

An Analysis on Section 89 of CPC: Settlement of Disputes Outside the Court

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Abstract: Section 89 of civil procedure code explains that Settlement of disputes outside the Court. 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 Courts have been the way to go for resolving disputes, may it be civil, criminal, industrial, family, etc. As more and more cases file up before the courts, the more the time they take to be resolved. However, there exists an alternative mechanism for resolving these disputes where the involvement of the courts can be avoided. This mechanism is called ADR (Alternative Dispute Resolution) or Out of Court dispute settlement mechanisms. These provide a more informal, less expensive and less time consuming way of resolving the disputes among parties. ADR uses a neutral third party, who helps the parties achieve settlement by ensuring communication and coming to a decision acceptable by both the parties. The importance of ADR has been seen more and more as the time passes as the cases piling up before the courts are now beyond resolvable. Even the Courts have advised the use of ADR mechanisms in order to reduce the burden of the courts and save its time. The objective of this paper is to study the importance and the advantages of ADR. The research method used here is Empirical methods and a total of 200 responses have been collected through Convenient Sampling Method. It was found that the respondents think that ADR methods seem to be quite effective and would prefer them over the general judicial process as it is less expensive and less time consuming.

Keywords: Courts, Disputes, Resolution, Settlements, Conflicts, Arbitration, Mediation, Conciliation, Judgement

I. INTRODUCTION

The agreement under Section 89 aims to facilitate discussions between parties, control expenses, and reduce the importance of the courts. Its main purpose is to bring alternative questioning techniques to the centre of the Indian judicial system by blending legal and non-legal discussion aim components. ADR has become a crucial component of the judicial framework to ensure quicker and more efficient equity because of the lengthy and expensive cycle of prosecution that has been in place for quite some time, the costs incurred by the two parties for an equal amount of time, and a set number of adjudicators. The most well-liked response to this people's dilemma has always been alternative dispute resolution, which cries out for rapid attention. Due to this evolution and recognition of the need for a backup plan, even in the post-litigation stage³, Section 89 was added to the Civil Procedure Code in 1999. Section 89 contains the Court's authority to refer conflicts to various ADR procedures where it considers appropriate so that the parties can settle their differences without going to court. Section 89 of the CPC and the corresponding rules (Order 10 Rules 1A, 1B & 1C) were inserted by Section 7 and Section 20 of the Code of Civil Procedure (Amendment) Act, 1999 Act No. 46 of 1999 (w.e.f. 1.7.2002). The Law Commission of India suggested the creation of a conciliation court system in its 129th Report and emphasized the benefits of conciliation/mediation as a type of ADR. The Arrears Committee, popularly referred to as the "Malimath Committee," had recommended in their report that the law be altered to incorporate ADR procedures. The Code of Civil Procedure (Amendment) Bill was proposed in 1997 by the



legislature in response to the recommendations of the Malimath Committee and the Law Commission of India. Conflicts are inevitable in any community, but they also require the development of dispute resolution techniques to lessen the overflowing litigation mess in the courts. As of 2021, there were approximately 4 crore cases outstanding in courts across the nation, according to the National Judicial Data Grid and the Supreme Court. Out of all of these cases, one crore involve civil disputes, some of which have been open for more than 30 years. In the judgement of Justice (retired) Markandey Katju, even in the event that no new cases are submitted, it would take more than 360 years to finish the backlog. Section 89 refers to five different ADR procedures, of which only arbitration is an adjudicatory process (conciliation, mediation, judicial settlement, and Lok Adalat settlement). The Supreme Court has also stated that Section 89 was enacted with the intention that, if the Court determines that there are elements of settlement that may be acceptable to the parties, the parties will be required to use their judgement to choose one of the five ADR methods listed in Section 89, and if the parties cannot come to an agreement, the court will refer them to one of the aforementioned modes. In the comparison between Chennai and other states in India, Maharashtra evaluates variations in the use of arbitration, mediation, and conciliation under Section 89. Assess whether specific states have state-specific mediation rules or alternative dispute resolution (ADR) centers. Delhi examines the role of local bar associations, NGOs, and legal aid clinics in spreading awareness about ADR. Are certain regions more inclined toward ADR due to cultural practices?

OBJECTIVES

- To study the importance of Out of Court Settlements.
- To analyze the advantages of ADR.
- To compare between the court proceedings and out of court dispute resolution.

II. LITERATURE REVIEW

Shavell (2022) This article examines why parties make use of ADR and what the social interest is in ADR. A basic distinction is drawn between ex ante ADR arrangements (made before disputes arise) and ex post ADR agreements (made after disputes arise). The private advantages of ex ante ADR agreements are identified.

Barrett (2022) This paper studies the History of Alternative Dispute Resolution and offers a comprehensive review of the various types of peaceful practices for resolving conflicts.

Macun, Ian, Daniel Lopes, and Paul Benjamin (2008) In this study, a hierarchical model is developed to organize attributes of ADR processes. This presentation fits with the use of analytical hierarchy process methodology by a panel of experts to prioritize ADR process attributes. The top-ranked attributes identified as critical include, among others, preservation of relationships, enforceability, neutrality, and consensus.

Elkouri et al. (1973) This comprehensive text uses actual arbitration cases to explain procedural and substantive aspects of the arbitration process in labor-management relations, with attention to common questions and problems that confront parties and their arbitrators.

Vinyamata, Eduard (2011) This paper reports on research that involved the analysis of 873 Commission for Conciliation Mediation and Arbitration (CCMA) arbitration awards sampled from unfair dismissal and unfair labor practice cases for the years 2003 to 2005.

Mnookin, Robert. (1998). This paper talks about ADR as a set of practices and techniques that are aimed at permitting the resolution of legal disputes out of courts. ADR processes may be less expensive and more swiftly than traditional legal procedures, which could reduce the transaction costs of conflict settlement;

K, Agarwal. (2005). This essay investigates how Lok Adalat, a form of alternative conflict resolution, might help the general public obtain affordable, effective, and quick justice. The Indian Constitution provides for what. Constitutional remedies are a right? as a basic privilege. The government offers those in need free legal assistance. More and more disagreements are being settled using non-judicial means, such as negotiation, mediation, and conciliation. India's procedural legislation has recently been amended to include these practices so that people receive justice quickly and there is less dispute in society.



Tripathi, Aditya & Shukla, Shailja. (2021). The paper explains how the Indian courts have to look for other methods to handle the conflicts that arise in dealings to maintain their integrity and deliver the promised justice in a fast paced, just and equitable manner. Indian courts are so overburdened that the Chief Justice of India has to request that judges and judicial magistrates forgo their summer vacations in order to resolve the backlog of cases. The use of alternative dispute resolution procedures benefits the courts while also saving the petitioners' time and money. Alternative dispute resolution gives people flexibility and an escape from mountains of legal paperwork. Alternative dispute resolutions are beneficial to regular people in cases involving insurance claims, consumer claims, contract violations, matrimonial disputes, tort liabilities, motor vehicle claims, etc. They are not just for large multinational corporations that transact in millions and billions of dollars.

Diathesopoulos, Michael. (2012). The characteristics of certain popular alternative conflict resolution methods are examined, along with some of the main ways in which they differ from arbitration in terms of their nature and reach. Its objective is to investigate the suitability of each mechanism for various sorts of disputes.

Jovic, Njegoslav. (2019). The author of this essay examines the advantages and drawbacks of using international arbitration to resolve disputes involving intellectual property rights. Conflicts involving intellectual property have unique aspects. The territoriality of intellectual property rights poses a challenge to the jurisdiction of state courts in the event of a dispute with an international component. The author specifically focuses on the WIPO Center for Arbitration And Mediation as a permanent arbitration institution whose primary activity is the resolution of disputes in the field of intellectual property rights. The author analyses alternative dispute resolution through arbitration to determine whether this method of dispute resolution is more acceptable to foreign courts.

Mishra, Taru & BBD, Janmejaya. (2022). The researcher wants to examine the gaps between the Constitution's commitment and institutional responses to the issue of legal aid policy and the legal system that is already in place. Equal justice is the goal of legal assistance. As long as there are poor people in society, emerging nations need legal assistance. Poor individuals do not know their rights because of a lack of knowledge. Legal assistance should play a key part in achieving social equality. Free legal aid can be crucial in helping the underprivileged fight for their lives. They cannot be denied their legal rights if they use the legal aid effectively. An crucial component of achieving justice is providing free legal aid to those who are socially and economically disadvantaged and live in poverty. The scope of free legal aid goes beyond simply providing legal aid to those who are poor or indigent.

Clammer, John & Byrne, Matthew. (2021). This essay makes the case that online dispute resolution (ODR) has not been widely embraced in rural India. For this field study, participants travelled to a "typical rural community" in North India, which had about 3,000 residents. The case study also has theoretical ramifications for the study of comparative access to legal services, the connection between human rights concepts and local moral norms, and the persistence of social structure and "traditional" modes of conflict resolution despite access to "modern" legal services.

Shashni, Akriti. (2013). The essay will begin with a brief explanation of Lok Adalats and how individuals can obtain justice through Lok Adalats. Between Lok Adalats and Permanent Lok Adalats, the researcher will make a distinction. And will investigate the rationale behind the creation of Permanent Lok Adalats. The researcher will also examine the following issues: • How Permanent Lok Adalats operate • Their jurisdiction and the places they address • Their orders or decisions

Chowbe, Vijaykumar & Dhanokar, Priya. (2011). The history and development of Lok-Adalat in India are discussed in this article. The potential value of Lok-Adalat as a tool for ADR has been examined. It has been investigated as to whether the Lok-Adalat award is legitimate and whether there are any grounds for challenging it in court. The SWOT analysis of Lok-Adalat and its potential resolution in the form of Permanent Lok-Adalat have been explored at the conclusion. Thus, the current essay offers a thorough understanding of Lok-Adalat and its possible application to the current legal system, which is overcrowded with open cases. Conclusions are self-explanatory and require that the concept of Lok-Adalat be modified to meet the shifting needs of the underprivileged. To that purpose, the appropriate recommendations have been made.

Laskar, Manzoor. (2012). This essay goes into great detail about the Lok Adalat system's history, components, need, and significance. The notion of Lok Adalat is an original Indian contribution to international law. It also examines in detail the jurisdiction pertaining to Lok Adalats as well as its procedure to handle the cases and the powers of Lok



Adalats. A creative Indian contribution to international law is the idea of Lok Adalat. The establishment of Lok Adalats opened a new chapter in this nation's justice system and was successful in giving victims of wrongdoing a second platform for amicably resolving their differences. Gandhian ideals are the foundation of this system. It is one of the elements that make up ADR systems. The theory of Lok Adalat conceptualises and institutionalised the idea of resolving disputes by mediation, negotiation, or through an arbitral process known as a "Nyaya-Panchayat" ruling. People who are either directly or indirectly impacted by dispute resolution are involved.

Devi, V. & Babu, G.. (2012). When the British centralised judicial operations and replaced local courts with royal courts, the Lok Adalat institution suffered a serious death blow. Following independence, it became essential to implement an Alternative Dispute Resolution (ADR) system due to the rapid expansion of global trade and the time it took for matters to be resolved in traditional courts. The upkeep of social harmony and peace in society depends heavily on the peaceful resolution of disagreements. Article 39A of the Indian Constitution requires the provision of free legal assistance and the enforcement of equal justice. The Lok Adalat System is an effective institution of a people-friendly judicial system, dispensing swift justice in an affordable and amicable manner. It was made necessary by several Law Commission Reports, the Justice Malimath Committee Report, the Amendment of Civil Procedure Code, the Criminal Procedure Code, and the Legal Services Authority Act, 1987.

Nimodia, Sristi. (2020). The importance of Lok Adalats in a nation is often emphasised throughout the article due to many issues including unresolved cases, illiteracy, etc. In a society like India, where illiteracy predominated in virtually every element of administration, the Lok Adalat was historically essential. With 3 crore cases still waiting in Indian courts according to the most recent report, it may appear that the most desired role of lok adalats is to reduce the backlog. However, the other duties of lok adalats cannot be disregarded. The Lok Adalat idea has been implemented successfully.

Rogers, Beverly-Ann. (2020). To aid in the resolution of trust conflicts, a variety of alternative dispute resolution (ADR) procedures are available. These include arbitration, mediation, early neutral evaluation, and expert determination. As compared to a court process characterised by adversarial argument and a final judicial decision enforced, they provide the parties with a higher degree of control over both the process and the result of the disagreement.

Menkel-Meadow, Carrie. (2015). This article defines and describes contemporary alternatives to court-based adjudication for resolving disputes, including negotiation, mediation (facilitated negotiation), arbitration (decisions by party-selected private dispute resolvers), and a number of new hybrid dispute resolution techniques used in both public and private disputes (e.g., med-arb, summary jury trials, public policy consensus building). The article examines the theory and history underlying these procedures, outlining the quantitative and qualitative justifications for their application. It then examines a number of issues surrounding their application, such as the privatisation of dispute resolution, the difficulty of determining their efficacy, and power imbalances in their application.

Sullivan, Edward & Solomou, Alexia. (2011). Over the past few decades, alternative dispute resolution (ADR) has become more and more well-liked among lawyers. ADR refers to any kind of technique or combination of procedures that parties to a dispute voluntarily employ to settle their differences. ADR is a desirable conflict resolution approach in matters involving land use due to its advantages.

III. METHODOLOGY

Research method : The research method followed here is empirical research.

Sampling method and size : A total of 200 samples have been collected through convenient sampling methods and collected in and around Chennai.

Independent variable : The independent variables are age, gender, marital status, educational qualification, occupation and locality.

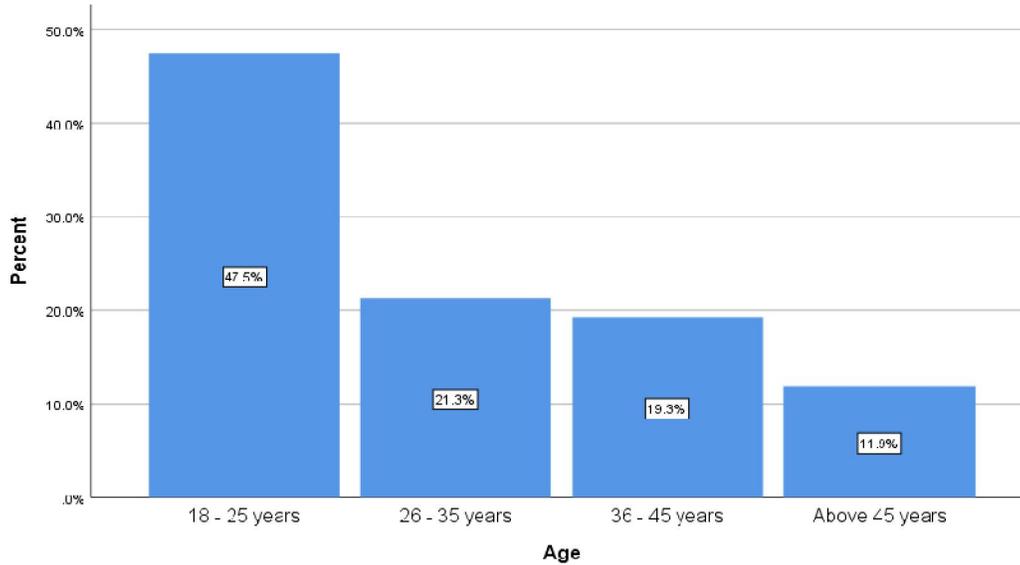
Dependent variable : The dependent variables are: Do you consider outside court settlement as a valid option for settlement of disputes, Do you think that the outside court dispute settlement mechanism is better than a General litigation, Rate the agreeability towards the following methods as a suitable dispute settlement mechanism (Arbitration), Rate the agreeability towards the following methods as a suitable dispute settlement mechanism (Conciliation), Rate the



agreeability towards the following methods as a suitable dispute settlement mechanism (Mediation), Rate the agreeability towards the following methods as a suitable dispute settlement mechanism (Judicial settlement).

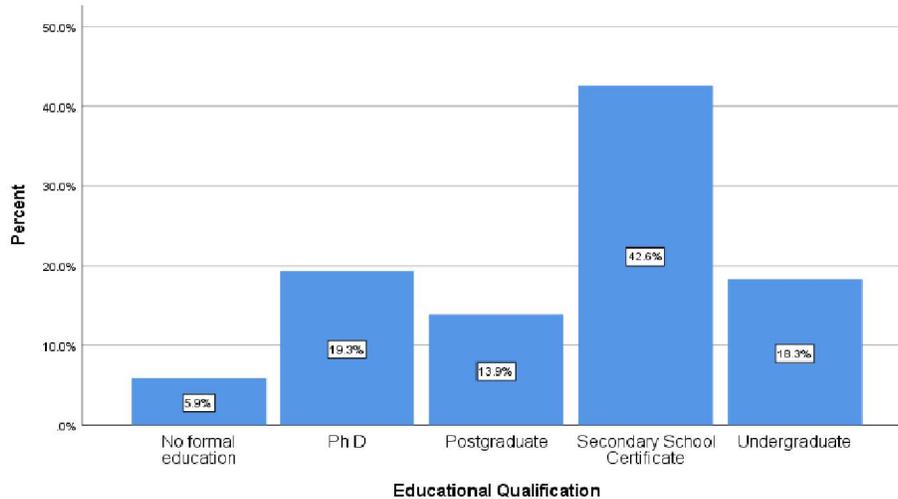
IV. ANALYSIS

FIGURE 1



LEGEND : FIGURE 1 represents the age distribution of the sample population.

FIGURE 2

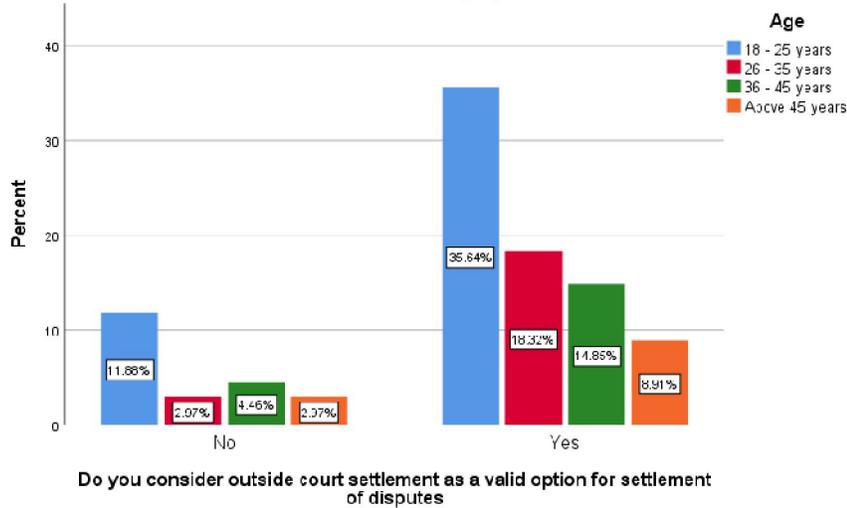


LEGEND : FIGURE 2 represents the educational qualification distribution of the sample population.



FIGURE 3

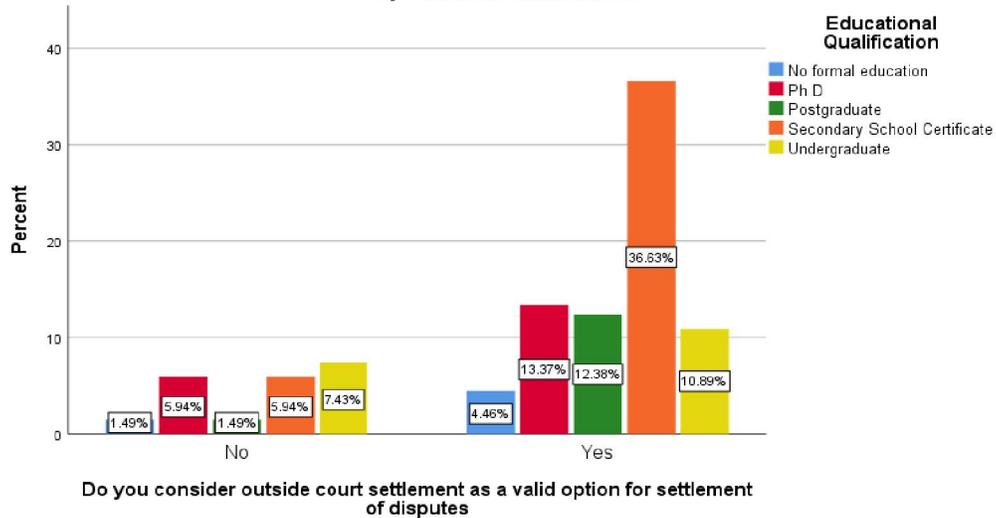
Clustered Bar Percent of Do you consider outside court settlement as a valid option for settlement of disputes by Age



LEGEND : FIGURE 3 represents the age distribution of the sample population and their opinion on whether they consider outside court settlement as a valid option for settlement of disputes.

FIGURE 4

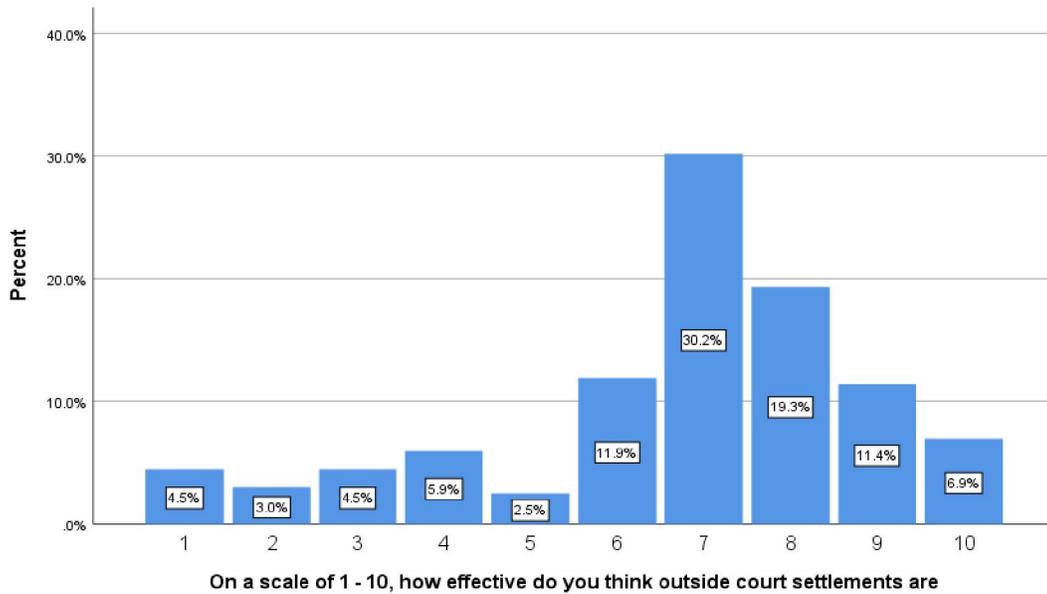
Clustered Bar Percent of Do you consider outside court settlement as a valid option for settlement of disputes by Educational Qualification



LEGEND : FIGURE 4 represents the educational qualification distribution of the sample population and their opinion on whether they consider outside court settlement as a valid option for settlement of disputes.



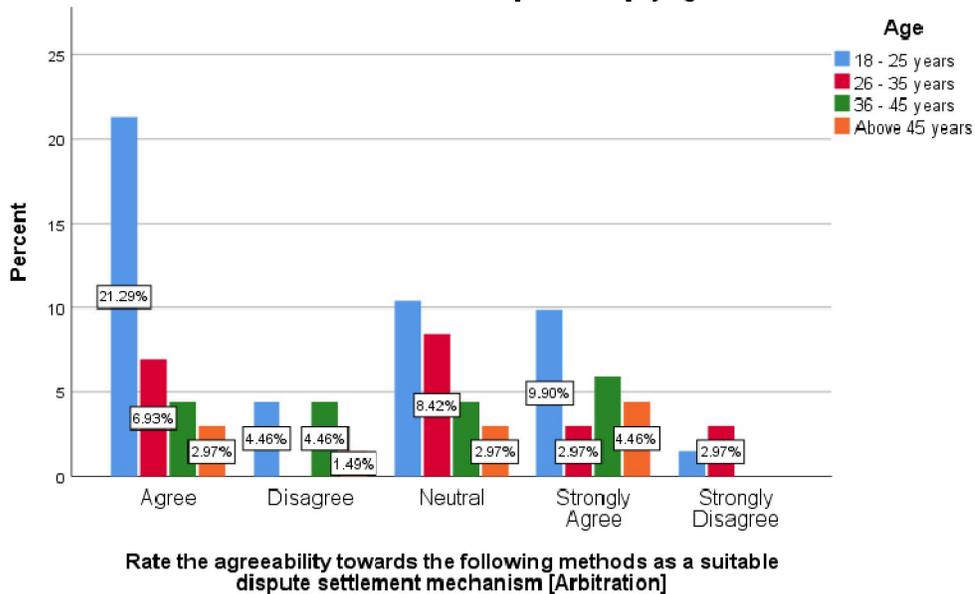
FIGURE 5



LEGEND : FIGURE 5 represents the effectiveness of outside court settlement mechanisms according to the opinion of the respondents.

FIGURE 6

Clustered Bar Percent of Rate the agreeability towards the following methods as a suitable dispute settlement mechanism [Arbitration] by Age

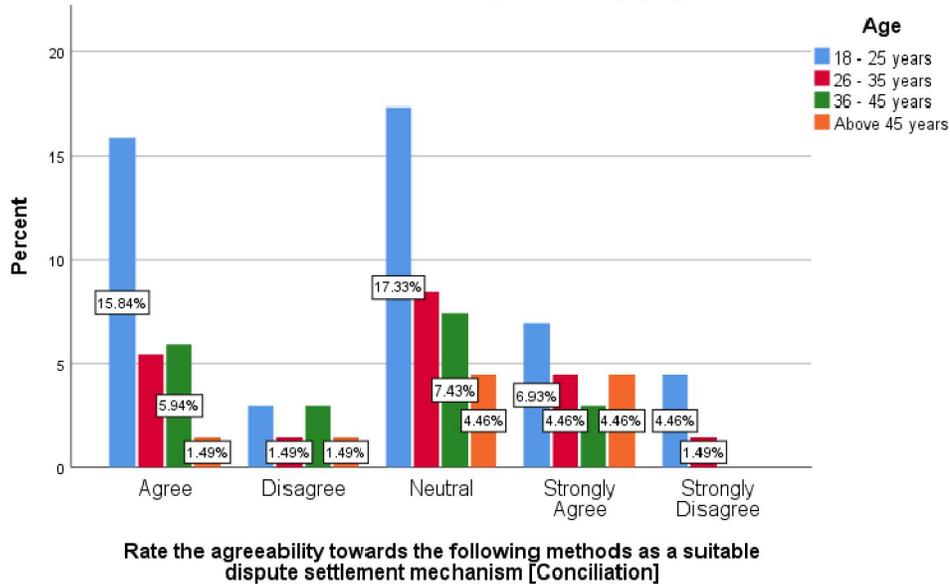


LEGEND : FIGURE 6 represents the age distribution of the sample population and if they think that arbitration is the best, among the other dispute settlement methods.



FIGURE 7

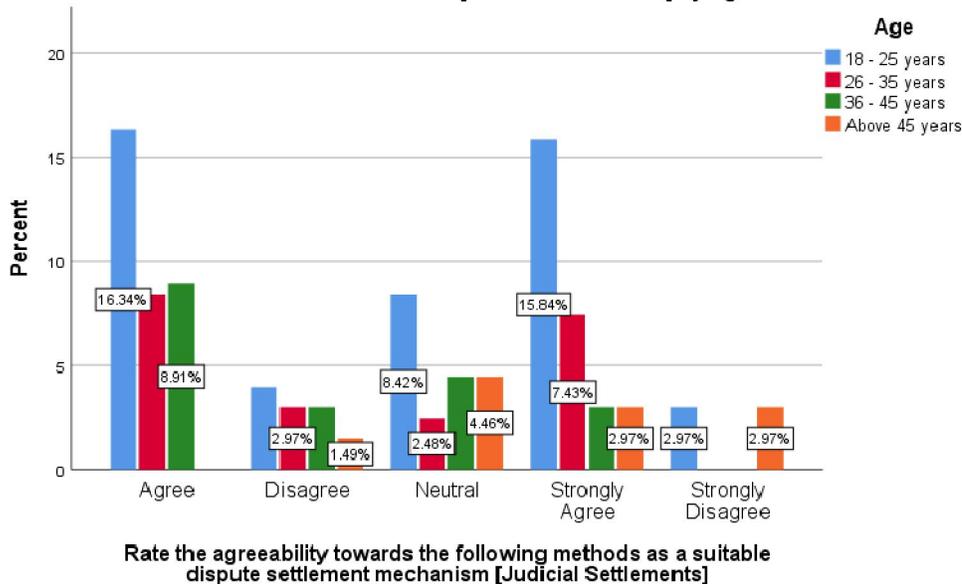
Clustered Bar Percent of Rate the agreeability towards the following methods as a suitable dispute settlement mechanism [Conciliation] by Age



LEGEND : FIGURE 7 represents the age distribution of the sample population and if they think that conciliation is the best, among the other dispute settlement methods.

FIGURE 8

Clustered Bar Percent of Rate the agreeability towards the following methods as a suitable dispute settlement mechanism [Judicial Settlements] by Age



LEGEND : FIGURE 8 represents the age distribution of the sample population and if they think that judicial settlement methods are the best, among the other dispute settlement methods.



V. RESULT

This graph shows that the majority of the respondents belong to the age group 18 - 25 years, followed by 26 - 35 years **FIGURE 1**. This graph indicates that the majority of the respondents belong to the educational qualification group Secondary School Certificate (42.8%), followed by PhD (19.3%) and Undergraduates (18.3%) **FIGURE 2**. This graph shows that the majority of the respondents from all of the age groups think that out of court settlement methods are a valid option for settlement of disputes **FIGURE 3**. This graph shows that the majority of the respondents from all of the educational qualification groups think that outside court settlement methods are a valid option for settlement of disputes **FIGURE 4**. This graph shows that the majority of the respondents have rated between 6 - 9 on the effectiveness of outside court settlement mechanisms **FIGURE 5**. The next four graphs deal with the agreeability of the respondents towards which of the mentioned four methods is the most suitable dispute settlement mechanism, out of which Arbitration **FIGURE 6** was the 3rd out of the four and Conciliation seemed to be the least suitable method **FIGURE 7**, followed by Judicial Settlements **FIGURE 8** which were the most agreed upon.

VI. DISCUSSION

This graph indicates that most of the respondents belong to the age group 18 - 25 as about 47.5 % of the respondents belong to this age group. The least populated age group is Above 45, as only 11.9 % of the respondents belong to this age group **FIGURE 1**. This graph shows that the most populated educational qualification group is Secondary School Certificate as about 42.6 % of the respondents belong to this educational qualification group, while the most populated educational qualification group is No formal education as only 5.9 % of the respondents belong to this educational qualification group **FIGURE 2**. This graph shows that the majority of the respondents from all of the age groups, especially the age groups 18 - 25 (35.64%) and 26 - 35 (18.32%) think that out of court settlement mechanism as a valid option for settlement of disputes. This might be due to their speedy and efficient nature **FIGURE 3**. This graph shows that the majority of the respondents from all of the educational qualification groups think that outside court dispute are indeed a valid option for settlement of disputes, as about 36.63% of the respondents from the age group Secondary School Certificate and 13.37% from PhD who contribute to half of the population in this graph think so **FIGURE 4**. This graph shows that the majority of the respondents think that outside court settlement methods are quite effective as most of the respondents have rated its effectiveness from 6 - 9 where most of the responses have been 7, which is quite affirmative implying that it is indeed effective **FIGURE 5**. This graph shows that the respondents think that Arbitration might not be the most suitable dispute settlement mechanism **FIGURE 6**. This graph shows that the respondents think that conciliation is the least suitable dispute settlement method as it has the most neutral responses when compared to the other dispute resolution methods **FIGURE 7**. This graph shows that Judicial settlements are the second most suitable dispute settlement method after Mediation according to the respondents **FIGURE 8**.

VII. SUGGESTION

While lack of awareness seems to be the factor that hinders these ADR mechanisms, proper awareness is needed to be created. Institution of ADR centres in Courts can help them as it would ensure that the disputes capable of being solved without the need of the formal judicial proceedings can be resolved first. If these fail to work, then the parties may depend on the usual litigation process to resolve their disputes. The knowledge and awareness of the mechanism can be resolved by awareness programmes where the public can be taught of such methods which help them resolve their disputes without having to move to the Courts.

VIII. LIMITATION

The limitations of the study include the time frame and the sample frame was confined only to limited areas. Another limitation is the sample size of 201 which cannot be used to assume the thinking of the entire population in a particular country, state or city. The physical factors have a larger impact, thus limiting the study.



IX. CONCLUSION

Since most modern countries had already adopted ADR procedures that had shown to be successful to the degree that more than 90% of cases were settled outside of court, the objective of Section 89 is very obvious. It was included to guarantee justice in spite of the drawn-out legal process and the dearth of judges. Alternative dispute resolution procedures can be used by parties as a substitute for going to court to resolve their issues. The mistakes in the Section's wording were fixed by the Supreme Court of India in its 2010 decision in *Afcons Infrastructure Ltd. and Ors. v. Cherian Varkey Construction Co. (P) Ltd.* It further stated that before the foregoing adjustments made through the interpretative process go into effect, the legislature must make the appropriate corrections in order to prevent Section 89 from becoming meaningless and infructuous. The Law Commission of India submitted recommendations for the revision of Section 89 in its 238th Report immediately following the Afcon ruling in the year 2011. But no parliamentary action has been taken on it thus far. Making progress is not enough, and India needs to take Section 89 of the CPC seriously. ADR programme advancement requires thorough rules. The study has shown that these out of court settlement mechanisms remain an alternative to the usual judicial proceedings, however the problem is with the lack of awareness about the topic as most of the public are not aware of this, which is why most do not consider using these as an alternative for the general judicial proceedings.

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