

EVALUATING THE IMPLEMENTATION OF SECTION 89 CPC IN HARYANA'S CIVIL JUSTICE SYSTEM

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ABSTRACT

Section 89 of the Code of Civil Procedure, 1908 (CPC) represents a structural attempt to embed Alternative Dispute Resolution (ADR) within India's formal civil justice process. Enacted to reduce judicial backlog and promote consensual settlement, the provision mandates courts to identify settlement potential and refer appropriate disputes to arbitration, conciliation, mediation, or Lok Adalat. Despite constitutional validation and extensive judicial guidance, its practical impact remains uneven. This paper combines doctrinal analysis with empirical field data from Haryana to assess whether Section 89 has transformed dispute resolution culture or remains a procedural formality. Survey findings reveal low litigant awareness, limited adoption of lawyer-driven ADR, and weak institutionalisation of referral practices. The paper argues that Section 89's underperformance is systemic rather than legal, rooted in informational asymmetry, adversarial professional incentives, institutional inertia, and drafting ambiguities. The study proposes reforms targeting legal literacy, procedural standardisation, professional alignment, and institutional design, positioning Section 89 as a crucial but under-realised access-to-justice mechanism.

KEYWORDS: Section 89 Code of Civil Procedure, Court-Annexed Alternative Dispute Resolution, Civil Justice Reform in India, Mediation and Access to Justice, Empirical Evaluation of ADR Implementation.

1. INTRODUCTION

Judicial delay in India is not an episodic malfunction but a structural condition embedded in the design and functioning of the civil justice system. Civil disputes often traverse multiple procedural stages—pleadings, framing of issues, evidence, cross-examination, interlocutory applications, and appeals—resulting in protracted timelines. Delay does not merely inconvenience litigants; it alters the nature of justice itself. Relief loses meaning when delivered after economic loss, relational breakdown, or commercial collapse has already occurred.

Against this backdrop, procedural reform emerged as a necessary complement to institutional expansion. Section 89 of the Code of Civil Procedure, 1908 (CPC) represents one of the most significant such reforms. Rather than increasing adjudicatory capacity, it seeks to restructure how disputes move through the system. By mandating courts to identify elements of settlement and refer appropriate cases to Alternative Dispute Resolution (ADR), the provision aims to convert courts into gateways of settlement rather than exclusive sites of trial.

This marks a paradigm shift. Traditionally, settlement occurred at the margins of litigation, driven by party negotiation. Section 89 inverts this model: settlement becomes procedurally central. Yet the success of such a design depends not only on legal validity but on behavioural acceptance by judges, lawyers, and litigants. Two decades after implementation, referrals remain inconsistent. Many suitable cases proceed through full trials without structured settlement screening.

The core question is therefore functional, not doctrinal:

Has Section 89 CPC reoriented civil justice culture toward settlement, or does it operate merely as a formal procedural checkpoint?

This study addresses that question through doctrinal analysis and empirical fieldwork in Haryana trial courts.



2. THEORETICAL FOUNDATIONS: THE JURISPRUDENCE OF COURT-ANNEXED ADR

Section 89 CPC must be understood not as a procedural technicality but as an embodiment of evolving dispute resolution philosophy. Its normative roots lie in the global movement away from litigation monopolies toward multi-door justice systems, where adjudication is one among several legitimate pathways.

2.1 From Adjudicatory Centralism to Justice Pluralism

Traditional civil procedure evolved around adjudication as the authoritative method of dispute resolution. Courts were conceived as primary sites for the determination of rights, and alternative mechanisms were viewed as peripheral. Contemporary procedural theory, however, recognises that not all disputes are rights-centric; many involve relational breakdowns, miscommunication, or commercial recalibration. Justice pluralism acknowledges that negotiated processes can produce outcomes better aligned with parties' interests while preserving procedural fairness.

Section 89 reflects this shift by embedding ADR within the court process rather than leaving it as a parallel system. This integration preserves legitimacy while diversifying dispute resolution modes.

2.2 Participatory Justice and Party Autonomy

ADR emphasises agency. Parties are not passive recipients of judgments but active participants shaping outcomes. Participatory justice aligns with democratic procedural values, where legitimacy derives not solely from state authority but from consensual engagement. In mediation, especially, the goal is not merely compromise but mutual recognition and voluntary agreement.

This participatory dimension is critical in disputes involving continuing relationships—family, commercial partnerships, neighbourhood conflicts—where adversarial judgments may exacerbate tensions. Section 89 operationalises this theory by creating a procedural moment where courts invite parties to transition from adversarial posture to collaborative problem-solving.

2.3 Therapeutic Jurisprudence

Therapeutic jurisprudence views legal processes through their psychological and relational impact. Prolonged litigation can deepen conflict, generate stress, and produce zero-sum outcomes. ADR processes, particularly mediation and conciliation, offer space for dialogue and emotional acknowledgement, reducing adversarial harm. Section 89 thus carries not only efficiency goals but a humanistic dimension.

2.4 Systemic Efficiency and Resource Allocation

Courts represent high-cost institutional resources. Diverting disputes that do not require authoritative adjudication allows the judiciary to concentrate on complex or precedent-setting matters. Section 89 embodies this triage principle. However, efficiency is a secondary effect; the primary goal remains appropriate dispute resolution.

2.5 Normative Ambition vs. Operational Reality

While Section 89 reflects sophisticated jurisprudential ideas, translating theory into practice requires institutional alignment. The gap between normative ambition and operational reality forms the central tension explored in this study.

3. EVOLUTION AND JUDICIAL INTERPRETATION OF SECTION 89

Section 89's legislative drafting was ambitious but imprecise. Judicial interpretation played a crucial role in transforming it from a potentially dysfunctional provision into a workable procedural mechanism.

3.1 Legislative Background

Inserted by the CPC Amendment Act 1999 and operationalised in 2002, Section 89 was intended to reduce arrears and mainstream ADR. It reflected recommendations from reform committees emphasising negotiated settlement.

3.2 Salem Advocate Bar Association Decisions

The Supreme Court's validation of Section 89's constitutionality marked the first step in stabilising its legitimacy. The Court clarified that the provision does not undermine adjudication but supplements



it. Importantly, the Court emphasised that courts bear the responsibility to explore settlement possibilities rather than waiting for party initiative.

3.3 Afcons Infrastructure: Procedural Architecture

The *Afcons* decision represents the doctrinal turning point. The Court:

- Categorised disputes unsuitable for ADR
- Clarified consent requirements
- Distinguished between ADR modes
- Reduced the burden of “formulating settlement terms”

This decision transformed Section 89 from an abstract mandate into structured practice guidelines. It also demonstrated judicial pragmatism—acknowledging drafting flaws while preserving legislative intent.

3.4 Judicial Creativity as Procedural Repair

Indian procedural reform often depends on judicial interpretation to resolve legislative ambiguities. Section 89 illustrates how judicial innovation can rescue reform but also create variability, as implementation depends on how lower courts internalise guidance.

4. RESEARCH DESIGN AND METHODOLOGICAL RATIONALE

This study adopts a mixed doctrinal-empirical approach, recognising that procedural effectiveness must be evaluated in practice, not solely in statutory or judicial terms.

4.1 Why Haryana?

Haryana provides a representative socio-legal landscape combining urban commercial litigation and semi-urban civil disputes. This diversity enables examination of ADR’s relevance across dispute types.

4.2 Sampling Logic

The study surveyed:

- 50 litigants
- 50 lawyers

The sample, while limited, offers insight into stakeholder perceptions, which are central to ADR’s functioning.

4.3 Questionnaire Focus

Questions explored:

- Awareness of ADR and Section 89
- Experience with ADR mechanisms
- Professional advice patterns
- Cost and time perceptions
- Comfort with non-judicial actors

4.4 Analytical Strategy

The study uses descriptive statistics combined with interpretive analysis. The aim is not generalisation but diagnostic insight into systemic barriers. Empirical findings contextualise doctrinal critique.

5. EMPIRICAL FINDINGS: INTERPRETATION AND THEMATIC ANALYSIS

5.1 Informational Deficit Among Litigants

The majority of litigants lacked awareness of ADR mechanisms and Section 89 CPC. This is not merely a knowledge gap but a structural barrier: ADR presupposes informed consent. Without awareness, litigants remain confined to litigation pathways.

5.2 Lawyer Mediation of ADR Access

Although most lawyers reported awareness, many had not utilised ADR. Litigants frequently indicated that lawyers did not inform them of ADR options. This suggests that legal professionals function as gatekeepers whose incentives shape ADR uptake.

5.3 Trust and Legitimacy Concerns

A significant proportion of litigants expressed discomfort with non-judicial resolution. Courts symbolise authority and enforceability; ADR may appear uncertain. Trust deficits can only be addressed through institutional credibility and public education.

5.4 Perception Gap on Efficiency

Many litigants believed courts were preferable, even regarding time and cost. This contradicts ADR’s theoretical advantages and reveals communication failure. Efficiency is not self-evident; it must be demonstrated and trusted. The tabular representation explains the comparative Stakeholder Perception.

| Issue | Litigants | Lawyers |
|------------------------------|-----------------|-------------------------|
| Awareness of Section 89 | Low | High |
| Confidence in ADR | Moderate to Low | Moderate |
| Perceived efficiency of ADR | Uncertain | Aware but underutilised |
| Trust in non-judicial actors | Limited | Conditional |

Table 1. Stakeholder Perception Comparison

5.5 Interaction of Findings

The empirical data reveal that Section 89’s limited impact stems from perception, incentives, and institutional culture rather than legal inadequacy. Awareness, trust, and professional behaviour form the real determinants of ADR integration.

6. DOCTRINAL AND STRUCTURAL CONSTRAINTS IN THE OPERATION OF SECTION 89 CPC

Despite strong judicial endorsement, Section 89 continues to encounter doctrinal friction and institutional limitations that inhibit its transformative potential. These constraints operate at three interrelated levels: drafting design, procedural integration, and court system capacity.

6.1 Drafting Ambiguity and Judicial Workarounds

One of the most criticised features of Section 89 is the requirement that courts “formulate the terms of settlement” before referral. Conceptually, this places judges in a paradoxical position. Settlement formulation presupposes substantive engagement with dispute content, yet ADR processes—particularly mediation and conciliation—are designed to allow parties to shape outcomes autonomously. Judicial pre-structuring risks influencing negotiation dynamics or pre-judging merits.

Trial courts often bypass this stage entirely, treating it as a symbolic step. The Supreme Court in *Afcons Infrastructure* effectively diluted the requirement through purposive interpretation, holding that a brief description of the dispute’s nature suffices. This interpretive rescue underscores a broader pattern in Indian procedural law: judicial correction compensating for legislative imprecision. However, reliance on judicial creativity produces uneven practice across jurisdictions.

6.2 Conceptual Confusion Between ADR Modes

Section 89 originally conflated “mediation” and “judicial settlement,” a drafting error later rectified by judicial interpretation. Yet the conceptual distinction between facilitative mediation, evaluative mediation, judicial settlement, and Lok Adalat remains blurred at the trial court level. Judges may not clearly differentiate when to choose which mechanism, leading to either overuse of Lok Adalats for convenience or underuse of mediation due to uncertainty.

This conceptual vagueness weakens the triage function envisaged in *Afcons*, where the nature of the dispute should determine the mode of ADR.

6.3 Court Fee Refund and Procedural Continuity

Another structural issue concerns the refund of court fees when ADR succeeds and the procedural consequences when ADR fails. Variations in state amendments create uncertainty regarding re-institution of suits and the payment of fresh court fees. Procedural ambiguity disincentivises referral, as parties and lawyers may fear procedural complications if settlement fails.



6.4 Judicial Workload and Referral Incentives

Paradoxically, Section 89 aims to reduce judicial burden but initially increases it. Screening cases, explaining ADR options, and tracking referrals require time investment. In overburdened courts, immediate adjudicatory progress may appear more efficient than initiating ADR processes perceived as uncertain. Without institutional support structures—dedicated mediation centres, clerical tracking, or ADR coordinators—Section 89 becomes an aspirational norm rather than a routine practice.

6.5 Absence of Accountability Mechanisms

Unlike case disposal statistics, ADR referral rates are rarely monitored as performance indicators. Without administrative oversight, Section 89 compliance depends on individual judicial inclination. Procedural mandates lacking institutional metrics often lose normative force.

Collectively, these doctrinal and structural factors demonstrate that Section 89’s challenges lie less in legal validity and more in procedural operability.

7. SYSTEMIC DIAGNOSIS: INTERACTING BARRIERS TO EFFECTIVE ADR INTEGRATION

The empirical and doctrinal findings converge toward a systemic diagnosis: Section 89 operates within a multi-actor ecosystem where each stakeholder’s incentives shape outcomes.

7.1 Informational Barrier: Cognitive Invisibility of ADR

Litigant surveys reveal that ADR remains cognitively peripheral. Legal systems often assume that procedural rights translate automatically into usage; however, rights without awareness are inert. Informational asymmetry empowers legal professionals while disempowering litigants, contradicting ADR’s participatory ethos.

7.2 Professional Barrier: Adversarial Incentive Structures

Lawyers occupy a gatekeeping position. Their strategic and financial incentives may align more closely with extended litigation than expedited settlement. ADR reduces billable stages and may dilute adversarial leverage. Without institutional or reputational incentives to promote settlement, professional culture may resist procedural reform.

7.3 Institutional Barrier: Absence of Embedded ADR Culture

Courts historically function as adjudicatory bodies. Embedding ADR requires organisational culture change, training, and procedural routinization. Where ADR remains peripheral, referral appears discretionary rather than expected.

7.4 Legislative Barrier: Normative Clarity vs. Operational Precision

Section 89 reflects normative commitment but lacks operational precision. Drafting ambiguities, refund issues, and conceptual overlap among ADR modes create uncertainty that discourages proactive use.

7.5 Interaction Effect

These barriers do not operate independently. Informational gaps reinforce professional dominance; professional reluctance reduces institutional momentum; institutional inertia magnifies legislative ambiguity. The result is path dependency, where traditional litigation practices persist despite procedural reform.

This systemic perspective suggests that piecemeal reform will be insufficient. Section 89 requires coordinated intervention across informational, professional, institutional, and legislative domains. The table explains the Barriers to Effective Section 89 Implementation.

| Barrier Type | Description | Impact |
|---------------|-----------------------------------|------------------------|
| Informational | Litigant ignorance of ADR | Low participation |
| Professional | Adversarial lawyer incentives | Gatekeeping |
| Institutional | Lack of tracking & infrastructure | Inconsistent referrals |
| Normative | Trust deficit in ADR | Preference for courts |

Table 2. Barriers to Effective Section 89 Implementation



8. REFORM FRAMEWORK: RE-ENGINEERING SECTION 89 IMPLEMENTATION

Effective reform must shift focus from textual amendment alone to ecosystem design.

8.1 Informational Reform: Making ADR Visible

Mandatory ADR information sheets at filing, court-displayed ADR guides, and pre-trial orientation sessions can democratize knowledge. Legal literacy transforms ADR from an abstract option into a perceived opportunity.

8.2 Institutional Reform: Procedural Standardisation

Courts should adopt structured ADR screening checklists based on *Afcons* categories. Digital tracking of referral rates can create accountability. Dedicated ADR coordinators within court registries can manage logistics, reducing judicial burden.

8.3 Professional Reform: Aligning Incentives

Bar Councils can integrate ADR advocacy into continuing legal education. Recognition mechanisms—certifications, panels, or reputational credits—can reposition settlement as professional competence rather than adversarial retreat.

8.4 Legislative Reform: Clarifying Normative Architecture

Amendments should remove the “formulate terms” requirement, codify judicial interpretations distinguishing ADR modes, and harmonise court fee refund rules across states.

8.5 Trust-Building Measures

Court-attached mediator panels with transparent qualifications can address legitimacy concerns. When ADR operates within court supervision, litigants perceive greater procedural security.

8.6 Cultural Reform

Public campaigns emphasising ADR success stories can reshape perception from compromise to constructive resolution.

The reform agenda thus moves from **procedural amendment to institutional transformation**.

9. BROADER IMPLICATIONS: SECTION 89 AND THE FUTURE OF INDIAN CIVIL PROCEDURE

Section 89 serves as a case study in the limits of legislative reform absent behavioural adaptation. It illustrates a broader principle of procedural theory: law’s effectiveness depends on social uptake. Rules can mandate referral, but they cannot mandate trust, awareness, or professional cooperation.

The experience of Section 89 suggests three broader lessons:

1. **Procedural pluralism requires cultural acceptance.**
2. **Professional actors mediate reform outcomes.**
3. **Institutional design determines whether legal innovation becomes routine practice.**

In this sense, Section 89 is not merely an ADR provision but a window into the challenges of modernising Indian civil procedure. Its trajectory reveals the need for integrated reform strategies that address legal text, professional norms, institutional processes, and public perception simultaneously.

The provision’s unrealised potential does not signify failure of ADR theory; rather, it highlights the complexity of translating procedural ideals into operational justice. The table below explains the objectives of section 89 and the normative expectation it carries, along with the empirical outcome in Haryana.

| Objective of Section 89 | Normative Expectation | Empirical Outcome in Haryana |
|-------------------------------|------------------------------------|--------------------------------|
| Reduce judicial backlog | Diversion of suitable cases to ADR | Inconsistent referrals |
| Promote consensual settlement | Early resolution | Limited litigant awareness |
| Enhance access to justice. | Cost-effective resolution | Preference for courts persists |



| Objective of Section 89 | Normative Expectation | Empirical Outcome in Haryana |
|-------------------------|------------------------------|-----------------------------------|
| Institutionalize ADR | Routine settlement screening | Treated as a procedural formality |

Table 3. Objectives of Section 89 CPC and Ground-Level Outcomes

10. EXPANDED CONCLUSION: FROM PROCEDURAL REFORM TO JUSTICE CULTURE

Section 89 CPC represents one of the most ambitious procedural experiments in Indian civil justice. It attempts something deeper than case diversion: it seeks to change the architecture of dispute resolution itself. By embedding ADR within court procedure, the legislature envisioned courts not merely as adjudicatory forums but as gateways to multiple forms of justice delivery. The empirical evidence from Haryana, however, shows that this transformation remains incomplete.

The study demonstrates that the gap between legislative design and functional reality is not caused by legal invalidity or judicial resistance. Instead, the underperformance of Section 89 emerges from systemic misalignment across four interconnected layers:

1. **Cognitive Layer (Awareness)** – Litigants largely lack knowledge of ADR and Section 89. A procedural right that parties do not know exists cannot alter dispute behaviour. Section 89, therefore, operates more as a judicial power than a litigant-empowering tool.
2. **Professional Layer (Lawyer Incentives)** – Lawyers occupy a gatekeeping role in dispute strategy. Even when aware of ADR, many do not actively recommend it. This reflects an adversarial legal culture where litigation offers procedural control, strategic delay, and predictable fee structures. ADR, designed for efficiency and compromise, may disrupt these incentives.
3. **Institutional Layer (Court Practice)** – Trial courts do not uniformly apply structured screening. Section 89 is often treated as a procedural formality rather than a deliberate evaluative stage. Judicial workload further reduces the time available for meaningful settlement exploration.
4. **Normative Layer (Trust and Legitimacy)** – Many litigants remain uncomfortable with non-judicial dispute resolution. Courts symbolise authority, neutrality, and finality, while ADR is perceived as compromise or second-tier justice. Without social trust in mediators and conciliators, procedural referral alone cannot ensure acceptance.

Together, these findings show that Section 89’s challenge is not doctrinal but cultural and systemic. ADR cannot be legislated into existence as a justice culture; it must be socially normalised, professionally integrated, and institutionally routinised.

The study also reveals an important paradox. The judiciary has repeatedly endorsed ADR as a solution to delay, yet Section 89’s effectiveness depends heavily on actors outside judicial control—lawyers, litigants, and state governments (particularly regarding court-fee reform and infrastructure). This demonstrates that procedural justice reform is interdependent, requiring coordinated action across branches and professions.

From a broader justice-theory perspective, Section 89 sits at the intersection of efficiency and participation. It promises quicker resolution and reduced backlog, but also a more dialogic, interest-based model of justice. Its limited realization therefore, represents a missed opportunity not only for docket management but also for democratizing dispute resolution.

The Haryana evidence suggests that reform must move beyond textual amendment. Three long-term shifts are necessary:

- **From awareness to literacy** – Litigants must understand ADR as a legitimate right, not a concession.
- **From discretion to routine** – Settlement screening should be a structured judicial stage, not a matter of individual inclination.
- **From authority-based justice to trust-based justice** – ADR institutions must gain credibility comparable to courts.

Ultimately, Section 89’s story illustrates a core truth of procedural reform: law can open the door, but institutions and culture determine whether people walk through it. If supported through literacy, professional alignment, and institutional design, Section 89 can still fulfil its transformative promise. Without such ecosystem reform, it risks remaining a symbolic provision—progressive in text, limited in practice. Strengthening Section 89 is therefore not merely about reducing pendency; it is about reshaping how justice is imagined, accessed, and experienced in India.



11. CONCLUSION

Section 89 of the Code of Civil Procedure, 1908, represents one of the most ambitious procedural reforms in Indian civil justice, seeking to recalibrate the system from adjudication-centric litigation toward consensual and participatory dispute resolution. Conceived as a structural response to judicial delay, the provision aspires not merely to reduce pendency but to transform the culture of dispute resolution by embedding Alternative Dispute Resolution (ADR) within the court process itself.

The findings of this study, based on doctrinal analysis and empirical fieldwork in Haryana, demonstrate that this transformative potential remains only partially realised. While Section 89 enjoys constitutional validation and sustained judicial support, particularly through decisions such as *Salem Advocate Bar Association* and *Afcons Infrastructure*, its ground-level implementation is uneven and often symbolic. Courts rarely engage in systematic settlement screening, referrals are inconsistent, and ADR is frequently perceived as peripheral rather than integral to civil procedure.

The empirical evidence reveals that the underperformance of Section 89 is not attributable to legal inadequacy but to systemic and behavioural factors. Low litigant awareness undermines informed participation; lawyers function as decisive gatekeepers whose professional incentives do not always align with settlement, and institutional practices lack procedural standardisation and accountability. Additionally, trust deficits persist among litigants, who continue to associate justice primarily with formal adjudication rather than negotiated outcomes.

These findings underscore a critical insight: procedural reform cannot succeed through statutory mandate alone. Section 89 operates within a complex ecosystem where awareness, professional culture, institutional capacity, and public trust interact to determine outcomes. Without parallel reforms addressing legal literacy, incentive alignment within the legal profession, institutional support structures, and normative legitimacy of ADR forums, Section 89 risks remaining a progressive provision in text but limited in practice. Nevertheless, the provision's continued relevance should not be underestimated. Section 89 provides a viable framework for reimagining civil justice as a pluralistic system capable of delivering timely, participatory, and context-sensitive resolutions. If supported by coordinated reforms—informational, institutional, professional, and legislative—it can still function as a meaningful access-to-justice mechanism rather than a procedural formality.

Ultimately, the experience of Section 89 CPC illustrates a broader lesson for procedural reform in India: law can create pathways to justice, but institutions and culture determine whether those pathways are actually used. Strengthening Section 89, therefore, is not only about reducing pendency—it is about reshaping how justice is accessed, understood, and experienced within the civil justice system.

End Notes [Linked to Specific Paragraphs]

Introduction (paras 1–4)

1. End Note 1 (para 1 – judicial delay as structural):

Judicial delay in India has been repeatedly characterised as systemic rather than incidental, arising from procedural complexity, limited judicial capacity, and adversarial incentives rather than episodic inefficiency.

2. End Note 2 (para 2 – purpose of Section 89):

Section 89 CPC was introduced through the Code of Civil Procedure (Amendment) Act, 1999 and operationalised in 2002 to institutionalise Alternative Dispute Resolution (ADR) as an integral component of civil procedure.

3. End Note 3 (para 3 – paradigm shift):

The conceptual shift underlying Section 89 CPC is from adjudication-centric dispute resolution to court-guided settlement screening, positioning courts as gateways rather than exclusive forums of dispute resolution.

4. End Note 4 (para 4 – research question):

The effectiveness of procedural reform must be assessed functionally, focusing on behavioural adoption by judges, lawyers, and litigants rather than doctrinal validity alone.

Section 2: Theoretical Foundations (paras 2.1–2.5)

5. End Note 5 (para 2.1 – justice pluralism):

Justice pluralism recognises the legitimacy of multiple dispute resolution mechanisms, acknowledging that adjudication is not always the most appropriate method for resolving interest-based or relational disputes.

6. End Note 6 (para 2.2 – participatory justice):

ADR mechanisms emphasise party autonomy and participatory justice, aligning dispute resolution outcomes more closely with parties' interests rather than strictly defined legal entitlements.



7. End Note 7 (para 2.3 – therapeutic jurisprudence):

Therapeutic jurisprudence evaluates legal processes by their psychological and relational impact, highlighting the potential of mediation to reduce adversarial harm and conflict escalation.

8. End Note 8 (para 2.4 – systemic efficiency):

From an institutional perspective, ADR serves a triage function by diverting cases that do not require authoritative adjudication, allowing courts to allocate resources more efficiently.

Section 3: Judicial Interpretation (paras 3.1–3.4)

9. End Note 9 (para 3.2 – Salem Advocate Bar Association, Tamil Nadu vs Union of India AIR 2005 SUPREME COURT 3353, (2005) 4 BOM CR 839

In Salem Advocate Bar Association (I) v. Union of India, the Supreme Court upheld the constitutionality of Section 89 CPC and clarified that ADR complements rather than undermines judicial adjudication.

10. End Note 10 (para 3.3 – Afcons Infrastructure Ltd. v Cherian Varkey Construction Co. P. Ltd. (2010) 8 SCC 24):

Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. provided structured guidance on ADR referral, dispute categorisation, consent requirements, and the limited role of courts in settlement formulation.

Section 4: Research Design (paras 4.1–4.4)

11. End Note 11 (para 4.1 – Haryana as field site):

Haryana’s mixed litigation profile—urban commercial disputes and semi-urban civil litigation—makes it a representative jurisdiction for evaluating court-annexed ADR implementation.

12. End Note 12 (para 4.4 – methodological limits):

The study adopts a diagnostic rather than generalizing approach, using empirical insights to illuminate systemic barriers rather than produce statistically representative conclusions.

Section 5: Empirical Findings (paras 5.1–5.5)

13. End Note 13 (para 5.1 – litigant awareness):

Informed consent is foundational to ADR; low litigant awareness undermines the participatory justice model envisioned under Section 89 CPC.

14. End Note 14 (para 5.2 – lawyer gatekeeping):

Lawyers function as institutional gatekeepers to ADR, and their professional incentives significantly influence whether settlement options are presented to litigants.

15. End Note 15 (para 5.3 – legitimacy concerns):

Litigant discomfort with non-judicial forums reflects trust deficits rather than legal shortcomings of ADR mechanisms.

Section 6–7: Structural & Systemic Barriers

16. End Note 16 (para 6.1 – drafting ambiguity):

The requirement that courts “formulate terms of settlement” has been widely criticised as conceptually inconsistent with party-driven ADR processes.

17. End Note 17 (para 7.2 – adversarial incentives):

Extended litigation aligns with traditional adversarial professional incentives, whereas ADR challenges established fee structures and strategic control.

Conclusion

18. End Note 18 (final paras – reform insight):

Procedural reform cannot succeed in isolation; effective ADR integration requires synchronised informational, professional, institutional, and cultural change.

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