlement procedures prescribed under section 89 of the Code. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under section 89 of the Code, is mandatory. But the actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be a reference to the ADR process. In all other case referred to the ADR process is a must."*[24]

As stated by the SC, under "Section 89 of the CPC, courts must decide whether or not the dispute can be solved through any form of ADR, and if the court determines that it cannot be resolved through ADR, then the court need not send the same to other mechanism of ADR". Hence the courts must determine that whether the process of ADR is apt for the individual dispute.

2.1.3 SELECTION OF PROPER ADR MECHANISM FOR DISPUTE RESOLUTION

The mechanisms of ADR can be broadly classified as "Adjudicatory and Non-Adjudicatory ADR mechanisms". In the former, the issue is determined on its merits, but in the latter, the problem is handled by compromise or cooperative settlement. As "Section 89" allows for the "referral of disputes to both adjudicatory (Arbitration) and non-adjudicatory (Conciliation, Mediation, Lok Adalat, and Judicial Settlement) ADR mechanisms," the court should exercise extreme caution in determining which ADR mechanism is best for resolving a particular dispute, because the matter cannot be considered by the court once any adjudicatory ADR procedure has concluded. The SC observed that:

> *"Section 89 and Rule 1A of Order 10 required the court to explain to the parties the various ADR options for dispute resolution. If the parties have selected one of the ADR methods listed in Section 89, the court will refer the disagreement to that ADR mechanism solely. If the parties are unable to reach an agreement on the type of ADR to be used, the court may send the dispute to any non-adjudicatory form of ADR mechanism. When a dispute is referred to Conciliation, the court might do so with or without the parties involvement."*[25]

It's worth noting that the Indian Law Commission disagreed with the Supreme Court on the Afcons infrastructure issue, giving the court the authority to decide upon the fact that whether a specific dispute can be submitted to the process of Conciliation in addition to the other options of non – adjudicatory mechanism of ADR. In contrast, the author supports decision of the SC in the case of "Afcon's Infrastructure Limited".

2.1.4 AMBIGUITY ON ADR MECHANISMS AND ITS REFERRAL PROCESS

There are basically 5 different types of ADR mechanisms under "Section 89 i.e., Arbitration, Conciliation, Mediation, Judicial settlement and Lok Adalat". However, if we read "Section 89" of the CPC in its entirety, we will see that there are certain difficulties with regard to a specific definition of the term ADR and also for the

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[23] (n 6) at Para 55.

[24] Connor SD, "Resolving Disputes out of Court: Understanding Mediation & Arbitration" (Mac Murray & Shuster LLP, June 15, 2021 <https://mslawgroup.com/resolving-disputes-out-of-court-understanding-mediation-arbitration/> accessed April 18, 2022.

[25] Ibid.

referral procedure for that particular ADR mechanism. The explanation in Chapter 2, that each type of ADR process has its own way to solve the problem. So, “Section 89” can't work with the straight jacket formula for ADR referral.

2.1.4.1 ARBITRATION AND CONCILIATION

In case a dispute is being sent to an arbitration proceeding under “Section 89, the Arbitration and Conciliation Act” will govern the whole process.[26] In the “***Afcons Infrastructure*** case”, the SC declared the fact that the courts without obtaining the consent of the parties, does not have the power to refer an issue to the arbitration. "Section 89" assumes that the parties haven't signed an agreement to have the issue decided by an arbitrator. According to the provisions of “Section 89”, the parties can agree for arbitrating their matter before the tribunal. An agreement may be annexed in the court's order sheet and signed by both parties, or the same may be either in the form of a joint application or even in the form of join affidavit. If both parties agree, the court may refer the case to arbitration.[27]

“Section 89 says that if the dispute is referred to Conciliation, the Arbitration and Conciliation Act of 1996 governs the conciliation rules. Conciliation must be agreed to if a court decides to send a case to it”.[28]

2.1.4.2 MEDIATION

"Section 89 of the CPC" provides that if the court decides to send the issue to mediation, the parties' assent is not required. A typographical error in the definitions of "Mediation" and "Judicial Settlement" was found by the SC in “Section 89”. SC ruled that the clause and subsection of “Section 89” can be interchanged to have the same meaning, even though they're written differently.[29]

The presiding person in Lok Adalat may be a court official, although anybody can mediate a dispute. When we look at the history of Indian mediation, we can find that Lok Adalat predates mediation by a long shot. So, the author suggested the “following clause for mediation referral: If the court decides to refer the dispute to mediation, it can refer to a person or an institution, including court-annexed mediation, and the process of such mediation shall be governed by the mediation rules of such institution or the respective High Court mediation rules”. A similar provision was proposed by the “Law Commission of India in its 238th report” on the modification of “Section 89”.[30]In the following terms, the Indian mediation guideline emphasised the benefits of referring the disputes to the mediation centres which are annexed by the courts:

> *“The judges, lawyers, and litigants become participants therein, thereby giving them a feeling that negotiated settlement is achieved by all the three actors in the justice delivery system. When a judge refers a case to the court-annexed mediation service, keeping overall supervision on the process, no one feels that the system abandons the case. The Judge refers the case to a mediator within the system. The same lawyers who appear in a case retain their briefs and continue to represent their clients before the mediators within the same setup. The litigants are given an opportunity to play their own participatory role in the resolution of disputes. This also creates public acceptance for the process at the same time it tests the court system, which has acquired public confidence because of integrity and impartiality, retains its control and provides additional service. In court-annexed mediation, the court is the central institution for the resolution of disputes.” “Where ADR procedures are overseen by the court, at least in those cases which are referred through courts, the effort of dispensing justice can become well-coordinated”.[31]*

This study says that there should be regular audits of the Mediation Centres which have been annexed by the courts to find out how many cases are sent to each centre and how many are solved there. Also, there needs to be real information about how many mediations MCPC mediation trainees have done.

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[26] Code of Civil Procedure (1908), s 89(2)(a).
[27] (n 22) at Para 33.
[28] Ibid, at Para 35.
[29] Ibid, at Para 11.
[30] Justice Reddi PV, (n 19).
[31] Mediation and Conciliation Project Committee, “Mediation Training Manual of India” (Supreme Court of India) <https://www.main.sci.gov.in/pdf/mediation/MT20MANUAL%20OF%20INDIA.pdf> accessed May 1, 2022.

2.1.4.3 LOK ADALAT

The Supreme Court determined that non-complex cases and those that may be resolved simply by using legal standards should be referred to Lok Adalat.[32] As explained in Chapter II, the author thinks that a Lok Adalat decision shouldn't be final on the day it was made, especially if the case has been taken to court under Section 89. The opportunity must be given to the referring court in order to evaluate the awards and also determine that whether any inadvertent mistakes or glaring errors exist, and if so, the Lok Adalat must fix the error. The author would like to propose that the Law Commission of India's recommendation be adopted into Section 89 of the CPC. The parties may apply under "Rule 3 of Order XXIII of CPC" if they want to make their settlement agreement a decree.[33]

2.1.4.4 JUDICIAL SETTLEMENT

One of the controversies of "Section 89" is whether or not the case should be submitted to "Judicial Settlement." The judicial settlement can work miracles and is the best of the five ways to settle a dispute that are listed in "Section 89 of the CPC".[34] It is yet unclear how the "court settlement" will be implemented. Section 89, as previously indicated, conflates "Judicial Settlement and Lok Adalat."

The SC stated in "***Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited"*** that "judicial settlement is a term in vogue in the United States referring to a settlement of a civil case with the assistance of a judge who is not assigned to adjudicate upon the dispute".[35] Amendments must be made to Section 89(2)'s Clauses (c) and (d) to address the mistake of the draftsman.

Despite the Supreme Court's stance in "Afcons Infrastructure case", "Justice Khan indicated that Judicial Settlement can be achieved by the same judge who is presiding over the same legal matter". The same has been explained by him in the following lines:

> *"If the judge finds that the learned counsel for both the parties, and the parties if present, are showing some interest in settlement, however faint or strong it may be, the proposed terms as come in the mind of the judge are reduced in writing on the order sheet" and "the parties are given two or three days to consider the same". "The council must be either supplied a free copy of the said order sheet or be permitted to copy the order at once. The judges have to develop the skill of persuasion by practice."*[36]

According to study, it was due to the failure of the "LCI as well as the Union government" that the concept of judicial settlement was not properly explored, as required by the SC in "Afcons Infrastructure case". The LCI endorsed Justice Raveendran's formulation following the Afcons Infrastructure case.[37]

Disputes can be settled through judicial settlement with the consent of all parties if the presiding judge so determines. The compromise strategy must be tried before he outlines the problems.

2.1.5 INSERTION OF ANOTHER NOVEL FORM OF ADR

The author has uncovered various innovative types of ADR that can be successfully and efficiently referred under Section 89. These are as follows:

1) *DAB ("Dispute Adjudication Board") and DRB ("Dispute Review Board"):* In the construction disputes DAB and DRB are regarded as the common ADR proceedings. A standing panel which comprises of three or five members shall be formed for dispute settlement. The only point which differentiates both is that the DAB's decision is legally binding, while the DRB's is not. The panellist must possess some knowledge about the dispute. "DAB and DRB" model provisions have been integrated into several organisation's standard construction contract forms. Parties to certain specified construction contracts are required by Part 2 of the UK Construction Act to settle disputes by compulsory adjudication.[38]
2) *Neutral evaluation at an early stage:* As per "Robert A. Goodin", in the very early stages, **"**early neutral evaluation is a technique used in American litigation to provide an early focus to complex commercial

[32](n 7) at Para 36.
[33]Azeem N, "Compromise Decree: A Detailed Overview" (Legal Service India - Law, Lawyers and Legal Resources) <https://www.legalserviceindia.com/legal/article311-compromise-decree-a-detailed-overview.html> accessed May 1, 2022.
[34]Justice Khan SU, (n 8).
[35]Ibid.
[36]Ibid.
[37]Justice Reddi PV, (n 19).
[38]Jenkins J, "*International Construction Arbitration Law*" (3rd edn, Kluwer Law International 2021).

litigation, and based on that focus, to provide a basis for sensible case management or offer a resolution of the entire case".[39] A person with legal knowledge be it an advocate or a retired judge shall be appointed as an unbiased mediator. This impartial mediator will assess the disagreement objectively, as well as the parties' strengths and shortcomings, and present the parties with a report. The parties will receive a wake-up call from this report, which will encourage them to achieve an agreement.[40] The parties in the "***Bawa Masala"*** dispute[41] were ordered by the SC to employ ENA to resolve their differences.

3) *Ministerial or Executive tribunal:* The dispute will be heard by a panel made up of executives from both sides and a neutral person. The disputed parties will present their points before the panellist. The hearings will be done in a fair way (unbiased) by the individual who acted as Chairman. After the long hearings, the panel will try to bring the parties together and settle the dispute.
4) *Determination of the expert:* If in case any disagreement arises then the same shall be submitted to one or more experts for resolving the matter in their expert determination. Unless the parties agree differently, the expert's conclusion shall bind the parties. For the expert determination referral to be made, both parties must agree. Expert decision is used to resolve IPR issues.[42]
5) *ODR:* ODR stands for Online Dispute Resolution. Certain distinct conflict resolution approaches are available on an internet platform. One such strategy is automated negotiation, in which competing parties simply resolve their claims through a bidding system. "Traditional ADR processes such as arbitration, mediation, and conciliation are now done through virtual hearings".

ANALYSIS OF THE APPLICATION OF SECTION 89 OF CODE OF CIVIL PROCEDURE IN JAIPUR (RAJASTHAN)

3.1 CRITICAL ANALYSIS OF SECTION 89 IN RELATION TO STAKEHOLDERS

Any rules, activities, or standards, whether related to the manufacturing process or another programme, must be applied at the end-user level. Similarly, the government changed "Section 89 of the Civil Procedure Code 1908" in 1999, mandating courts to look into the potential of resolving existing civil disputes through various ADR mechanisms. Despite great resistance, this provision was enacted into law, as previously stated, and in 2002, this provision came into force. As a result, the success of this section is contingent on the stakeholders' cooperative behavior.

The primary purpose of this research is to ascertain how stakeholders react to Section 89 of the CPC i.e. ADR referral. According to the author, the applicability of this rule is contingent on significant parties such as plaintiffs, attorneys, and judges. The disagreement cannot be addressed through ADR unless both parties exhibit a willingness to do so. Section 89 allows courts to refer a dispute to ADR tools; but, unless the parties employ this option regularly, the referral becomes ceremonial. Advocates are essential in putting this part into action. They are responsible for informing litigants about ADR options and the importance of ADR, as well as encouraging them to engage in the ADR process. Finally, the judges who hear the civil dispute in the first instance bear official duty for carrying out this requirement. It is the duty of the Judges to make sure that the litigants are aware about the options of ADR Mechanisms and that the outcome of the "non-adjudicatory procedure is legitimate and advantageous" to them.

3.1.1 LITIGANTS: ANALYSIS AND INTERPRETATION OF DATA COLLECTED

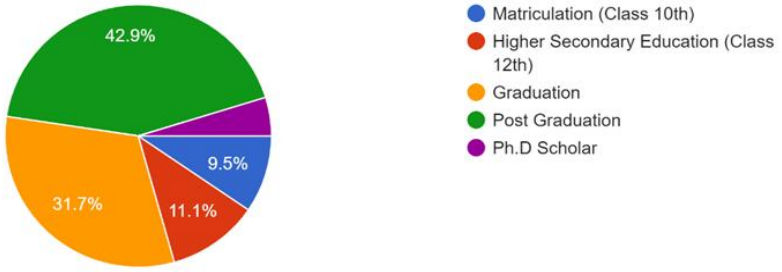
In scenarios wherein the "amendment or act has been implemented" on the ground, the Litigant is one of the key participants in the position of end-users. As a result, it is vital to investigate the litigants involved in pending lawsuits. Furthermore, one of the goals of this research is to determine the success rate of settling disputes. Settlements are completely dependent on the plaintiffs' behavior and mutual understanding. As a consequence, 63 samples were collected from Jaipur and analyzed in the sections that follow.

3.1.1.1 EDUCATIONAL AND OCCUPATIONAL STATUS OF RESPONDENTS IN JAIPUR

Education is one of the most crucial attributes to consider while analyzing the litigants because their educational status can aid in the better resolution of disputes and disagreements. A highly literate person has a better chance of comprehending problems than others, and they can grasp how to solve them more efficiently. In order to evaluate the educational status of the respondents, following categories were opted for the study. The same has been listed down as follows:

[39]Bawa Masala Co. v. Bawa Masala Co. Pvt Ltd. And Anr, AIR 2007 Delhi 284.
[40]Maiyaki TB & Uduak R, (n 12).
[41]Ibid.
[42] "Expert Determination" (Chartered Institute of Arbitrators) <https://www.ciarb.ie/services/expert-determination.236.html> accessed May 4, 2022.

FIGURE 1: EDUCATIONAL STATUS



The above Figure 1 reflects the educational status of the respondents wherein it can be observed that there were near about 42.9% respondents who were post graduates, 31.7% were graduate, 11.1% were higher secondary education students, 9.5% were graded till matriculation and the rest 4.8% were Ph.D. scholars.

The occupation of the respondent plays an essential role in the analysis of the data collected. The occupational status has been divided into two categories i.e. organized and unorganized sector. Organized sector means where the respondent is financial capable to bear the cost of the court, whereas, unorganized sector means where the respondent in unable to pay cost of the court.

FIGURE 2: OCCUPATIONAL STATUS

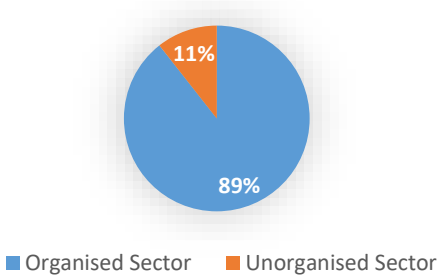


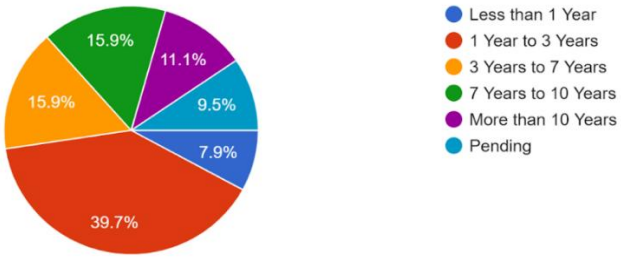
Figure 2 reflects the occupational status of the respondents wherein it can be interpreted that 89.4% of the total respondents are from the organized sector such as legal professionals, doctors, academicians, businessmen, etc. Whereas, 10.6% belongs to the unorganized sector which includes maids, peons, housewives, etc. Through this figure it can be interpreted that mostly the people who belongs to the organized sector approached the court for seeking justice as they were financially sound. This is not the case with the peoples of unorganized sector, as they have to fight with their own needs first.

3.1.1.2 TIME DURATION AND NATURE OF THE DISPUTE

FIGURE 3: NATURE OF THE DISPUTE

The nature of the dispute plays a vital role in referring the case to the mechanisms of ADR. In this study, respondents were part of various kinds of disputes. The above Figure 3 reflects that majority of the disputes were matrimonial disputes consisting of 30.2% of the total. In furtherance to this, 27% of the total were of the property disputes, 15.9% were other disputes such as IPR infringement, copyright infringement and service matter, 14.3% were of commercial disputes, 11.1% of the total were of consumer forum disputes, and the remaining 1.6% is of tortious liability which is the least one in the data collected.

FIGURE 4: TIME DURATION



The time duration which was used for the settlement of cases by the court played a vital role in the study. So, the author has analyzed this time duration with the nature of the dispute to understand better that which type of dispute is taking more time in getting settled.

Figure 4 shows the time duration which the respondents have faced in order to get their dispute resolved. As per this figure, majority of the cases i.e. 39.7% cases were settled within 1-3 years of filing, however, 15.9% of the cases were settled within 3-7 years as well as 7-10 years, 11.1% cases took more than 10 years to get settled, but the most interesting fact is that 9.5% cases are still pending before the court, and 7.9% of cases were resolved within the period of 1 year or less.

The data states that it was the service matter as well as the property matters which took more than 10 years to get settled. However, the tortious liability matters were the one who took least time i.e. less than 1 year to get resolved.

3.1.1.3 COURT DISPUTE RESOLUTION SYSTEM: REASONS TO APPROACH AND SATISFACTION

Under this head the author tried to learn that why did the respondents approached the court. It was found that majority of the respondents approached the court because of the following reasons - to seek justice; on the advice of the advocate; to take divorce; not familiar with the other mechanisms of dispute resolution; to take back the property or money; etc.

FIGURE 5: SATISFACTION WITH THE COURT DISPUTE RESOLUTION SYSTEM

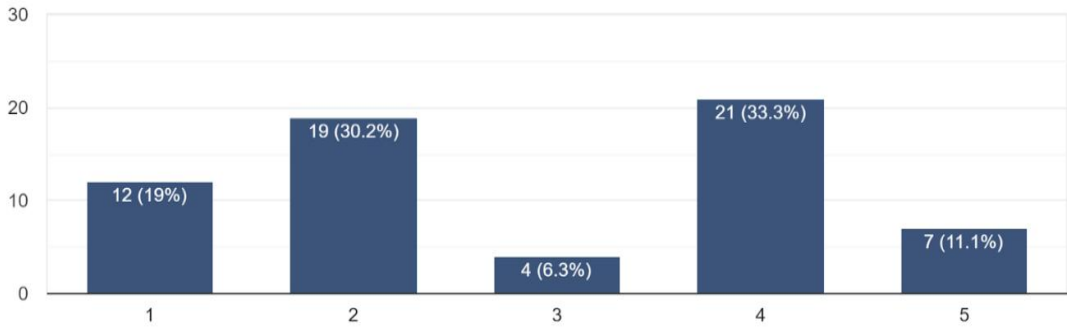
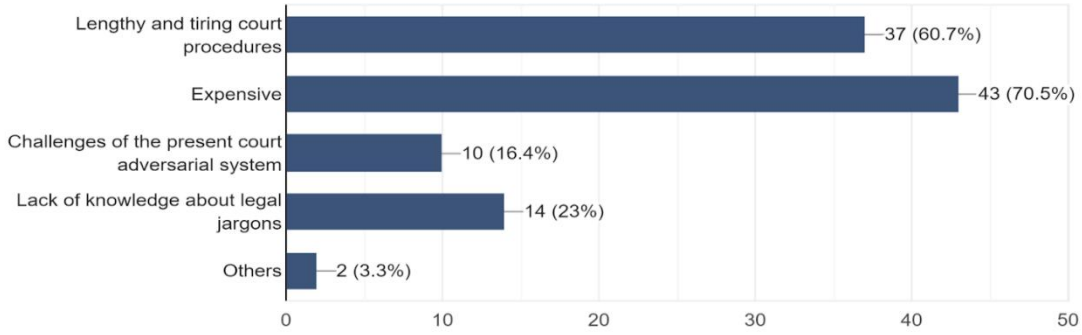


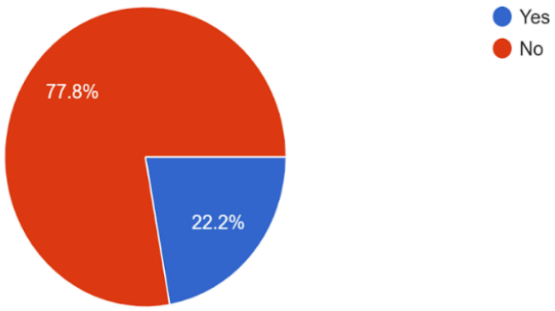
Figure 5 states about the respondent's satisfaction with the court dispute resolution system before the cases were referred to the ADR mechanisms. The figure reflects a very shocking figure that on the scale of 1-5 only 11.1% of the respondents were satisfied with the court dispute resolution system, however, 19% (on the scale of 1-5) of the total respondents were least satisfied with the court dispute resolution system. Hence, it can be interpreted that there are very few respondents who are satisfied with the court dispute resolution system. So, it is important to know the reasons behind the dissatisfaction and the figure below will help us to analysed that.

FIGURE 6: REASONS FOR DISSATISFACTION WITH THE COURT DISPUTE RESOLUTION SYSTEM



It can be seen from Figure 6 that the main reason for the dissatisfaction of the respondents with the court dispute resolution system is that the court proceedings are very expensive in nature, hence 70.5% respondents are of this opinion. Not only this, there are 60.7% respondents who are of the opinion that the court proceedings are lengthy and tiring, which is also another major reason behind the dissatisfaction of the respondents with the court dispute resolution system. Some other reasons for the dissatisfaction are: lack of knowledge about legal jargons (23%); challenges of the present adversarial system (16.4%); others like time flexibility, court procedure flexibility (3.3%).

3.1.1.4 SUGGESTION TO USE ADR MECHANISMS



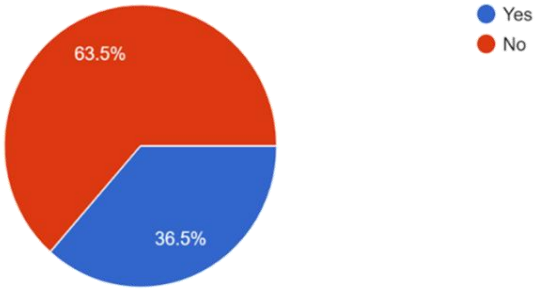
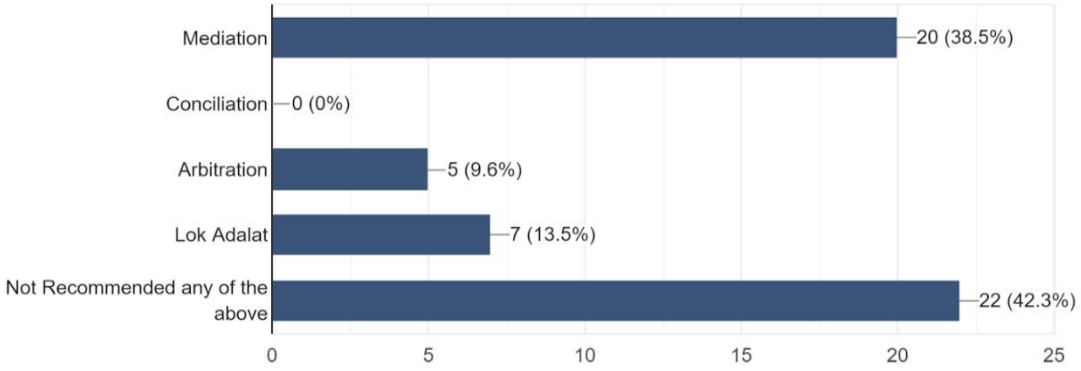


FIGURE 7: SUGGESTION BY THE LEGAL PRACTITIONERS

FIGURE 8: SUGGESTION BY THE COURT

Figure 7 talks about the question that "whether the advocates have suggested for the use of ADR mechanisms or not". A very shocking figure i.e., 77.8% of the respondents were not suggested by the legal practitioners to opt for the process of ADR to get their dispute settled. Remaining 22.2% of the respondents though were suggested to opt for the process of ADR by their advocates. Figure 8 talks about the question that whether the Court have suggested for the use of ADR mechanisms or not. The data which has been collected from respondent reflects that 63.5% of the respondents were not suggested by the court to opt for the process of ADR to get their dispute settled. Remaining 36.5% of the respondents though were suggested to opt for the process of ADR by the court.

FIGURE 9: SUGGESTED ADR MECHANISMS



Since the above two figures i.e., Figure 7 and Figure 8 reflects the idea that some of the legal practitioners as well as the Court suggested the respondents to use ADR mechanisms for resolving the dispute. Hence, Figure 9 states that mediation is the most preferred way of resolving the dispute with 38.5% and conciliation being the least with 0%, however, lok Adalat and arbitration with 13.5% and 9.6% respectively were also the suggested mechanisms of the ADR.

3.1.1.5 WILLINGNESS AND FAMILIARITY WITH ADR MECHANISMS

FIGURE 10: WILLINGNESS TO OPT FOR ADR

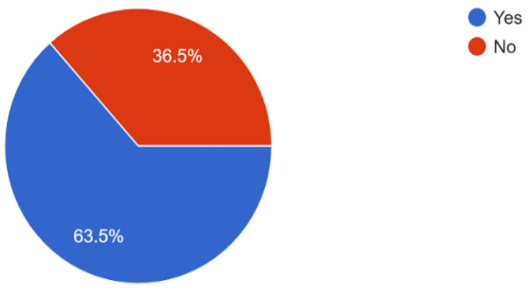
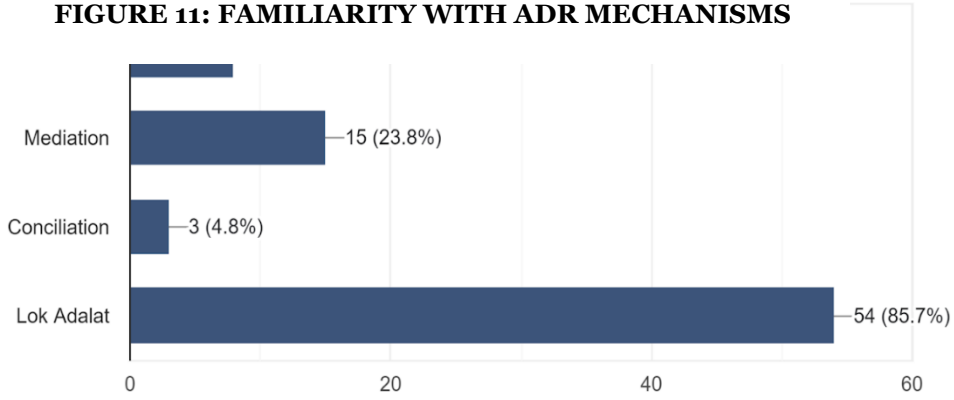


Figure 10 depicts that 63.5% of the respondents were willing to get their dispute resolved via ADR mechanisms, but simultaneously, 36.5% of the respondents were not willing to get their dispute resolved via ADR mechanisms.

FIGURE 11: FAMILIARITY WITH ADR MECHANISMS



Now we know that some of the respondents show their willingness “resolve their dispute through ADR mechanisms”, hence Figure 11 reflects the data that with which ADR mechanism the respondents are familiar with. The figure shows that 85.7% of the respondents are familiar with lok Adalat, however, 23.8%, 12.7% and 4.8% of respondents are familiar with mediation, arbitration and conciliation respectively.

3.1.1.6 RECOMMENDATIONS BY THE RESPONDENTS

Lastly, in this questionnaire recommendations of the respondents for the ADR mechanisms were asked and following are some of the recommendations which were suggested by the respondents for the better implementation of the ADR:

1. Awareness campaigns should be organised by the authorities of the court so that people also become aware of this (ADR) process of settlement of disputes, especially in rural areas.
2. Workshops and training sessions should be conducted by the concerned authorities for the advocates as well as judges in the lower court.
3. ADR must be taught as a mandatory subject in the Universities/Colleges so that young minds can implement the ADR mechanisms soon after entering the legal field.
4. Proper mediation centres should be constituted within each court.
5. ADR forums should specifically be set up in rural areas.

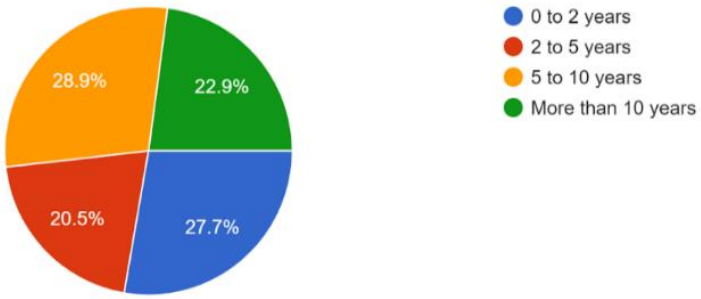
3.1.2 LEGAL PRACTITIONERS: ANALYSIS AND INTERPRETATION OF DATA COLLECTED

Advocates serve as a link between litigants and judges, and they play an important role in the process. In general, it is assumed that they advise their clients to settle their disputes through the ADR system. As a result, it is critical to examine Advocates who are dealing with outstanding cases. Furthermore, because settlements are based on it, one of the purposes of this research is to evaluate the referral method of "civil courts under Section 89 of the Civil Procedure Code, as well as the advocates' attitudes toward it". As a result, 83 samples were gathered from various courts of Jaipur (Rajasthan), and the results were analyzed in the sections below.

3.1.2.1 AREA OF SPECIALIZATION AND EXPERIENCE

It is necessary to understand that how much experience does the advocate holds in order to develop a better understanding of how did the advocates handle the legal process and how did they resolve the dispute. As a result, the advocates have been questioned as to how much practice experience do they have. In furtherance to this, advocates were also asked about the area of specialization to develop a better understanding.

FIGURE 12: EXPERIENCE

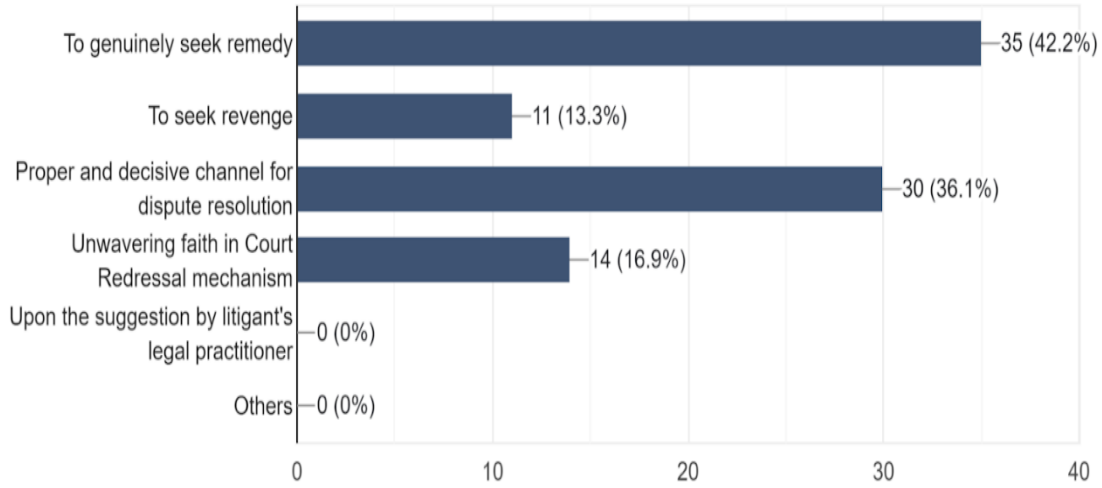


From this study, it was interpreted that majorly the advocates specialised into civil matters, however, many of them specialised in matrimonial matters and criminal matters as well. Figure 12 reflects the percentage of experience into different range of years of practice. It can be studied from the above figure that 28.9% of the advocates holds 5-10 years of experience, 27.7% of the advocates were the ones who holds 0-2 years of experience, 22.9% of the advocates holding more than 10 years of experience, and 20.5% of the advocates were holding 2-5 years of experience.

3.1.2.2 REASONS TO APPROACHED THE COURT BY THE LITIGANTS

It is essential to understand the reason as to why the litigants are approaching the court because it would help us to ascertain the fact that the litigants are in actual need of getting justice. Legal practitioners are the best way to know the reasons behind the litigants approaching the court.

FIGURE 13: REASONS TO APPROACHED THE COURT BY THE LITIGANTS



It can be viewed from the above graph (Figure 13) that why did the litigants knocked the door of the court in the opinion of the advocates. This figure reflects that 42.2% of the litigants genuinely wanted to seek remedy, and 36.1% of the litigants were of the opinion that the courts are consider to be a proper and decisive channel for dispute resolution. There were litigants (16.9%) who had due faith in the court redressing mechanism. A shocking figure of 13.3% of the litigants simply approached the court to seek revenge. But none of the litigants approached the court upon the suggestion by the legal practitioners.

3.1.2.3 SATISFACTION WITH THE CURRENT COURT REDRESSAL SYSTEM

The justice delivery mechanisms by the courts is getting worst day by day due to a lot of burden of the pending cases before the judiciary. The quality of justice gets hindered because of the lengthy proceedings which sometimes goes on even after the death of the litigant which is unworthy for the litigant.

FIGURE 14: SATISFACTION OF THE ADVOCATES

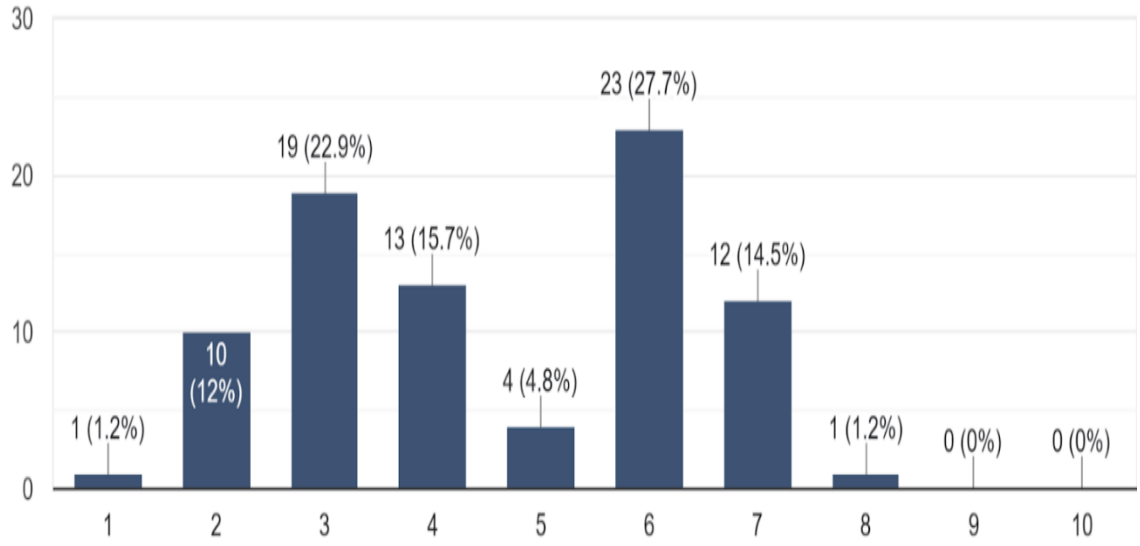
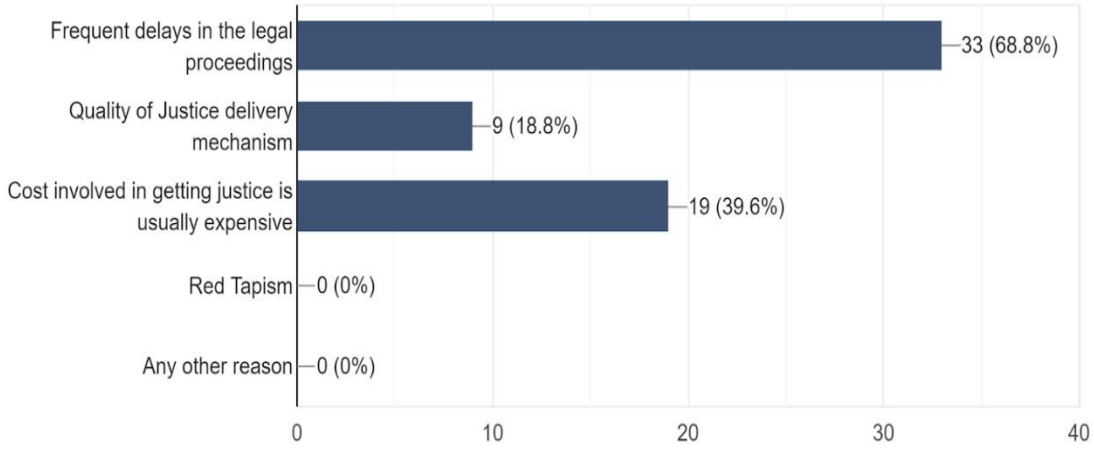


FIGURE 15: REASONS OF DISSATISFACTION OF THE ADVOCATES



The satisfaction of the advocates is also necessary with regard to the quality and expensed incurred in the current court redressal system. Figure 14 talks about the satisfaction of the advocates on the scale of 1-10, where 1-5 being less satisfied and 6-10 consider to be satisfied with the current court redressal system. So, Figure 14 reflects that only 43.4% of the total respondents have been satisfied, however, 56.6% of the respondents have been least satisfied, which means that not only the litigants are unsatisfied with the "current court redressal system" but also the majority of the advocates are not satisfied.

Further Figure 15 mentioned above provides us with the reasons of dissatisfaction of the advocates. It can be learnt that the major reason of dissatisfaction is the frequent delays in the legal proceedings with 68.8%. The next essential reason of dissatisfaction is the cost involved in getting justice is considered to be usually expensive with 39.6%. Lastly, it is the quality of justice delivery mechanisms with 18.8% which act as another reason for dissatisfaction.

3.1.2.4 SUGGESTION TO LITIGANTS TO OPT ADR MECHANISMS

This head will be dealt with three different interpretations i.e. whether the advocate has suggested their client to opt ADR mechanisms to resolve their dispute, and if yes, then which of the ADR mechanisms were suggested, secondly, how many ADR cases are dealt with the advocates in their career, and lastly, whether the litigants are satisfied with the suggestion. It is necessary to interpret these above-mentioned questions so as to understand the perspective of the advocates towards the ADR mechanisms.

FIGURE 16: SUGGESTION TO LITIGANTS TO OPT ADR MECHANISMS

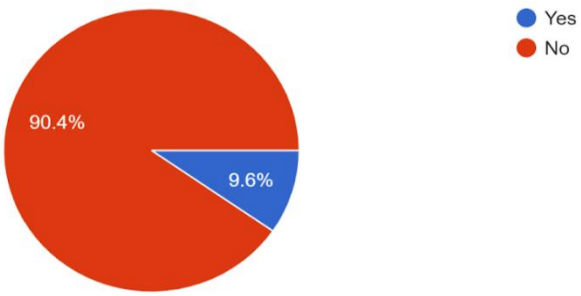
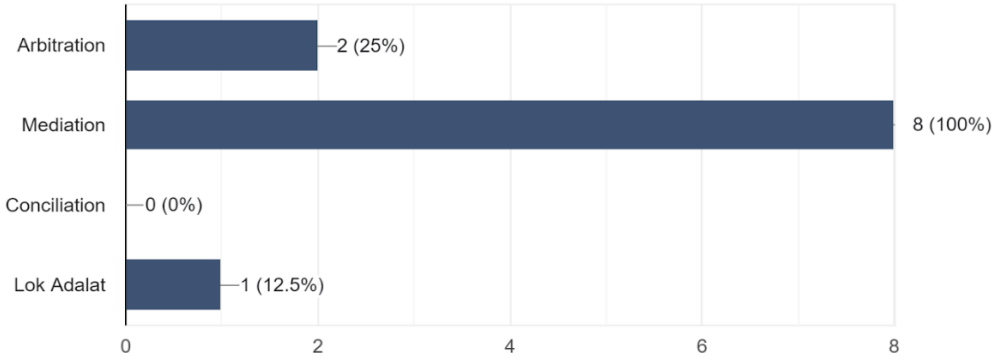


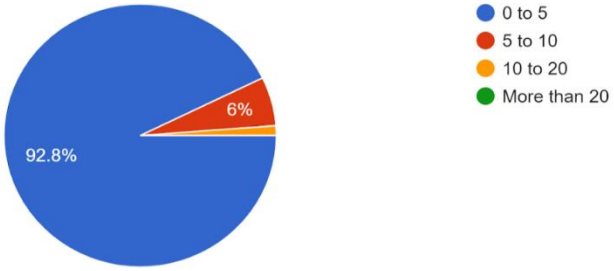
Figure 16 talks about the question that whether the advocate has suggested the client to opt for ADR mechanisms or not. 90.4% of the advocates did not suggested their clients to opt for ADR mechanisms which is very shocking to know, however, 9.6% advocates are being still there who has suggested their client. As per this interpretation, it can be studied that advocates are less inclined towards the ADR mechanisms as dispute resolution mechanisms.

FIGURE 17: SUGGESTED TYPES OF ADR MECHANISMS



As 9.6 % of the advocates suggested their clients for ADR mechanisms, hence it is essential to know that which ADR mechanisms did the advocate suggested their client. As per Figure 17, 8 respondents have suggested their clients to opt for mediation, however, 2 respondents and 1 respondent for arbitration and Lok Adalat respectively. Hence, it can be ascertained that advocates prefer mediation over other ADR mechanisms.

FIGURE 18: NUMBER OF CASES



As per Figure 18, 92.8% of the advocates have dealt with 0-5 cases of ADR, however, there are only 6% of the advocates who have dealt with 5-10 cases of ADR. It is very disheartening to see that only 1.2% of the advocates have settled 10-20 cases through ADR mechanisms. The study clarifies that the advocates are more in favour of traditional litigation instead of the ADR mechanisms. This may be because of many reasons like less incentives, less involvement in the case, etc.

FIGURE 19: CLIENT SATISFACTION

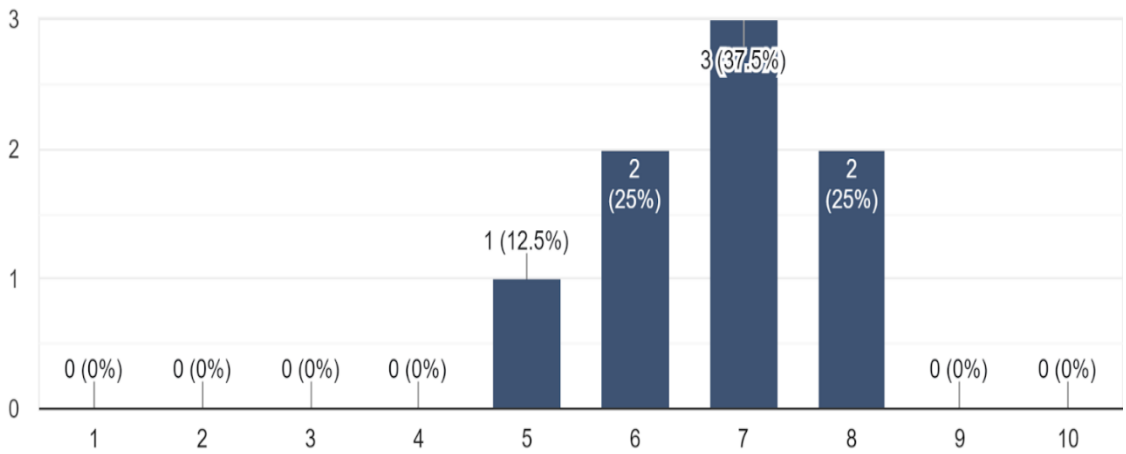
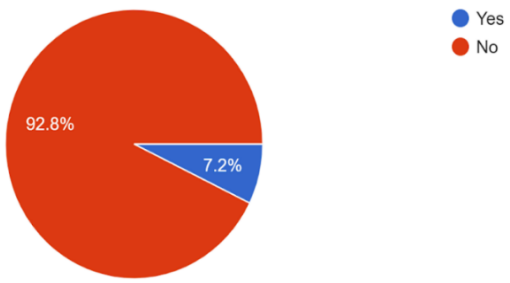


Figure 19 talks about the satisfaction of the client on the scale of 1-10, where 1-5 being less satisfied and 6-10 consider to be satisfied with the suggestion of the advocate to opt ADR mechanisms. The above figure states 87.5% of the clients were highly satisfied with the suggestion to opt for ADR mechanisms, and 12.5% of the clients were not satisfied with the suggestion to use ADR mechanisms. Therefore, it can be interpreted from the data collected that if the clients are made aware about the ADR mechanisms, then they will welcome the suggestion and will opt for ADR mechanisms for resolving their dispute.

3.1.2.5 MEDIATION TRAINING PROGRAMME

FIGURE 20: UNDERGONE ANY MEDIATION TRAINING PROGRAMME



Generally, in the courts, only mediation centres are there hence as a part of the study, the advocates were questioned that whether they have undergone any professional training programme for mediation or not. This is essential to know because the advocates can be the mediators too in their case if the party's consent is there, or in the other cases also they may be appointed as mediator. So, to accomplish the very aim of the principle of ends of justice it is important that the advocates must undergone some training. The experience which the advocates gain from the training will reflects in the process of mediation.

It was studied through Figure 20 that 92.8% of the respondents have not undergone any professional mediation training programme and only 7.2% of the respondents have undergone with the professional mediation training programme like Mediation: Conflict Management and Resolution, Community Mediation Training, Certified Mediation Training Programme, etc.

3.1.2.6 SECTION 89 OF THE CPC: REFERRAL

FIGURE 21: PERSPECTIVE OF THE ADVOCATES UPON THE REFERRAL OF THE CASES UNDER SECTION 89

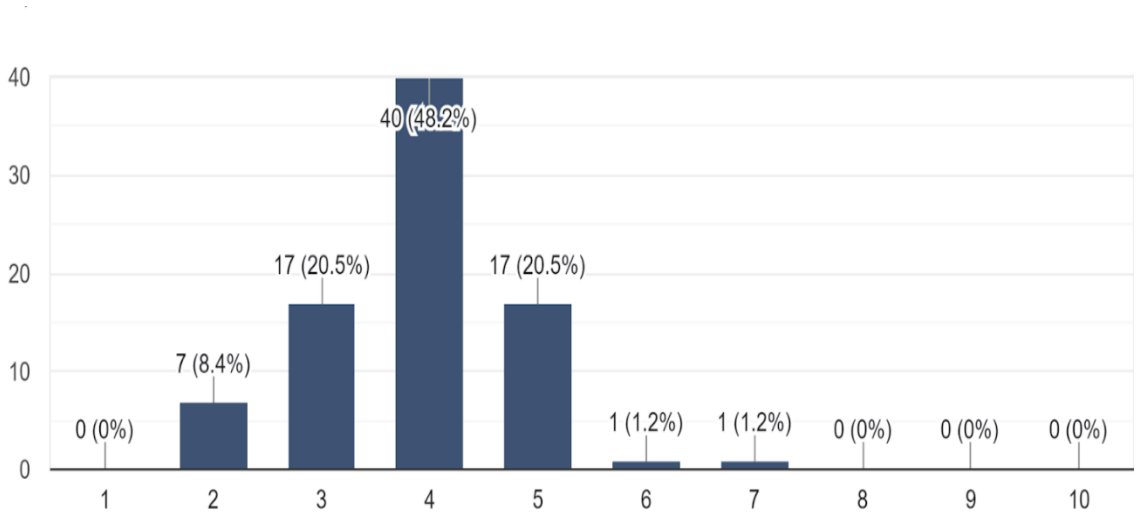
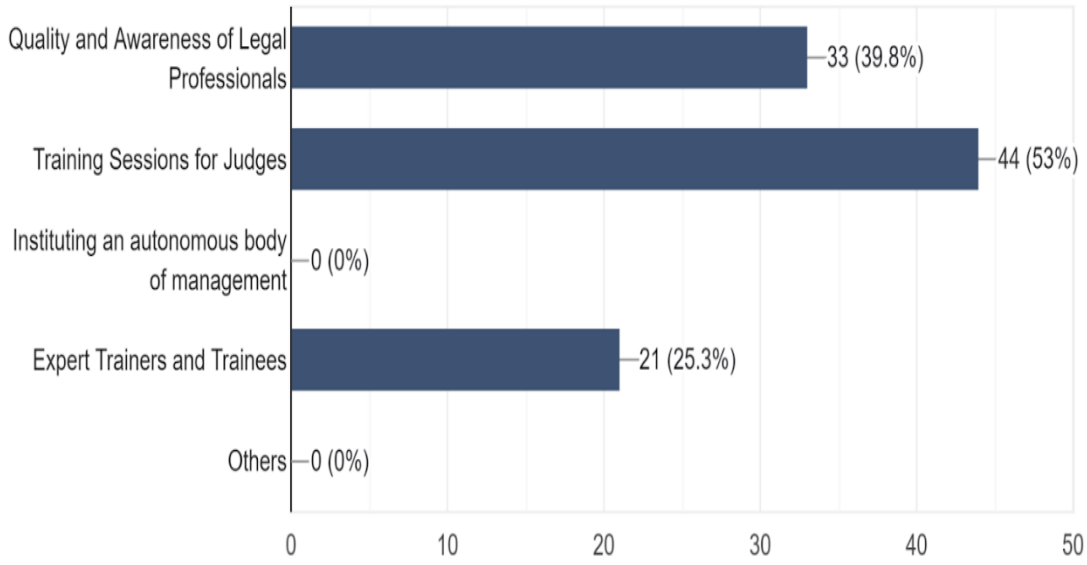


Figure 21 talks about the perspective of the advocates upon the referral of the cases under Section 89 of CPC on the scale of 1-10, where 1-5 being less satisfied and 6-10 consider to be satisfied. This question was asked in

order to interpret that does the courts actually refer the cases to "ADR mechanisms under Section 89 of CPC". The main reason behind asking this question to the advocates was that advocates are considered to be the backbone of the judiciary. It was interpreted that 97.6% of the respondents were not satisfied with the referral being made under Section 89 of the CPC, however 2.4% of the respondents were somewhat satisfied with the referral.

FIGURE 22: SUGGESTIONS BY THE UNSATISFIED RESPONDENTS



In this study, advocates were asked to provide with some suggestive measures for "the better implementation of Section 89 of the CPC" as the advocates were not satisfied with the referral process of Section 89 by the courts. Figure 22 provides the suggestive measures given by the unsatisfied respondents. This figure states that 53% of the respondents have suggested to conduct proper training sessions for the judges so that they can make referral more accurately and effectively. The advocates through 39.8% provided the solution of making legal professionals aware about the ADR mechanisms so that they can also educate the clients about the same. Lastly, with 25.3% of the respondents suggested for expert trainers and trainees who can educate about the proper implementation of Sec 89 of CPC.

3.1.3 JUDGES: ANALYSIS AND INTERPRETATION OF DATA COLLECTED

Judges are considered to be the key stakeholder of the judiciary which is why it was important to understand and analyze the perspective of the judges in the process of "referral under Section 89 of CPC". It was due to the paucity of time that there are only 7 responses from the Hon'ble judges of Jaipur.

3.1.3.1 JUDGESHIP EXPERIENCE

FIGURE 23: JUDGESHIP EXPERIENCE

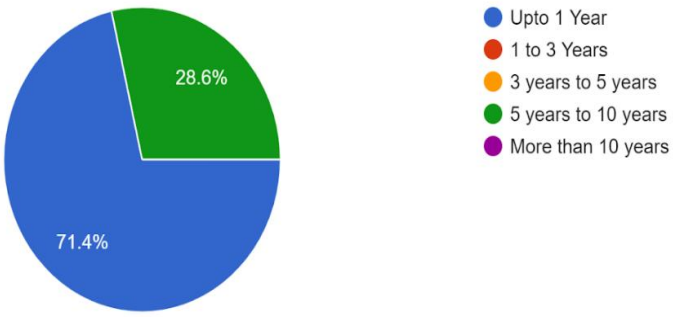
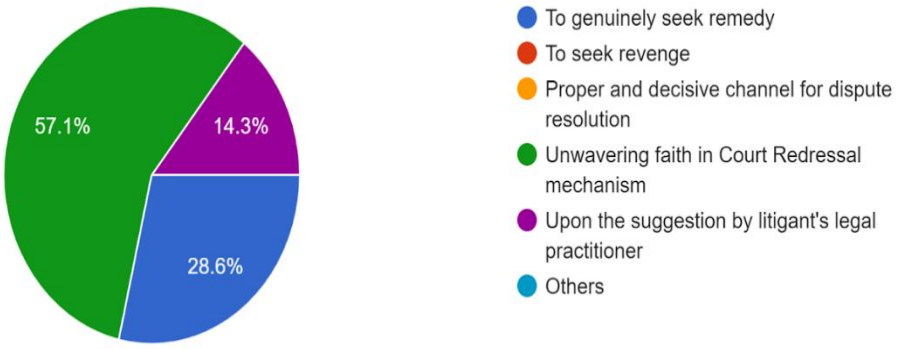


Figure 23 reflects the year of practice of the judges wherein it can be interpreted that 71.4% of the respondents holds upto one year of experience of judgeship, and 28.6% of the respondents holds upto 5-10 years of experience of judgeship.

FIGURE 24: REASON TO APPROCHED THE COURT

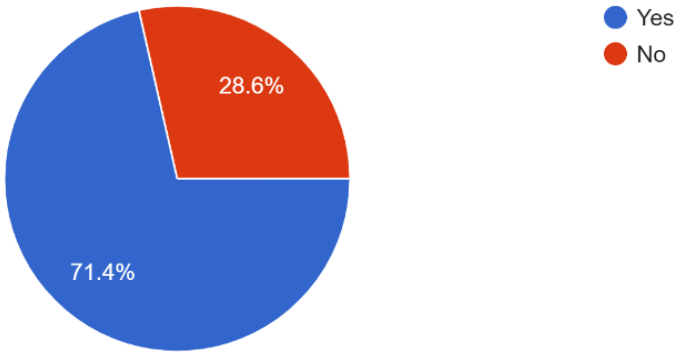


This study involved the primary question that what compels the litigants to approach the court. This question can be more accurately answered by the judges because they are the most essential and necessary stakeholder of the judiciary. Hence, as per Figure 24, 57.1% of the litigants approached the court due to their faith in the court redressal mechanism, however, 28.6% of the litigants were of the opinion that the courts are the best place to seek remedy. Lastly, remaining 14.3% of the litigants approached the court because they have been suggested by their legal practitioner.

3.1.3.2 COURT DISPUTE REDRESSAL SYSTEM

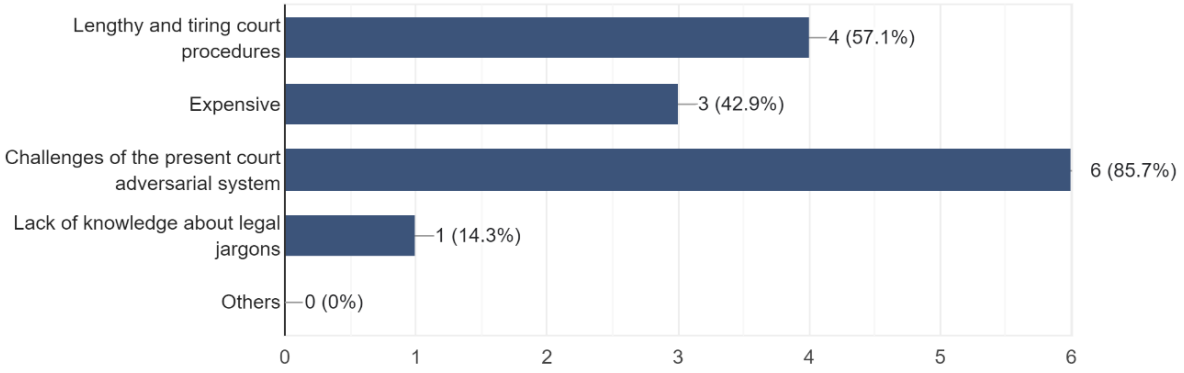
The study involved the question from the judges that is the current Court Dispute redressal system viable for the Indian justice seekers? Figure 25 reflects the answer to this question according to the opinion of the judges. As per the figure, 71.4% of the respondents feel that the current Court Dispute Redressal system is viable for the

FIGURE 25: CURRENT COURT DISPUTE REDRESSAL SYSTEM VIABLE FOR THE INDIAN JUSTICE SEEKERS



Indian justice seekers, however, to the author's utter surprise there are 28.6% of the respondents who are of the opinion that the current Court Dispute redressal system is not viable for the Indian justice seekers. This study helped us to come to an interpretation that some of the judges do believe the fact that there is some lacuna in the Indian Judiciary when it comes to the dispute redressal system.

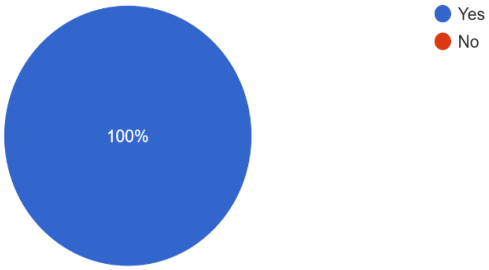
FIGURE 26: REASONS AS TO WHY THE COURT REDRESSAL SYSTEM IS NOT VIABLE



As the above question reflects that the Court Redressal System is not completely viable for the Indian Justice Seekers, hence it was important to understand that what are the basic reasons behind the same. Figure 26 reflects some of the basic reasons as to why the Court Redressal System is not viable. One of the major reasons with 6 responses is the challenges of the present court adversarial system. Secondly, the court proceedings are length and tiring thereby holding 4 responses. Lastly, with 3 responses it is the expensive nature of the court proceedings and 1 response with the lack of knowledge about legal jargons. Hence, it can be ascertained that one cannot completely rely upon the Judiciary for seeking justice.

3.1.3.3 DISPUTE RESOLUTION VIA ADR MECHANISMS

FIGURE 27: JUDGES'S SUGGESTION TO THE PARTIES TO OPT FOR ADR MECHANISM



As a part of the study, judges were asked that did they ever have suggested the parties to opt for ADR Mechanism for resolving the dispute. The major reason behind asking this question was to understand the fact that how much reliance do the judges keep over the ADR Mechanisms. Figure 27, ascertains the fact that 7 of the respondents agree to the fact that they have suggested the parties to opt for ADR Mechanisms. As per this interpretation we can learn that the judges are well aware about the pendency of the cases before the judiciary thereby recommending the parties to refer their cases to ADR Mechanisms.

FIGURE 28: INTERNTION OF THE PARTIES WITH REGARD TO ADR MECHANISMS

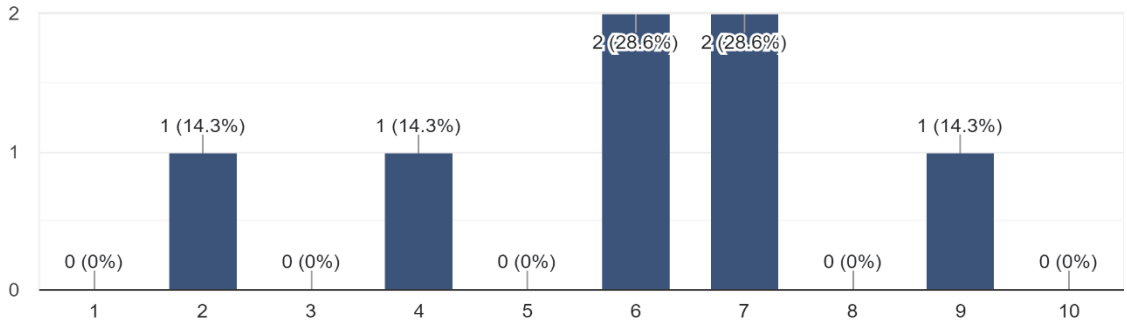
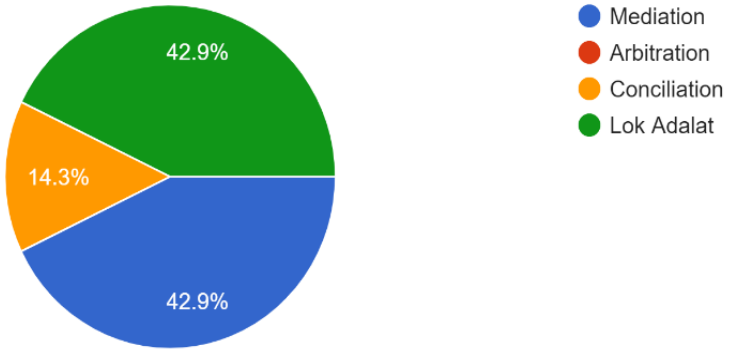


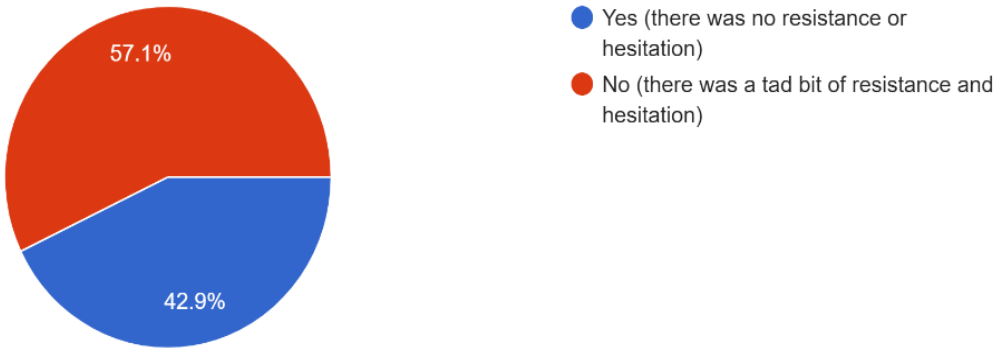
Figure 28 talks about the perspective of the parties i.e., how likely are the parties in getting their dispute resolved through ADR mechanism when the same is being recommended by the courts, on the scale of 1-10, where 1-5 being less satisfied and 6-10 consider to be satisfied. According to the study 71.4% of the litigants remains satisfied with their case being resolved by the ADR Mechanism however there are still 28.6% of the litigants who remains unsatisfied by the ADR Mechanism. This dissatisfaction can be due to lack of knowledge or even due to lack of awareness about the processes of ADR.

FIGURE 29: MOST PREFERRED ADR MECHANISM



As in the above answer the respondents have agreed that they have recommended the parties to opt for the ADR Mechanism, hence in this question the author was keen to know that which ADR Mechanism is most preferred by the judges. Figure 29 interprets that with 42.9% Lok Adalat as well as mediation stands to be the most preferred way of the dispute resolution mechanism, however, Conciliation remains less preferred with 14.3%. Hence, it can be learnt that judges use both Lok Adalat as well as Mediation as the mechanism for dispute resolution however the same shall vary upon case to case.

FIGURE 30: REACTION OF LEGAL PRACTITIONERS AND LITIGANTS



As the study has stated that the judges have duly recommended the parties to use ADR Mechanism for resolving their dispute, hence the study involved the question that what was the reaction of Legal Practitioners along with the parties when the parties were recommended to use the ADR Mechanism. According to Figure 30, 57.1% of the respondents believed that neither did the Legal Practitioners nor did the Litigants had any resistance or hesitation while dealing with the ADR Mechanism for resolving their dispute, however 42.9% of the respondents believed that there are some Legal Practitioners as well as the litigants who were a bit hesitated when they were referred to ADR Mechanism.

3.1.3.4 SETTLED OR UNSETTLED CASES VIA ADR MECHANISMS

FIGURE 31: SUCCESS RATE OF THE DISPUTES VIA ADR

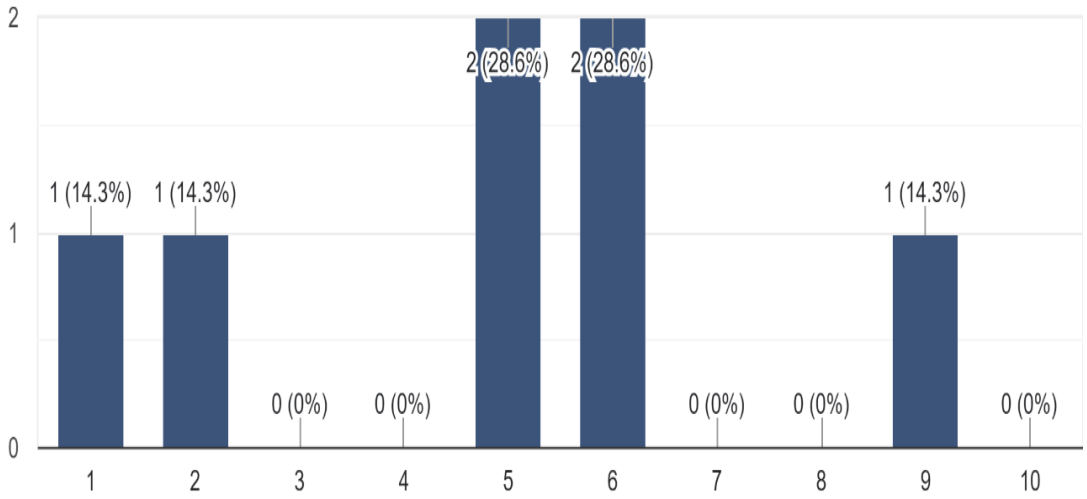
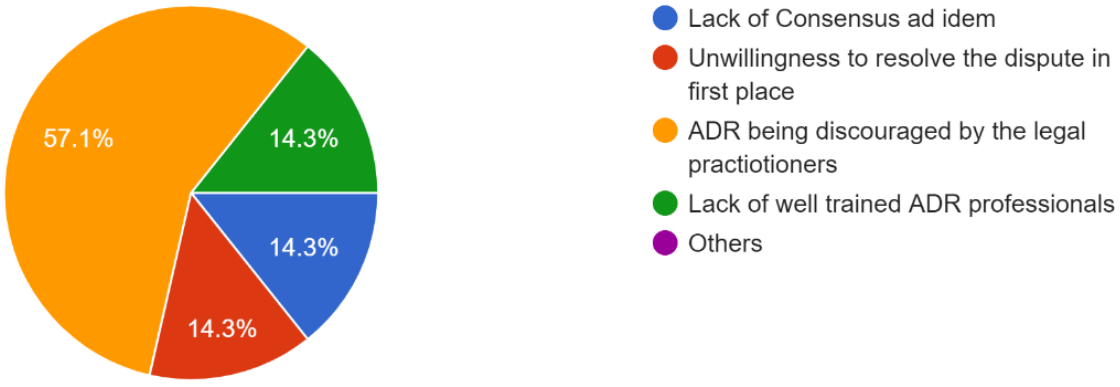


Figure 31 talks about the perspective of the respondents with regard to the success rate of the disputes being redressed or disposed of via ADR Mechanism, on the scale of 1-10, where 1-5 being un settled and 6-10 consider to be settled. As per the graph it can be interpreted that 57.2% of the cases remains unsettled and 42.8% case remains settled. Hence, it can be ascertained that this 57.2% cases remains unsettled as the people involved in ADR Mechanism have not been duly trained thereby taking much time to understand the process of ADR Mechanism.

FIGURE 32: REASONS BEHIND UNSETTLED CASES



As the above-mentioned questions reflects about the unsettlement of some of the cases that have been referred to ADR, hence it is necessary to study that why does the cases which are being referred to ADR Mechanism remains unsettled. Figure 32 interprets that 57.1% of the respondents are of the opinion that ADR is often being discouraged by the legal Practitioners which is why the cases before ADR Mechanism remains unsettled. Further some of the minor reasons were unwillingness to resolve the dispute in first place, lack of Consensus Ad Idem and lack of well-trained ADR professionals with 14.3% respectively. Hence, it can be stated that there is no one particular reason for the cases to remain unsettled by the ADR Mechanism.

3.1.3.5 ADR AS AN EFFECTIVE AID TO THE COURT OF LAW

FIGURE 33: ADR AS AN EFFECTIVE AID TO UNBURDENING THE COURT OF LAW

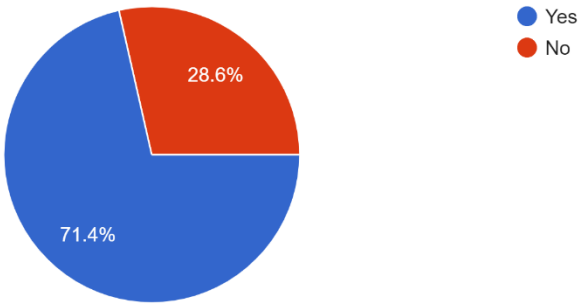


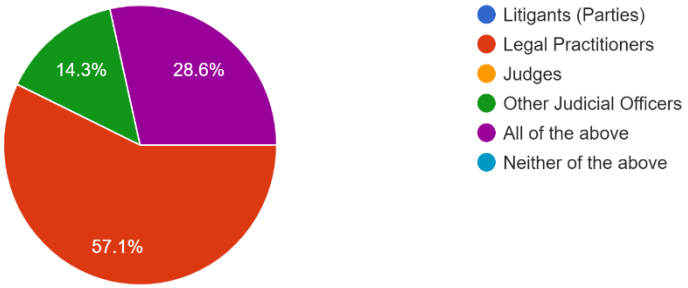
Figure 33 reflects the ideology of the judges upon the fact that is ADR as a dispute redressal mechanism an effective aid to unburdening Court of Law from cases at present. As per the responses 71.4% of the respondents believe that ADR as a dispute redressal mechanism helps in unburdening the judiciary by resolving certain types of the dispute however, on the contrary there were 28.6% of the respondents who are of the opinion that ADR as a dispute redressal mechanism does not help the judiciary to unburden.

In furtherance to this question, judges were also asked with the question that what kind of legal matters mostly get referred to ADR Mechanism? Judges were of the opinion that following were some of the matters which were most being referred to ADR Mechanism:

1. Civil Matters
2. Commercial Matters, and
3. Family Disputes (Matrimonial).

3.1.3.6 IMPLEMENTATION OF SECTION 89 OF CPC

FIGURE 34: PIVOTAL ROLE IN IMPLEMENTING SECTION 89 OF CPC



The judges as one of the most important stakeholders were questioned that who actually plays a pivotal role in implementing Section 89 of CPC. The main behind asking this question was to inquire that who actually holds the burden of implementing Section 89 of CPC and reducing the burden of the Judiciary. According to Figure 34, 57.1% of the respondents were of the opinion that it is actually the Legal Practitioner who holds the burden of implementing Section 89 of CPC, however 28.6% of the respondents were of the opinion that all i.e., the litigants, the legal practitioners, the judges as well as other judicial officers are altogether "responsible for the implementation of Section 89 of CPC". There are still 14.3% of the respondents who are of the opinion that other judicial officers of the courts are solely responsible for the "implementation of Section 89 of CPC". Hence, it can be interpreted that there is no particular person who can solely be held responsible for the proper "implementation of Section 89 of CPC".

Lastly, this study focused upon the possible solutions by the judges for successfully implementing "Section 89 of CPC". Hence following were some of the suggestions which were provided by the judges:

1. The parties need to be educated so that they are aware about the ADR Mechanism and if any of the dispute arises in near future, the parties can directly opt for any of the ADR Mechanism rather than approaching the court at the first instance.

2. Legal practitioner should be provided with certain and proper incentives so that they can suggest the parties to opt for ADR mechanisms.
3. Proper awareness campaigns should be organised by the concerned authorities of the court so that the people are aware about it.
4. Robust permanent mediation institute with mediators who are not serving judicial officers.
5. Fixing pre-counselling days in a month in court followed by mediation experts taking up matters dedicatedly.

CONCLUSION AND RECOMMENDATIONS

This chapter summarises the study's reasoning and makes some recommendations for future judicial reform. Though it is not intended to argue whether the ADR system is good or bad, it does discuss how the court system might be improved to handle cases as pleasantly as possible and minimise ongoing and future disputes, hence reducing the court's burden. It is important to note that the ADR system does not replace the judicial system; rather, it supplements it. ADR is different from the traditional court room dispute resolution structure where the parties undertake to resolve their issues outside the court, as there is nothing under the law which restricts a party to opt for this mechanism, it is getting more popular as the world is expanding. In India the ADR model is present in the shape of Arbitration and Conciliation, mediation and Lok Adalat. Notably, these models are not present only in an experimental form but do have the statutory backing in the form of Section 89 of the Civil Procedure Code which talks about 'settlement'- this term settlement has a wider connotation as it includes within its purview the concept of mediation, Lok Adalat etc.

In this study, since the author has adopted empirical method of research hence there were total of 153 samples which were collected from the stakeholders i.e. judges, legal practitioners and litigants. The main aim with which the study was conducted was to undermine the ideology of the stakeholders with regard to the implementation of the referral system under Sec 89 of the CPC. The ADR mechanism as provided under the code seems like a smooth sailing concept however in a much more practical sense there are some problems that have been pointed out by the Hon'ble Apex court. The problems begin with the role of the court as stated in the terminology of section 89, which signifies that the terms of settlement must be devised by the courts. However, practically "the court is not involved in the mediation or conciliation process", not to state that this has not seen the light of controversy by courts and committees but it still remains in the black paper of law. Another problem posed before section 89 is the choice of 'proper' ADR mechanism, the onus of which rests on the shoulders of the court. Thirdly, the ADR mechanism under section 89 mentions 5 types of it, however on an individual perusal one can't help but notice that there are certain irregularities with respect to the definition and the procedure of referral, where there are some glaring loopholes in which the law is interpreted and how the courts have decided on the matter. For instance, as per section 89 the law assumes that the parties need not sign the agreement to have the issue decided by the arbitrator as the parties can even agree for the same before the tribunal however, in one of the importance cases in this regard i.e. Afcons Infrastructure the court decided that without the consent of the parties, the court cannot refer to the Arbitration. This is one of the instances where the difficulties arise, similar judgments have been provided by the Hon'ble court in various definitions such as mediation, Lok Adalat where the language of the law and the decision of the court does not see eye to eye. Further, a glaring issue in this matter is the term 'Judicial settlement' which is regarded as a drafting error by the courts and have been advised to remove the disability but the same has not been done away with still and the difficulty in the implementation still remains.

In the case of litigants, the reaction was contingent on various aspects such as education and occupational status, time duration, nature, reasons to approach the court, reasons for dissatisfaction with the resolution of the dispute by court, suggestion by court or legal practitioner to use ADR, suggested ADR mechanism, willingness to opt for ADR. The study ended with the suggestion of the respondents, where most of the respondents suggested that awareness campaigns, workshops should be organised, the subject must be taught in colleges, there must be proper mediation centres in court and that ADR forums should be set up in rural areas. In the case of legal practitioners, the reaction was contingent on aspects such as area of expertise and specialization, reasons to approach the court, satisfaction with the present system of dispute redressal, suggestion to litigants to opt ADR mechanism, mediation training programs, referral made under section 89 of the code. In the case of judges, the reaction was contingent on aspects such as experience of the judge, court dispute redressal system, dispute resolution via ADR, settled or unsettled cases via ADR, ADR as an effective aid to the court of law and implementation of section 89, the study concluded by providing some suggestions by the judges such as the parties need to be aware of the ADR mechanism, there must be proper incentives for the Legal practitioner so that they refer the litigants to ADR mechanism, proper awareness campaigns should be organised, permanent mediation institutes should be set up.

The author after the analysis of the responses of the respondents draws a conclusion that there is a blame game being played between all the stakeholders i.e. the litigants always blamed the legal practitioners for not disclosing them the option of ADR mechanisms, further the legal practitioners were not satisfied with the

referral which was being made by the judges, and lastly, the judges themselves blamed both the legal practitioners as well as the litigants for the improper implementation of Sec 89.

Further, the author on the basis of the above conducted research have some recommendation to be proposed for the amendment in Sec 89 of CPC. The provision under section 89 that stands for outside court settlement and order XX should be amended in the following manner:

1. "Section 89" should be added under "Order XX" of CPC to ensure that judges effectively execute "Section 89". In the order, the judge must indicate if the specific problem was referred under "Section 89", and if it was, the outcome of the ADR must be indicated.
2. In the cases where the dispute is required to be referred to non-adjudicatory dispute resolution methods such as mediation, conciliation, Lok Adalat, DRB, mini-trial etc. the court will not be allowed to refer the dispute to any of the ADR mechanisms unless explicit consent has been provided by the disputed parties.
3. Where the non-adjudicatory mechanism of resolution was adopted, the outcome so achieved should be put before the court and the same must be reviewed by the court, if there is any mistake or error the court shall refer it to the conciliator or lok Adalat, which will take the necessary step to correct it.
4. Some other new forms of ADR mechanisms like DAB, DRB, early neutral evaluation, expert determination, ministerial or executive tribunal, and ODR must be incorporated under Section 89.

BIBLIOGRAPHY:

LEGISLATIONS AND CASE LAWS

- Afcons Infrastructure Ltd. v Cherian Varkey Construction Co. (P) LTD [2010] 8 SCC 24. https://indiankanoon.org/doc/1875345/
- Bawa Masala Co. v. Bawa Masala Co. Pvt Ltd. And Anr, AIR 2007 Delhi 284. https://indiankanoon.org/doc/1858612/
- Brown S, Cervenak C and Fairman D, "Alternative Dispute Resolution Practitioners Guide" (usaid.gov) https://www.usaid.gov/sites/default/files/documents/1868/200s be.pdf
- Legal Services Authorities Act, 1987 (39 of 1987). https://indiankanoon.org/doc/17104795/#:~:text=(1)%20Every%20State%20Authority%20or,areas%20as%20it%20thinks%20fit
- Mediation and Conciliation Project Committee, 'Mediation Training Manual of India' (Supreme Court of India).https://www.main.sci.gov.in/pdf/mediation/MT20MAN UAL%20OF%20INDIA.pdf
- Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344.https://indiankanoon.org/doc/342197/
- Salem Advocate Bar Association v. Union of India, AIR [2003] SC 189. https://indiankanoon.org/doc/20185201/
- The Arbitration and Conciliation Act,1996 (26 of 1996), [2018]. https://www.indiacode.nic.in/bitstream/123456789/1978/1/AAA1996__26.pdf
- The Code of Civil Procedure 1908 (5 of 1908).https://legislative.gov.in/ sites/default/files/A1908-05.pdf
- The Constitution of India 1950 (1 of 1950). https://www. constitutionofindia.net/constitution_of_india

BOOKS

- Jenkins J, "*International Construction Arbitration Law*" (3rd edn, Kluwer Law International 2021). https://law-store.wolterskluwer.com/s/product/international-construction-arbitration-law-3e/01t4R00000OVBU0
- Justice Doabia, MLJ 's Code of Civil Procedure, 13th edn Vol. 1, Delhi: Wadhwa Nagpur, 2008. 468.
- Sarkar, S.C., and Prabhas C. Sarkar. The Law of Civil Procedure. 11th ed. Vol. 1. Delhi: Wadhwa and Company Nagpur, 2006. 498.

ONLINE JOURNALS/WORKING PAPERS

- Bhargava A, 'Conciliation: An Effective Mode of Alternative Dispute Resolution System' (thelawbrigade, April 2017). https://thelawbrigade.com/wpcontent/uploads/ 2019/05/Aditi-Bhargava.pdf
- Justice Khan SU, 'Judicial Settlement under Section 89 C.P.C.' (International Journal for Transformative Research) http://ijtr.nic.in/Article_chairman%20S.89.pdf
- Sander F., 'Future of ADR' (Journal of Dispute Resolution - University of Missouri School of Law, April 16, 1999) https://scholarship.law.missouri.edu/cgi/viewcontent. cgi?article=1866&context=jdr

REPORTS

- 77th Report on Delay and Arears in Trial Courts 1978" (Law Commission of India 2014) http://lawcommissionofindia.nic.in/reports/Report245.pdf
- Justice Reddi PV, "Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions" (238th Report on Law Commission of India December 2011). https://lawcommissionofindia.nic.in/reports/report238. pdf

- NJDG, *'National Judicial Data Grid (District and Taluka Courts of India)'* (October 20, 2021) https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard

WEBSITE/BLOGS AND NEWSPAPER ARTICLES

- Associates D & D, "Evolution of Arbitration in India" (*Mondaq*) https://www.mondaq.com/india/arbitrationdispute-resolution/537190/evolution-of-arbitration -in-india
- Azeem N, "Compromise Decree: A Detailed Overview" (Legal Service India - Law, Lawyers and Legal Resources) https://www.legalserviceindia.com/legal/article311-compromise-decree-a-detailed-overview.html
- Chellapa S and Ollapally T, "Mandatory Mediation under Commercial Courts Act - A Boost to Effective and Efficient Dispute Resolution in India" (Bar & Bench - Indian Legal news June 12, 2018) https://www.barandbench.com/columns/mandatory-mediation-commercial-courts-act
- Connor SD, "Resolving Disputes out of Court: Understanding Mediation & Arbitration" (Mac Murray & Shuster LLP, June 15, 2021 https://mslawgroup .com/resolving-disputes-out-of-court-understanding-mediation-arbitration/
- Esmaili T and Gilkis KB, "Alternative Dispute Resolution" (Legal Information Institute November 2021) https://www.law.cornell.edu/wex/alternative_dispute_resolution
- Expert Determination (Chartered Institute of Arbitrators) https://www.ciarb.ie/servic es/expert-determination.236.html
- Maiyaki TB & Uduak R, "ADR: An Appropriate Substitute to Litigation in the 21st Century" (Academia, 2018) https://www.academia.edu/34551870/ADR_AN_APP ROPRIATE_SUBSTITUTE_TO_LITIGATION_IN_THE_21_ST_CENTURY

ANNEXURE I

Questionnaire (For Litigants) - Examining the adequacy of referral system under Section 89 of C.P.C. (A case study in Jaipur, Rajasthan)

This questionnaire has been prepared in light for the partial fulfilment of the paper topic - "Examining the adequacy of referral system under Section 89 of C.P.C. (A case study in Jaipur, Rajasthan)," solely for academic and research objectives.

Disclaimer - The intention behind this research is purely academic. All the data collected via this google form shall be kept confidential and may only be used for academic and further research purposes.

*Required

1. Name*

2. Education*
   - Matriculation (Class 10th)
   - Higher Secondary Education (Class 12th)
   - Graduation
   - Post-Graduation
   - Ph.D Scholar

3. Occupation*

4. What is/was the nature of your dispute? *
   - Property Dispute
   - Matrimonial Dispute
   - Commercial Dispute (Trade/ Commerce/ Contract/ Corporate/ Insurance etc.)
   - Consumer Forum Dispute
   - Tortious Liability
   - Others

5. If your nature of dispute was not listed above and you selected the option "others", then what was the nature of your dispute in brief?
(If already answered above, then kindly write "Nil")

6. How much time did it take for your dispute to get resolved via Court Redressal Mechanism? *
   - Less than 1 Year

- 1 Year to 3 Years
- Years to 7 Years
- 7 Years to 10 Years
- More than 10 Years
- Pending

7. Why did you specifically resort to Court for Dispute Resolution? (In short) *

8. On a scale from 1 to 5, how satisfied were you with the method of Court Dispute Resolution? *

0 0	0	0	0	0	0	0	0	0
1 2	3	4	5	6	7	8	9	10

9. Which of the following options best describe your experience if your answer was on the scale 1 or 2?
   - Lengthy and tiring court procedures
   - Expensive
   - Challenges of the present court adversarial system
   - Lack of knowledge about legal jargons
   - Others

10. With regards to above question, if you selected the option "others", then what are those reasons? (If already answered above, then kindly write "Nil".)

11. Were you suggested to use ADR Mechanism to get your dispute resolved by legal practitioner? *
    - Yes
    - No

12. Were you suggested by the Honourable Court to use ADR mechanism for getting your dispute resolved? *
    - Yes
    - No

13. Would you be willing to get your dispute resolved via Alternate Dispute Resolution Mechanisms? *
    - Yes
    - No

14. If you were suggested to use ADR mechanism, then which of the following methods were suggested?
    - Mediation
    - Conciliation
    - Arbitration
    - Lok Adalat
    - Not Recommended any of the above

15. Which of the following ADR mechanisms are you familiar with? *
    - Arbitration
    - Mediation
    - Conciliation
    - Lok Adalat

16. What are your recommendations pertaining to popularity of ADR mechanisms in the near future? *

ANNEXURE II

Questionnaire (For Legal Practitioners) - Examining the adequacy of referral system under Section 89 of C.P.C. (A case study in Jaipur, Rajasthan)

This questionnaire has been prepared in light for the partial fulfilment of the paper topic - "Examining the adequacy of referral system under Section 89 of C.P.C. (A case study in Jaipur, Rajasthan)," solely for academic and research objectives.

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*Required

1. Name*

2. Area of Specialization (currently)

3. For how long have you been practicing law? *
   - 0 to 2 years
   - 2 to 5 years
   - 5 to 10 years
   - More than 10 years

4. In your humble opinion, why do most litigants knock the doors of the Court? *
   - To genuinely seek remedy
   - To seek revenge
   - Proper and decisive channel for dispute resolution
   - Unwavering faith in Court Redressal mechanism
   - Upon the suggestion by litigant's legal practitioner
   - Others

5. If the reason is not listed above and you selected the option "others", then what is that reason(s) (Kindly write "nil" if already answered above with other options)

6. With respect to the quality of justice delivery mechanism and expenses thereon in the legal proceedings, how satisfied are you with the current court redressal mechanism on a scale of 1 to 10? *

0	0	0	0	0	0	0	0	0	0
1	2	3	4	5	6	7	8	9	10

7. With respect to the above question, if you rated from between 1 to 5, then what might be the most dominant reason behind your dissatisfaction?
   - Frequent delays in the legal proceedings
   - Quality of Justice delivery mechanism
   - Cost involved in getting justice is usually expensive
   - Red Tapism
   - Any other reason

8. If the reason is not listed above and you selected the option "any other reason", then what might be that reason(s)?
   (Kindly write "nil" if already answered above with other options)

9. In your years of practice, how many cases have settled using ADR mechanism? *
   - 0 to 5
   - 5 to 10
   - 10 to 20
   - More than 20

10. Have you ever suggested your client to opt for ADR mechanisms over the Court redressal mechanisms? *
    - Yes
    - No

11. If you answered the aforementioned question with "yes", then which of the following ADR Mechanisms did you suggest?
    - Arbitration
    - Mediation
    - Conciliation
    - Lok Adalat

12. When you suggest a client with ADR redressal mechanism, on a scale from 1 to 10, what is the reaction of your client?

0	0	0	0	0	0	0	0	0	0
1	2	3	4	5	6	7	8	9	10

13. In your humble opinion, what is the most preferred means of ADR that is recommended by the Hon'ble Judges to the parties of a dispute? *
    - Arbitration
    - Mediation
    - Conciliation

- Lok Adalat

14. Have you ever signed up for any professional mediation training programme? *
    - Yes
    - No

15. If your answer was "yes" for the aforementioned question, then kindly mention the details of the same herein.
    [Details like - Name of the programme, hours of training etc. (Kindly write "nil" if answered with a "no")]

16. How often do Courts resort to Section 89 of CPC on a scale of 1 to 10? *

0	0	0	0	0	0	0	0	0	0
1	2	3	4	5	6	7	8	9	10

17. In your humble opinion, what might be some good suggestions for the proper implementation of Section 89 of CPC? *
    - Quality and Awareness of Legal Professionals
    - Training Sessions for Judges
    - Instituting an autonomous body of management
    - Expert Trainers and Trainees
    - Others

18. If the suggestion is not listed above and you selected the option "others", then what is that suggestion(s)? (Kindly write "nil" if already answered above with other options)

ANNEXURE III
Questionnaire (For Hon'ble Judges) - Examining the adequacy of referral system under Section 89 of C.P.C. (A case study in Jaipur, Rajasthan)

This questionnaire has been prepared in light for the partial fulfilment of the paper topic - "Examining the adequacy of referral system under Section 89 of C.P.C. (A case study in Jaipur, Rajasthan)," solely for academic and research objectives.

Disclaimer - The intention behind this research is purely academic. All the data collected via this google form shall be kept confidential and may only be used for academic and further research purposes.

*Required

1. Name *

2. Years of Expertise in Judgeship
    - Upto 1 year
    - 1 to 3 years
    - 3 years to 5 years
    - 5 years to 10 years
    - More than 10 years

3. With your Judgeship expertise, why do most litigants knock the doors of the Court?
    - To genuinely seek remedy
    - To seek revenge
    - Proper and decisive channel for dispute resolution
    - Unwavering faith in Court Redressal mechanism
    - Upon the suggestion by litigant's legal practitioner
    - Others

4. If the reason is not listed above and you selected the option "others", then what is that reason(s)?

5. Is the current Court Dispute redressal system viable for the Indian justice seekers?
    - Yes
    - No

6. According to you, what are some challenges with regards to court dispute redressal system?
    - Lengthy and tiring court procedures

- ○ Expensive
- ○ Challenges of the present court adversarial system
- ○ Lack of knowledge about legal jargons
- ○ Others

7. With regards to above question, if you selected the option "others", than what are those reasons? (If already answered above, then kindly write "Nil")

8. Have you ever suggested parties to a dispute to get their dispute resolved via ADR Mechanisms?
   - ○ Yes
   - ○ No

9. On a scale of 1 to 10 (if answered yes in the above question), how likely do the parties get their dispute resolved successfully using ADR Mechanism when recommended by the Court?

0	0	0	0	0	0	0	0	0	0
1	2	3	4	5	6	7	8	9	10

10. In case the answer to the above question was a "yes", then was the reaction of Legal Practitioners along with the parties favorable?
    - ○ Yes (there was no resistance or hesitation)
    - ○ No (there was a tad bit of resistance and hesitation)

11. Which form of ADR Mechanism is/was mostly recommended by you?
    - ○ Mediation
    - ○ Arbitration
    - ○ Conciliation
    - ○ Lok Adalat

12. On a scale of 1 to 10, once the dispute gets recommended to ADR Mechanism, what is the success rate of the dispute being redressed or disposed off?

0	0	0	0	0	0	0	0	0	0
1	2	3	4	5	6	7	8	9	10

13. According to you, which of the following reasons are the most dominant in cases remaining unsettled via ADR?
    - ○ Lack of Consensus ad idem
    - ○ Unwillingness to resolve the dispute in first place
    - ○ ADR being discouraged by the legal practitioners
    - ○ Lack of well-trained ADR professionals
    - ○ Others

14. With regards to above question, if you selected the option "others", then what are those reasons? (If already answered above, then kindly write "Nil")

15. In your humble opinion, is ADR as a dispute redressal mechanism an effective aid to unburdening Court of Law from cases at present?
    - ○ Yes
    - ○ No

16. In your humble opinion and with your expertise in judgeship, what kind of legal matters mostly get referred to ADR Mechanism?

17. According to you, whose role is more pivotal in the efficacy of implementation of Section 89 of CPC, 1908?
    - ○ Litigants (Parties)
    - ○ Legal Practitioners
    - ○ Judges
    - ○ Other Judicial Officers
    - ○ All of the above
    - ○ Neither of the above

18. With respect to the proper implementation of Section 89 of CPC, 1908, what could be the possible solution(s) to improve the current dispute redressal systemic conditions?