

ADR Mechanisms under the Code of Civil Procedure, 1908



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Development of ADR in the Code Procedure 1908

In our country many civil suites are filled in the regular court but according to the proportion of the filling suit very small amount of suits are dismissed by the court as a result the court becomes the overloaded place with the suits. The suits which are decided by the courts again, go to the appellate court if the other party is not satisfied. Besides the aggrieved party has the right to apply for review division. It takes a lot of time to dismiss a suit finally apparently 20/30 years.

To recover from the situation historical step is taken to introduce ADR in the code of civil procedure 2003 by inserting the section 89A and 89B. In 2003 section 89A and 89B empowers the trial court to settle the dispute by ADR. Again in 2006 a new amendment is brought in the Code of Civil procedure to provide the power to Appellate court by section 89C.

Procedure of Mediation under Section 89A of The Code Of Civil Procedure 1908.

Definition of **Mediation under This Section:**

“Mediation” Under this section shall mean flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process in which the mediator shall facilitate compromise of disputes in the suit between the parties without directing or dictating the terms of such compromise.

Function of The Court After Filing The Suit By The Plaintiff

Section 89A (1) provides that except in a suit under the Artha Rin Adalat Ain, 2003, **after filling of written statement**, if all the contesting parties are in attendance in the court in person or by their respective pleaders, the court may by **adjourning the hearing**, mediate in order to settle the dispute or disputes in the suit or refer the dispute or disputes to the engaged pleaders of the parties or the party or parties **where no pleader or pleaders have been engaged or to a mediator from the panel as may be prepared by the District Judge** under sub-section (10) for undertaking efforts for settlement through mediation.

Application by the Party for ADR

If all the contesting parties in the suit through application or pleadings state to the court that they are willing to try to settle the dispute or disputes in the suit through mediation, the court shall so send it to mediate or make reference under this section. In this case the court is bound to send for ADR.

Appointment of the Mediator

When the reference is made through the **pleaders**, the pleaders shall by their mutual agreement in consultation with their respective clients shall appoint

1. **Another pleader not engaged by the parties in the suit, or**
2. **A retired judge, or**
3. **A mediator from the panel as may be prepared by the District Judge under sub- section (10),or**
4. **Any other person whom they may seem to be suitable, to act as a mediator for settlement, or**
5. **The court itself**

Non Qualification of Mediator

1. A person holding an office of profit in the service of the Republic shall not be eligible for appointment as mediator.
2. The person who acts as the Advocate of the parties

Incapability of the Court

While referring a dispute or disputes in the suit for mediation, the court shall not dictate or determine the fees of the pleaders and the mediator and procedure to be followed by the mediator and the parties.

Roles and Functions of the Mediators

When the mediation is completed, then the mediator have duties liabilities those are:

1. the mediator shall without violating the confidentiality of the parties to the mediation proceedings submit through the pleaders to the court a report of result of the mediation proceedings, and
2. if the result is of compromise of the dispute or disputes in the suit the terms of such compromise shall be reduce into writing in the form of an agreement bearing signatures or left thumb impressions of the parties as executants, and
3. Signatures of the pleaders and the mediator as witnesses and
4. when the court itself mediates, it shall make a report and passed order in a manner similar to that as stated in sub-section (5)

Then the court shall thereupon pass an order or a decree in accordance with relevant provisions of [order XXIII \[Withdrawal And Adjustment Of Suits\]](#) of the code. If the mediation attempt is failed.

Panel of The Mediator

For the purposes of this section the District judge in consultation with the president of the District Bar Association shall prepare a panel of mediators to be updated from time to time consisting of pleaders, retired judges, persons known to be trained in the art of dispute resolution and such other person or persons, except the persons who are holding office of profit in the service of the Republic as may be deemed appropriate for the purpose and shall inform all the Civil Courts under his administrative jurisdiction about the panel.

Refund of the Court Fees

Where a dispute or disputes in a suit are settled on compromise under this section, **the court shall issue a certificate directing refund of the court fees** paid by the parties in respect of the plaint or written statement and the parties shall be entitled to such refund **within 60 (sixty) days** of the issuance of the certificate.

Nature of the Mediators Decision

The decision of the mediator is final. It cannot be challenged by appeal and revision. As stated that no appeal for mediation in order to settle the dispute or disputes in that appeal, if the appeal is an appeal from original decree under Order XLI [Appeal from Original Decree] and is between the same parties who contested in the original suit or the parties who have been substituted for the original contesting parties. In mediation under sub-section (1), the Appellate Court shall, as far as possible, follow the provisions of mediation as contained in section 89A with necessary changes as may be expedient.

Arbitration

Another method of ADR is stipulated in the section 89B of the code of civil procedure 1908 and that is arbitration. The parties are free to choose either.

In section 89B (1) if the parties to a suit at any stage of the proceeding apply to the court for withdrawal of the suit on ground that they will refer the dispute or disputes in the suit to arbitration for settlement, the court shall allow the application and permit the suit to be withdrawn and the dispute or disputes, thereafter, shall be settled in accordance with Salish Ain, 2001 (Act no.2 of 2001) so far as may be applicable.

The problems/weakness facing in Introducing the ADR in The CPC

The ADR in the code of civil procedure 1908 is totally new initiative which leads a lot problem in application of the ADR. The main problems are:

1. No fixed remuneration:

The remuneration of the mediator and the arbitrators are not fixed in the code of civil procedure. As a result the advocates do not sit together for compromising the dispute.

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2. want of eagerness of the advocates:

The interests of the advocate is less in disposing the dispute through the ADR as the there is not fixed honorary for them.

3. Non-binding of the decision:

As the decision of the mediation is not binding so the parties sometimes disregards the decision of the mediation.

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4. Emphasis on the private's right:

The disputant can participate directly in the discussion and for this reason they try to emphasize on their rights. They do not want to leave any part for the others.

5. Lacking of the parties about the knowledge of law ADR:

Still now mediation is not popular as the people have not enough knowledge about this process.

Recommendations

The recommendations for removing the impediments that prevent the ADR in the CPC fruitful are as follows:

1. The **fees** of the advocates and mediators may be **determined by the law**
2. The **separate mediation court** in the every district should be established
3. The **training** for the advocates and the judges should be done effective regularly
4. The **training Institute** should be established
5. The ADR method should be **widely extended** through different sectors
6. Extensive **research** should be conducted on the ADR frequently

Questions Session