
BRIDGING THE GAP TO SWIFT JUSTICE: A COMPREHENSIVE ANALYSIS OF ADR MECHANISMS IN CONJUNCTION WITH SECTION 89 OF THE CPC FOR EFFECTIVE DISPUTE RESOLUTION

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ABSTRACT

This research paper critically evaluates the efficacy of different types of Alternative Dispute Resolution (ADR) mechanism namely arbitration, mediation, and conciliation within the legal framework established by the Code of Civil Procedure, 1908 (CPC). ADR facilitates a collaborative and an amicable approach to dispute resolution that prioritizes relationship preservation while alleviating the judicial burden, minimizing litigation costs and the prolonged delays. This study investigates the impact of ADR integration on the efficiency and timeliness of dispute resolution of various subject matters, with particular emphasis on jurisdictional complexities associated with international commercial arbitration and procedural delays that may compromise its effectiveness. The objectives of this research encompass a thorough assessment of the efficacy and effectiveness of ADR under the CPC and the Arbitration and the Conciliation Act, 1996, a comparative analysis of ADR and conventional litigation along with that the comparative analysis of ADR Legislation relating to the various mechanisms prevalent in India and United Kingdom , and an exploration of the challenges that are faced in the incorporation of ADR mechanisms within the existing legal infrastructure. The findings reveal that, despite the intent to expedite resolution processes, significant deficiencies are prevalent within the CPC especially concerning international disputes and the enforcement and recognition of the international awards passed during the international commercial arbitration resulting in procedural complications and enforcement challenges. To enhance the ADR framework, the paper proposes recommendations that include increasing public awareness of ADR benefits, establishing an independent regulatory body to oversee mediation processes, and amending Section 89 of the CPC to rectify jurisdictional ambiguities. Ultimately, this research advocates for a streamlined and effective ADR process that aligns with judicial principles, thereby promoting equitable and timely access to justice with that the judiciary must play a proactive role in referring the parties to amicably resolve the disputes in matters

related to commercial nature and the matrimonial nature. The 222nd Law Commission Report focusing on the efficacy and public awareness on ADR mechanisms. This study also focuses on the judiciary playing a pro-active role in implementing the ADR mechanisms and an exclusion of the jurisdictional seat in the contract between the parties.

Keywords: Alternative Dispute Resolution, Comparative Analysis, Effectiveness, India United Kingdom, Dispute Resolution Mechanisms and Jurisdictional Issues.

Introduction

“A Good Settlement is better than a good lawsuit.”

- Abraham Lincoln

Alternative Dispute Resolution (ADR) is a form of non-adversarial mechanism in which the disputing or contesting parties tries to resolve the disputes or conflicts outside the conventional courtroom proceedings and trial. The parties in dispute works together with co-operation to come to an amicable result, without violating the principles of “equity”, “justice” and “good conscience”. The emphasis is more on collaboration and cooperation which ultimately leads to preservation of relationship between the parties. The main aim of resolving disputes through ADR is to avoid the multiplicity of litigation, it leads to saving of time, money and leads to amicable settlement of disputes, which is lawful. ADR can be useful in reducing the burden of courts. This also help the parties to resolve the dispute through creativity, collaborative negotiation with that there is direct control over the decision given as the parties are free to hold negotiations. The resolution of disputes usually take place in private-ultimately maintaining the confidentiality. In *Afcons Infrastructure Ltd v. Cherian Varkey Construction Co. (P) Ltd*¹, the Hon’ble Supreme Court held that the following categories of the disputes can be adjudicated through the ADR mechanisms:

- 1) The disputes which are related to Business, trade, commerce and the contracts (money claims) formed between the parties including the disputes related to performance of contract and along with that the specific performance; disputes related to real estate industry.

¹ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

- 2) The disputes related to marriages, maintenance and the custody of children,
- 3) The disputes related to the tortious acts and the requisite liability including: claims for negligence.

Section 89 of the Code of Civil Procedure, 1908² enshrines the settling of civil disputes through different mechanisms of ADR such as: Arbitration, Mediation, Conciliation. Judicial Settlement and Settlement through the Lok Adalat. While analyzing Section 89 of the Civil Procedure Code, 1908 (CPC) and considering Order 10 Rule 1-A CPC, it has been established that once pleadings are complete and admissions and denials are addressed, but before issues are framed, the court must mandatorily evaluate whether referring the parties to an Alternative Dispute Resolution (ADR) process is appropriate based on the case's facts and circumstances. It is the duty of the court to refer the cases related to ADR if a particular case is arbitrable, however it is not mandatory to refer the cases to ADR if the cases are not arbitrable.

Research Questions

1. How does the various ADR mechanisms such as arbitration, mediation, and conciliation in concurrence with CPC influence the efficiency and speed of resolving disputes?
2. Whether the Jurisdictional issues in International commercial arbitration matters, Procedural delays and completion proceedings are an important facet and are hampering the effectiveness of the ADR?
3. What are the practical effects of differentiating between the jurisdictional seat and venue in international arbitration on the enforcement of arbitral awards, and how can these challenges be managed effectively?

Research Objectives

1. **Analyzing and examining the effectiveness of ADR Mechanisms under CPC:** This exploring of various ADR methods—mediation, arbitration, conciliation, and negotiation—to clarify the available dispute resolution options. It will also assess the effectiveness of mediation and arbitration within the CPC framework, focusing on how

² Code of Civil Procedure, 1908, § 89, No. 5, Acts of Parliament, 1908 (India).

CPC provisions support these mechanisms, their role in achieving successful outcomes, enhancing party satisfaction, and ensuring the enforceability of ADR agreements.

2. ***Comparing ADR and Litigation; The CPC's Influence on Enforcement:*** The comparative evaluation of ADR and litigation. It also investigates the CPC's influence on the enforcement of ADR agreements, focusing on how CPC provisions affect enforceability and the role of courts in interpreting these provisions to oversee ADR proceedings effectively.
3. ***Difficulties in amalgaming Alternative Dispute Resolution with the Civil Procedure Code:*** Seamlessly incorporating ADR mechanisms into the existing legal framework poses challenges such as jurisdictional issues, enforceability concerns, and procedural delays.

Legal Frameworks

- 1) ***Section 89 of the Code of Civil Procedure, 1908:*** “This section postulates that when it appears to the court there exists the elements of settlement the court with the willingness of the parties shall formulate the terms and conditions and refer the parties to:-
 - A) Arbitration
 - B) Conciliation
 - C) Judicial Settlement:
 - D) Mediation”
- 2) ***Section 36 of the Arbitration and Conciliation Act, 1996:*** “This section postulates that the arbitral award has the same binding effect as a decree passed by the court making it legally enforceable”
- 3) ***Section 27 of the Mediation Act, 2023:*** “This section postulates that the settlement agreement is deemed to have the same binding effect as a decree passed by the court making it legally enforceable.

Analysis

Alternative Dispute Resolution includes different types of techniques which helps the disputed

parties in resolving the disputes with collaboration and co-operation. The ADR mechanism is a non-adversarial form of mechanism in which the disputes are resolved without the intervention of judiciary. There are different forms of mechanism under Alternative Dispute Resolution.

1) **Arbitration:** Arbitration is a form of alternative dispute resolution in which the disputed parties amicably appoint an 'arbitrator' who is a third neutral party who tries to resolve the ongoing dispute between the parties amicably. **Section 89(2)(a) of the Code of Civil Procedure, 1908**³ postulates that wherein it appears to court that a specific matter can be resolved through arbitration or conciliation then the provisions of Arbitration and Conciliation Act, 1996 shall be applied for the proceedings. The final decision that is given by the competent person (in short) an "Arbitrator" is known as an "arbitral award". Under **Section 35 of the Arbitration and Conciliation Act, 1996**⁴, the arbitral award is deemed to be final and binding on the parties to a dispute. Under Section 34 of the Act, the arbitral award can be set aside by the court on the merits and on various grounds. In **Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd**⁵, the Apex Court held that all the matters do not come under the ambit of arbitration, the court enumerated certain matters that are outside the scope of arbitration such as: Insolvency and winding up petitions and proceedings, criminal offences, Anti-trust matters, Corruption matters, Guardianship matters.

2) **Mediation:** In Mediation there is involvement of a neutral third party, who is known as a mediator or facilitator, the third person communicates and negotiates the terms and conditions between the disputing parties and tries to resolve the prevalent disputes with the main goal of mutual acceptable resolution. In mediation the decision is not given by the mediator as the role of the mediator is to guide or act as an intermediat the mediator does not give the decision, the role of the mediator is only to act as an intermediary between the parties. Through mediation the parties help to understand each other's stance on the matter related and comes to an amicable settlement in favor of the parties. In **Gita Hariharan v. Reserve Bank of India**⁶, the Apex Court recommended the resolution of matrimonial cases

³ Code of Civil Procedure, 1908, § 89(2)(a), No. 5, Acts of Parliament, 1908 (India).

⁴ Arbitration and Conciliation Act, 1996, § 36, No.26, Acts of Parliament, 1996 (India).

⁵ Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532.

⁶ Githa Hariharan v. Reserve Bank of India (1999) 2 SCC 228.

through mediation as it gives the parties the freedom to amicably settle the issues.

- 3) **Conciliation:** Conciliation is the form of ADR in which there is an appointment of an impartial third person who helps in settling of the disputes prevailing between the parties, the decision that is being pronounced in conciliation proceedings is not legally binding. The procedure that is being followed in the proceedings is not formal as arbitration and mediation. In *Jaswant Sugar Mills Ltd., Meerut v. Lakshmi Chand & Ors*⁷, the hon'ble Apex Court held that the person appointed as a conciliator is not deemed to be a "Judicial person" and the directions that are pronounced does not comes under the ambit of a decree as passed by court.

"Section 89 of the Code of Civil Procedure, 1908" postulates the settlement of disputes outside the conventional courts, this may differ from case-to-case basis where on the face of it the court believes there is scope of settlement the cases are referred to various ADR mechanisms. The main objective is to reduce the backlog of the cases, giving the parties to resolve the disputes amicably with mutual interest. **"Order 10 rule 1-A of the CPC**, states that the court shall direct the parties to refer to any of the of mechanism under the ADR for the settlement of the disputes." **"Order 10 rule 1-B of the CPC**, states that the parties are to appear before the competent authority when the case has been referred by the court." **"Order 10 rule 1-C of CPC**, states that when a particular dispute is being referred before competent authority and it is observed that the justice can't be dispensed through ADR, for the better *interest of the parties* the dispute is again being referred to court again".

ADR mechanisms aim to reduce the backlog of cases that are pending in the courts. The pendency of cases leads to prolonged delays in dispensing justice. These mechanisms under ADR help the parties to negotiate the terms and conditions amicably, with that there is a sense of cooperation and compassion which seems to be impossible in a court of law. In ADR the parties have a greater outcome, as the terms and conditions are decided amicably. There is confidentiality in the ADR proceedings which give the parties a satisfaction, which ultimately leads to coming up to an amicable solution.

In the ADR mechanism when the court directs the parties to appear before the competent authority to handle the arbitration issues there is the **JURISDICTION ISSUE** that the parties

⁷ Jaswant Sugar Mills Ltd. v. Lakshmi Chand, 1962 SCC OnLine SC 20.

are faced with, which concerns which court has the jurisdictional power to administer and carry out the arbitral award handed down by the arbitral tribunal. In the case of international commercial arbitration, when either of the parties is incorporated in a foreign country and the other in India, it becomes tricky to determine the seat of jurisdiction and venue unless the arbitration agreement contains a clause to the same. The Code of Civil Procedure 1908 fail to assume the provisions pertaining to the controversies between the international parties concerned with international arbitration that eventually results in the inability to deliver the justice and maintainability of arbitral awards.

In *Mankatsu Impex Private Limited v. Airvisual Limited*,⁸ the hon'ble SC took a wider meaning for the "*venue*" and "*seat*" of arbitration and interpreted the jurisdictional aspect, wherein one company is registered in Hong Kong and the other in India. The Court held that Jurisdictional Seat is far more important than the venue of arbitration, even if the proceedings are being conducted outside India's territory, but the seat is India then Indian laws would be adopted unless there is a special provision in the agreement of arbitration. The same was quoted by the Hon'ble Apex Court in *Union of India v. Hardy Exploration and Production (India) Inc.*⁹ *Section 36 of Arbitration and Conciliation Act, 1996*¹⁰ enunciates enforcement of the arbitral award being akin to decree or judgement delivered by the court, with that the *Section 27 of the Mediation Act, 2023*¹¹ enunciates enforcement of the decision being akin to a decree or the judgement, but the problem is that the award is appealable under *Section 34 of the Act*¹² and the same is the case for the mediation decision which affects the enforceability of the mechanisms under ADR which would lead to reintroduction of the litigation in the matters.

The Court under *Section 89 of the CPC*¹³ their referral of the cases to other mechanisms like arbitration and mediation causes procedural delay in the proceedings and the completion of the proceedings to be difficult as in the court jurisdictions with the high case burden struggle to schedule and the appointment of the arbitrators, with that the appeals under the arbitration and mediation resulting in completion delay. In *Sundaram Finance v. NEPC India Ltd*¹⁴, the Apex court considered the difficulties with the enforcement of arbitral awards according to the Civil

⁸ Mankastu Impex (P) Ltd. v. Airvisual Ltd., (2020) 5 SCC 399.

⁹ Union of India Vs. Hardy Exploration and Production (India) Inc. (2019) 13 SCC 472.

¹⁰ Arbitration and Conciliation Act, 1996, § 36, No.26, Acts of Parliament, 1996 (India).

¹¹ Mediation Act, 2023, § 27, No.32, Acts of Parliament, 2023 (India).

¹² Arbitration and Conciliation Act, 1996, § 34, No.26, Acts of Parliament, 1996 (India).

¹³ Code of Civil Procedure, 1908, § 89 No. 5, Acts of Parliament, 1908 (India).

¹⁴ Sundaram Finance v. NEPC India Ltd. (1999) 2 SCC 228.

Procedure Code (CPC). The Court found the following problems: the delays and procedural obstacles in the implementation of these awards, the concerns with the effectiveness of ADR mechanisms within the CPC system. The case pointed out that the enforcement processes need to be enhanced in order to enhance arbitration.

Section 36(1) of the Arbitration and Conciliation Act, 1996¹⁵ stipulates that the legal validity or the enforcement of the arbitral awards as equal to the decree or judgment passed by the courts. This showcases that the Arbitration and Conciliation Act, 1996 is in consonance or relation with the Code of Civil Procedure, 1908 for the enforcement of the various agreements. **In Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd**¹⁶, the Apex Court postulated that the arbitral award is deemed to have the same binding and legal effect as a decree passed by the Court. And is equivalent to the decree of the court. **Section 34 of the Arbitration and Conciliation Act, 1996**¹⁷ which stipulates the provision of setting aside the decision made by the *arbitral tribunal* through the *arbitral award*. There are certain grounds that are enshrined under the following section through which the arbitral award can be set aside by the court that are as following:

- A) The parties are incapable of entering into a contract.
- B) The Arbitration agreement formed between the parties is void ab initio or not valid.
- C) The one of the parties is not given notice of proceedings.
- D) The nature of the dispute does not align with the terms set out for arbitration.
- E) The arbitration process is not being conducted in accordance with the agreed-upon procedures.

In **AKM Enterprise Pvt. Ltd v. Ahluwalia Contract (India)**¹⁸, the arbitral award was being set aside under Section 34 of the Act, by the court on the ground of the party not being given the notice regarding the proceedings. These provisions provide the parties to set aside an arbitral award on the grounds enumerated as the court being the ultimate guardian of the people. This

¹⁵ Arbitration and Conciliation Act, 1996, § 36(1), No.26, Acts of Parliament, 1996 (India).

¹⁶ Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24.

¹⁷ Arbitration and Conciliation Act, 1996, § 34, No.26, Acts of Parliament, 1996 (India).

¹⁸ AKM Enterprises (P) Ltd. v. Ahluwalia Contract (India) Ltd., 2019 SCC OnLine Del 7614.

is for the welfare of the parties in order to dispense justice keeping in mind “*equity*,” “*justice*” and “*good conscience*.”

Comparative Analysis of ADR in India and United Kingdom

The Alternative Dispute Resolution (ADR) systems in India and the United Kingdom both aims to establish effective, economical, and prompt ways of resolving disputes in comparison to traditional means of settling disputes common between the parties. Although both nations advocate for ADR as a method of dispute settlement, the methods and legal systems in both countries have some differences. The UK from the inception give top priority to the consumers and the implementation of Consumer Rights Act 2015 serves a very crucial function for the redressal of the consumers' grievances and corresponding to it there is the facility of settlement of disputes in a friendly manner including arbitration, negotiation and mediation. The basic agenda of the Act is to provide consumers and traders with an ability to settle disputes justly and effectively, thus protecting consumer rights in the marketplace.

Comparatively Indian Arbitration and Conciliation Act, 1996 was adopted considering the increasing demands for resolution of disputes by way of arbitration, conciliation and mediation as a practical and economical alternative compared to the conventional method of adjudication of the disputes through litigation. The primary agenda of the act is to reduce the burden that currently exists on the Indian Judiciary since there are a lot of cases that are pending in front of the courts. The act ensures resolution of disputes that are common between the parties and resolving it amicably with the “*Arbitrator*” issuing the “*Arbitral Award*” that is legally enforceable and binding upon both the parties. But here too the judicial interference is not limited the courts can step in where there is obvious illegality and the other requirements which are set out in **Section 34 of the Arbitration and Conciliation Act, 1996**¹⁹ The Indian Arbitration Act 1996 and the UK Arbitration Act, 1996 drew its origins from the UNCITRAL Model Law on International Commercial Arbitration for the settlement of disputes. The Indian Arbitration Act, 1996 not only enables the minimum intervention of the Judiciary but also emphasizes the jurisdiction provided to the Arbitral Tribunal which results in independence and autonomy to the Arbitrators for the issuance of the awards without pressure and without bias along with that the emphasis of Indian Arbitration Act, 1996 is also on the freedom of the parties. However, the main objective of the UK Arbitration Act, 1996 is on the minimal judicial intervention in

¹⁹ Arbitration and Conciliation Act, 1996, § 34, No.26, Acts of Parliament, 1996 (India).

arbitration, and with that the center of focus is also removing the procedural defects and there is an exception similar to the Indian Arbitration Act, 1996 that the courts can intervene where there is patent illegality in the award issued by the Arbitral Tribunal. The organogram design of both the Acts reflects various facets which makes them comparable.

The Indian Arbitration Act, 1996 is divided into four main sections which deals with different procedural aspects of the domestic as well as the international arbitration, which includes the provisions relating to the composition of the arbitral tribunal and with that the powers which are conferred by the court relating to the judicial intervention and review and it also states the enforcement process of the arbitral award. ***Section 16 of the Indian Arbitration and Conciliation Act, 1996***²⁰ provides for the independence of the arbitral tribunals to decide their own jurisdiction to resolve the disputes. Part II of the act focuses on the aspects of the international commercial arbitration and enforcement of the awards passed by the arbitral tribunal and the Geneva and New York Conventions. Part III of the Act prescribes the procedure for conciliation, and Part IV enshrines the general provisions. Conversely the UK Arbitration Act, 1996 also emphasizes general provisions, definition clauses, the process of initiation of the arbitration proceedings and the provisions pertaining to the composition and the eligibility of arbitral tribunal. As in the Indian Arbitration Act, 1996 Section 16 provides power to tribunals to determine the jurisdiction and on the same hand the UK Arbitration Act also postulates provision to determine the jurisdiction as enshrined under Section 30 of UK Arbitration Act, 1996.

The main emphasis of UK Act is mainly on domestic arbitration, but it also enshrines provisions pertaining to international arbitration and the enforcement of arbitral awards. Indian Arbitration and the UK Arbitration Act emphasizes amicable resolution of disputes through different mechanisms but the Indian Arbitration Act, 1996 covers more in terms of scope as it encompasses different kinds of disputes that can be settled through arbitration. On the contrary, the UK Arbitration Act, 1996 is more favorable to the consumer rights and is in concurrence with the UK Consumer Rights, 2015 rendering the Act consumer-oriented ultimately looking for the well-being of the consumers. The most distinguishing feature between the two nations is the legal system being adopted for the settlement of disputes. India has a civil law system, whereas the United Kingdom is a common law system. The difference affects application of ADR in both the jurisdictions. The UK's common law system is flexible enough to

²⁰ Arbitration and Conciliation Act, 1996, § 16, No.26, Acts of Parliament, 1996 (India).

accommodate modification of ADR procedures in line with specific case facts. The Indian civil law system is codified and more formal, with certain provisions applying to the process of arbitration and conciliation. In UK the functioning of the courts is very passive and minimal intervention during the arbitral proceeding occurs because the resolution of disputes by alternative methods is promoted and the courts in UK only interfere if there is any procedural irregularity during the arbitral proceedings.

Contrarily, the Indian courts are not only proactive in ADR because the courts themselves direct the parties to undergo ADR mechanisms when not envisaged under the contract as well as that the courts itself plays a significant role in the enforcement of the awards made by arbitral tribunal and thereby the courts serve as the guardian and the watchdog of the Indian citizens. Both nations identify the three main modes of ADR: mediation, arbitration, and negotiation and India identifies a fourth in conciliation. UK mediation tends to be voluntary and informal, with mediators serving as impartial facilitators to help parties agree on a solution. Mediation in India is formal, by authorized mediators that are appointed by the court. The Arbitration proceedings in both countries is centered on inclusion of an unbiased third individual known as "Arbitrator" who takes an active role in issuance of the awards that are legally binding and enforceable but there are variations in the manner the awards being disputed in both the countries.

The Indian Arbitration and Conciliation Act, 1996 permits opposition to the awards on numerous grounds such as contravention of public policy, corruption, serious procedural irregularities and patent illegality. The UK Arbitration Act 1996, on the other hand, offers a limited basis for challenging arbitral awards and concentrates more on matters of jurisdiction, serious procedural irregularities, or where there is a case of substantial injustice to the parties. Both nations have a very critical role to play in the recognition and enforcement of foreign arbitral tribunal as they are signatories to the New York Convention the international framework is established for this.

But foreign arbitral awards' enforcement is confronted with varying challenges in every jurisdiction. In UK, enforcement and recognition pursuant to the New York Convention is quite efficient and a simple process, either under summary procedures or by transmutation of an award into a domestic court judgment. Conversely, India has faced challenges of delayed enforcement and procedural flaws in the enforcement of foreign awards that can affect the

efficacy of the ADR process. In conclusion, though the United Kingdom and India share a similar objective of providing successful alternatives to litigation through ADR, their legislative systems and approaches differ significantly. The UK ADR law is far more consumer-centric, elastic, and judicial restraint-oriented, whereas India's legal system encourages ADR to a wider range of industries and focuses on decreasing judicial interference. Both nations, based on the UNCITRAL Model Law, have fashioned frameworks that mirror their individual traditions of law common law in the UK and civil law in India with the UK taking a more flexible approach and India encouraging a more formal and expansive application of ADR.

Conclusion and Recommendations

Alternative Dispute Resolution mechanisms aim to reduce the pendency of cases before the courts, with that there is a speedy and a flexible process which helps the parties to come to an amicable solution. However, there exists some incongruity in Section 89 of the Code of Civil Procedure, 1908 which hinders to process of dispensing the justice to the parties. In Section 89 of the CPC, there is nothing postulated about the jurisdiction in relation to the disputes of International Commercial matters which ultimately leads to the procedural delays with the completion of proceedings. As analyzing Section 89 of the Code of Civil Procedure, 1908 it postulates ***“where it appears to the courts there exists elements of settlement and is acceptable to the parties”***, herein the Code of Civil Procedure do not provide which type of disputes are to be settled outside the jurisdiction of the courts. In Mediation when the parties have undergone the settlement and there is the formation of a ***settlement agreement***, the parties have to again approach the court for the enforcement of the settlement agreement this again reintroduces the role of the courts for making the settlement agreement as binding. In making an arbitration agreement the parties must specific the laws prevailing in case of the dispute or must specific the ***jurisdictional seat***.

The ***“Law Commission in the 222nd Report²¹”***, recommended the need of ADR mechanism for dispensing justice with the ADR being a speedy and a cost-effective mechanism. In order to make the ADR mechanism effective and in conjunction with the CPC, there is a need of public awareness about the various benefits of ADR and with that there is a need to streamline the procedure regarding the enforcement of the ***settlement agreement*** in Mediation. There is a need of a statutory and an independent body for the Mediation with the requisite procedural rules

²¹ Law Commission of India, 222th Report, Need for Justice-dispensation through ADR etc., (April 2009).

and the code of conduct governing mediation proceedings which would ultimately help the party for the enforcement of the settlement agreement without reinforcing the path to courts. The judiciary must have a pro-active role in making the parties aware about the various mechanisms of ADR in cases related to matrimonial, commercial matters.