ALTERNATIVE DISPUTE RESOLUTION MECHANISM

By

Dr. Chetna Upadhyay

ISBN: ***978-1-329-83408-8***
First Edition: New Delhi, 2016

Published and Printed by **ISARA PUBLICATIONS**

B-15, Vikas Puri, New Delhi 110018

ACKNOWLEDGEMENT

Firstly I owe my gratitude for completion of my research work to 'GOD' who I believe in a spiritual force behind all creation. Without GOD's blessing I was unable to complete my work.

I give my gratitude for the inspiration given to me by my father ***Late Shri H.N. Upadhyay*** (Inspector, MP Police) and my mother ***Smt. Anita Upadhyay*** who had dreamt that one day I would become a PH.D. holder. Today their dream is on the verge becoming true. My father who had always encouraged and promoted me to seek high education. The display of my gratitude towards him in words would be amounting to insulting him. His memories and inspiration always with me till the end of my life. I dedicate my PH.D. Degree to him with honour.

I am highly obliged and grateful to accomplish this work to my guide ***Dr. (Smt.) Mamta Rao***, Head, Law Department RDVV, whose inspiration , guidance and suggestions provided me with the desired strength and vigour required to accomplish such a stupendous task. This work was impossible to reach my destination without her support. I can't express my view in words to her. Words would be insufficient to describe what I learned from her. Her punctuality, readiness and dedication for work has inspired me every time throughout my research work.

I must register my thankfulness to ***Dr.(Mrs.) Divya Chansoria*** who has been important source of inspiration in completion of this work.

I must express my gratitude to My Loving Husband **Shri Atul Mishra Advaocate** M.P. High Court for their valuable suggestion and moral support whenever I needed.

My elder sister ***Smt. Indukala Mishra***, Younger Brother ***Ashutosh Upadhyay*** and Sister ***Neha Upadhyay*** has always inspired me and given me necessary support whenever I needed.

Ku. Chetna Upadhyay

Preface

ADR Mechanism is a system of dispensation of justice which has come into existence to grapple with the problem of giving cheap and speedy justices to the people. This form of redressal is contrived for enabling the common people to ventilate their grievances against the State agencies or against other citizens and to seek an amicable settlement, if possible. It aims that a quick, informal and inexpensive justice must be provided to the people in friendly spirit.

There is no denying the fact that the present system of administration of justice has become inadequate to meet the needs of time. It has badly failed to keep pace with the aspirations of the people. The system is cracking and is virtually on the verge of collapse. More than 2.6 million cases are reported to be pending in the Supreme Court and the position in High Courts, District Courts and Subordinate Courts is stated even more alarming. Thus, the case load is so heavy that the Court-cart is grinding to a hault and managerial overhaul of the judicial process is the need of the hour. There is a dire need for a comprehensive inquiry into the roots of our existing judicial system. There is a great contradiction for the reason that our legal system is still a colonial heritage and of Victorian vintage whereas our Constitutional scheme makes justice in its true aspects, social, economic and political- the highest imperative of Freedom and entrusts judicial administration to an independent instrumentality. How long shall we continue to deny justice, which is after all a Constitution Commitment to our people. Obviously speaking, if we continue to deny it for long, we will do so only by putting our political democracy, which our Constituent Assembly has so laboriously built-up, peril. The solution must, therefore, be original. Pt. Nehru rightly summed up the whole situation in the following words:

"We must realized that 19th century system has passed away and has no application to the present day needs……It has to give away and be scrapped as obsolescent material".

The reasons advanced for the cause of ADR are strikingly similar in most part of the world whether developed or developing. Court congestion, delays, expenses and procedural inconveniences are the usual arguments that seek to justify the search for alternatives. The pressure on the judiciary due to large number of pending cases has always been a matter of concern as that being an obvious cause of delay.

The **loss of social harmony** due to litigation and the **success of the process in other nations** are the other compelling reasons to advance the cause of ADR A quick glance at the global scenario of ADR mechanism reveals its popularity in various countries. In the UK, work on ADR mechanism started in 1975 with the formation of the Advisory, Conciliation and Arbitration Service (ACAS), a

government funded but independent body. In USA, it was the historic 'Roscoe Pound Conference' of 1976 which profoundly influenced and transformed both ADR and the American legal system. As a result of the large-scale integration of ADR movement in USA, today approximately 90% of the civil disputes are settled outside the courts. Similarly, in Europe, mediation is seen as a promising mechanism for the resolution of disputes. In 1995, France expanded the legislative basis for judicial conciliation and mediation. In Japan, every judge is expected, both by law and litigants, to move a case towards settlement, which has the force of statutory law. Alternative Dispute Resolution Mechanism is also an inevitable part of any trade and commerce. International trade and commerce cannot be an exception to this basic premise. ADR Mechanism also gained recognition in International Law for resolution of international dispute through peaceful means. It has always been the objective of international law to develop means and methods through which the disputes among the nations may be resolved through peaceful means and on the basis of justice. In this connection, the rules of international law are partly in the form of customs and partly in the form of law-making treaties. The two Hague Conference of 1899 and 1907, the covenant of the League of Nations and the United Nations Charter deserve special mention in this connection. The method of the settlement of international disputes is a pacific means of settlement In this connection, the rules of international law are partly in the form of customs and partly in the form of law-making treaties.

There is coming a new trend in every field that if dispute arises party will prefer to resolve their dispute by settlement, if there is some possibility for that. According to this view, every laws consists of some dispute resolution methods so that party will not go to the Court and arbitration, conciliation, mediation and lok adalat will resolve their disputes. It is important that the legislature introduce certain provisions which discourage initiation of litigation in cases where out of court settlement can easily be worked out. Cases under the **Hindu Marriage Act (1954), Motor Vehicle Act (1988), Industrial Dispute Act (1947), The Consumer Protection Act (1986), Arbitration and Conciliation Act 1996** and **The Contract Act (1872)** etc. where the major cause for initiation of litigation is conflict of interest of the parties involved. **The Family Courts Act 1984** provisioned for the establishment of family courts with a view to promote conciliation and to secure speedy settlement of disputes relating to marriage and family affairs. So we can say that evolution of new juristic principles for dispute resolution is not only important but imperative. In India the need to evolve alternative dispute resolution mechanism simultaneous with the revival and strengthening to traditional system of dispute resolution has been reiterated in reports of expert bodies.

The role of judiciary is inevitable in Dispute Resolution. As stated that,

"The Court of this county should not be the places where resolution of disputes beings. They should be the places where the disputes end after Alternative Methods of Resolving Disputes have been considered and tried."

The pressure on the judiciary due to large number of pending cases has always been a matter of concern as that being an obvious cause of delay. The culture of establishment of special courts and tribunals had started early in independent India. The rationale for such an establishment ostensibly was speedy and efficacious disposal of certain types of offences. Tribunals were also set up through statutes to deal with specific issues as alternative to adjudication in regular court. The delay and efficiency reasons were further supplemented by the need to include specialists or persons well versed in the issue, in adjudicatory process as a means of achieving a just end. ADR system seeks to provide cheap, quick and accessible justice.

So precisely saying, ADR mechanism aims to provide justice that not only resolves dispute but also harmonizes the relation of the parties.

Thus the study **A Study of Alternative Dispute Resolution Mechanism in the Adjudication of Dispute (with special reference to Arbitration and Conciliation Act 1996)** revolves around the ADR methods, the ADR concept in International scenario, Indian scenario, various laws and judicial attitude. The research lays down various recommendations for the improvement in ADR mechanism.

Table of Cases

A

B

Bharat Petrolium Corporation Ltd. Ex-Employees Association v. Bharat Petrolium Corporation Ltd. AIR 1991 SC 1971.

Bhatia International v. Bulk Trading S.A. (2002) S.C.R. 411.

Bhoomatha Para Boiled Rice and Oil Mill v. Maheswari Trading Company, AIR 2010 AP 137.

Bisleri International Pvt. Ltd. (M/s) v. Sun Petpack Jabalpur Pvt. Ltd. (M/s), 2010(1) M.P.H.T.200(DB).

Bombay Port Trust Employees Union v. Union of India (1988) II LLJ 39.

Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. & Ors., Civil Appeal No. 5440 of 2002, decided on 15th April,2011.

Branch Manager, Magma Leasing & Finance Limited v. Potluri Madhavilata, 2009 (10) SCC 103.

Brook Bond India Ltd. v. The workmen AIR 1981 SC 1660.

Brooks v. Civil Aviation Authority, (2000) [ADR - ombudsmen - Pensions Ombudsman – investigations].

B.S.N.L. v. Telephone Cables Ltd. 2010 (4) Civil LJ 212 (SC).

C

Cable & Wireless plc v. IBM United Kingdom Ltd., [2002] QBD.

C v. C, [2003] CA.

Champsey Bhara Co. v. Jiwaji Balloo Spinning and Weaving Co.Ltd. AIR 1923 P.66.

Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., (1987) 2 SCC 107.

Cowl and others v. Plymouth City Council, [2001] CA[ADR - courts powers in disputes between public authorities and the public - importance of avoiding litigation].

CPMDPTM Sangam v. State of Tamil Nadu,(1986) I LLJ303;

D

Dr. Pratap Singh Hardia v. Sanjay Chawrekar 2009 (2) M.P.H.T. 351 (DB) = 2009 (1) MPLJ 471 = ILR (2009) MP 450.

Dr. Smt. Shashi Pathak v. Charan Singh Verma, AIR 2009, Allahabad 109.

F

FCI v. J Mohinderpal AIR 1989 SC 1263, 1266.

Food Corporation of India v. Jogindarlal Mohindarpal 1989(2) SCC 347.

G

G. Someshwar Rao v. Samimeni Nageshwar Rao, (2009) 14 S.C.C.677.

Gannon Dunkerley & Co. v. Union of India, AIR 1963 Pat 71.

Gas Authority of India Ltd. v. Spie Capag, AIR 1994 Del.75.

Gaurav Nagpal v. Sumedha Nagpal case, 2009 SCC(3).

General Manager, Security paper Mill v. R.S. Sharma , 1986 Lab IC 667(670) SC.

Ghanshyam Dass v. Domination of India, (1989)3 SCC 46.

Grindlays Bank v. Central Government Industrial Tribunal , AIR 1981 SC 606.

Gujrat Urja Vikas Nigam Ltd.v. Essar Brook Bond India Ltd. v. The workmen ,AIR 1981 SC 1660(1983)II LLJ 476 (Bom.)

Guru Nanak Foundation v. Rattan & Sons AIR 1981 SC 2075.

Guru Nanak Foundation v. Rattan Singh & Sons, AIR 1981 SC 2073 (Pg.2076).

Gulzar Begum v. Lok Adalat, W.P.NO. 14956 OF 2010, DECIDED ON 24TH MARCH 2011.

H

Hakam Singh v. M/s Gamon (India) Ltd. AIR 1971 SC 740.

Halsey v. Milton Keynes General NHS Trust and Steel v. Joy and Halliday,[2004].

High Court of Kerala in Bini v. K. V. Sundaran, AIR 2008 Kerala 84.

Hitesh Narendra Doshi v. Jeshal Hitesh, Doshi, 2000(2) Hindu L.R.(A.P.)(D.B.)45: AIR 2000 AP 362.

Hurst v. Leeming, [2002] Ch Div.

Hussainara Khatoon(1) v. Home Secretary State of Bihar,(1980) 1 SCC 81.

I

Indian Oil Corporation Ltd. v. M/s SPS Engineering Ltd., Civil Appeal No. 1282 of 2011, Decided on 3-2-11.

Indian Oil Corporation Ltd. v. Raja Transport (P) Ltd. 2009 (8) SCC 520.

J

Jagraj singh v. Birpal kaur case, 2007 SCC(3).

Jagtar Singh and another v. State of Punjab and others Vellikannu v. R. Singaperumal, AIR 2005 SC 258.

Jammu Kashmir State and others v. Devdatt Pandit (1999) 6 JT SC 283.

Jai Prakash v. National Insurance Co., SLP (civil) Nos. 11801-11804 of 2005; Decided on 17-12-2009; SC.

Jeevan Industries v. Hali Bawhruddin, AIR 1975 Del.215.

K

K.A. Abdul Jalees v. T.A. Sahida, (2003) 4 SCC 1667.

Kalpana Kothari v. Sudha Yadav and Ors., (2002) 1 SCC 203.

Kailash Rani Dang v. Rakesh Bala Aneja, AIR 2009 SC 1662.

K. K. Modi v. K. N. Modi, AIR 1998 SC 1297 at 1302.

K.N. Govindan Kutty Menonv. CD Shaji, SCC 2007.

Krishna Bai (Smt.) v. Hindustan Steel Limited , 2009(2)M.P.H.T.26(CG).

Kotwal J. Kashmir Ceramtics Ltd. v. Labour Court, 1980 Lab IC 192 (J&K).

Kurnal Leather Employess Union v. Liberty Footwear Co., AIR 1990 SC 247.

L

L. Chandra Kumar v. Union of India (1997) 3 SCC 261, 303-305.

Life Insurance Corporation of India v. Suresh Kumar, (2011) 7 SCC 491.

Love Kumar v. Sunita Puri, AIR 1997 Punjab and Haryana 189 : 1997 (1) HLR 179.

M

Mcdermott International Inc. v. Burn Standard Co. Ltd. and others.,2006(6) SCALE220=2006 AIR(SCW)3276.

M/s Atlas Export Industries v. M/S Kotak and Company , AIR.1999 SC 3286.

M/s Avon Services (Production Agencies) Pvt. Ltd v. Industrial Tribunal Faridabad, (1978), L.L.N. 503.

M/s. Bel House Associates Pvt. Ltd. v. General Manager, Southern Rly. Chennai M.M.T.C. Ltd. v. Sterlite Industries(India) Ltd.: AIR 1997 SC 605:1996 (4) ALT 42 (D.N.) : 1996(8) SC 385.

M/s. Group Chimique Tunisien SA v. M/s Southern Petrochemicals Industries Corpn. Ltd., 2006 (5) ALT 48 (SC) : 2006 (6) SCJ 363 .

M/s. Kamla Solvent v. Manipal Finance Corporation Ltd., AIR 2001 Mad. 440.

M/s. Sundaram Finance Co. Ltd. v. M/s. NEPC India Ltd., AIR 1999 SC 565.

M/s Thakral and Sons v. Indian Petro Chemicals Corporation Ltd. AIR 1994 SC 226 at P. 231.

M/s. Oriental Structural Engineers Ltd. v. M/s. Rites & another, AIR 1999 Del.303.

M/s. India Machinery Stores (Pvt.) Ltd. v. Presiding Officer, Labour Court, Patna, AIR 1990 SC1781.

Management of the Needle Industries v. The Labour Court,(1986) I LLJ 405.

Management of Binny ltd.(B and C) Mills v. The Government of TamilNadu 1989 I LLJ 180 (Madras).

Mc Cook v. Lobo., [2002] CA.

Meena Choudhary v. Dr. Dilip Choudhary, C. W .J .C. NO. 14426 of 2009.

Mercantile Employees Association v. State of Kerala and others,(1988) I LLJ377.

Mohinder Pal Kaur v. Gurmeet Singh, (2002)(1)Hindu LR (Pb&Hry) 537.

Mohd Akbar v. Attar Singh, AIR 1945 PC 170.

Moti Ram (D) Tr. LRs. v. Ashok Kumar and another.

Murlidhar Aggarawal v. State of Uttar Pradesh (1975) 1 S.C.R. 575.

Municipal Corporation, Gwalior v. A.P.S. Kushwaha (SSI Unit) (M/s), 2010(2) M.P.H.T. 338 (DB)= 2010 (1)JLJ 331.

Mysore Cements Ltd. v. Svedala Burmac Ltd.,(2003) 10 SCC 375.

N

N.B.C.C. Ltd. v. J.G. Engineering Pvt. Ltd. AIR 2010 SC 640: 2010 (2) SCC 385.

Nagaraju v. Oriental Insurance Company (1996) 4 SCC 647.

Nandyal Co-operative Spinning Mills v. Mohan Rao, (1993) 2 SCC 654.

Nandan Biomatrix Limited v. D1 Oils Limited, 2009 (4) SCC 495.

New India Insurance Co. Ltd. v. Smt. Shanti Mishra, AIR 1976 SC 237.

N.P. Lohiya v. N.K. Lohiya & others Balmukund Pandey v. V.K. Singh, AIR 2010 MP 117.

O

Oil and Natural Gas Corp. v. Saw Pipes Ltd. (2003) 5 SCC705.

Oil & Natural Gas Corporation v. Wig Brothers Builders & Engineers Pvt. Ltd., 2010 (4) Arb LR 375 (SC).

Orient etc. Ltd. v. Brace Transa Corporation, AIR 1986 GUJRAT 62.

P

Peoples Union for Democratic Rights v. Union of India .AIR 1992,SC 1473-1478.

P.Virudhachalam and others v. Management of Lotus and others . 1998 SCC L& S 342.

R

R. (on the application of Cowl) v. Plymouth CC., [2001] 1 W.L.R. 803.

Raghunath Das v. Union of India. AIR 1969 sc 674.

Raipur Authority v. Chokhamal Contractors, AIR 1990 SC 1426.

Rajesh Kumar Sexena v. Nidhi Saxena, 1995 (1) HLR.

Relience General Insurance Company v. Vijay Kumar, C.W.P.N.20825 of 2010.

Renusagar Power Co. v. General Electric Co. (1994) 1 S.C.R. 22.

R.M. Investment Trading Co. v. Boeing Co., AIR 1994 SC II 36.

S

Sabyasachi v. Swapan, (1994) 75 1 Arb LR Cal.
Salecha Cables v. H.P.S.E. Board, (1995) 1 Arb. LR 422 (MP).

Salem Advocates Bar Association v. Union of India (2005) 6 SCC 344, 375- 379.

SBP & Co. v. Patel Engineering Ltd., 2005 (8) SCC 618.

Secretary, India Tea Association v. Ajeet Kumar Bharat' AIR 2000 SC 507.

Shambu Nath v. Bank of Baroda AIR 1978 SC 1088.

Shiv Kumar Gupta v. Laxami Devi Gupta, 2005 (1) HLR 483.

Skandia Insurance Co. Ltd. v. KOKILABEN, (1987) 2 SCC 654.

Skypark Couriers v. Tata Chemicals, II (2000) CPJ 6(SC).

Sime Darby Engineering SDN. BHD. v. Engineers India Ltd. AIR 2009 SC 3158: 2009 (7) SCC 545.

Sitanna v. Viranna AIR 1934 SC 105.

S. N. Prasad v. Monnet Finance Ltd., 2010 (4) Arb. LR 205.

State of Haryana v. S.L. Arora and Company, AIR 2010 SC 1511: 2010 (3) SCC 690.

State of Jharkhand v. Rites Ltd. AIR 2010 Jhar 86.

State of Madras v. C.P. Sarathi, AIR 1953 SC 53.

State of Punjab & another. v. Jalour Singh & Others., Civil Appeal No.522 of 2008, 18 January 2008.

State of Punjab v. Jalour Singh, (2008) 2 SCC 660.

State of Punjab v. Jalour Singh, (2008) 2 SCC 660, para 8 and 10.

State of Tamil Nadu v. Subramaniam, (1987)II LLJ 106 .

State of Uttar Pradesh v. Chandrika 2000 Cr.L.J. 384(386). State of M.P. v. Bastar Oil Mills & Industries, 2001 (2) SLT 336.

State of West Bengal v. National Builders, AIR 1994 SC 200.

T

Telecom Conway Divers Mazdoor Sangh & authorities v. State of Bihar, 1989 AIR 73 (SC).

Textile workers v. Linclon Mills AIR 1957.

Tirath Lal Dey v. Smt. Bhuwanmoyee dasi, AIR 1949 FC 195.

The Steelworkers Trilogy cases, 1960.

U

Union of India v. Birla Cotton Mills, AIR 1967 SC 688.

United India Insurance Co. Ltd. v. Ajay Sinha, (2008) 7 SCC 454.

Union of India v. Saravana Constructions Pvt. Ltd. AIR 2010 Mad 6 at 12.

Uttar Pradesh Co-operative Federation Ltd. v. Three Circles 2009 (10) SCC 374.

V

Vakil Prasad Singh v. State of Bihar, A.I.R. 2009 S.C. 1822.

V. K. Constructions v. Army Welfare Organization, (1995) 1 Arb LR 184.

Vijay Kumar Sharma v. Raghunandan Sharma, 2010 (2) SCC 484.

Vijay Kumar Sharma v. Raghunandan Sharma AIR 2010 (2) SCC 486.

Virendra Singh Bharat, Judicial Courts v. Lok Adalats, A.I.R.1987, Journal Section, p.6.

Venture Global Engineering v. Satyam Computer Services Ltd., AIR 2010 SC 3371:2010 (8) SCC 660.

Vessel Mv 'Baltic Confidence' v. STC, AIR 2001 SC II 2381.

W

Wyatt v. Maxwell Batley, **(**2002) Ch Div.

1. INTRODUCTION

"Resolving conflict is rarely about who is right. It is about acknowledgement and appreciation of differences."

Thomas Crum[1]

1.1 Introduction of ADR mechanism

Alternative Dispute Resolution Mechanism has been part of our cultured heritage as in any other country. The Panchayat system was in vogue in India for several centuries and had effectively discharged the duty of dispensation of justice. With the Colonial Rule and British Legal system in place, the said mechanism gradually receded in the background. Now with the changed situation, it has become necessary to revitalize the ADR mechanism so as to overcome the innate problem of handling the staggering numbers of dockets in Courts throughout the Country. In India role of ADR is only supplementary, so as to help in resolution of the dispute in holistic manner and also help us to reduce pendency to certain extent. ADR Mechanism is a system of dispensation of justice which has come into existence to grapple with the problem of giving cheap and speedy justices to the people. This form of redressal is contrived for enabling the common people to ventilate their grievances against the State agencies or against other citizens and to seek an amicable settlement, if possible. It aims that a quick, informal and inexpensive justice must be provided to the people in friendly spirit.[2]

ADR is composed of different words: Alternative, dispute and resolution. Thus to clearly understand or define the phrase it is paramount important to understand each words separately thereof and then what 'Alternative' connotes? What about dispute? Is a dispute synonymous with conflict? What about resolution & adjudication?

1.1.1 Meaning of Alternative

ADR is defined in various ways. The National Alternative Dispute Resolution Advisory Council (NADRAC) has defined ADR as an 'umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them'[3]. ADR techniques may be used to determine some or all of the legal and factual issues in dispute.

The word 'Alternative' as to the definition given in 6th edition of Oxford Advanced Learners Dictionary refers "a thing that you can choose to or have out of two or more possibilities.[4]" Therefore the word in this context is used as an adjective and refers to all permitted dispute resolution mechanisms other than litigation, be it in court or administrative tribunal . Whereas, the phrase dispute resolution, in the absence of alternative as prefix, is simply a collection of procedures intended to prevent, manage or resolve disputes and refers procedures ranges from self-help in the form of negotiation through to state sanctioned mechanisms called litigation. It is to mean that, 'Alternative' connotes the existence of dispute settling mechanisms other than formal litigation. Though the word 'Alternative' in ADR seems to connote the normal or standard nature of dispute resolution by litigation and aberrant or deviant nature of other means of dispute resolution mechanisms, it is not really the case. ADR is not an alternative to the court system but only meant to supplement the same aiming on less lawyering. Now days there are arguments that ADR does not include arbitration and the proponent of this position say that Alternative Dispute Resolution encompasses various amicable dispute resolutions other than Litigation in court and arbitration. Indeed ADR Rules of The international Chamber of Commerce follows this approach. The preamble of the same rule reads as:

"Amicable settlement is a desirable solution for business disputes and differences. It can occur before or during the litigation or arbitration of a dispute and can often be facilitated through the aid of third party (the neutral) acting in accordance with these rules."

Needless to say most literatures and laws consider alternative dispute resolution as methods of dispute resolution which accommodates all the traditional dispute settling mechanisms other than court litigation. As arbitration shares many characteristics with other dispute resolution mechanisms than court litigation ADR in this material connotes all dispute resolutions out of litigation.

1.1.2 Meaning of Disputes

The other important word to define ADR is Dispute/ Conflict[5]. There is debate about whether a conflict and a dispute are synonymous. Apart this debate psychologist, Lawyers, Diplomats, and Public Servants all deal in their work with conflict/ dispute. Concerning the distinction between Conflict and Dispute, different people suggested the difference

in meaning between these words. Some people, for instance, define 'Conflict' as a form of competitive behaviour, like competition for scarce resource. Some see it as mere reflection of differences and an opportunity for personal growth. Still others only recognize conflict as armed conflict or war. The *Oxford Dictionary* defines "conflict" as:

1. An encounter with arms.
2. A fight.
3. Conflict of interests.
4. To be incompatible.

Webster's Dictionary has a broader definition:

1. Antagonism or opposition as between interests, or principles.
2. A conflict of opinion.
3. Discord of action, feeling, or effect.
4. Incompatibility or interference, as of one idea, event, or activity with another.

"Conflict" meaning: "perceived divergence of interests, or a belief, that the parties' current aspirations cannot be achieved simultaneously.[6]"

The nouns 'Conflict' and 'Dispute' are used interchangeably all time and indeed, are synonymous for each other in English Language, however. Still scholars, including Chornenki, draw slight distinction among the two words. 'Conflict' is the parent and disputes are the children and frequently, intervention is more important at parental level. Conflict is a phenomenon or condition with three aspects. It manifests itself through attitudes, behaviour and situations. This triangular image opens the prospect that conflict can be internal state of mind, an external act or an environmental situation. By contrast, Dispute is an issue –specific manifestation of conflict as to the same person. It usually has identifiable parties and articulated or defined /delineated points of difference between those parties. A dispute is the subset of conflict: conflict gives rise to and sustains dispute. This distinction, as to the above proponent, is very important because if a dispute is addressed in only superficial way without regard for the underlying conflict, it may recur or replaced by other similar or related disputes. Similarly, Folberg and Taylor also give the same definition for dispute as of Chornenki. To them '*a Dispute'is an interpersonal conflict that is communicated or manifested.* A conflictmay not become a dispute if it is not communicated to someone in the form of perceived incompatibility or contested claim as to them. Abebe Semagne in his unpublished thesis also quoted the meaning of dispute as;

"A conflict or controversy; conflict of claims or right; an assertion of right, claim or demand on one side met by the contrary claims or allegations on the other; the subject of litigation; the matter for which a suit is brought and which issue in joined; and in relation to which jurors are called and witness examined".

1.1.3 Meaning of Resolution

The other element of ADR is Resolution. The oxford Advanced Learner's Dictionary defines 'Resolution' as the act of resolving or settling a problem, dispute etc.

Thus, even if the phrase, i.e. ADR, defy precise definition, as to the above illustrations and different literatures, it is a generic term used to describe rang of procedure designed to provide a way of resolving a dispute as an alternative to court or administrative Tribunal procedure. For instance, Kerley, Hames and Sukys in their book entitled 'Civil Litigation' shortly define the phrase as methods to resolve legal problems other than court judgment.

1.1.4 Meaning of Adjudication

In the title Adjudication[7] word is also used it means that it is the process by which a dispute is presented to a judge, or a third party appointed by the judge (a panel of judges, a jury, and so on) for a legal decision that is binding and enforceable. Adjudication is the traditional way of resolving disputes by rendering a decision.

The decision is made according to legal precedent and application of relevant laws, which requires that the issues in the dispute be narrowly focused. The judge or jury as a third party imposes the solution upon the parties in the dispute. This is the process most known in societies all over the world, where the court appoints a judge who has the power to decide. The parties to the dispute employ lawyers who present their clients' arguments and evidence, and the judge rules and imposes his solution to the dispute. The parties to the dispute do not have control over the content or the process, and the result is usually a "win–lose" situation.

Thus we can say that ADR Mechanism is considered to be a process in which a dispute is settled in the active presence and involvement of a neutral agent. In its ideal form, ADR is perceived not only as resolving the dispute but also as placing back the relationship of the parties status quo ante

the conflict.[8] Alternative dispute resolution: alternative or methods and processes to prevent and resolve conflicts and disputes. Union Minister for Law and Justice, ***Veerappa Moily,*** speaking about the Consultation Paper on India's Arbitration and Conciliation Act, 1996, made the government's stand and intent adequately clear when he announced that:

"Within 3-4 years cases from overseas should come to India. We should become the most preferred ADR destination."

1.2 Historical Development of ADR

There is no clear information when exactly ADR had been used as means of dispute resolution but it quite possible to conclude its dating back to the history of human society since there were no courts to resolve differences during ancient time. Different scholars have showed the long history of ADR methods in their work. Here under we incorporated the full text of an article.[9] The article indicates the prevalence of the idea of ADR before 2000 years ago by showing the kind of debate in Talmud.

The modern –day methods and the issues raised by the difference between litigation and arbitration, have ancient roots. As this article demonstrates, the fundamental philosophical questions we face every day in the dispute resolution field were also faced by Rabbis and Hebrew sages nearly 2,000 years ago. The debates of these sages and their opinions are reflected today in our attitudes and laws about dispute resolution.

1.2.1 THE TORAH

The Bible (at this time after referred to by its Hebrew name "TORAH") contains one of the earliest legal codes. Throughout much of the TORAH, laws are prescribed and punishments are defined. Some of the laws prescribed are simple and…from today's perspective...Self-evident (e.g. the Ten Commandments); others are more arcane and obscure. The Torah contains laws that are both societal (what we think of as "criminal") and laws that are private (What we think of as "tortuous" and, in some case "commercial"). In the final book of the torah, Deuteronomy, mosses makes two long speeches to nation of Israel. The people's travel through the wilderness are nearing an end, and the Israelites are about to cross over the Promised Land. Moses' speeches in Deuteronomy are basically recapitulation of the laws recited earlier in the torah combined there with ominous injections that the laws must be strictly observed. Not only does

Moses recite the substantive laws themselves, he also speaks about the nation of Israel about resolution of disputes. Speaking about creation of a leadership structure of his people, Moses says:

I charged your magistrate at that time as follows, "Hear out your fellow men, and decide justly between any man and fellow Israelite or a strange. You shall not be partial in judgment: hear out low and high like. Fear no man, for judgment is God's. And any mater that is too difficult for you, you shall bring to me and I will hear it." Moses' words seem basic laws were announced; judges were appointed. The judges function was to decide dispute fairly through application of law. Complex cases can be brought before Moses himself, who would sit as a sort of Supreme Court. Correctness of the magistrates' rulings would be ensured through divine inspiration. Justice, impartiality and access to court are offered as guiding precepts but no alternative of the "Magistrates" is offered.

1.2.2 THE TALMUD

The Talmud (the word means "learning") was compiled between 1,600 and 2,000 years ago by rabbis in Jerusalem and Babylonia. Recorded over a period of four centuries, and combined with later-written commentary, the Talmud consists, in large part, of the studies and debates of Israel's leading scholars, predecessors of today's rabbis. The Talmud explores in a variety of ways the meaning of the Torah's ancient laws. Yet the Talmud was compiled many years after the Torah; the rabbis and the compilers of the Talmud were recording further details about the meaning of the Torah's laws. In studying and expounding on the Torah and its laws, the rabbis in the Talmud also debated methods of dispute resolution. Just like courts and arbitrators today the rabbis of the Talmud were faced with the question whether the "laws" were to be applied strictly or whether a broader sense of "Justice" and "equity" should prevail. Their answer is strikingly similar to our own modern attitudes about adjudication and arbitration. In the Tractate of the Talmud called "Sanhedrin," the rabbis discuss different approaches to dispute resolution. Which is more appropriate, they ask-- "Judgment" based on the strict law, or the "arbitration" of a "compromise". It was taught…." once a case has been brought to court, it is forbidden to arbitrate a compromise. Not only is compromise forbidden, but whoever arbitrates a compromise is regarded as a sinner, for compromise necessarily involves a deviation from Torah law to the disadvantage of one of the litigants. And whoever praises one who arbitrates a compromise blasphemes God". Rabbi Elieze explains that, Rather than compromise, "let the law cut through the mountain. Let even the most difficult case be decided according to the strict letter of the law, as it is said in Deuteronomy. Do not be afraid of

any man, for the judgment is God's. And similarly Moses, who was the first to judge Israel according to the Torah law, would Say: "let the law cut through the mountain". But his brother Aaron, who was not a judge, loved peace and caused peace to reign between a man and his fellow man…

Woven into this Talmudic discussion is a fundamental premise that remains with us today-- that arbitration involves the surrender of rights; it thus must be the product of consent.

Inherent in the "surrender" premise is that there is a difference between the strict application of law in the courts and the less-strict approach used in arbitration. Put differently, "rights" are at issue because of the substantive differences between the two approaches-differences that can act to the detriment of one of the parties. The wisdom of applying the letter of the law-and the divine interlocution that is assured in the Bible—is then cast into doubt by the reference to the contradictory philosophy of Moses' brother, Aaron. Aaron, the Talmud tells us, had a different attitude toward the resolution of disputes. While the details of Aaron's approach are not revealed in Torah or Talmud, the reference to Aaron appears to signal biblical legitimacy for an alternative approach to the resolution of disputes outside of the judicial system. As the High priest of Israel, Aaron knew the laws well, and he could have applied them as did Moses, but we are told that he chose not to do so. It will not go un-noticed to those experienced in arbitration that Moses' brother Aaron is specifically identified as not being a judge. More important, however, is the fact that this Talmudic passage ends with the incursion of a new but logical goal for dispute resolution-the promotion of "peace" Leaving for another day the question whether arbitration is in fact more likely (than is litigation) to promote peace, it must still be observed that the colloquy leaves the ultimate question unanswered—which approach is superior, that of Moses or that Aaron? The Talmud next records a ruling on the desirability of an arbitrated compromise versus a litigated judgment, and ends with a not-unusual conundrum meant to inspire further thought: Rav said: the law is in accordance with the view of Rabbi Yehoshua ben korhah, that it is a mitzvah [a meritorious deed] for a court to impose a compromise…. But is it really so that Rav rules that a compromise is a mitzvah? Surely Rav Huna, who was a disciple of Rav, accepted his master's rulings, and whenever two people came before Rav Huna to have him adjudicate a dispute, he would ask them: " Do you want me to adjudicate the case and tender a judgment or do you want me to arbitrate a compromise?" Now if Rav ruled that a compromise is a mitzvah, why did his pupil Rav Huna offer the litigants a choice between judgment and compromise?

The question the Talmud asks here lies at the heart of the debate over the benefits and drawbacks of alternative dispute resolution ("ADR")- which method is preferable? The Talmud's answer is that "choice" is to be promoted, but that neither arbitration nor letter-of –the law judgment is so superior as to be preferred to the exclusion of the other. The next question might be: but why should the law promote a choice between a divinely-directed system and one that may act contrary to God's law? ADR "believers" may be content to rest their case with the citation to Aaron, though they are sure to add certain disbelief about the divine inspiration of judges.

A principal goal of dispute resolution, the Talmud explains, is creating peace ("shalom") between the disputants: … surely where there is judgment and adherence to the law, there is no peace between the two litigants. And where the litigation ends with peace reigning between the two parties, there is no true judgment for to arrive at absolute justice, we must strictly follow the letter of the law, which is usually only in one party's favour. How then can there be a judgment which attains peace? You must say that this verse refers to compromise. And similarly, regarding King David, the verse states: "And David executed judgment and charity to all his people." But surely where there is judgment and strict adherence to the law, parties, there is charity, or consideration given to the financial circumstances the two parties. And where there is charity, there is no judgment, for the law is one and the same for rich and poor. How then can there be a judgment which involves charity? You must say that this verse refers to compromise. King David is venerated in Jewish lore as being unerring; the reference to verse from David, with its linkage of "judgment" and "charity,' provides the biblical (albeit post-mosaic) basis for promoting an arbitrated rather than strict legal resolution of disputes. Those seeking rabbinic authority for a preference for arbitration can, however turn to another scholarly and authoritative work about the meaning of the Torah and Talmud. The "Shulchan Oruch" (literally the "prepared table") is a more-straightforward recapitulation of the Talmud. By the time of Shulchan Oruch (early 16th Century), the Talmudi "laws" and debates had become so complex that people Yearned for a simpler version to which they could turn for answers. The Shulchan Oruch thus tries to answer, in four well-organized volumes, the questions the Talmud asks. The Shulchan Oruch, written by Rabbi Joseph caro, settles the judgment/ arbitration issue as follows: It is a meritorious deed to compromise. "It is a mitzvah for the judge to ask the parties at the outset whether they want their dispute resolved according to the law or by the means of a compromise …" There can be no doubt that, again, the main emphasis is on honoring choice. But now, the thrust is not simply about honoring the parties' choice—arbitration and compromise have

not just been elevated to equal status with a court's strict judgment, arbitration is in a sense preferred. The judge must offer the parties a choice.

The statement that the judge himself does a meritorious act by offering arbitration at the outset is intended as a clear expression to the parties that the use of the arbitration alternative is sanctioned/encouraged. This passage from the Shulchan Oruch displays a certain judicial reluctance on the part of rabbis to apply the strict law. Other rabbinic interpretations support the concept of preferring arbitration. For example, an older piece of writhing from the 12th century—that of Rabbi Moses ben Maimon (Maimonides or RAMBAM) interprets the Talmud as favouring arbitration. The promotion of "peace" is the principal rationale offered. Like Rabbi Caro and the Shulchan Oruch, Maimonides preferred arbitration to letter-of the-law litigation. But it can also be observed that the Mosaci preference for judgment according to the strict letter of law was derived from a sense that both the law and the decision-maker are divinely directed. But a corollary of that "faith" is that unlike God (and perhaps Moses), humans are fallible, and that God does not necessarily intervene to assure the correctness of every judicial act. The rabbis thus favour arbitration/compromise because it reduces the potential for grievous error. Put differently, a middle-ground solution reduces the adverse consequences of the judge being totally wrong; the potential for injustice is there by reduced-and justice is the first and foremost goal.

These biblical and rabbinic texts throughout stress the theme that all dispute resolution systems be fair and impartial, and driven by the need to do "justice." Whether in litigation or arbitration, the decision-maker must do "justice." But the Talmud teaches that there is no presumption that strict application of law is necessarily more "just" than an arbitrated, less-legal solution. Indeed, in the later writings, there is, surprisingly, a preference for the looser approach characterized by what we think of today as ADR. It important to note that the Talmud cautions that 'the power of compromise is greater than the power of judgment', perhaps intended as a warning to arbitrators that they must always act with utmost discretion and thoughtfulness, rather than cavalierly or capriciously.

1.2.3 TODAY

Arbitration law today very much reflects the Rabbinic and Talmudic views on dispute resolution. Any individual who is aggrieved has ready access to the courts, and a right to strict application of the law—including resort in complex cases to appellate authority. The courts, we know, will not modify or ignore legal rules in the name of

compromise or peace, letting the proverbial chips fall where they may. But our law also recognizes that if an agreement to arbitrate exists, the right to go to court and insist on strict application is surrendered. The Federal Arbitration Act ("FAA") Section 2, provides**:**

Validity, Irrevocability, and Enforcement of Agreements to Arbitrate: A written provision in any… contract… to settle by arbitration a controversy thereafter arising out of such contract… shall be valid, irrevocable, and enforceable, save upon such grounds as exists at law or in equity for the revocation of any contract.

Every state has a similar, if not identical, statute. There are, as well international treaties to the same effect. And as was the case with the Talmud, once in arbitration, the parties have no right to insist on strict application of law. Absent provision in the arbitration clause itself, and arbitrator is not bound by principles of substantive law or by rules of evidence. He may do justice as the sees it, applying his own sense of law and equity to the facts as the finds them to be and making an award reflecting the spirit rather than the latter of the agreement, even though the award exceeds the remedy requested by the parties. His award will not be vacated even though the court concludes that is interpretation of the agreement misconstrues or disregards its plain meaning or misapplies substantive rules of law, unless it is violative of a strong public policy or is totally irrational, or exceed a specific enumerated limitation on his power. Comparing the FAA and the Silverman case with the Rabbinic discussion, one sees a modern judicial attitude identical to that of the Talmud. The agreement, i.e." choice," is the main element. Once the choice is made to arbitrate, the parties enter into a different system and there is no turning back.

The system described by the New York court of Appeals in Silverman is just like the one the rabbis described in the Talud. The arbitrator has discretion to fashion a solution that the strict law might not support. The comparison of the cases and the centuries- old discussion by the sages reveals that the commonly-recited benefits of arbitration-an emphasis on equity over law, greater flexibility, virtual finality and, yes, the promotion of peace, go back a long, long way. In a sense the Court is reminding arbitrators what the Talmud warned two millennia ago-that the "power of compromise is greater than the power of law" that power must be exercised with the same degree of justice as is mandated by the law itself. Now we can summarized this as follows; These passages, now and old offer "Sages'" advice for the arbitration community today.

1. Arbitrators are not judges, and arbitration is not meant to be a court of law;

2. Arbitrators should not apply the law in the same strict way that a judge does that goes for procedures and the rules of evidence as well; and

3. Arbitrators must never lose sight of the principle that their overriding obligation is to provide access to all who are aggrieved, to act impartially, and most of all-to do justice.

Informal dispute resolution has long tradition in many of the World societies dating back to the 12th century in China, England and America. However, 1970s law reform movement in USA had played a great role for the further development of the same. In USA in the middle of the 20th century, legal and academic communities began to have serious concerns about the pitfalls of increased litigations because, even though legislations of the time granted a broad range of rights and individual protection, the search for redress of those rights while they are infringed through legal system was becoming a complex exercise. Adjudication of disputes was characterized by the court congestion, high legal cost and waiting for long hours in courts. The emphasis of the court and other traditional forum was pronouncing rights and wrong. And naming winner and loser destroy almost any pre-existing relationships between the people involved.

The cost, the stresses and inaccessibility of ways to resolve conflict other than through the popular alternative of fight and flight caused people to drop out or to seek extreme techniques to make their points. There for against back drop of formal litigation, new methods of settling disputes had been emerging both in and out of the court. The Roscoe Pound Conference in Saint Raul, Minnesota [10] is well known phenomenon in the history of growth of Alternative Dispute Settlement Mechanisms. The conference was summoned by a person named Warren Burger, a former Chief Justice of USA. It was a conference to discuss the causes of popular dissatisfaction with the administration of Justice at the time and to find new and better ways of dealing with disputes. In this conference academics, members of the judiciary and lawyers participated. The Pound Conference served to spark the interest of legal establishment in alternative ways of dispute settlement. And a lot of changes had taken place on aftermath of the Pound Conference: rapid growth of techniques of settling disputes and emergency of new institution and professionals to use them.

After the Pound conference, the American Bar Association established a special committee on minor dispute, which has now become the special committee on dispute resolution. Law schools and schools of business offered some alternative dispute resolution courses as part of their curriculum. Insurance companies used ADR to handle claims with the growing demands of clients to resolve disputes though ADR mechanisms, law firms appointed ADR coordinators as a response. Troubled families who used to go to the court began to mediation. And following this trend a number of jurisdictions required divorcing couples to try mediation before the courts would resolve their dispute for them. States become to treat ADR in their law. The American Congress in the late 1990 passed the Administrative Dispute Resolution Act, which requires the Federal Agencies to develop policies on the use of ADR, appoint ADR specialists and provide appropriate employees with training in ADR. In USA, the Civil Justice Reform Act was passed in 1990. It required all Federal district Court to create advisory Committees to consider ways of reducing the cost and delay of civil litigation, and directed these committees to consider the use of ADR to reduce cost and delay.

As ADR mechanisms are disseminated in many countries; countries developed innovative conflict management programs specific to their own cultures. Apart domestic effort by each states to use ADR, the International Community also resolved to use ADR on the same fashion. The international community, for example, use Arbitration clauses in International Trade contracts so as to reduce the back drop of litigation in court. International Arbitrations may be either ad hock, specified by parties in their contracts and administered and conducted in a manner defined by them or institutional incorporating rules, procedures and administration of Arbitration Institutions. Such Arbitration Institutions include the International Chamber of Commerce (ICC), head quarter in Paris, London Court International Arbitration (LCIA), The American Arbitration (A.A.A) and the International Centre for Settlement of Dispute (ICSID), established by the World Bank in Washington, D.C. The other Arbitration centres have been developed by the United Nations Commission on International Trade laws (UNCITRAL) of uniform set of culturally neutral Arbitral Rules for use of on world basis. The UNCITRAL rules have achieved wide acceptance for private as well as quasi-public International Disputes. India has recognized the Arbitration and Conciliation Act 1996 in this field.

There is no denying the fact that the present system of administration of justice has become inadequate to meet the needs of time. It has badly failed to keep pace with the aspirations of the people. The system is cracking

and is virtually on the verge of collapse.[11] More than 2.6 million cases are reported to be pending in the Supreme Court and the position in High Courts, District Courts and Subordinate Courts is stated even more alarming. Thus, the case load is so heavy that the Court-cart is grinding to a hault and managerial overhaul of the judicial process is the need of the hour.[12] There is a dire need for a comprehensive inquiry into the roots of our existing judicial system. There is a great contradiction for the reason that our legal system is still a colonial heritage and of Victorian vintage whereas our Constitutional scheme makes justice in its true aspects, social, economic and political- the highest imperative of Freedom and entrusts judicial administration to an independent instrumentality. How long shall we continue to deny justice, which is after all a Constitution Commitment to our people. Obviously speaking, if we continue to deny it for long, we will do so only by putting our political democracy, which our Constituent Assembly has so laboriously built-up, peril [13] The solution must, therefore, be original. Pt. Nehru rightly summed up the whole situation in the following words[14]:

"We must realized that 19th century system has passed away and has no application to the present day needs……It has to give away and be scrapped as obsolescent material".

In the light of the observation made by Pt. Nehru, the then Prime Minister of India, we must feel it that it is a warning to all of us to be creative and have activist approach to endeavour to overhaul the old methodology being adopted by our Courts on old lines. Moreover, we need the participation of the people in the process of justice. The cry of the time is to decentralize the administration of justice and make each and every person living even at the grass-root level involved and accountable in justice disbursement process [15]. Conflict is endemic to human society, among individuals and groups, and it is important to manage it. We find stories in the Bible, in the Islamic culture, among Native Americans, First Nations in Canada, and many other traditions that describe processes that have been used from the earliest times to find peaceful solutions to various disputes, and much can be learned from the past. In recent decades, the various conflict resolution approaches have become a widely accepted field both of academic study and of practice, with official and/or legislative functions in many countries. In international relations, they plays an increasing role in containing, managing and resolving potential sources of conflict. Litigation is the well-acclaimed process through which dispute settlement is sought in independent India [16]. It is a general perception that people tend to trust institutionalized mechanisms, especially those established in the public

sphere for dispute resolution. On the other hand, it is also argued that the faith in the present day justice administration system is gradually being eroded[17]. There exists a widespread feeling that the judicial system is on the verge of collapse[18]. The existing crisis in the judicial system, for some, is the justification for seeking alternatives[19]. When litigation is the mainstream and ADR, as the acronym suggests, the alternative[20], the legitimacy of the existence of alternatives needs to be validly established. Here, alternative is sought to remedy the problems existing in the conventional. It therefore becomes interesting and essential to conceptualize ADR as currently understood to understand its character.

1.3 Reasons for emerging ADR as a speedy justice tool

The reasons advanced for the cause of ADR are strikingly similar in most part of the world whether developed or developing.[21] Court congestion, delays, expenses and procedural inconveniences are the usual arguments that seek to justify the search for alternatives[22]. The pressure on the judiciary due to large number of pending cases has always been a matter of concern as that being an obvious cause of delay. Over 3.11 crore cases are pending in the country's Trial Courts and High Courts, Chief Justice of India K G Balakrishanan said. The CJI noted that there were 52,592 cases pending before the Supreme Court, over 40 lakh cases in High Courts and more than 2.71 crore cases in trial courts. CJI called for resorting to Alternative Dispute Resolution (ADR).[23]

The loss of social harmony due to litigation and the success of the process in other nations are the other compelling reasons to advance the cause of ADR. So here we can titled the reason for ADR as:

1.3.1 It takes minimum time for resolution of dispute

In India, an average time for a case to be disposed is varies case to case. In civil cases it took 10 to 15 years averagely, some time even more. There were cases which took hundreds of years also. In ADR the proceeding in very flexible and informal, so it took very little time to resolved matters. And save a lot of time compare to court proceedings. So speedy proceeding is one on best feature of ADR.

1.3.2 It cost's much less than litigation

One of the main reasons that parties wish to resolve their disputes outside of the courts is cost. Alternative dispute resolution usually costs much less than litigation. The litigation's fee and cost in court are very

high due to its long and unending procedure. And there is no balance between cost and benefit to parties While the ADR proceedings are time framed and speedy, the cost of ADR is comparative low and efficient. The parties can save their money by choosing ADR.

1.3.3 Certainty of positive results

In various situation parties themselves doubted could ever be settled or not? Yet, as with most disputes, even extremely charged, exceptionally complex disputes can be resolved through negotiations when both of the parties appreciate the risks of losing power over the end result. In Minnesota, many high-stakes cases of great complexity have been resolved through ADR, including securities fraud class actions, large business disputes, merger and acquisition claims, RICO claims, environmental disasters, and international transactions.[24]

The success of ADR was acknowledged by the American Bar Association's Standing Committee on Dispute Resolution:

"The use of ADR to resolve all pending litigation following the L'Ambience Plaza construction collapse in Bridgeport, Connecticut within 20 months of the disaster, a process that involved five judicial bodies, more than 44 plaintiffs, approximately 40 potential defendants, several government agencies, and nearly 200 attorneys, represents a dazzling display of the potential impact of the sophisticated use of ADR in complex cases."

– J. Michael Keating, Jr., ABA Dispute Resolution Kit (1989)[25]

1.3.4 Confidentiality in proceeding

Disputes resolved by courts are in public hearing. Even judgments pronounced are also public document. So it is publically accessible. While in ADR all proceedings were conducted in private and stay strictly confidentiality. Outstanding issues and undisclosed facts of proceeding are assured to be kept Confidentiality through an ADR mechanism**.**

1.3.5 Global Jurisdiction

Global disputes can be solved as per rules agreed in agreement, thereby avoiding the ambiguity inherent in being subjected to the jurisdiction of foreign courts.[26]

1.3.6 Speed

In judiciary the dates are scheduled by courts where in ADR dates can be scheduled by the parties and the panelist on agrees to meet. Compared to the court process, ADR is as fast as the parties want it to be.

1.3.7 Control

The parties can control some of the process like selecting what method of ADR they want to opt, appointment the panelist for their proceeding, the span of the process. In a mediations case, even the result different to the court proceeding, where the legal system and the judge control every aspect while ADR is much more flexible.

1.3.8 Mutual Approach

ADR proceeds in a more informal, flexible way. This maintains a optimistic business relationship between the parties. With mediation, specifically, the result is cooperation between the parties.[27]

Alternative methods of resolution is the need of the hour to speed up justice delivery and also for faster disposal of pending cases in various courts, said Madan B Lokur, Chief Justice, High Court of AP and chancellor, Nalsar University of Law, Hyderabad. "The parliament has also accepted the fact that there needs to be an alternative form of justice. Mediation and reconciliation methods may be one of these effective forms" he said. Lokur was speaking at the presentation ceremony of post-graduate diplomas to the students of Alternative Dispute Resolution (ADR).[28]

1.4 Kinds of ADR

1.4.1 Binding and Non-binding (According to law)

ADR mainly divided into two parts. It's *binding and non-binding* forms. It is important to distinguish between binding and non-binding forms of ADR. Negotiation, mediation, and conciliation programs are non-binding, and depend on the willingness of the parties to reach a voluntary agreement. Arbitration programs may be either binding or non-binding. Binding arbitration produces a third party decision that the disputants must follow even if they disagree with the result, much like a judicial decision. Non-binding arbitration produces a third party decision that the parties may reject. It is also important to distinguish between mandatory processes and voluntary processes. Some judicial systems require litigants to

negotiate, conciliate, mediate, or arbitrate prior to court action. ADR processes may also be required as part of a prior contractual agreement between parties. In voluntary processes, submission of a dispute to an ADR process depends entirely on the will of the parties.

1.4.2 According to nature

As diverse are the causes of disputes, varied are the models of resolving them. They are Court annexed, Community- based, rights-based, power-based, interest-based and legislative[29]. These models promise results either on a win-lose or win-win proposition. Now we can approach these ADR forms as:

1.4.2.1 Court annexed

Court-annexed[30] ADR includes mediation/conciliation—the classic method where a neutral third party assists disputants in reaching a mutually acceptable solution as well as variations of early neutral evaluation, a summary jury trial, a mini-trial, and other techniques. Supporters argue that such methods decrease the cost and time of litigation, improving access to justice and reducing court backlog, while at the same time preserving important social relationships for disputants.

1.4.2.2 Community Based

Community-based ADR is often designed to be independent of a formal court system that may be biased, expensive, distant, or otherwise inaccessible to a population. New initiatives sometimes build on traditional models of popular justice that relied on elders, religious leaders, or other community figures to help resolve conflict. India embraced lok adalat village-level people's courts in the 1980s, where trained mediators sought to resolve common problems that in an earlier period may have gone to the panchayat, a council of village or caste elders. Elsewhere in the region, bilateral donors have recently supported village-based shalish mediation in Bangladesh and nationally established mediation boards in Sri Lanka. In Latin America, there has been a revival of interest in the juece de paz, a legal officer with the power to conciliate or mediate small claims.

1.4.2.3 Interest Based

The interest-based approach is the one that is accommodative of the

interests of the Parties to a dispute. Rather than an endorsement of one's right through adjudication, the conflict is sought to be resolved by varied methods of intercession. This method is designed to bring out a win-win situation. This model is based on a consensual scheme where disputants themselves will be responsible for the result.

1.4.2.4 Legislative Based

In the legislative model, rules or laws will be made by the competent authority to solve an impasse. These rules could either provide a process by which disputes could be settled or could determine the issue itself.[31] This also would result in winner - looser situation or both the parties may find themselves at the losing end.

1.4.2.5 Power Based

Disputes could get settled within power structures, which are social, political or economic. When one party is domineeringly situated over the other, the relative positions determine the outcome of the dispute. This is referred to as the power-based model. This also creates a win-lose situation[32]. This model is used either independently or in combination with litigation.

1.4.2.6 Rights Based

The rights-based approach is one that is adopted in litigation or adjudication. Parties to the dispute contest on claims of 'rights' and the final decision is considered to be a vindication of the right agitated. This model creates winners and losers.

1.5 Application of ADR in

1.5.1 Civil matters

All other suits and cases of civil nature in particular the following categories of cases (whether pending in Civil Courts or other special Tribunals/ Forums) are normally suitable for ADR processes:

1.5.1.1 Cases relating to trade, commerce and contracts

In this category these types of disputes included as:

1. Disputes arising out of contracts (including all money claims);

2. Disputes between bankers and customers;

3. Disputes between suppliers and customers;

4. Disputes relating to specific performance;

5. Disputes between developers/ builders and customers;

6. Disputes between landlords and tenants/ licensor and licensees;

7. Disputes between insurer and insured.

1.5.1.2 Cases arising from strained or soured relationship

These disputes including as:

1. Disputes relating to matrimonial causes, maintenance, custody of children;

2. Disputes relating to partition/ division among family members/ co-parceners/ co- owners;

3. Disputes relating to partnership among partners.

1.5.1.3 Cases where there is a need for continuation of the pre-existing relationship in spite of the disputes including

1. Disputes between neighbours (relating to easementary rights, encroachments, nuisance etc.)

2. Disputes between employers and employees.

3. Disputes among members of societies/ associations, Apartments Owners Association**.**

1.5.1.4 Cases relating to tortuous liability including

Claims for compensation in motor accident/ other accidents.

1.5.1.5 Cases relating to consumer

Disputes where a trader/ supplier/ manufacturer/ service provider is keen to maintain his business/ professional reputation and credibility or 'product popularity'.

1.5.2 Criminal matters

A recent trend that can be noticed in the sphere of ADR is its applicability to the criminal matters. Mediation is the most sought after form of ADR, where the issue of criminal justice is concerned.

In order that the rule of law and justice can be administered properly, certain basic steps are to be taken by the state. As far as the picture of pendency is concerned in the civil cases, that can be tackled by the alternatives available such as the ADR mechanisms. But there is some doubt upon the application of ADR in criminal justice. In reference to the criminal justice, the term ADR encompasses a number of practices which are not considered part of traditional criminal justice such as victim/offender mediation; family group conferencing; victim offender-panels; victim assistance programs; community crime prevention programs; sentencing circles; ex-offender assistance; community service; plea bargaining; school programs. It may also take the shape of cautioning and specialist courts (such as Indigenous Courts and Drug Courts).

1.5.2.1 Plea Bargaining

Plea bargaining may be defined as an agreement in a criminal case between the prosecution and the defence by which the accused changes his plea from not guilty to guilty in return for an offer by the prosecution or when the judge has informally made the accused aware that his sentence will be minimized, if the accused pleads guilty[33]. In other words, it is an instrument of Criminal Procedure which reduces enforcement costs (for both parties) and allows the prosecutor to concentrate on more meritorious cases[34].

Keeping in mind that the pendencies of criminal cases have gone through the roofs, the Law Commission of India in its 142nd report suggested reform, which included implementation of plea bargaining in India.[35] Further, to reduce the delay in disposing criminal cases, the 154th Report of the Law Commission recommended the introduction of 'plea bargaining' as an alternative method to deal with huge arrears of criminal cases, which found a support in Malimath Committee Report. To give effect to the

recommendations, the draft Criminal Law (Amendment) Bill, 2003 was introduced in the parliament[36]. Despite a very huge hue and cry against the amendment, the amendment was accepted and with the effect of same, Chapter XXIA was added in the Code of Criminal Procedure, 1973. The said chapter contains Sections 265 A to 265 L, which deal with plea bargaining.
The concept of plea bargaining prevails in England, Canada, and most of the other nations of the British Commonwealth. Earlier Germany was referred to as "the land without plea bargaining". Subsequently, due to time-taking trials and increasing white-collar crimes in Germany, the system of plea bargaining was instituted by statute[37]. In United States of America, plea bargaining has a vital role to play. White J, in a US case of Brady v. Unites States [38]observed the validity of plea bargaining and upheld its validity.

1.5.2.2 Criminal ADR Programs

As far as the development of Criminal ADR procedures is concerned, it took birth from earlier "informal justice" programs.[39] There are various criminal ADR programmes that are running throughout the globe. Some of these are as follows:

1.5.2.2.1 Victim-Offender Mediation Programs (VOMP)

Also referred to as *victim-offender reconciliation programs (VORP)* or *victim reparation programs*, in most cases, its purpose is to promote direct communication between victim and offender. Victims who participate are provided with an opportunity to ask questions, address the emotional trauma caused by the crime and its aftermath, and seek reparations.[40]

1.5.2.2.2 Community Dispute Resolution Programmes (CDRP)

CDRP seek to dispose of minor conflicts that have not been disposed off and are clogging criminal dockets.

1.5.2.2.3 Victim-offender Panels (VOP)

VOP developed as a result of the rise of the victims' rights movement in the last two decades and in particular to the campaign against drunk driving. They often used to provide the convicted drunk drivers with a chance to appreciate human cost of drunk driving on victims and survivors. It also intends to decrease the likelihood of repeat offenses[41].

1.5.2.2.4 Victim Assistance Programs(VAP)

VOCA established[42] the Crime Victim's Fund, which is supported by all fines that are collected from persons who have been convicted of offenses against the United States, except for fines that are collected through certain environmental statues and other fines that are specifically designated for certain accounts, such as the Postal Service Fund.

1.5.2.2.5 Community Crime Prevention Programs (CCPP)

The community crime prevention[43] has included a plethora of activities, including media anti-drug campaigns, silent observer programs, and neighborhood dispute resolution programs.

1.5.2.2.6 Private Complaint Mediation Service (PCMS)

It provides the mediation as an alternative to the formal judicial process of handling criminal misdemeanor disputes between private citizens. PCMS gets its authority from Administrative Rule 9.02 of the Hamilton County Municipal Court.[44]

Apart from the above programmes, there are also available the mechanism of sentencing circles, ex-offender assistance, community service, school programs, and specialist courts. These programmes point towards a gradual shift from deterrence to reparation, as a mode of criminal justice in some nations. In a nutshell, they show the application of restorative justice.

1.5.2.3 Appraisal of Criminal ADR System

Some criminal ADR programmes like Victim-Offender Mediation Programs have been successfully mediating to bring justice between crime victims and offenders for over twenty years. There are now over 300 such programs in the U.S. and Canada and about 500 in England, Germany, Scandinavia, Eastern Europe, Australia and New Zealand.[45]
Some statistics from a slice of the North American programs reveal that about two-thirds of the cases referred resulted in a face-to-face mediation meeting; over 95% of the cases mediated resulted in a written restitution agreement; over 90% of those restitution agreements are completed within one year. On the other hand, the actual rate of payment of court-ordered restitution (nationally) is typically only from 20-30%[46].

1.5.2.3.1 Privatizing the public harm

With the growth of the ADR movement, Owen Fiss in his seminal article *Against Settlement,* argued that ADR advocates naively painted settlement as a "perfect substitute for judgment" by trivializing the remedial role of lawsuits and privatizing disputes at the cost of public justice[47].

1.5.2.3.2 Mediation mostly being followed

Mediation has been adopted in various countries as a means to resolve the criminal disputes. To be specific, mediation has been consistently applied in juvenile justice programmes.

As an example, Romania has been applying mediation to the field of Criminal Law. Articles 67-70 in the Law 192/2006 of Romania lay down provisions regarding mediation in the criminal cases[48]. In countries like Canada, England, Finland, and even in the United States, the system of mediation is being used to resolve the juvenile offences[49].

Though, the mediation of severely violent crimes is not usual, in a chunk of victim-offender programs, victims and survivors of severely violent crimes, including murders and sexual assaults, are finding that confronting their offender in a safe and controlled setting, with the assistance of a mediator, returns their stolen sense of safety and control in their lives[50]. The emphasis is upon healing and closure. But in cases of severely violent crimes, victim-offender mediation cannot replace punishment.

1.5.2.3.3 Not a flawless process

There have been several criticisms against the applicability of ADR in criminal disputes, which render ADR techniques unlikely to succeed. The victim-offender mediation considered to be highly emotionally charged. Further mediation is argued to be successful where there is a moderate level of conflict. Further, the offender may feel to be under pressure to reach an agreement, rather than genuinely seeking to repair the harm done.

Other criticisms include that ADR is an appropriate remedy, where the parties have an ongoing relationship (which provides a significant motivation to achieve reconciliation). But this is not usually the case with victim-offender mediations.

1.6 Advantages of ADR Mechanism

Advantages of the Alternative means of Dispute Redressal are:

1) The alternative means of dispute redressal can be invoked at any time, even if the matter is pending in the Court of Law. Similarly it can be terminated at any time except in case of compulsory arbitration.

2) The disputes can be resolved comparatively more economically and speedily. Disputes can be maintained as the personal subject-matter. Sometime disputes are resolved within one or two days' time because the procedure adopted by the mediator is controlled and consented by the parties. Thus, real solution of the dispute can be arrived at by the system of alternative means of dispute redressal.

3) The system of alternative means of dispute redressal can be followed without seeking legal assistance from the advocates-lawyers.

4) This system effectively reduces the work-load of the court.

5) Reliable information is an indispensable tool for adjudicator. Judicial proceedings make halting progress because of reluctance of parties to part with inconvenient information. ADR moves this drawback in the judicial system. The truth could be difficulty found out by making a person stand in the witness-box and he pilloried in the public gaze. Therefore, ADR is a step towards success where judicial system has failed in eliciting facts efficiently.

6) In Mediation or Conciliation, parties are themselves prodded to take a decision, since they are themselves decision-makers and they are aware of the truth of their position, the obstacle does not exist.

7) The formality involved in the ADR is lesser than traditional judicial process and costs incurred is very low in ADR While the cost procedure results in win-lose situation for the disputants.

8) Finality of the result, cost involved is less, the time required to be

spent is less, efficiency of the mechanism, possibility of avoiding disruption.

Finally, this system provides flexible procedure, strict procedure of law is not applicable to alternative means of disputes redressal.

2. ADR MECHANISM IN NTERNATIONAL SCENARIO

2.1 INTRODUCTION

Globally efforts are now being made to bring about dispute resolution in an informal manner; with speed; and at least expense. The reason for this trend is not far to seek! For the business community, pursuing litigation is not only time-consuming, but also an expensive proposition. Businessmen, particularly those involved in cross-border transactions, are focused on making optimal use of their time, energy and resources with the result that ADR is now preferred over court-room battles to iron out differences between the parties[51]. A quick glance at the global scenario of ADR mechanism reveals its popularity in various countries. In the UK, work on ADR mechanism started in 1975 with the formation of the Advisory, Conciliation and Arbitration Service (ACAS), a government funded but independent body. In USA, it was the historic 'Roscoe Pound Conference' of 1976 which profoundly influenced and transformed both ADR and the American legal system. As a result of the large-scale integration of ADR movement in USA, today approximately 90% of the civil disputes are settled outside the courts. Similarly, in Europe, mediation is seen as a promising mechanism for the resolution of disputes. In 1995, France expanded the legislative basis for judicial conciliation and mediation. In Japan, every judge is expected, both by law and litigants, to move a case towards settlement, which has the force of statutory law. It is not surprising that the Hong Kong International Arbitration Centre, one of the largest arbitration service centre in Asia, is of the view that "*Arbitration ascompared to litigation has become very popular for resolving the disputes. Similarly, conciliation and mediation find an increasing measure of support in future*."

Alternative Dispute Resolution Mechanism is also an inevitable part of any trade and commerce. International trade and commerce cannot be an exception to this basic premise. In this perspective Arbitration was found to be the appropriate dispute resolution mechanism, rather than the traditional court system.

The history of modern international commercial arbitration began in Paris, France under the auspices of the international Chamber of Commerce founded in 1921. The ICC International Court of Arbitration was established in 1923. The expanding horizons of international trade created a greater need

for close cooperation among the states to evolve a machinery for enforcement of arbitral awards arising from international commercial arbitration.

In this background, a Protocol on Arbitration Clauses (for short, "Geneva Protocol") was concluded under the auspices of the League of Nations on 24th September 1923, which came to be ratified by thirty states and came into force on 28th July 1924. Although the Protocol was named as the "Protocol on Arbitration Clauses", it also provided for arbitral procedure and execution of arbitral awards. One of the provisions of the Protocol, however, provided that each contracting state undertook to ensure the execution of the arbitral awards in accordance with the provisions of its national laws, if these arbitral awards were made in its own territory. The effect of this provision was that only domestic awards could be enforced under the Protocol by the courts of member states. This was one of the glaring shortcomings of the Protocol. In order to overcome the deficiencies exhibited by the Protocol, the League of Nations was instrumental in the conclusion of another treaty called the International Convention on the Execution of Foreign Arbitral Awards (for short, "Geneva Convention"). This treaty was concluded on 26th September 1927 at Geneva and was ratified by twenty-four states. This Convention came into force on 25th July 1929. As per Article 1 of the Geneva Convention, each contracting state was required to recognize as binding and to enforce, in accordance with the rules of procedure of its territory, an arbitral award made in the territory of one of the contracting states to which the Geneva Convention applied and which was between persons who are subject to the jurisdiction of one of the contracting states. In effect, Geneva Convention supplemented the Protocol by making it possible to enforce an arbitral award in a contracting state other than where the award was given.

Experience showed that the Geneva Convention failed to achieve its desired object. The most important reason for this was that the beneficiary of the award was required to show to the court, before which the matter came for enforcement, that the award had become final in the country in which it was made. So, the party opposing the enforcement of the award would effectively prevent its execution on the ground that the award was the subject matter of litigation in the country where it was rendered. The Convention also laid too much emphasis on the remedies that were open to the parties to invoke the law of the country where the award was given for the purpose of setting aside the same. The United Nations Economic and Social Council (ECOSOC), therefore, decided to convene a 'Conference to conclude a Convention on the Recognition and Enforcement of Foreign Arbitral Awards'. The Conference was held at New York from 20th May to 10th June 1958 and the new International Convention on the Recognition and Enforcement of Arbitral Awards was adopted by the Conference (held on 10th June 1958), which

came to be known as the New York Convention and which came into force on 7th June 1959. Article 1(1) of the New York Convention applied to the recognition and enforcement of arbitral awards made in the territory of the state other than the state where the recognition and enforcement of such awards was sought. It also applied to the arbitral awards not considered as domestic in the state where their recognition and enforcement was sought. The New York Convention thus marked a clear departure from the Geneva Convention as the latter was based strictly upon the principles of reciprocity and applied to arbitral awards made in the territory of one of the contracting states and between persons who were subject to the jurisdiction of two different contracting states. Hence, the area of operation of the New York Convention was wider than that of the Geneva Convention and the Protocol. Thus the stage was set for effective dispute resolution and enforcement in international arena. As we know, the United Nations Commission on International Trade Law (UNCITRAL) was established by the General Assembly resolution on 17th December 1966, with promotion of the progressive harmonization and unification of the law of international trade as its objectives. The Commission consisted of as many as thirty-six states from various geographic regions and different economic and legal systems of the world. The Commission, after deliberations on various aspects of arbitration on international trade and commerce, adopted the Model Law on 21st June 1985. Since the model law is not a treaty, it does not compel the state adopting it to enact a national law on that basis. But there were obvious advantages in following its terms.

The General Assembly by its resolution of 11th December 1985 made recommendations as follows:

"*All states give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of law of arbitral procedure and the specific needs of international commercial practice*."

2.2 Some International Instruments

At International level there are many countries who have adopted several ADR methods. In International level there are many states who regulate arbitration through a variety of laws. The main body of law applicable to arbitration is normally contained either in the national private international law Act (as is the case in Switzerland) or in a separate law on arbitration (as is the case in England). In addition to this, a number of national procedural laws may also contain provisions relating to arbitration. Some most

important International instrument on arbitration law is the-

1. The Geneva Protocol of 1923,

2 The Geneva Convention of 1927,

3 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958,

4 The European Convention of 1961,

5 The Agreement relating to the Application of the European Convention on International Arbitration (Paris, 1962),

6 The UNCITRAL Model Law (providing a model for a national law of arbitration),

7 The UNCITRAL Arbitration Rules (providing a set of rules for an ad hoc arbitration),

8 The UNCITRAL Conciliation Rules,

9 Statutes and Rules of International Court of Arbitration,

10 The Washington Convention of 1965 (governing settlement of international investment dispute),

The other treaties governing ADR in various states would include the United States Code Title 9.

2.3 ADRs in different countries

2.3.1 UNITED STATES

Arbitration in the United States dated to the eighteenth century. Court frowned on it though, until attitudes started to change in 1920 with the passage of the first state arbitration law, in NEWYORK. This statute served as a model for other state and federal laws, including in1925; the U.S. Arbitration Act, later known as the Federal Arbitration Act (FAA) (9U.S.C.A.$ 1et.seq.). The FAA was intended to give arbitration equal status with litigation, and in effect created a body of federal law. After World War

II, arbitration grew increasingly important to labour-management relations. Congress helped this growth with passage of the Taft-Hartly Act (29U.S.C.A.$141et seq.) in1947, and over the next decade, the U.S. Supreme Court firmly cemented arbitration as the favoured means for resolving labour issues by limiting the judiciary's role. In the1970's arbitration began expanding into a wide range to issues that eventually included prisoners right, medical malpractice, consumer rights, and many others. In 1995 at least 44 states had modern arbitration statutes. Similarly in TEXAS, which is the part of U.N., The Texas Constitution of 1845 and Alternative Dispute Resolution Procedure Act 1897 are relevant in ADR field.

2.3.2 PAKISTAN

The relevant laws (or particular provisions) dealing with the ADR are summarised as under:

1. Section 89-A of the Civil Procedure Code, 1908 (as amended in 2002) read with Order X Rule 1-A (deals with alternative dispute resolution methods).

2. The Small Claims and Minor Offences Courts Ordinance, 2002.

3. Sections 102–106 of the Local Government Ordinance, 2001.

4. Sections 10 and 12 of the Family Courts Act, 1964.

5. Chapter XXII of the Code of Criminal Procedure, 1898 (summary trial provisions).

6. The Arbitration Act, 1940.

7. Articles 153–154 of the Constitution of Pakistan, 1973 (Council of Common Interest).

8. Article 156 of the Constitution of Pakistan, 1973 (National Economic Council).

9. Article 160 of the Constitution of Pakistan, 1973 (National Finance Commission).

10. Article 184 of the Constitution of Pakistan, 1973 (Original Jurisdiction when federal or provincial governments are at dispute

with one another).

11. Arbitration (International Investment Disputes) Act, 2011.

12. Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011.

2.3.3 AUSTRALIA

ADR law in Australia involves federal and state enactments, reflected in a range of schemes that are specific to particular industries, organzations and enterprises.

At a national level in Australia the International Arbitration Act 1974 reflects the UNCITRAL Model Law on International Commercial Arbitration about procedures for international arbitration, covering all international commercial arbitration conducted in Australia unless otherwise agreed. The Act also adopts the Convention on the Recognition & Enforcement of Foreign Arbitral Awards, 'NewYork Convention' 1965 and International Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention). It sets out the institutions and procedures that are available for the conduct of international arbitration. It does not deal with other alternative dispute resolution processes for resolving private international commercial disputes. Each State/Territory has uniform Commercial Arbitration Acts dealing with domestic arbitration –

3. **New South Wales Commercial Arbitration Act 1984.**

4. Victorian Commercial Arbitration Act 1984.

5. Queensland Commercial Arbitration Act 1990.

6. South Australian Commercial Arbitration Act 1986.

7. Western Australian Commercial Arbitration Act 1985.

8. Tasmanian Commercial Arbitration Act 1986.

9. ACT Commercial Arbitration Act 1986.

10. Northern Territory Commercial Arbitration Act 1985.

2.3.4 NEWZELAND

Arbitration in New Zealand is covered by the Arbitration Act 1996, based on the UNCITRAL Model Law.

2.3.5 FRANCE

In France Mediation, Conciliation and Arbitration all these methods of ADR have been recognized.

(A) New Code of Civil Procedure[52], Articles 131-1 to131-15deals with Mediation provisions.

(B) Section 831 to 835 of the Code of Civil Procedure deals with Conciliation provisions.

(C) Section 1442- 1491 of the Code of Civil Procedure deals with Arbitration provisions.

2.4 Mediation in various countries

2.4.1 CHINA AND ASIA

Confucius believed that the best way to resolve a dispute was through moral persuasion and agreement rather than coercion. There is a natural harmony in human affairs that should not be disrupted. Peace and understanding were central to his philosophy. Buddhist traditions encourage dispute resolution through compromise rather than coercion. In these cultures litigation is a last resort and is involves a loss of faith. Today in the people's republic of china there is still an emphasis on conciliation, self- determination and mediation to be used in the resolution of disputes.

2.4.2 JAPAN

There is a relative absence of lawyers in Japan, probably because of their rich history of mediation. The leader of the village was expected to help people resolve their disputes. There are also many procedural barriers to formal litigation and this may contribute to an emphasis on the informal procedures of mediation. Today mediation is part of the business culture, where intermediaries are introducers, Shokai-Sha and mediators Chukai-Sha to smooth business relationships.

2.3.3 AFRICA

Any disputant may call for an informal neighborhood assembly called a moot. A respected member of the community serves as a mediator to help parties resolve conflicts cooperatively. The success of this from may be success due to extended kinship patterns within many African communities.

2.3.4 UNITED STATES

The Quakers have a long history of practicing both mediation and arbitration. Much of the early U.S. model of mediation was based on the work of the Quakers. In NEWYORK city the Jewish community established its own mediation forum Chinese immigrants established the Chinese. Benevolent society to resolve disputes within the family and within the community by mediation. In the united states alternative dispute resolution (ADR) processes were being formalized as an alternative to litigation early on with the U.S. department of labor (Established in 1913) appointing a penal called the "Commissioners of conciliation" to deal with labor/ management disputes.

These commissioners became the U.S. conciliation service and in 1947 that entity became the federal mediation and conciliation service. Some of the early writing in ADR drew on the experiences of labor and industrial dispute resolution and adapted it to the resolution of interpersonal conflict in 1926 the American Arbitration Association(AAA) was set up as a commercial service for the resolution of disputes in the private sector. The Association of family and conciliation courts was founded in 1963 to promote court- related family conciliation as an alternative to family court litigation family mediation has become a major area of growth for ADR and has spawned the Family Mediation Association and the Academy of Family Mediators.

In **Cable & Wireless plc v. IBM United Kingdom** Ltd[53] it was held that Courts power to order mediation, in suitable cases. D allegedly failed to comply with the terms governing the quality and cost of the technology services it provided. Their contract stated that in such event the matter should be resolved by ADR, it they failed to resolve it by negotiation. CPR 1.4(2)(e) provides that the court should further the overriding objective by actively managing cases, including encouraging the parties to use an ADR procedure if the court considered that appropriate and facilitating the use of such procedure. Held that the reference to ADR had binding effect. The contract included a sufficiently defined mutual obligation upon the parties to go through the process of initiating a mediation, selecting a mediator and at least presenting the mediator with its case and documents. For the courts to decline to enforce contractual references to ADR would fly in the face of public policy as expressed in CPR 1.4(2)(e). Proceedings adjourn for ADR, which failed and the case resumed in the court. In **Halsey v. Milton Keynes General NHS Trust and Steel v. Joy and Halliday**[54] CA courts will 'encourage' appropriate use of mediation by adverse costs orders. In this case Halsey was a medical negligence case. D, the hospital where C's husband died, allegedly because of an incorrectly fitted nasal feeding tube. D refused invitations by C to mediate, and C lost at trial. Steel, was a car accident case where D refused an offer of mediation. it was held that the courts will not refuse costs to a successful party unless it was shown that the successful party acted unreasonably in refusing to agree to ADR. The normal order of costs made to the winning party (costs follow the event – crudely stated "the winner takes all") would not apply if the successful party acted unreasonably. To oblige truly unwilling parties to refer their disputes to mediation (the most common form of ADR) would be to impose an unacceptable obstruction on their right to access the court, and could fall foul of Article 6 of the European Convention on Human Rights, which gives citizens the right to a fair trial. Compulsory ADR orders will not be made as to do so would make a voluntary process involuntary. Factors the courts will take into account:

1. The nature of the dispute;

2. The merits of the case;

3. The extent to which other settlement methods had been attempted;

4. Whether the costs of the alternative dispute resolution would have been disproportionately high;

5. Whether any delay in setting up and attending the alternative dispute resolution would have been prejudicial;

6. Whether the alternative dispute resolution had a reasonable prospect of success.

In the **case of Hurst v. Leeming**[55] it was observed that where mediation is inappropriate it can be refused. D a barrister, was sued for professional negligence by his former client C, a solicitor. D had represented C in failed actions against C's former partners. C's lost his actions including appeals in the Court of Appeal and the House of Lords and the expense bankrupted him. C refused to pay D because D had refused to go to mediation. It was held that the D was justified in taking the view that mediation was not appropriate because it had no realistic prospect of success. It had been more than 11 years since the claimant began his campaign of litigation against his former partners, solicitors, counsel and other professional advisers. He was a man obsessed with the 1995 judgment. That obsession had led to his bankruptcy, and he was effectively immune from costs awards made against him by the court.

It was observed in **Mc Cook v. Lobo** [56] that cost implications for mediation not applicable where there is no prospect of success. D engaged C to refurbish premises. C fell from a ladder and was injured. During the negotiations D's solicitor failed to answer a letter suggesting mediation. Held that D's solicitors should have replied to the claimant's letter as a matter of courtesy and because of the risk of having to explain to court why they had not considered mediation. However, in the instant case, mediation would have had no realistic prospects of success and there was no reason to deprive D of any costs.

In **Wyatt v. Maxwell Batley**[57] held that some demands for mediation can be unreasonable. MB a firm of solicitors drafted a document for W. The document concerned social security charges payable on an employee pension scheme. W wrongly advised a Belgian company on the basis of

the document, and had to pay damages. W brought an action against MB for a contribution. W's claim against MB, failed entirely. MB on 3 occasions declined to participate in mediation. W contended that the court should deprive MB of some of the costs which they might otherwise have been awarded. Held that MB was entitled to all of their costs of the proceedings. It would be a grave injustice to MB to deprive them of any part of their costs on the ground that they declined W's self-serving invitations (demands would be a more accurate word) to participate in the mediation.

ADRs methods can be used in family matters also. In **C v. C**[58] held that mediation use in family proceedings. The court invited the Children and Family Court Advisory and Support Service (CAFCASS) to become the guardian of two girls, and made various suggestions in respect of the sappointment of a psychiatrist or a psychologist. The father of the girls contended that he had been the subject of an alienation process adopted by the mother. There followed a string of mishaps which resulted in the mother, father and CAFCASS missing contact hearings. The father's contact orders with the girls were ended, so he appealed. Held that the court would instruct CAFCASS to instruct an expert with proper experience and with sympathy for a mediation based approach to see what could be done with the father and mother to facilitate a future relationship with the girls. Father's contact reinstated.

2.5 Modes of ADR at International level

2.5.1 Arbitration

Arbitration[59] is undoubtedly as old as mankind, and is certainly older, as an institution, than the modern-day court systems. Arbitration has been favored in all the ancient culture and legal systems – Jewish, Roman, Greek, Byzantine, Islamic and Christian.

Arbitration is a universal human institution. It is the product of a universal human need and desire for the equitable solution of differences inevitably arising from time to time between people by an impartial person having the confidence of and authority from the disputants themselves"[60]. It could be seen that Arbitration developed as it offered businessmen or others disaffected with the State legal system a way of solving their problems without involving the State. On the viability of arbitration as a dispute resolution tool, also note the authoritative words of **Professor *Van Houtte,***

"Arbitration seems an ideal way to settle disputes involving anti-trust matters. Indeed, the parties may select arbitrators with more expertise in competition matters than the judges who otherwise would decide the issue. Arbitrators may also be more familiar with the type of business at stake. Furthermore, they may be more sensitive to the needs of the business community. And probably most important, arbitration proceedings are confidential so that outsiders cannot pick up confidential information in the hearing room.[61]"

According to US History Encyclopedia,

"Arbitration is the use of an impartial third party to resolve a dispute. Unlike mediation or conciliation, in which a third party facilitates the end of a dispute by helping the negotiator find common ground, an arbitrator ends a dispute by issuing a binding settlement. Before submitting their dispute to arbitration, the parties to a dispute agree to abide by the arbitrator's ruling[62]*."*

According to Wikipedia: Arbitration Policy,

"*Arbitration, a form of alternative dispute resolution (ADR), is a legaltechnique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons (the "arbitrators" or "arbitral tribunal"), by whose decision (the "award") they agreed to be bound. It is a settlement technique in which a third party reviews the case and imposes a decision that is legally binding for both sides[63]".*

According to Britannica Concise Encyclopedia,

"*Arbitration is the process by which the parties to a dispute submit theirdifference to the judgment of an impartial person or group appointed by mutual consent or statutory provision[64]".*

So we can say that process of resolving a dispute or a grievance outside a court system by presenting it for decision to an impartial third party. Both sides in the disputes usually must agree in advance to the choice of arbitrator and certify that they will abide by the arbitrator's decision. In medieval Europe arbitration was used to settle disputes between merchants; it is now commonly used in commercial, labour- management and international dispute. The procedures differ from those used in the court, especially regarding burden of proof and presentation of evidence.

At international level Arbitration has been used to resolve disputes for centuries. Examples from as far back as the sixth century B.C.E. affirm the use of arbitration to resolve disputes between individuals and between city-states in ancient Greece. In the Old 'Testamen' king Soloman acted as

an arbitrator to resolve a conflict between two women over the identity of a child (1king3:16-28).George Washington in 1799 provided for the use of arbitration should any disputes arise over his will. Since the Mid-1970. The technique has seen great expansion. Some state have mandated arbitration for certain disputes such as auto insurance claims, and court decisions have broadened its scope into areas such as securities, antitrust, and even employment discrimination. International business issues are also frequently resolved using arbitration.

2.5.1.2 Kind of ADR in USA

In the U.S. mainly these types of arbitration are prevailing-

Labour Arbitration

Labour Arbitration usually resolves disputes involving labour unions, employees and employers. In U.S. history labour arbitration, to settle industrial disputes between labour unions and employers. The development of labour arbitration stems from the government's desire to avoid strikes that threaten the public interest.

It is commonly divided into two distinct categories:-

Interest Arbitration and

Right Arbitration

Interest arbitration resolves conflicts of interest over the establishment of the terms and conditions of employment, for example, the wage rate, working hours and number of vacation days for each employee. In labour relation, these terms and conditions are negotiated through collective bargaining and agreements are formalized in collective bargaining agreements or union contracts. A breakdown in these negotiations typically results in a strike interest arbitration avoids or ends strikes. In the united states the development of interest arbitration can be attributed to the government's desire to protect the public interest by preventing or ending strikes in key industries during the first part of the twentieth century .In 1902 president Theodore Roosevelt ended a five-month coal strike via arbitration and several laws provided for voluntary arbitration in the railroad industry, and the appointment of boards of inquiry if interstate commerce was effected.

Interest arbitration in the private sector is voluntary, and the parties can choose arbitration as an alternative to a strike if desired. Examples have involved the apparel and steel industries as well as major league baseball congress however has prevented railroad strikes through arbitration, and president bill Clinton ended a flight attendants strike at American airlines in 1993 by persuading the parties to submit their dispute to arbitration. In the public sector, interest arbitration is often compulsory that is required by law which echoes the rationale of preventing strikes that harm the public interest. At least twenty states and the federal government deny government employees the right to strike and instead require interest arbitration. These compulsory arbitration laws are especially prevalent among occupations deemed essential, such as police officers, firefighters and prison guards. Most interest arbitration in the united states occurs in the public sector under these compulsory statutes, private sector negotiators are generally reluctant to give up their rights to strike and to turn over their decision making authority to a third party.

Rights arbitration is widely used in both private and public-sector labour relations. Rights arbitration resolves conflicts of right, more commonly referred to as grievances which are disagreements over the application or implementation of an existing union contract.

In other words, has a right that was granted by the contract to a specific party been violated? A common example involves the discipline and discharge of employees. Most union contracts specify that employees can only be disciplined and discharged with just cause, so grievances are frequently filed over whether or not a specific instance of discipline or discharge was consistent with the requirements of just cause. An arbitrator might rule that the discharge was consistent with just cause and therefore stands or that management violated a principal of just cause and therefore the grievant is entitled to be reinstated to his or her job perhaps with back pay. Other examples include questions of whether or not the contractual provisions were followed in layoffs or promotions, whether or not a specific employee was eligible for vacation pay, or whether or not management has the right to subcontract work. The widespread adoption of rights or grievance arbitration in the United States originated during World War II. This period was marked by significant growth in union membership and an obvious public interest in avoiding strikes that interrupted war production. The U.S. government, through the National War Labour Board, prompted organized labour to give up the right to strike over grievance procedure. At the conclusion of the war, the only thing that labour and management could agree on was that grievance were best settled through a grievance procedure ending in binding arbitration

rather than a strike.

Grievance arbitration was further institutionalized by the important Supreme Court decisions in **Textile workers v. Linclon Mills**[65] and the **Steelworkers Trilogy cases**[66]. In short these decisions prohibit labour and management from ignoring an arbitration clause in their contract, provide significant legitimacy to the arbitration process, and restrict the scope of judicial review.

No-strike clauses are in 95 percent of union contracts, and clauses providing for binding arbitration to settle unresolved grievances are in nearly all contracts. Note carefully that these no-strike clauses pertain to grievances rights disputes during the term of a collective bargaining agreement, not to interest disputes at the expiration of the agreement. This system of grievance arbitration with its established body of precedents on just cause and other important issues, is widely recognized as a positive contribution to labour-management relations in the workplace.

However, the application of arbitration to employment disputes in the nonunion arena is contentious. A number of employment laws provide employee with rights pertaining to non-discrimination, safety and health, family and medical leave and other subjects. To avoid costly litigation, some employers require employees, as a condition of employment to agree to arbitrate any future employment law disputes rather than take the employer to court.

The Supreme Court, in **Gilmer v. Interstate/ Johnson Lane Corporation**[67] upheld forcing an employee who agreed to binding arbitration in advance to submit his or her dispute to arbitration, but numerous legal and policy questions remained. In particular, it is central to the legitimacy of arbitration as a dispute resolution process that all parties receive due process. In light of the difference in resources between corporations and individual employees, it is debatable whether or not employees are provided with due process in this non union context, especially if they must waive their right to litigation as a condition of employment in advance of any dispute. This issue impacts significantly arbitration in the United States.

Commercial Arbitration

Commercial Arbitration resolves disputes involving business transaction. Merchants and traders used arbitration for centuries. The Chambers of commerce of NEWYORK and other eastern cities used arbitration before 1800, though perhaps not frequently. Widespread acceptance of

commercial arbitration, however did not start until the 1920s. NEWYORK state passed a law in 1920 and Congress passed the Federal Arbitration Act in 1925, making contract clauses containing an agreement to arbitrate dispute legally binding. Also significant was the founding in 1926 of the American Arbitration Association a non- for-profit organization that provides guidelines and assistance in using Arbitration.

As a result, contracts in the United States between builders, architects and owners in the construction industry or between cloth mills and garment manufacturers in the textile and apparel industry often have a clause specifying that disputes will be resolved through arbitration. Transactions in the real estate, financial securities and publishing industries often include arbitration as the dispute resolution procedure. One of the largest commercial arbitration applications involves uninsured motorist claims in which liability and damages are determined through arbitration.

The rationale for commercial arbitration is to avoid the court system. Relative to court action, arbitration can be faster, less expensive and more private. Moreover, arbitrators are experts in the subject matter of the dispute. Increased economic globalization and complex international business relationships combined with a reluctance to litigate disputes in a foreign court have increased adoption of arbitration to resolve international business disputes.

We can say labour arbitration as a industrial arbitration or we can give the name of industrial arbitration for labour arbitration. Such arbitration may be compelled by the government as in NEWZELAND (since 1894), Australia (since 1904), Canada (since 1907), Italy (since 1926) and Great Britain (since World War II). In other cases, it may be by voluntary agreement, as it often the case in the United States, were the government occasionally intervenes in the case of strike affecting the public welfare (Teft-Hartley Labour Act) by persuading the parties concerned to accept the decision handed down by the arbitrators. Additionaly, the Supreme Court ruled in 2001 that companies can insist that employment- related disputes (such as discrimination suits) go to arbitration rather than to court .Arbitration machinery in the United States has been set up at both federal and state levels in the form of mediation and arbitration boards. The American Arbitration Association, founded in 1926 has nearby 17,000 members who helps settle labour disputes. In voluntary arbitration a formal agreement is usually made to abide by the decision. ADR law in Australia involves federal and state enactments, reflected in a range of schemes that are specific to particular industries, organizations and enterprises.

At a National level in Australia the International Arbitration Act 1974 reflects the UNCITRAL Model Law on International Commercial Arbitration about procedures for international arbitration, covering all international commercial arbitration conducted in Australia unless otherwise agreed. The Act also adopts the Convention on the Recognition & Enforcement of Foreign Arbitral Awards, 'NEWYORK CONVENTION' 1965 and International Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention). It sets out the institutions and procedures that are available for the conduct of international arbitration. It does not deal with other alternative dispute resolution processes for resolving private international commercial disputes.

It was decided in **AT&T Corp v. Saudi Cable Co.**[68] that courts have power to investigate arbitration matters - test for bias same as common law AT&T and Nortel bid for a telephone contract in Saudi Arabia. A dispute arose about the pre-bid process which was required to go to arbitration. AT&T wanted the arbitrator removed because the arbitrator had not disclosed he was a non executive director of Nortel. Held that the court could investigate misconduct in arbitration matters under the ICC Rules 1988. The test for bias in private arbitration proceedings should be the same as the common law test. In this case there was no substance to the allegations of misconduct or bias. Right to representation by lay person this principle is laid down in **Bache v. Essex CC** [69] . In this case C was represented by a lay person in Employment Tribunal proceedings. The representative was not doing very well and persisted in raising irrelevant matters so the tribunal directed C to represent herself, but allowed the representative to remain and advise. Held, there is a statutory right for a party to be represented in an employment tribunal by a person (qualified or lay) of his or her choice, which could not be restricted. The tribunal can insist on proper behaviour, improper behaviour could be contempt of court.

In the case of **Barnard v. National Dock Labour Board**[70] it was held that Tribunals statutory power delegate cannot further delegate. The Port Manager suspended workers using powers delegated to him by to London Board, delegated to them by The Board under the Dock Workers (Regulation of Employment) Order 1947.The second delegation was *ultra virus* and the manager's decision was therefore a nullity.

In **Brooks v. Civil Aviation Authority**[71] the facts of the case is that, D the Pension Ombudsman rejected C's claim for an occupational pension on the ground of ill health. D relied on the reasons given by the Employment

Tribunal for C's dismissal, which were capability and conduct, and not by undertaking his own enquiry. It was held that the Ombudsman had wide powers of investigation and a wide discretion to decide the best way to conduct an investigation under the Pension Schemes Act 1993 S.146. He had not, by adjudicating the complaint based on a review of existing material, delegated any of his decision-making power to another and it was not suggested that he had failed to consider any relevant issue.

In **Cowl and others v. Plymouth City Council,**[72] C appealed against the refusal of his application for judicial review of the council's decision to close the residential home in which he was a resident. C sought to have an assessment of the community care needs of the residents. Held that to avoid litigation between public authorities and members of the public it was the duty of the courts to use their powers under the Civil Procedure Rules 1998 to ensure that such disputes were resolved by a complaints procedure or other form of alternative dispute resolution. Justice Lord Woolf suggested that:

A. Courts should make appropriate use of their ample powers under the CPR to ensure that the parties try to resolve the dispute with the minimum involvement of the courts.

B. The legal aid authorities should co-operate in support of this approach.

C. To achieve this objective the court may have to hold, on its own initiative a hearing at which the parties can explain what steps they have taken to resolve the dispute without the involvement of the courts.

D. In particular the parties should be asked why a complaints procedure or some other form of ADR has not been used or adapted to resolve or reduce the issues which are in dispute.

Institutional ADR

The modern trend is to prefer institutional alternative dispute resolution mechanism. The parties generally stipulate in their agreement an ADR clause stating that in case of any dispute arising between them, it shall be referred to a particular institution for redressal. Some of the leading ADR institution in International level are-

ADR institute in CANADA

- **ADR Chambers International (ADRCI)**

ADR chambers international (ADRCI) is the leading Canadian organization that specializes in international arbitration and mediation. Through the use of the UNCITRAL arbitration rules as supplemented by

its own state of the art rules, ADRCI provides practioners and their clients uniformity and credibility in the field of the international arbitration and mediation. The mandate of ADRCI is to provide a single cest effective Canadian source for all types of international dispute resolution, including formal international arbitration mediation, med-arb or other hybrid systems of dispute resolution.

- **ADR Institute of Canada**

The ADR Institute of Canada (ADR Canada) is a national non-profit organization that provides national leadership in the development and promotion of dispute resolution services in Canada and internationally. In concert with seven regional affiliates across the country, it represent and support professionals who provide dispute resolution services and the individuals and organization that use these services. Its membership includes over 1,700 individuals and 60 business and community organization from across Canada. Its standard and programs reflect its commitment to excellence in the field.

- **Association for International Arbitration (AIA)**

The Association for International Arbitration (AIA) works towards promotion of alternative dispute resolution in general and arbitration in particular, as a means of dispute resolution and strives to bring together the global community in this field, be it as professionals in the form of judge, lawyers, arbitrators, mediators or as academics as well research scholars and student with this unique blend of people it is our endeavour to inculcate an interest in ADR, laws school/universities all around the globe.

- **International Chamber of Commerce (ICC)**

The commission on Arbitration aims to create a forum for experts to pool ideas and impact new policy on practical issues relating to international arbitration, the settlement of international business disputes and the legal and procedural aspects of arbitration. The commission also aims to view of current developments, including new technologies.

- **Permanent Court of Arbitration (PCA)**

The PCA is an intergovernmental organization with over one hundred member states, established in 1899 to facilitate arbitration and other forms of disputes resolution between states, the PCA has developed into a modern, multi-faceted arbitral institution that is now perfectly situated at the juncture between public and private International law to meet the rapidly evolving

dispute resolution needs of the international community. Today the PCA provides services for the resolution of disputes involving various combination of states, state entities, intergovernmental organizations and private parties.

ADR institute in AMERICA

- **American Arbitration Association(AAA)**

The American Arbitration Association was set up in1926 in America, as a commercial services for the resolution of disputes in the private sector.
The American Arbitration Association (AAA) with its long history and experience in the field of alternative disputes resolution, provides services to individuals and organization who wish to resolve conflicts out of court. The AAA role in the dispute resolution process is to administer cases, from filing to closing. The AAA provides administrative services in the U.S.; as well as abroad through its International Centre for Dispute Resolution (ICDR). The AAA's administrative services include assisting in the appointment of mediators and arbitrators, setting hearings, and providing users with information on dispute resolution options, including settlement through mediation. Ultimately the AAA aims to move cases through arbitration or mediation in a fair and impartial manner until completion.

- **The North American Free Trade Area (NAFTA)**

The North American Free Trade Area, comprising Canada, Mexico and the United States, was established in 1992 by the North American Free Trade Agreement (NAFTA). Like several other regional economic integration agreements, such as the European Communities, the EFTA, the Andean Community or the Mercosur, the objective of NAFTA is to remove trade barriers, create a common market, and promote economic cooperation between participating states. However, unlike most similar agreements NAFTA falls significantly short of creating an integrated legal system, much less a structured dispute settlement system.

- **ABA Dispute Resolution Section**

As part of the American bar association, the world's largest professional association, the section of dispute resolution, with over 18,000 members, is the world's largest association of dispute resolution professionals. Through its section conference, continuing education programs, research activities, information services, eNewsletter, publication and mediation and arbitration institutes for neutrals and advocates throughout the United States, it's deliver useful knowledge and training to its members.

- **CPR Institute-International Institute for Conflict Prevention and Resolution**

CPR institute is a non- profit organization based in NEWYORK city. Its mission to spearhead innovation and promote excellence in public and private dispute resolution, and to serve as a primary multinational resource for avoidance, management and resolution of business- related and other disputes.

- **National Arbitration forum**

In a field that is continually expanding and envolving the forum is setting the benchmarks by providing alternative dispute resolution services that consistently aspire to high legal and ethical standards. Its mission is simple to provide a fair, efficient and effective system for the resolution of commercial and civil disputes in America and worldwide.

ADR institute in Australia

- **LEADR- Association of Dispute Resolvers Australia**

LEADR is an Australasion not for profit membership organization formed in 1989 to serve the community by promoting and facilitating the use of dispute resolution processes including mediation. These processes are generally known as Alternative Dispute Resolution or ADR.

- **Center for Effective Dispute Resolution (CEDR)**

The centre for Effective Dispute Resolution (CEDR) is an independent non-profit organization with a public mission and supported by multinational business, law firms and public sector organizations.

Other ADR institute

- **Better Business Bureau (BBB) Dispute Resolution Services**

The dispute resolution process is an alternative to going to court. It's informal and user- friendly and it helps to resolve thousands of complaints each year. BBB's offer several methods to resolve dispute, encourage open communication and facilitate discussions leading to a resolution. In mediation, it will provide a professionally trained mediator to talk with the parties and guide them in working out their own mutually-agreeable solutions

if conciliation or mediation efforts are not successful, arbitration may be the next step. The parties state their views at an arbitration hearing, offer evidence and let an impartial arbitrator make a decision that ends the dispute.

- **International Court of Environmental Arbitration and Conciliation**

The International Court of Environmental Arbitration and Conciliation ("the court") was established in Mexico D.F. on November 1994, by 28 lawyers from 22 different countries, as a form of institutionalized arbitration. The court facilitates through conciliation and arbitration the settlement of environmental disputes submitted by states, natural or legal persons ("parties").

- **Association for conflict resolution**

The Association for conflict resolution is a professional organization dedicated to enhancing the practice and public understanding of conflict resolution.

- **Charted Institute of Arbitrators (CIArb)**

'The Charted Institute of Arbitrators (CIArb) is a not- for-profit, UK registered charity working in the public interest through an international network of branches. It has a global membership of around 12,000 individuals who have professional training in private dispute resolution.

- **Department of the Navy (DON)**

Department of Navy, ADR program office with the following missions-

1. Coordinate ADR policy and initiatives,
2. Assist activities in securing or creating cost effective ADR techniques or local programs,
3. Promote the use of ADR, and provide training in negotiation and ADR methods,
4. Serve as legal counsel for in-house neutrals used on ADR matters,
5. For matters that do not use in house neutrals, the program assists

DON attorneys and other representatives concerning issues in controversy that are amenable to using ADR.

- **The office of dispute resolution for acquisition (ODRA)**

The office of dispute resolution for acquisition (ODRA) is the sole, statutorily designated tribunal for all contract disputes and bid protests under the FAA,s acquisition management system. The ODRA dispute resolution process recognizes that it is in the best interests of the FAA and its private sector business partners to work collaboratively to avoid and where possible, voluntarily resolve acquisition- related controversies in a timely and fair manner**.**

- **The WIPO Arbitration and Mediation Center**

In order to make the advantages of ADR widely available to intellectual property owners, WIPO has established, in 1994, the WIPO Arbitration and Mediation Center (the Center). The procedures offered by the Center under the WIPO Mediation Rules, the WIPO Arbitration Rules and the WIPO Expedited Arbitration Rules are particularly appropriate for technology, entertainment and other disputes involving intellectual property. Parties can draw upon a growing list of more than 1,000 independent arbitrators and mediators from some 70 countries covering the entire legal and technical spectrum of intellectual property.[73]

The Center has focused significant resources on establishing an operational and legal framework for the administration of disputes relating to the Internet and electronic commerce. For example, today the Center is recognized as the leading dispute resolution service provider for disputes arising out of the registration and use of Internet domain names. Between December 1999 and October 2002, the Center has received some 4,500 cases under the UDRP alone, relating to approximately 8,000 domain names. The Center also administers a number of specific policies designed to resolve disputes in the new generic top level domains, namely .aero, .biz, .coop, .info, .museum, .name and .pro. With disputes arising from these new domains, the total number of cases received by the Center amounts to 20,000.[74] Since the end of 2001, the Center has also observed a marked increase in the number of arbitrations and mediations under the WIPO Arbitration, Expedited Arbitration and Mediation Rules that have been filed with the Center. These have so far involved parties from 13 countries on three continents and have been conducted in English, French and German. The subject matter of the proceedings includes both contractual disputes (e.g. software licences, distribution agreements for pharmaceutical products and research and development agreements) and non-contractual disputes (e.g. patent infringement). In addition, the Center is frequently asked to recommend WIPO neutrals, or to act as appointing authority, by parties to disputes that are not subject to the WIPO Rules but that require experience in arbitration or mediation as well as specialized knowledge of the intellectual property rights in dispute.[75]

In addition to providing dispute resolution services to private parties, the Center is frequently consulted on issues relating to intellectual property dispute resolution and the Internet and has been involved in the development of various tailor-made procedures. The most prominent example is the UDRP which is based on recommendations made by WIPO to address certain abusive practices in the domain name system. Also in the area of e-commerce, the Center has, on the request of the Application Service Provider Industry Consortium (ASPIC), developed a set of dispute avoidance and resolution best practices specifically tailored to meet the needs of Application Service Providers (ASP).[76]

2.5.2 Adjudication

Adjudication involves an independent third party who considers the claims of both sides and makes a decision. The adjudicator is usually an expert in the subject matter in dispute. Also, adjudicators are not bound by the rules of litigation or arbitration. Their decisions are often interim ones, i.e., they can be finalized using arbitration or another binding process.[77]

Adjudication decisions are usually binding on both parties by prior agreement. In other words, adjudication is generally binding for an interim period of time in order to resolve a dispute quickly, but the specific issues may be arbitrated at a later time at the request of a party for a definitive binding solution. Adjudication offers immediate, binding and affordable relief, win or lose, with the opportunity of later revisiting contested issues in arbitration. The most used method of adjudication is Consensual adjudication.

If litigation is pending in the court and parties are making efforts to use ADR methods to resolve the disputes parallel to the court proceedings and the parties may record any settlement agreement reached by ADR as an award or order in those court proceedings. This settlement order could be recorded by consent as an order of the court. The experience in England and Wales is the parties could record the terms of their agreement and have it made an order staying the proceedings and reserving the right to revert to the court in relation to any questions arising in the course of implementation. Even if no proceedings are pending in court, it may in some circumstances possible for parties in case of settlement negotiations to initiate proceedings so that their agreement can be made an order of the court by consent. Even in case of personal injury claims a claimant who is about to institute court proceedings defer doing so pending negotiation /mediation and could approach the court to record the consent order. A mediated settlement agreement can be referred as a judgment, which is nothing but a "consensual judgment". This could enhance the ADR process in cases where enforceable orders were needed.

The practice of consensual adjudication and its application to consumer disputes have come before the Supreme Court in the case of **Skypark Couriers v. Tata Chemicals,**[78] Supreme Court is not ready to accept the practice of consensual adjudication.

In this case, the National Consumer Disputes Redressal Commission has referred the present dispute to Justice V.C. Tulza Purkar, retired Judge of Supreme Court of India when both sides agreed for consensual adjudication. The records of the case were transmitted to him with a direction that the award will be sent to the commission after the arbitration proceedings are completed so that final orders can be passed by the Commission in accordance with the award. The Commission has given three months to complete the award**.**

The important questions raised in this case is can a court, commission, tribunal is authorised to refer disputes for a consensual adjudication? It is abdication of its legal responsibility? And can the court/commission tribunal base their order / judgment on the basis of the award?

The Supreme Court held that the Commission under the Consumer protection Act do not have the jurisdiction to refer the dispute for a consensual adjudication and then make the said decision an order of the commission. Even if there exists an Arbitration clause in an agreement and a complaint is made by the consumer in relation deficiency of services, then the existence of an arbitration clause will be not be a bar to the entertainment of the complaint by the commission. Supreme Court stated that it is an "unhealthy practice for courts/commission to abdicate their duties and functions and to delegate adjudication of disputes before them to third parties".

2.5.3 Conciliation

Conciliation is also a method of ADR mechanism. Conciliation is an alternative dispute resolution (ADR) process whereby the parties to a dispute (including future interest disputes) agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement[79].Japanese law makes extensive use of conciliation in civil disputes. The most common forms are civil conciliation and domestic conciliation, both of which are managed under the auspices of the court

system by one judge and two non-judge "conciliators."

Civil conciliation is a form of dispute resolution for small lawsuits, and provides a simpler and cheaper alternative to litigation. Depending on the nature of the case, non-judge experts (doctors, appraisers, actuaries, and so on) may be called by the court as conciliators to help decide the case.

Domestic conciliation is most commonly used to handle contentious divorces, but may apply to other domestic disputes such as the annulment of a marriage or acknowledgment of paternity. Parties in such cases are required to undergo conciliation proceedings and may only bring their case to court once conciliation has failed.

2.5.4 Expert Determination

Expert determination[80] is a historically accepted form of dispute resolution invoked when there isn't a formulated dispute in which the parties have defined positions that need to be subjected to arbitration, but rather both parties are in agreement that there is a need for an evaluation, e.g. in a preceding contract. Expert determination is a procedure by which parties agree to submit a particular dispute, usually of a technical, scientific or industry-specific nature, to an expert in the particular subject matter. The parties can authorize the expert either to render a decision that is binding between the parties as a matter of contract law, or to make a non-binding recommendation on the basis of his or her expertise. Expert determination is often invoked in aid of a parallel dispute resolution process. The practice itself is millennia old and well established where complex legal institutions either have not developed, or are unavailable, such as tribal societies and criminal organizations. The first mention that distinguishes specifically against the practice of arbitration, and introduces the formula "as an expert and not as an arbitrator" was in **Dean v. Prince[81].**

2.5.5 Fact Finding

Fact finding[82] is the process of ascertaining facts.

Facts are pieces of information about the world that can be independently verified by generally accepted research methods as reliable, sound bases for decision making and dispute resolution. Facts may involve technical questions, as well as factual questions involving the law.

In some cases factual questions can be answered with absolute certainty. In other cases, however, there are large elements of uncertainty. While some of these uncertainties can be reduced through more intricate fact-finding efforts, there are often other uncertainties which cannot be eliminated

by any reasonable amount of analysis. In these cases, decision will have to be made and disputes resolved on the basis of incomplete information.

The goal of fact- finding efforts is to incorporate as much reliable information as possible into the dispute resolution process. Outlined in this section are problems which make it difficult to achieve this objectives. Joint fact-finding can help the parties resolve factual disagreements in ways which are acceptable to all parties. This technique requires the parties to collaborate in the joint design and oversight of the fact- finding process, and it usually involves the hiring of experts who then work on behalf of and under the joint direction of the parties. Another method of resolving disputed facts is data mediation, in which experts from both sides sit down together to discuss the discrepancies or disagreements and come to a joint conclusion about what is know, what is unknown, but determinable with more fact- finding and what is avoidable uncertainty.

2.5.6 Facilitation

Oftentimes, meetings aren't just about presentations but about two-way exchange that leads to new solution, resolved difficulties and informed decisions. Yet too often, one person dominates the discussion and other voices aren't heard very simply put, facilitation is helping a group to accomplish its goals[83].

There are a wide range of perspectives about the ideal nature and values of facilitation, much as there are a wide range of perspective about the ideal nature and values of leadership some facilitators believe that facilitation should always be highly democratic in nature and that anything other than democratic is not facilitation at all others may believe that facilitation can be quite directive, particularly depending on the particular stage of development of the group. Whatever one's beliefs about the best nature of facilitation the practice usually is best carried out by someone who has strong knowledge and skills regarding group dynamics and process these are often referred to as process skills. Effective facilitation might also involve strong knowledge and skills about the particular topic or content that the group is addressing in order to reach its goals, these are often referred to as content skills. The argument about how much "Process versus content" skills are required by facilitators in certain applications is a very constructive argument that has gone on and will go on for years. The method of facilitating is most appropriate when: (1) the intensity of the parties' emotions about the issues in dispute are low to moderate; (2) the parties or issues are not extremely polarized; (3) the parties have enough trust in each other that they can work together to develop a mutually acceptable solution; or (4) the parties are in a common predicament and they need or will benefit from a jointly-acceptable outcome.

2.5.7 Med-Arb

Med-Arb is an abbreviation for mediation-arbitration. It is in use in two distinct forms in the United States. In the first, the mediator, by agreement, acts as both the mediator and the arbitrator pursuant to a binding arbitration agreement. If there are still unresolved issues after the mediation, the matter goes to arbitration. The second and more standard process is the pre-selection of a separate arbitrator, who deals with the unresolved dispute if mediation is not successful[84]. Areas where Med-Arb has developed in the United States include labour disputes, international arbitration and corporate disputes[85].

2.5.8 Medaloa

Medaloa is sometimes referred to as 'baseball arbitration' because it is used to resolve salaries of major league baseball players [86]. MEDALOA is an abbreviation for 'mediation and last offer arbitration'. At the conclusion of an unsuccessful mediation, the mediator considers each party's 'last offer' then makes a decision as to which offer is the most reasonable and should be accepted as the settlement. The mediator is not able to split the difference or propose a different result. Medaloa is a useful technique for resolving an impasse in a variety of circumstances.

2.5.9 Minitrials

Minitrials involve a structured settlement[87] process in which both parties present abbreviated summaries of their case before the other party and/or their representatives who have authority to settle the dispute. The summaries contain explicit data about the legal bases and the merits of the case. The process generally follows more relaxed rules for discovery and case presentation than might be found in a court, and the parties usually agree on specific limited periods of time for presentations and arguments. The minitrial method is a particularly efficient and cost effective means for settling contract disputes and can be used in other cases where some or all of the following characteristics are present: (1) it is important to get facts and positions before high-level decision makers; (2) the parties are looking for a substantial level of control over the resolution of the dispute; (3) some or all of the issues are of a technical nature; and (4) a trial on the merits of the case would be very long and/or complex.

2.5.10 Neutral Evaluation

In international level there is another method [88] of Alternative Dispute Resolution Mechanism which is known as "Neutral Evaluation".

Neutral Evaluation means a process through which the parties may obtain an initial expert and neutral assessment of the merits of their respective cases at the very initial stage of a dispute as well as an independent recommendation regarding settlement options.

Therefore, neutral evaluation, intends to:

(1) Facilitate or restore communication between the parties on the basis of the analysis and recommendations of the expert evaluator,

(2) Obtain a highly specialized neutral analysis of each particular dispute submitted to this process,

(3) Help the parties reach lasting agreements.

Neutral Evaluation is suitable for any business having a dispute with another regarding their contractual rights and obligations.

- **Process of Neutral Evaluation**

The process is initiated as a result of a joint filing by the parties submitting to neutral evaluation. In this process parties also appoints their evaluator for resolving disputes. Once when a evaluator appointed then he will set the date for the parties to submit documentation and written arguments.

The oral hearing does not generally take the breadth and dimension of a conventional arbitration hearing. It is less formal and there is almost never any live expert testimony introduced. It does, however, provide an opportunity for the parties to comment further on the written arguments presented beforehand. Given the fact that this technique is generally utilized at the very early stages of a dispute, the oral hearing usually becomes the first time that the disputants meet face to face with their respective counsel. Generally, the neutral evaluator will solicit written conclusions, the evaluator presents a written report commenting on the merits of each party's case. This report also contains the neutral's own recommendations regarding a settlement of the dispute.

- **Who is the Evaluator?**

The evaluator is the professional who will hear the parties arguments, but he is not empowered to render a decision enforceable upon the parties.

Evaluators are professionals engaged in diverse professional activities. Evaluators may be licensed practicing attorneys or not. This is the parties choice entirely. However, if the parties expressly wish an analysis of legal issues or consequences, then the evaluator will be practicing attorney. Regarding the report submitted by the evaluator to the parties, each professional will apply, at a minimum, the standards of practice governing his profession. All evaluators must be impartial and they must document their impartiality with regard to the parties involved.

2.5.11 Negotiation

Negotiation[89] is one of the most common approaches used to make decisions and manage disputes. It is also the major building block for many other alternative dispute resolution procedures. Negotiation occurs between spouses, parents and children, managers and staff, employers and employees, professionals and clients within and between organization and between agencies and the public negotiation is a problem- solving process in which two or more people voluntarily discuss their differences and attempt to reach a joint decision on their common concerns. Negotiation requires participants to identify issues about which they differ, educate each other about their needs and interests, generate possible settlement options and bargain over the terms of the final agreement. Successful negotiations generally result in some kind of exchange or promise being made by the negotiators to each other. The exchange may be tangible (such as money a commitment of time or a particular behavior) or intangible (such as an agreement to change an attitude or expectations or make an apology). Negotiation is the principal way that people redefine an old relationship that is not working to their satisfaction or establish a new relationship where none existed before because negotiation is such a common problem- solving process, it is an everyone's interest to become familiar with negotiation dynamics and skills, This chapter is designed to introduce the basic concepts of negotiation in international level and to present procedures and strategies that generally produce more efficient and productive problem- solving. There are many conditions which can affect the success or failure of negotiations. The following conditions can make success in negotiations more likely.

- **Identifiable parties**

The first condition for negotiation is identifiable parties who are willing to participate. The people or groups who have a stoke in the outcome must be identifiable and willing to sit down at the bargaining table if productive negotiations are to occur. If a critical party is either absent or is

not willing to commit to good faith bargaining, the potential for agreement will decline.

- **Readiness to Negotiate**

The second condition is that people must be prepare to negotiate for dialogue to being when participants are not psychologically prepared to talk with other parties, when adequate information is not available or when a negotiation strategy has not been prepared, people may be reluctant to being the process.

- **Interdependence**

The third condition for negotiation is that the participants must be dependent upon each other to have their needs met or interests satisfied. The participants need either each other's assistance or restraint from negative action for their interests to be satisfied. If one party can get his/ her needs met without the cooperation of the other, there will be little impetns to negotiate.

- **Means of Influence or Leverage**

The fourth condition is that, for people to reach an agreement over issues about which they disagree they must have some means to influence the attitudes or behavior of other negotiators. Often influence is seen as the power to threaten or inflict pain or undesirable costs, but this is only one may to encourage another to change. Asking thought-provoking question, providing needed information, seeking the advice of experts, appealing to influential associates of a party, exercising legitimate authority or providing rewards are all means of exerting influence in negotiations.

- **Issues must be negotiable**

The fifth condition is, for successful negotiation to occur, negotiators must be believe that there are acceptable settlement options that are possible as a result of participation in the process. If it appears that negotiations will have only win/ lose settlement possibilities and that a party's needs will not be met as a result of participation, parties will be reluctant to enter into dialogue**.**

- **Will to settle**

The sixth condition for negotiations to succeed, participants have to want to settle. If continuing a conflict is more important than settlement then negotiations are doomed to failure. Often parties want to keep conflicts going to preserve a relationship (a negative one may be better than no relationship at all) to mobilize public opinion or support in their favour, or because the conflict relationship gives meaning to their life. These factors promote continued division and work against settlement. The negative consequences of not settling must be more significant and greater than those of settling for an agreement to be reached.

- **Agreement on some issues and interest**

The seventh condition is that people must be able to agree upon some common issues and interests for progress to be made in negotiations. Generally participants will have some issues and interest in common and others that are of concern to only one party. The number and importance of the common issues and interest influence whether negotiations occur and whether they terminate in agreement parties must have enough issues and interests in common to commit themselves to a join decision- making process.

- **Unpredictability of outcome**

The eighth condition is that people negotiate because they need something from another person. They also negotiate because the outcome of not negotiating in unpredictable.

For example: If by going to court, a person has a 50/50 chance of winning, she/he may decide to negotiate rather than court because if negotiation is successful, the party will at least win something. Chance for a decisive and one-sided victory need to be unpredictable for parties to enter into negotiations.

- **A sense of urgency and deadline**

The ninth condition for negotiation is sense of urgency. Negotiations generally occur when there is pressure or it is urgent to reach a decision. Urgency may be imposed by either external or internal time constraints or by potential negative or positive consequences to a negotiation outcome. External constraints include court dates imminent executive or administrative decision or predictable changes in the environment. Internal constraints may

be artificial deadlines selected by a negotiator to enhance the motivation of another to settle. For negotiations to be successful, the participants must jointly feel a sense of urgency and be aware that they are vulnerable to adverse action or loss of benefits if a timely decision is not reached. If procrastination is advantageous to one side, negotiations are less likely to occur, and if they do, there is less impetus to settle.

- **No major Psychological barriers to settlement**

The tenth condition is strong expressed or unexpressed feelings about another party can sharply affect a person's psychological readiness to bargain. Psychological barriers to settlement must be lowered if successful negotiations are to occur.

- **The people must have authority to decide**

The eleventh condition for negotiation is that, participants must have the authority to make a decision. If they do not have a legitimate and recognized right to decide or if a clear ratification process has not been established, negotiation will be limited to an information exchange between the parties. A willingness to compromise. Not all negotiations require compromise.

- **The agreement must be reasonable and implementable**

Some settlement may be substantively acceptable but may be impossible to implement. Participants in negotiations must be able to establish a realistic and workable plan to carry out their agreement if the final settlement is to be acceptable and hold over time.

- **External factors favourable to settlement**

Often factors external to negotiations inhibit or encourage settlement views of associates or friends, the political climate of public opinion or economic conditions may foster agreement or continued turmoil some external conditions can be managed by negotiators while others cannot favourable external conditions for settlement should be developed whenever possible.

- **Resources to negotiate**

Participants in negotiations must have the interpersonal skills

necessary for bargaining and, where appropriate, the money and time to engage fully in dialogue procedures. Inadequate or unequal resources may block the initiation of negotiations or hinder settlement.

2.5.12 Ombudsman

The other method of Alternative Dispute Resolution Mechanism in international scenario is "Ombudsman[90]".

The term Ombudsman is Swedish in origin and means "representative". The Swedish term is said to be etymologically gender inclusive, but in the English language, the term is often modified as "Ombudsperson" or "Ombuds" office.

There are two forms of ombudsman offices,

- **'Classical' ombudsman**
- **'Executive' ombudsman**

(A) A classical ombudsman is an independent high-level public official responsible to the parliament or legislature and appointed by constitutional or legislative provisions to monitor the administrative activities of Government. The ombudsman has the power to investigate citizen complaints of maladministration and administrative injustice, but may also act on his or her own motion. The ombudsman may recommend changes to prevent further administrative injustices and may also issue public reports. The ombudsman makes regular reports to the legislature. An ombudsman/person is an independent neutral party appointed by an institution or organization to represent and defend the collective interests of a group served precisely by the institution or organization that appoints him/her. Ombuds investigate and resolve complaints about public and private organizations. They also incourage good practice in the way complaints are handled by organizations and government bodies. Conceptually, an ombudsman/ person's office must reflect the values of the organization it serves. Also the organization appointing an ombudsperson must be open to constructive self- criticism and change as there is very little use in appointing an ombudsperson if the organization is hostile to reform and change. Rarely is an ombuds office structured or equipped to handle individual complaints or to resolve them as they come. The ombudspersons is not meant to be the first live of resort in a resolution process because it is not his place to assign blame or provide redress on a case- per- case basis. Rather, the ombuds is interested in the nature of disputes with a new towards changing corporate or

institutional policy from the very top. In this way the ombuds is instrumental in resolving not a single grievance but thousands of similar grievances by bringing about structural policy changes. An ombuds eternally asks himself "What needs to be done to prevent this kind of dispute from arising again?" Ombudsman offices are found in many institutions or corporations. In an institution with a "classical" ombudsman, the ombuds office is separate from the executive and reports directly to the governing body of the institution such as the board of directors.

(B) An "executive" ombudsman reports to the chief executive officer (CEO). The common characteristics of all types of ombuds offices, are impartiality, the power to investigate and the power to recommend changes.

2.5.13 Online Dispute Resolution

The rise and popularity of the internet has led to the use of technology in resolving disputes. Online dispute resolution mechanisms are being recognized and adopted in Alternative Dispute Resolution has moved the process of dispute resolution away from the courts and online dispute resolution (ODR) has extended this trend. The development of technology has a direct bearing on the growth of on line dispute resolution. However, the use of technology in alternative dispute resolution has given rise to significant problems, legal issues, benefits and disadvantages.[91] ADR process include mediation, arbitration, conciliation and negotiation.

Online dispute resolution (ODR) refers to the processes of dispute resolution in which electronic means of communication is used instead of the traditional (ADR) face to face interaction.[92] Online dispute resolution, which uses information and computer technology, mediation and arbitration. By using cyberspace as a location for dispute resolution, ODR has further extended the process by moving ADR to the cyberspace or internet, which is a virtual environment.[93] Online Dispute Resolution (ODR) uses information technology to facilitate traditional alternative dispute resolution mechanisms on the internet or cyberspace.

- **Type of ODR**

- **Online Negotiation**

In online negotiation, the disputants are provided with a neutral forum to discuss issues related to their dispute and to devise a satisfactory mutual resolution[94] in the process of ODR.

- **Online Mediation**

In online mediation, the disputants use online technology in order to communicate with each other and also the mediator regarding the dispute. The role of the mediator is to assist the disputants[95] to devise a mutually acceptable resolution[96].

- **Online Arbitration**

In online arbitration, third party is involved as an arbitrator, which is similar to mediation, where a third party is involved as a mediator in the ODR process. The role of the arbitrator is to issue a binding decision after considering the merits of the arguments of both parties.[97]

- **Online Case Appraisal**

In online case appraisal, the ODR services appoint a third party which provides a nonbinding opinion regarding the merits of each disputant's case and also identifies the manner in which the dispute may be resolved.[98]

- **Automated Negotiation**

Automated Negotiation is a dispute resolution process which may be easily conducted online without human intervention. It is a form of ODR best suited in situations where liability of parties is not in dispute but the parties are unable to process the disputants submit monetary bids and the bids represent the amount demanded by one party and the offer made by the other to resolve the dispute.[99] when an offer exceeds the demand then the dispute is considered to be resolved.

- **Benefits of Online Dispute Resolution**

The technological innovations such as email, web-based decisions, video conferences and instant messages have assisted the popularity and growth of ODR as an effective means of resolving disputes. ODR through the use of Internet has certain benefits.[100] Such as:-

- **Affordability and cost savings**

The cost of traditional ADR[101] is lower than the cost of litigation and ODR is more affordable because it has further reduced the cost compared to traditional ADR. The direct online negotiation process is free and a charge is levied when a mediator is involved. Consumers prefer ODR because there are no travel expenses and the cost of resolving the dispute through ODR is low.[102]

- **Time Savings**

ODR saves time because ODR sites are open all the time and on seven days a week. Parties to a dispute can participate in ODR by using computers from the comforts of their home or office. It is very useful to people living in remote areas because they do not have to travel long distances to access ODR. Disputes can be resolved faster because information and computer technology saves time due to enormous speed of internet data transfer**.**

- **Better Convenience**

ODR is very convenient to the parties possessing internet access. They have more options to use technology whenever they like and they decide to respond at their own convenience.

- **Transmission and Availability of Information**

The interest and email transmits information rapidly between the parties. Since the interest maintains distance between the disputants, most participants feel its benefits. As there is no physical contact, parties do not feel threatened. Some ODR sites such as Online Resolution.Com provide the disputants with a process Advisor which guides them to the best suited ODR process according to their needs.[103]

- **Possibility of using Experts**

Similar to ADR in ODR also parties may choose their own neutral and experts. The cost of choosing an expert is very low and the affordability helps in the resolution of disputes through ODR process.[104]

- **Disadvantages of Online Dispute Resolution**

The introduction of information technology has raised a number of legal

challenges and legal issues in Online Dispute Resolution. There are certain problems[105] and challenges faced by Online Dispute Resolution, which includes-

- **Problem of Security**

During the course of the dispute resolution process, disputants exchange a large amount of information. Contents of such proceedings can be kept confidential very easily in traditional methods[106] where online dispute resolution is not adopted. Hence, confidentiality of such information raises security issues in online dispute resolution.[107] Confidentiality of the proceedings is very important to develop public confidence in ODR while resolving disputes.

- **Problem of Confidentiality**

Traditional and offline dispute resolution processes ensure secrecy and confidentiality.[108]In ODR proceedings it is not only necessary to maintain privacy[109], confidentiality of the information but also to ensure that the resolution are not published unless approved by the parties to the dispute. ODR is becoming a predominant method of resolving disputes. Hence publication of resolutions is required to develop legal certainty in online dispute resolution. Publication of resolutions of online disputes will result in developing body of principles that will assist disputants in ODR in gaining an understanding of their rights and obligations. Hence, the need to publish decisions to establish legal certainty must be balanced with the need to develop internet users' confidence[110] in ODR process.

- **Intellectual Property Law Issues**

In order to resolve disputes online, organizations offering Online Dispute Resolution Services normally invest considerable amount of time and money. Hence, such organizations may seek patent protection so that the new ODR process created by them is not adopted or copied by others. Such a grant of patent to a particular organization for an ODR process will prohibit and hinder the process of ODR from becoming a more popular method of resolving dispute online, thereby decreasing global popularity of ODR in resolving disputes by new processes.

- **Enforceability and Validity of Online Dispute Resolution Agreement**

The very basis of any ODR mechanism, whether it is negotiation or mediation or arbitration is the agreement of the parties. The final decisions or resolutions of the ODR service provider will be enforceable legally by national courts only if they were based on a valid agreement of the parties to submit their dispute to ODR. When such ODR agreement is formed between two businesses, there is no problem in enforcing the agreement in most countries including U.S.A. United Kingdom, Australia and France. [111] However, problem arise when some disputants or consumers do not abide by the terms of an agreement. Parties involved in an ODR must ensure that they have an enforceable agreement when they submit the dispute to ODR.

2.5.14 Partnering

The other form of Alternative Dispute Resolution Mechanism in international level is that Partnering. Partnering is a formal process that brings key project participants (stakeholders) together to communicate effectively and work as a team to define and achieve mutually beneficial goals and organizational interests of the other members.

To form an ADR-oriented partnership, the parties form a relationship based upon teamwork, cooperation and a shared vision for success. The process is focused on accomplishing common goals and objectives, and includes an agreement to avoid surprise and expeditiously resolve disputes at the lowest possible level. Through this commitment to improve communications between the all stakeholders, potential disputes are prevented from arising, or at least recognized at an early stage where satisfactory resolution is more attainable. The key to all partnering approaches is communication.

When Partnering is working, old adversarial patterns change and a new spirit pervades the working relationship. This new spirit has many indicators. Look for these signs of successful Partnering.

- **Sharing -** The Partners share a common set of goals.
- **Clear Expectations -** Each partner's expectations are clearly stated, upfront, and provide the basis for working together.

- **Trust and Confidence** - Partners actions are consistent and predictable. Trust is earned when one's actions are consistent with one's words. We must "walk the talk."

- **Commitment -** Each partner must be willing to make a real

commitment to participate in the partnership.

- **Responsibility -** Responsibility is recognizing and accepting the consequences of our choices. Partners are accountable to each other and should agree up front on measures for mutual accountability**.**

- **Courage -** Partners have the courage to forthrightly confront and resolve conflict.

- **Understanding and Respect** - Partners understand and respect each other's responsibilities, authorities, expectations and boundaries, as well as any honest differences between them.

- **Synergy -** The partnership is more than the sum of the individual partners. The relationship is more powerful than any of the partners working alone because it is based on the collective resources of the partners.

- **Excellence -** Partners expect excellence from each other and give excellence in return.

These are the positive indicators of a successful Partnering effort. If you look closely at the list again, it's clear that most of these indicators are based on the ability of the partners to communicate and solve problems. Partnering is about-

(1) How stakeholders on the project want the project to be conducted;

(2) How those involved on the project want to treat and be treated by one another developing confidence building measures that will allow each person and organization to make the greatest contribution possible to the project;

(3) Developing shared goals for the project that will form an understanding in such a way that all partners measure success based upon the ability of the project to meet the greatest number of those interests;

(4) Working together to create procedure and action plans to help realize shared goals;

Developing procedures to resolve disputes as they come up quickly, efficiently and fairly.

- **The Partnering Charter**

- Define Goals and Objectives

At the conclusion of the Partnering workshop, the parties need to create a blueprint for their new relationship, which can be summed up in a Charter. The Partnering Charter defines the long-term goals and objectives for the project. This is a win-win charter. It is a collaborative effort written at the workshop by all participants and therefore includes the overlapping goals of the project team. Common goals are: a quality project carried out safely, in a timely and cost effective manner. To achieve these goals, the team must transform them into concrete objectives and action items which can be measured at follow-up sessions. If all the goals and objectives are achieved, both contracting parties will win.

The Partnering Charter should include objectives that will provide measurable milestones for success on the project. These objectives should be specific and should be the framework for a Partnering implementation plan. As an example, the following is a list of some project objectives:

1. meet the design intent;
2. encourage a maximum amount of value engineering savings;
3. limit cost growth;
4. cause no impact to follow-on projects;
5. lose no time due to job-related injuries;
6. encourage a fair sharing of contract risks;
7. use ADR methods;
8. avoid litigation;
9. finish ahead of schedule;
10. include an implementation plan.

The implementation plan fills out these objectives by including measurable details. For example, the implementation plan can call for a specific number of value engineering submittals or a target dollar amount of savings; a specified cost growth percentage; or a joint safety awareness program. These are just a few examples of how specifics can be added to the objectives to make them part of a viable plan for ensuring project success.

- **Follow-up Meetings and Evaluation**

- **Arrange Regular Follow-up Meetings**

The importance of following up on the initial Partnering workshop cannot be stressed enough. The lessons of Partnering need continued reinforcing so they do not fade with time or under the stress of the job. On-going evaluation of Partnering goals and objectives is essential. The best method is to conduct regularly scheduled follow-up sessions between the key leaders.

- **Develop Evaluation Processes**

To evaluate performance, successful Partnering efforts have included a jointly developed evaluation form. The evaluation form assigns weights to the Partnering objectives relative to the overall project. Ratings are determined for each evaluation period, and then compared to an agreed-upon standard. Corps and contractor leaders jointly rate performance. The result is a numerical score as well as a narrative evaluation. Such an evaluation can be the focus for a team meeting where problems are addressed and the values of partnership are encouraged and reinforced. Evaluation is important for good management of a project and encouragement of Partnering values.

- **Plan Combined Activities**

There are other ways to advance the Partnering relationship through combined activities. Follow-up workshops could be scheduled to nurture the lessons and skills of Partnering. Debriefing sessions following significant milestones in the project could be the occasion for review of achievement. Awards ceremonies jointly conducted could recognize and reinforce cooperative effort. Professional development programs such as lectures, workshops, and breakfast seminars could be scheduled to emphasize job skills as well as team work. Partnering relies on identifying and working cooperatively to achieve a jointly-defined set of goals and objectives for a project. These guiding principles are embodied in a written document drafted at the partnering workshop. This is one of the most important products of the workshop.

Sometimes called a Partnering Agreement, a Partnering Charter, or a Mission Statement, it is signed by the key people who attend the Partnering workshop. It then becomes the touchstone for reinforcing cooperative relationships and the basis for evaluating the success of the Partnering team.

What follows are two examples of Partnering Charters. One is a broadly-worded statement of principles followed by a list of goals; the other is a statement which includes a series of measures for success in the text. These examples are not intended to be "forms" to be filled out and should not be used verbatim at any Partnering workshop. They are a suggestion of some of the subjects that might be considered by the people at the workshop when they draft their own Charter.

2.5.15 Regulated Infrastructure

Entities in control of an infrastructure, such as operators of market platforms, online auction sites, or Internet service providers, often issue rules and establish mechanisms to resolve compliance disputes. Access to the infrastructure is made dependent on submission to those mechanisms. Since non-compliance can be sanctioned by exclusion, regulated infrastructures have an in-built enforcement mechanism. The most prominent example of such mechanisms is the Uniform Domain Name Dispute Resolution Policy.

2.6 Recognition of ADR Mechanism in International Law[112]

ADR Mechanism also gained recognition in International Law for resolution of international dispute through peaceful means. It has always been the objective of international law to develop means and methods through which the disputes among the nations may be resolved through peaceful means and on the basis of justice. In this connection, the rules of international law are partly in the form of customs and partly in the form of law-making treaties. The two Hague Conference of 1899 and 1907, the covenant of the League of Nations and the United Nations Charter deserve special mention in this connection. The method of the settlement of international disputes is a pacific means of settlement. In this method these are pacific means as:

2.6.1 Arbitration

2.6.2 Judicial settlement,

2.6.3 Negotiation,

2.6.4 Good offices

2.6.5 Mediation ,
,

2.6.6 Conciliation,

2.6.7 Enquiry,

2.6.8 Settlement of international disputes under the auspices of United Nations Organization

.

As far as Arbitration is concerned:

Article 15 of the Hague Convention of 1899 provides:

"International arbitration has for its object the settlement of differences between States by Judges of their own choice and on the basis of a respect for law."

In the development of settlement of international disputes through arbitration was Alabama Claims Arbitration, 1872. In this case, America had claimed compensation from Britain on the ground that it had violated the laws of neutrality. The arbitrators gave their award in favour of America and held that Britain was liable to pay compensation. As remarked by Judge Hudson, "The success of Alabama Claims Arbitration stimulated a remarkable activity in the field of international law decisions".[113]

For this purpose some Arbitration Courts were also established after the first world war. In the modern times also the importance of the settlement of the international disputes through arbitration has not lessened. A glaring recent example is that of Kutch Arbitration of 1968 for the settlement of dispute between India and Pakistan. However, "Arbitration is essentially a consensual procedure.
States cannot be compelled to arbitrate unless they agree to do so either generally and in advance or ad hoc in regard to a specific dispute. Their

consent even governs the nature of tribunal established.[114]

(I) Arbitration has recognized as one of the means of pacific settlement of disputes. Article 33, paragraph 1 of the U. N. Charter provides that "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice."

(II) In the Judicial Settlement of international disputes, at present there is only one such Court called the International Court of Justice which is the successor of the Permanent Court of International Justice which was established under the League of Nations. At present International Court of Justice occupies important place so far as the settlement of international disputes through judicial process is concerned.

(III) So far as the Negotiations is concerned, it is also the means for the settlement of international disputes. It is much less a formal method than judicial settlement. Negotiation are the simplest method of peaceful settlement of disputes in the sense that in negotiation the parties to the dispute alone are involved in the procedure.[115]

(IV) The role of Good Offices in the resolution of international dispute is also important. When two States are not able to resolve their disputes, a third State may offer its good offices for the same. These offices may also be offered by international organization or some individuals. The third State, individual or international organization creates such an environment as may be conducive for the settlement of the disputes. The United Nations Security Council offered its good offices in the dispute between Indonesia and Netherlands in 1947. The recent example of offering good offices is that of France to America and North Vietnam to settle their mutual disputes so as to end the Vietnam War.

(V) Mediation is yet another method through which efforts are made to settle international disputes. In the case of mediation the third State or individual not only offers its services but also actively participates in the talks to resolve the dispute.[116]

(VI) Conciliation is a method through which the other States or the

impartial persons try to resolve the dispute peacefully through different means. Often the matter is referred to a Commission or Committee which submits its report and recommends certain measures for the settlement of disputes. In the words of Judge Hudson, "conciliation is a process of formal proposals of settlement after an investigation of the facts and an effort to reconciliate to accept or reject proposals formulated.[117] A recent example of this the 1965 Convention of the Settlement of Investment Dispute between States and Nationals of other States which provides for Conciliation Commission for the settlement of dispute.

(VII) Enquiry is also a method which is often resorted to for the settlement of dispute. It is not an independent method and is often used alongwith other methods. The main objective of the enquiry is to make investigation of the relevant matter so as to establish facts which may help the ultimate solution of the problem. Enquiry Commission is appointed in relation to the settlement of border disputes. The commission clarifies the facts after making enquiry into the relevant facts

(VIII) Settlement of International Disputes under the auspices of the United Nations Organization

These are some of the provisions for the settlement of international disputes under the United Nations Charter:

(i) It one of the purpose of the United Nations that the State members should settle their disputes through peaceful means. Under Art. 2 of the Charter, the member States have undertaken to resolve their disputes through peaceful means and not to resort to force or threat of force to resolve international disputes.

(ii) The Geneva Assembly of the United Nations may make recommendations for the peaceful settlement of international disputes.[118]

(iii) Article 33 to 38 of Chapter VI of the Charter made the provisions for the peaceful settlement of international disputes.

Similarly Security Council has given powers in respect of pacific settlement of disputes.

2.7 New Developments in ADR at International Level

From the above description it is possible to identify a number of trends concerning the future development of ADR in e-commerce.

2.7.1 Expansion of ADR

ADR has traditionally been limited to particular sectors. Arbitration, for example, was almost exclusively confined to high-value disputes in international trade, while mediation was originally most popular in the area of family or labor disputes. E-commerce, with its special needs for efficient dispute resolution on an international level, has accelerated the trend towards ADR also in areas that, like intellectual property, have traditionally relied almost exclusively on court litigation.

2.7.2 Tailored ADR Procedures

In order to realize the efficiency gains that are likely to result from streamlined and standardized procedures, ADR will increasingly be tailored to specific types of disputes, such as disputes arising in specific businesses or industry sectors (e.g., insurance, Internet service providers and application service providers, from specific types of transactions (e.g., e-commerce auctions) or for specific subject matters (e.g., cyber squatting and privacy). As such, the procedures are likely to become part of the (legal or business) standard in the specific area concerned, and are more likely to be accepted by the stakeholders concerned.

2.7.3 ADR in Institutional Relationships

The development of specific ADR mechanisms for specific types of disputes will also further the trend to integrate ADR procedures into institutional relationships, such as certification or "trustmark" schemes, self-regulation and industry standards, or regulated infrastructures (as in the case of the UDRP). Such institutional solutions dispose with the need to bargain for both parties' submission to the proceedings, thus increasing the efficiency as well as the legal certainty of dispute resolution.

2.7.4 In-built Enforcement Mechanisms

As part of institutional relationships, ADR procedures often provide in-built enforcement mechanisms since non-compliance can be sanctioned by exclusion from the certification scheme, the industry, or the infrastructure concerned. The experience under the UDRP has shown that such mechanisms greatly enhance the efficiency of ADR procedures and largely dispense with the need to seek the help of public enforcement mechanisms.

2.7.5 Public Support

Given the interest of government and public authorities in channeling the resolution of private disputes into ADR, it is likely that ADR mechanisms will be supported and encouraged by public regulation. Hybrid dispute resolution systems result if a public authority defers to solutions developed through private ADR, or lends its authority to the outcome of ADR procedures. Increasing public attention to ADR is also likely to result in more active policing of minimum procedural safeguards, while public scrutiny has so far largely been confined to regulating arbitration.

Thus we can conclude that at International level ADRs methods are also popular. With camparison to India there are many ADRs methods have existed at International level and some are in a very developing stage. USA, Pakistan, New Zealand and in other states also there are some types of Legislation which recognized the ADRs methods for resolution of disputes. Arbitration, Adjudication, Fact finding, Facilitation, Mediation, Neutral evaluation, Negotiation, Ombudsman, Online Dispute Resolution, Partnering are some of them. A quick glance at the global scenario of ADR mechanism reveals its popularity in various countries. ADR Mechanism also gained recognition in International Law for resolution of international dispute through peaceful means. It has always been the objective of international law to develop means and methods through which the disputes among the nations may be resolved through peaceful means and on the basis of justice. In this connection, the rules of international law are partly in the form of customs and partly in the form of law-making treaties. According to the Department of Justice Strategic Priorities 2006:

There has been a growth in demand for alternative dispute resolution, which offers a cost-effective and non-adversarial environment for resolving disputes. Better coordination and integration of alternative dispute resolution across the justice system will ensure disputes are resolved at the most appropriate stage[119].

1800 B.C.	Mari Kingdom (in modern Syria) uses mediation and arbitration in dispute with other kingdoms.
1400 B.C	Ancient Egyptian Amama system of international relations uses diplomacy.
1200-900	B.C. Phoenicians (in the eastern Mediterranean) practice entrepreneurship and negotiations
960 B.C.	Israel's King Solomon arbitrates dispute over baby by threatening to split the child.
700 B.C.	Rhodian Sea Law codifies traditional rules for determining liability for ship cargo losses and dispute resolution. 500 B.C. Arbitration, called *Panchayat* used in India.
400 B.C.	Greeks use public arbitrator in city-states. Arbitration decisions between city-state "published" on temple columns.
300 B.C.	Aristotle praises arbitration over courts.
100 B.C.	Western Zhou Dynasty establishes post of mediator. 452 A.D. As Attila the Hun destroyed city after city in his sweep across Europe, Pope Leo the Great successfully negotiateto spare the city of Ravenna, Rome's western capital.

	.
1000	European law merchant used in marketplaces.
1263	King Alfonso the Wise of Spain directs the use of binding arbitration with the publication of *Siete Particles.*
1400	Venice establishes first overseas diplomatic offices.
1632	Irish Arbitration Law provides statutory basis for arbitration.
1648	Count Maximilian mediates an end to the Thirty Years War for the Holy Roman Empire established contours of Europe for a century.
1624-1664	During Dutch colonial period, commercial arbitration in wide use in New York City.
1664-1776	In British colonial period, commercial arbitration use continues.
1750	Benjamin Franklin, as Pennsylvania's Indian commissioner, reports learning persuasion, compromise, and consensus building from Native Americans. He also prints some of their peace documents.
1770	George Washington places arbitration clause in his will,

1776-1785	Benjamin Franklin, John Adams, and Thomas Jefferson negotiate in Europe on behalf of the weak United States, establishing a diplomatic history for the young nation.
1775-1860	From the Continental Congress to Lincoln's inaugural, repeated negotiations and compromises reach temporary solutions to the slavery issue.
1790	Thomas Jefferson mediates between Treasury Secretary Alexander Hamilton and Congressman James Madison, establishing the U.S. capital at Washington, D.C., and creating the national debt
1865	Generals Lee and Grant negotiate the terms of the South's surrender, ending the Civil War.
1866	General Howard institutes arbitration in employment agreements between former slaves and former owners. Arbitration Act passed. Probably the first ADR statute in the United States providing voluntary arbitration and ad hoc commissions to investigate the cause of specific railway labor disputes.

1902	President Teddy Roosevelt mediates a long anthracite coal strike.
1906	Teddy Roosevelt mediates peace agreement ending the Russo- Japanese War, earning him the Nobel Peace Prize.
1913	Department of Labor created and mediates first labor dispute; mediates thirty-three disputes in its first year.
1914-1918	World War 1 uses ADR process to resolve labor disputes and establish labor agreements to aid war effort. Unions experience substantial growth. All wartime arrangements end with the peace in Europe.
1917	U.S. Conciliation Service created with permanent staff to mediate labor disputes.
1920	New York state passes first modern arbitration law; within five years, fifteen other states would follow.
1920	Aggressive employer tactics and a compliant government reduce collective bargaining and union membership.
1926	American Arbitration Association created from merger of an arbitration foundation and society.

1926	Railway Labor Act is passed after labor and management create a draft that both can support.
1932	Norris-La Guardia Act limits injunctions stopping union activities.
1935	National Labor Relations Act creates employee and union rights and prohibits antiunion practices of employers.
1942	War Labor Board created; uses ADR.
1945-1946	Most strikes ever in a single year.
1947	Taft-Hartley Act creates Federal Mediation & Conciliation Service, prohibits some union activities, and establishes ADR for national emergency disputes.
1962	President Kennedy's Executive Order 10988' required federal agencies to engage in collective bargaining with unionized employees, starting a movement toward public employment unionization at all levels of government.
1962	Steel Trilogy: U.S. Supreme Court recognizes labor arbitrators' expertise as final authority.

1965	Civil Rights Act protects minority rights and creates Community elations Service to conciliate civil rights disputes.
1968	National Advisory Commission on Civil Disorder (Kerner Commission) reports the need for major social and legal changes to avoid a dangerous split in U.S. society.
1968	Ford Foundation creates National Center for Dispute Settlement and Center for Mediation and Conflict Resolution to apply labor-management ADR to civil rights. campus, and community disputes.
1969	President Nixon's Executive Order 11491 expands Kennedy's executive order on federal employment relations .
1972	Society of Professionals in Dispute Resolution (SPIDR) created as membership organization for all ADR practitioners. It would merge to become the Association of Conflict Resolution in the late1990s.
1973	First environmental mediation: Snoqualmie River Dam project in Washington State.
1973	Prisoner grievance procedure in New York and California

	begins with nonbinding arbitration.
1974	Federal Mediation and Conciliation Service expands mission statement beyond labor-management.
1975	Collective bargaining honored with first-class postage stamp, first ADR process so honored.
1975	American Arbitration Association commits to new areas of ADR by moving experimental programs handled by the National Center for Dispute Settlement into AAA.
1976	Pound Conference promotes legal reform by encouraging ADR processes, including the mutidoor courthouse.
1978	Camp David Accords result in Israeli-Palestinian agreement, with resident Carter using single text negotiation process.
1979	Judicial Arbitration and Mediation Service established. Getting to Yes published, popularizing interest-based negotiations.
1981	1981 Institute of Conflict Analysis and Resolution established at George Mason University.

1981	Air traffic controller strikers replaced by the government, subsequently labeled the beginning of the decline of the labor movement and collective bargaining.
1982	Academy of Family Mediators founded.
1982	Former President Carter establishes the Carter Center in Atlanta to, among other things, use ADR in international disputes.
1983	Program on Negotiation officially established at Harvard University.
1983	National Institute for Dispute Resolution established to encourage ADR with foundation funds.
1983	Federal Aviation Administration becomes first federal agency to use negotiations to establish rules (RegNeg).
1984	Hewlett Foundation begins major funding for ADR.
1985	National Institute of Dispute Resolution funds pilot programs to encourage state governments to use ADR .
1987	Administrative Conference of the United States sponsors the Colloquium on Improving Dispute Resolution: Options for the Federal Government, and issues the Sourcebook: Federal Agency Use of Alternative Means of Dispute Resolution.

1989	Public Conversation Project begins, followed shortly by the Consensus Councils, which use comprehensive consensus processes to address public issues.
1990	Negotiated Rulemaking Act directs federal regulatory agencies to use consensus building and negotiation to createn administrative rules.
1990	Administrative Dispute Resolution Act directs federal agencies to expand use of ADR.
1990	Civil Justice Reform Act initiates experiments to reform the federal courts with focus on ADR use.
1993	President Clinton issues Executive Order 12871 promoting partnership between federal agencies and their unionized

3. ADR MECHANISM IN INDIAN SCENARIO

3.1 INTRODUCTION

Discourage litigation, persuade your neighbor to compromise whenever you can. Point out to them how the nominal winner is often the real loser in fees and expenses and waste of time. As a peace maker the lawyer has a superior opportunity of being a good man. There will still be business enough.

-Abraham Lincoln[120]

Justice is the foundation and object of any civilized society. The quest for justice has been an ideal which mankind has been aspiring for generations down the line. The resolution of dispute has a very long history and the true determination of its beginning lies in the history of the origin of the evolution of man. Mankind in different ages in different communities has resolved disputes using various methods – harmoniously or by coercion and force. The object of dispute resolution is to ensure continued peaceful co-existence among the people as well the maintenance of equilibrium and growth of the society as a whole. Normally, we think that 'dispute resolution' and 'rule of law' is a subject within the domain of jurisprudence. The evolution and growth of dispute resolution mechanisms is also considered as the resultant growth of the science of jurisprudence. But the growth of arbitration as a dispute resolution mechanism had an additional perspective. Commerce, economics and business exigencies changed the scene of dispute resolution process in the course of time, yielding place for commercial arbitration. Arbitration was viewed as a shortcut to early determination of cases amongst the business community since the courts were getting increasingly congested, time-consuming and procedurally complicating. On the other hand, the advantages of arbitration were many; including, Expediency: Arbitration paved way for faster result than typical dispute resolution through the public court system. It was not uncommon for business disputes to languish in courts for years together. Choosing the decision-maker: Parties could agree on the arbitrator or on how the arbitrator is to be selected. The ability to select the decision maker for a dispute was found attractive to the parties as it gave the feeling of control over the proceedings. It also gave parties the choice and freedom to select the decision-maker who is knowledgeable about both the subject matter upon which a dispute may be

based and the specific laws related to the issues involved.

Ancient India had many traditions of ADR (it could be mediation, arbitration or even a hybrid of mediation and arbitration) upto the medieval period. The affairs of the community were generally managed by a single headman whose position was either hereditary or elective. During the years, administration of justice underwent various changes and developments and adopted various types and compositions. It even had various stages of appeals. The king became the ultimate judge. The scene changed with the arrival of the East India Company.[121] The Anglo-Saxon, formal dispute resolution process or the Court system, where state institutions conducting public, formal proceedings that result in binary, win-lose remedies, subsequently enforced through social control over the losing party was established.

But even then, the importance of the determination of disputes by arbitrators was well recognized. One of such method was through the institution of Panchayat or Village head. They proceeded in an informal way untrammeled by the technicalities of procedure and the laws of evidence. The advantage of this system lay in its location at the grass root level. However in British India, the Panchayat system underwent considerable changes. Commencing from 1772, a number of Regulations were made – the Legislative Council, for India was established in 1834 and subsequently in 1857, the procedure of Civil Courts was codified except those established by the Royal Charter. Gradually the importance of arbitration as a primary method of dispute resolution lost its significance. The reason was quite obvious. Even though arbitration was prevalent under the Roman law and in the Greek civilization since the sixth century BC, the attitude towards arbitration at its inception in England was generally hostile. There was a policy against agreements ousting jurisdiction of courts. Such agreements were considered as void and against public policy.

Arbitration in independent India was governed by the Arbitration Act, 1940. India had become a party to both the Geneva Protocol and the Geneva Convention on 23rd October 1937. For implementing and giving them effect, the Arbitration (Protocol and Convention) Act, 1937 (the 1937 Act), was enacted, incorporating the Geneva Protocol as its First Schedule and the Geneva Convention as its Second Schedule. India became a party to the New York Convention on 13th July 1960. In order to give legislative effect to the New York Convention, Foreign Awards (Recognition and Enforcement) Act, 1961 (the 1961 Act) was enacted in India, incorporating the New York Convention as its schedule. Even though India was a signatory to the Geneva and New York conventions and passed two legislations to enforce it, the apparent flaws in the arbitration laws, constant interference by national courts and difficulty in enforcing foreign awards added to the confusion. It was said that the way in

which arbitration proceedings were conducted and without an exception challenged in courts, made lawyers laugh and legal philosophers weep, in view of unending prolixity, at every stage providing a legal trap to the unwary[122]. One of the primary grievances of investors and business groups, including domestic and international, had always been the delay, cost and uncertainty involved in litigation in the ordinary courts of the country. None of it would be finally disposed of for atleast 10 years from commencement. The only accepted alternative was Arbitration.

India had to make a sincere and timely effort to make available a speedy, inexpensive and impartial alternative to litigation for resolving disputes, particularly involving foreign element. After extensive deliberations and consultations at all possible levels, it adopted the UNCITRAL Model Law, accepting the recommendation of UNCITRAL to ensure uniformity of law of arbitral procedures worldwide and produce the desired convenience to international commercial practice. The Arbitration & Conciliation Act, 1996 was enacted, consolidating and amending the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign awards. Major thrust and legislative intent was to achieve "speed and efficiency", coupled with maximum independence from court intervention. The Act also for the first time gave statutory recognition to mediation.

The traditional approach of evaluating the "success" of dispute resolution is to define intended outcomes and the criteria or indicators by which achievement of those outcomes can be judged. The norms could be many. For some, fairness may be more important than settlement of the dispute; for others, durability and long term impact may be more important than the immediate outcome. It is often said*, "Laws and regulations tell you what you can do, butvalues tell you what you should do."* ADR, which includes arbitration andmediation, apart from its primary goal of dispute resolution also have broader goals such as capacity building, skills development and reductions in social friction. Then the big question is does ADR and in particular Arbitration provide "justice" and "value" effectively to all groups in the community, for example remote/rural communities, disadvantaged and poor people?

There is a Chinese proverb that says, "When the wind changes direction, there are those who build walls and those who build windmills". When the wind has definitely changed direction, we need to build the kind of windmills that can sustainably harness it[123]. So it is understood and accepted that ADR is the most suited dispute resolution method for promoting global trade and commerce and thereby to uplift the economy and conditions of the poor, why not accept it and modify it to suit the requirements of the common people as well. In India the need to evolve alternative mechanisms simultaneous with

the revival and strengthening of traditional systems of dispute resolution have been reiterated in reports of expert bodies.[124] Each of these reports saw the process of improving access to justice through legal aid mechanisms and ADR as a part of the systemic reform of the institution of the judiciary coupled with substantive reforms of laws and processes.

3.2 First Method: Arbitration

3.2.1 Origin of Arbitration

The origin[125] of Arbitration may be traced back to the age old system of *VillagePanchayats* prevalent in ancient India. The decision of Panchas while sittingcollectively as *Panchayat* commanded great respect because of the popular belief that they were the embodiment of voice of GOD and therefore had to be accepted and obeyed unquestionably. In course of time this mode of Divine dispensation of justice through *Panch Parmeshwar* underwent redical changes with the changing pattern of society and growth of human knowledge and civilization. The complexities of modern commercial transaction in the wake of globalization of economy have necessitated effective redressal mechanism for speedy settlement of domestic as well as international commercial disputes with a view to ensuring uninterrupted flow of trade and commerce. This has been possible through measures such as Arbitration which is considered as relatively less expensive and speedy mechanism as compared with the court proceedings which are expensive, dilatory and involve a complex cumbersome procedure.

3.2.2 Historical backdrop

As like most Indian Laws, the law relating to arbitration in India is also based on the English Arbitration Law. The English merchants and traders referred their trade and commercial disputes for settlement to persons called arbitrators who were specially selected for the purpose. Initially, the Arbitration Act of 1697 was enacted in England to resolve the disputes relating to personal chattels or personal wrongs or real estate of the disputant merchants and traders. Besides, the Common Law Procedure Act 1854 also contained some provisions relating to arbitration with a view to making the award more binding upon the parties and ensuring its legal enforcement. These statutes were subsequently replaced by the Arbitration Act 1889 which repealed all the earlier English enactments relating to arbitration.

In India the first statutory enactment on arbitration law was the Indian Arbitration Act 1899, which was modeled on the English Arbitration Law

1899. Prior to this enactment, the Bengal Regulation 1772 provided that the parties to a disputes relating to accounts etc. shall submit their cause to arbitration, the award of which shall become a decree of the court further changes were made in the arbitration law by the Regulations of 1781 and 1782 which provided that an arbitration award could be set aside on the proof of gross corruption or partiality on such assertion being made by at least two credible witness on oath. The Arbitrators were to be appointed by the parties of their own choice and their decision was final and binding on the parties except in case of partiality or misconduct on the part of arbitrators. Regulation of 1787 empowered the court to refer disputed matters to arbitration with the consent of parties.

The operational part of the arbitration law was made more effective by the Bengal Regulation 1793, which provided that the court could refer matters and suits relating to accounts, partnership debts, non-performance of contracts etc. to arbitration where the value of suit did not exceed two hundred Sikkas (i.e.rupees). The Regulation also laid down the procedure to be followed in conducting arbitration proceedings. The provisions relating to arbitration proceedings contained in the Regulation of 1793 were extended to the territory of Banaras by the Regulation of 1795. These were made further applicable to the province of Oudh by the Regulation of 1803.

The Government of Madras and Bombay also conferred certain powers on the Panchayats to settle disputes by arbitration by the Madras Regulation of 1816 and Bombay Regulation of 1827 respectively. Consequent to the enactment of the code of civil procedure1859, the provisions relating to arbitration were incorporated in Chapter VI of the code. However, these were not applicable to the Non-Regulation provinces and the Presidency small cause courts as also the Supreme Court of Calcutta, Madras and Bombay. The code of civil procedure 1859, was subsequently repealed and replaced by the Act of 1882[126] which was further replaced by the code of civil procedure 1908[127] this code contained elaborate provisions relating to arbitration in Section 89, Section 104 and Second Schedule[128]. The Indian Arbitration Act 1899 however, continued to be applied only to matters which were before a court of law for adjudication.

It was in 1940 that the Indian law on arbitration was consolidated and redrafted in the form of Arbitration Act 1940, on the pattern of the English Arbitration Act 1934. While the English Arbitration Act 1934, was subsequently modified by the Act of 1950 followed by the Arbitration Act of 1979, the Indian Arbitration Act 1940, remained in force until it was

replaced by the new Arbitration and Conciliation Act 1996.

3.2.3 Meaning of Arbitration

Arbitration is a process of disputes resolution between the parties through arbitral tribunal appointed by parties to the dispute or by the court at the request of a party. Precisely speaking, it is an alternative to litigation as a method of dispute resolution.

Arbitration may be defined as a "mechanism" for the resolution of disputes which take place usually pursuant to an agreement between two or more parties, under which parties agree to be bound by the decision to be given by the arbitrator according to law or if so agreed, other considerations, after a fair hearing such decision being enforceable by law.[129]

Arbitration is entered into usually by contract, but renders a binding result. Arbitrators are selected by parties who bear the expenses of arbitral proceedings as also the fees payable to arbitrations. Arbitration through less formal than litigation, is the most formal of the six ADR processes and results in an 'award' which is similar to a final decree of a court.[130]

Section 2(1)(a) of the Arbitration & Conciliaton Act 1996 defines 'Arbitration'. The Arbitration Act of 1940 did not contain the definition of the term 'Arbitration'. The word arbitration as defined in the present Act, cannotes the same meaning as contained in Article 2(a) of the Model law of UNCITRAL.

According to Byrne's Law Dictionary

The term 'arbitration' includes practically every question, which might be determined by a civil action, referred to arbitration[131].

Thus under the English Law, arbitration means the settlement of disputes by the decision of one or more persons called arbitrators.

As Russel pointed out[132]- *The essence of Arbitration is that some dispute isreferred by the parties for settlement to a tribunal of their own choice instead of to a court.*

According to the Section of 2(1)(a) of the Arbitration and Conciliation Act 1996

"Arbitration" means any arbitration whether or not administered by permanent arbitral institution.

The Supreme Court of India has interpreted arbitration as Judging of a dispute between parties or groups of people by someone not involved in the dispute and whose decision both parties agree to accept.[133]
Thus we can say that arbitration as an effective substitute for court litigation for settlement of dispute or difference between the parties.

3.2.4 Kinds of Arbitration

Arbitration may broadly be categorized into:

- **Ad hoc Arbitration**

Adhoc Arbitration refers to an arbitration where the procedure is either agreed upon by the parties or in the absence of an agreement the procedure is laid down by the Arbitral Tribunal. Thus it is an arbitration agreed to and arranged by the parties themselves without seeking the help of any Arbitral Institution. In Ad hoc, Arbitration, if the parties are not able to nominate arbitrator/arbitrators by consent, the appointment of arbitrator is made by the Chief Justice of a High Court (in case of a domestic arbitration) and by the Supreme Court (in case of international arbitration) or their designate. The fees to be paid to the arbitrator is agreed to by the parties and the arbitrator concerned. Thus, we can say that Arbitration which is not conducted under the auspices of any Arbitral Institution is termed as Ad hoc Arbitration. In the light of above description of Ad hoc Arbitration, in its some deficiency also have, such as-

In Ad hoc Arbitration potential delay in disposal of arbitration cases. Ad hoc Arbitration required parties to rush to law court repeatedly for seeking orders even on ordinary procedural matters. For example, in case of any dispute between the parties and the arbitrators regarding latter's fees, the matter had to be taken to court for settlement as there was no provision relating to scale of fees payable to the arbitrators in the Act.

Ad hoc Arbitration is not self- enforcing, there if the respondent declines to arbitrate, the claimant has to move the court for enforcement of the reference of disputes to arbitration.

So we can say that in Ad hoc arbitration involves huge expenditure on procuring the infrastructure facilities such as trained staff, library, suitable

venue for conduct of arbitration proceedings etc.

- **Contractual Arbitration**

Globalization has changed the world atmosphere, therefore there is a increasingly tendency in trade and business and growth of economy, commercial transactions increased leaps and bounds. There were frequent occasions for clashes and disputes between the parties which needed to be resolved. In order to seek early settlement of disputes without approaching the court, the parties usually chose to insert an arbitration clause as an integral part of the contract to refer their existing or future disputes to a named arbitrator or arbitrators to be appointed by a designated authority. This has been called as contractual in-built arbitration.[134]

- **Domestic Arbitration**

Domestic Arbitration takes places in India when the arbitration proceedings, the subject matter of the contract and the merits of the disputes are all governed by the Indian law or when the cause of action for the dispute arises wholly in India or where the parties are otherwise subject to Indian jurisdiction.

In this context (The Arbitration and Conciliation Act 1996) section 2 sub-section (7) of Arbitration and Conciliation Act 1996 provides that an award made under part-I of the Act shall be called a domestic award which means an award made in respect to an Arbitration which has taken place in India.

- **Foreign Arbitration**

A foreign Arbitration is an Arbitration which is conducted in a place outside of India and the resulting award is sought to be enforced as a foreign award.

- **Institutional Arbitration**

The main advantages of institutional arbitration is that it handles the entire proceedings right from the stage of appointment of arbitrators to the making of final award on payment of prescribed fee and therefore, there is minimum of disruption without the need for recourse to law courts. Institutional Arbitration will specially be useful in case of arbitration involving construction contracts with a view to avoiding needless argument and debate on interpretation and enforcement. In such an

arbitration, every party will be governed by the same set of clauses and subject to same interpretation, thus eliminating delay in unnecessary argument and interpretation of clauses. It's also ensure uniformity which is an essential feature of the Arbitration and Conciliation Act 1996. In the institutional arbitration has secretarial and administrative staff of its own who are subject to the discipline of the institution; therefore they are more dependable so far confidentiality of arbitral proceeding is concerned. The institutional arbitration is advantageous in the sense that it avoids the necessity of going to the court for enforcement of arbitration.

In an Institutional Arbitration it may stipulate in the arbitration agreement that in case of dispute or differences arising between them, they will be referred to a particular institution such as Indian Council of Arbitration (ICA) or International Chamber of Commerce (ICC), Federation of Indian Chamber of Commerce and Industry (FICCI). World Intellectual Property Organisation (WIPO) etc. All these institutions have framed their own rules of arbitration which would be applicable to arbitral proceedings conducted by these institutions. The main institution are as under-

- **Indian Council of Arbitration (ICA)**

The Indian Council of Arbitration (ICA) was established in 1965 and it is the apex organization at national level. It provides facilities for arbitration of commercial, maritime, industrial and trade disputes. It also provides for settlement of International disputes. ICA can play a leading role in popularizing arbitration. The Indian Council of Arbitration has framed the rules of arbitration as amended upto 30th September 1998.

One more advantage of institutional arbitration is that the award made by arbitrators is scrutinized by the committee of experts and experienced professionals before it is finalized which minimizes chances of award being set aside thus eliminating Judicial intervention to a considerable extent.

- **International Centre for Alternative Dispute Resolution (ICADR)**

This centre was set up in 1995 as an autonomous organization by the Government of India, Ministry of law and Justice. The centre has offices in Delhi, Hyderabad and Bangalore. The Government of India, sponsors the Delhi office, while the respective State Governments pay for the

Hyderabad and Bangalor offices. The Primary focus of the ICADR is to promote and popularize ADR methods, by providing administrative and other support for holding ADR proceedings. Though the ICADR objectives include Conciliation and Mediation .Its primary focus is arbitration, since it appears to be the "Preferred ADR" technique in urban India[135]. No fees are charged by the ICADR for the use of their premises for conducting ADR proceedings by parties.[136]

Objects of the International Centre for Alternative Dispute Resolution are as under:

(I) To expand, encourage and popularise the scientific means for settlement of local, national and international commercial disputes;

To provide assistance and render facilities for arbitration, conciliation and mediation;

To develop the alternative means of dispute resolution among the communities in accordance with their social, economic and other requirements;

To appoint conciliator and mediator on the request made by the parties in the dispute. In accordance with the Arbitration and Conciliation Act, 1996 if the parties are unable to appoint the mediator or conciliator or arbitrator they can designate or nominate the person or institution for the appointment of the mediator. Similar power has also been conferred upon the Chief Justice**.**

- **Indian Centre for Mediation and Dispute Resolution (ICMDR)**

This private charitable trust was established in Chennai in 2001 to create awareness and training on ADR. The functions of this centre include evaluation of a dispute and advice to parties as to which process of dispute resolution if most appropriate; training workshops for mediators and lawyers who represent parties at mediation; awareness programmes for companies and institutions on mediation and its relevance, a penal of trained mediators and a facility to conduct mediation and the design of dispute resolution process. The centre has collaborated with the cell (confederation of India Industries) and has conducted training and awareness programmes in various cities in India. The centre was Instrumental in establishing the TamilNadu Mediation

and Conciliation centre at the Madras High Court.

FICCI Arbitration and Conciliation Tribunal (FACT)

The Federation of Indian Chambers of Commerce and Industry set up FACT to administer international and domestic arbitration and conciliation as provided for by law. FACT recommends arbitration or conciliation clauses are included in commercial contracts to promote these ADR process over conventional litigation. FACT primarily seeks to address B2B (Business to Business) disputes and provides facilities for dispute resolution proceedings in 8 Indian cities.

FICCI Alliance for Consumer Care (FACC)

A more recent effort (still largely in pipeline) in the FACC which is a tri-partite arrangement between FICCI, Government of India and VOICE (a Delhi-based consumer organization). At this point of time, FACC's work is limited to documenting and analysing complaints received by VOICE and CORE (on line complaint collection system). These complaints are forwarded by NACC to "Nodel Officers" appointed in service provider/manufacturer companies with a request that the company settles the complaint. FACC requires the companies to sign a voluntary code of conduct which requires them to resolve such complaints within 60 days. In the proposed stage-2 of FACC, unresolved complaints would be referred to mediation. However , there is no specific plan as on date on who will be appointed mediators, what structure will exist, where the facilities will be provided, who will bear the cost of this system will be enforced[137].

Alternate Consumer Dispute Redressal Cell

Andhra Pradesh has a unique pre-litigation consumer dispute redressal cell in the office of the civil supplies and consumer protection department in Hyderabad. The cell functions one day a week and has been running for over 4 years. Though the number of complaints filed is low (15-20 per month). Consumer bring their complaints to this cell rather than file it before the District Forums, because of the informed procedure and relative speed of the handling of complaints. Some complaints can get resolved within two weeks, while others may take up to two months. The process is anchored by a single officer- the Deputy Director of the Consumer Affairs of the State Government. All types of consumer complaints are brought to the cell and no fees are required to be paid for this process. The State Government are almost never represented by lawyers, though occasionally opposite parties tend to send their lawyers to represent the case. Unlike traditional mediation proceedings, if the parties are

unable to settle the dispute amicably, the cell advises the consumer on the process to file the complaints before the District Forum. They also attach their opinion or findings (on issues settled and those that could not be settled). On the matter to the complaint and have found that this helps the District Forums better appreciate the facts of the case.[138] Where parties are able to agree on a settlement the same is recorded by the cell and both parties sign the document recording the same, where payments are to be made, this is generally included in the settlement process to avoid another sitting/date for the payment. Similar cell have been set up by the Andhra Pradesh in the Districts of Mahboobnagar, Kurnool and Hyderabad district.

- **Dispute Resolution Board (DRB)**

In India, the system of Dispute Review Board (DRB) is not functioning effectively due to lack of awareness of its utility and half-hearted approach of employers and contractors. The reason perhaps is that the parties find it more convenient to get their disputes resolved through arbitration, mediation and conciliation rather than constituting a regular DRB for their construction Projects. However, the Project sponsored by the World Bank do have in their contract a DRB clause containing detailed rules and procedure to be followed by the Dispute Review Board during the progress of the project [139]India also sent some of its technical expert for DRB training organized by the U.S. Dispute Review Board Foundation but overall implementation of the system is not very encouraging.

- **Delhi High Court Mediation and Conciliation Centre**

Delhi High Court Mediation and Conciliation Centre, known as 'SAMADHAN' was established in May 2006.The centre handles cases referred by Supreme Court of India, High Court of Delhi and its Sub-ordinate Court. The centre has been handling a variety of cases covering matters relating to business contracts/transactions, real estate and construction, Consumer issues, employment and service issues, industrial disputes, banking and insurance cases, trade mark and copyright issues, accident related claims, landlord-tenant disputes, partnership disputes, family and matrimonial disputes, child custody and visitation rights.

- **Federation of Indian Chamber of Commerce and Industry (FICCI)**

A non-government, not-for-profit organization, FICCI is the voice of India's business and industry. FICCI has direct membership from the

private as well as public sectors, including SMEs and MNCs, and an indirect membership of over 83,000 companies from regional chambers of commerce. Partnerships with countries across the world carry forward our initiatives in inclusive development, which encompass health, education, livelihood, governance, skill development, etc. FICCI serves as the first port of call for Indian industry and the international business community.

- **International Arbitration**

International Arbitration can take place either in India or outside of the India cases where there are ingredients of foreign origin relating to the parties or the subject-matter of the dispute. The applicable may be Indian law or foreign law depending on the agreement between parties in this regard. The definition of International Arbitration is given in section 2(1)(f) of the Arbitration and Conciliation Act 1996.

- **International Commercial Arbitration**

The present trend all over the world is for redressal of commercial disputes through arbitration and not by litigation. With the globalization and liberalisation of trade and commerce, the importance of International Commercial Arbitration as a mechanism for resolution of international disputes has assumed greater significance. The term international commercial arbitration has been defined in the Model Arbitration Law in Article 1(3) which says that an arbitration is international if the parties at the time of conclusion of their arbitration agreement had their place of business located in different States.

The Court observed in **Orient Ltd. v. Brace Transa Corporation**[140] that the term "Commercial" suggests that it pertains to commerce, and therefore ultimately nothing else than money.

In **Gas Authority of India Ltd. v. Spie Capag**[141] it has been held that a commercial arbitration agreement will be international in character in the following circumstances-

1. If one of the parties has business located abroad; or

2. The agreements has to be performed abroad; or

3. The subject- matter of the transaction is located abroad; or

4. One of the parties to the transaction is a foreign national.

In **R.M. Investment Trading Co. v. Boeing Co**[142]**.** the SC held that consultancy services are of a commercial nature, promoting sale of Boeing aircraft and providing commercial and managerial assistance and information which may be helpful to promote sales of boeing are "commercial" activities in nature. The Supreme Court further noted that "trade and commerce do not mean merely traffic in goods i.e. exchange of commodities for money or other commodities. In the complexities of modern conditions it includes carriage of persons and goods by road, rail, air and waterways, contracts, banking, insurance, transaction in Stock Exchange and forward markets communication of information supply of energy postal and telegraph services and many more activities……."

- **Statutory Arbitration**

Statutory arbitration is totally different from other arbitrations. Statutory arbitration is a obligatory and binding nature on the parties as the law of the land, as Section 43(c) of the Indian Trust Act, 1882, Section 24, 31 and 32 of the Defence of India Act, 1971; Section 31 of the North-Eastern Hill University Act, 1973, Section 5 of the Delhi Transport laws (Amendment) Act 1971, are some of the examples which contain provisions relating to statutory arbitration. In this type of arbitration there is no importance of consent of parties and they have no option to declined it. For statutory form of arbitration there has provision for Statutory Arbitral Tribunal also.

In **Anant Prakash v. Asstt. Registrar, Co-operative Societies**[143] court has observed that some States such as Madhya Pradesh, U.P., Andhra Pradesh etc. entrust their civil courts to act as arbitral tribunals in the same manner as the statutory arbitral tribunal. The award of these statutory tribunals are final and not subject to appeal in a court of law. These tribunals have their own procedure.

3.2.5 Advantages of Arbitration

Arbitration is by far the most commonly used nationally as well as internationally and it is encourage the parties for amicable settlement of disputes. The reasons for this are as follow-

- **Final and binding**

The decision (i.e. award) of arbitral tribunal is final and binding on the parties, while several mechanism can help parties reaching an amicable settlement, all of them depend upon goodwill and co-operation of the parties. A final and enforceable decision by amicable settlement can generally be obtained only by recourse to arbitration because arbitral tribunals are not subject to appeal. Arbitral awards may be challenged only on a very few limited grounds.

- **Internationally recognized**

Arbitral award enjoy much greater international recognition than judgments of national courts. The NEW YORK CONVENTION facilitates enforcement of awards in all contracting states.

- **Neutrality in Arbitration process**

Neutrality and mutuality are the most redeeming features of arbitration process. At least in matters such as-

(χ) Nationality of arbitration (in case of international arbitration),

(δ) Procedure or rules to be applied,

(ε) Language to be used,

(ϕ) Place of arbitration,

(γ) Legal representation, the parties can place themselves on equal footing.

- **Parties have a choice to designate persons as Arbitrators**

Arbitration offers parties a unique opportunity to designate persons of their choice as arbitrators, which is not possible in case of courts. This enables the parties to have their disputes resolved by people who have specialized competence and expertise in the relevant field.

- **Confidentiality in Arbitration proceeding**

The element of confidentiality which is essential for judicial

proceedings is an attribute of arbitration system. Arbitration hearings are not public and only the parties receive the copies of the arbitral award.

- **Faster and expensive**

Arbitration is faster and less expensive than litigation in courts. Litigation explosion is spawning a formidable backlog of cases that shows no signs of abating even as an alarmed judiciary now pins its hopes on Alternative Disputes Resolution (ADR) to bail it out of the predicament. Hammering on the ADR as a panacea for various ills plaguing the traditional judicial system, the Asia Pacific Jurist Association (APJA), Punjab and Haryana Chapter, and the Chandigarh Judicial Academy on Saturday organized a high-profile event that was attended by a galaxy of judges, including justice Saleem Masroof from Sri Lanka Supreme Court.[144]

3.3 Second Method: Mediation

3.3.1 History of Mediation

Mediation is also a method of Alternative Dispute Resolution Mechanism. Nowadays judiciary role in mediation is valuable which can be seen in various field as family dispute. The concept of mediation is ancient and deep rooted in our country. In olden days disputes used to be resolved in a panchayat at the community level. Panchas used to be called Panch Parmeshwar.

They have been in vogue in our village from time immemorial as Dispute Resolution Panchayats. So long as the village wisemen, committed to the welfare of the villagers, were the Panchayatdars mediation by such panchayats flourished. Their neutrality, impartiality and wisdom enabled them to find mutually acceptable solutions which benefited the parties to the conflict. But things began to change when respected village wise men were gradually replaced by "leaders" based on caste, money and political affinity for whom neutrality and impartiality were secondary and asserting their views and will was primary, instead of the attempting to serve the interests of the parties to the disputes, they started flaunting their power by issuing fiates based on their superstitions, moral beliefs, political compulsions and personal financial interests and started enforcing them by imposing sanctions like ex-communication or levying penalties for disobedience or non-compliance. As a result, such Panchayats resolving disputes, slowly and steadily lost the respect, trust and confidence which they earlier enjoyed. Courts functioning under codified laws, replaced them as arbiters of dispute.

Now we have grown into a country of 125 crore people and with liberalization and globalization, there is tremendous economic growth.[145] All this has led to explosion of litigation in our country. Though our judicial system is one of the best in the world and is highly respected, but there is lot of criticism on account of long delays in the resolution of disputes in a court of law. Now an honest litigation is wary of approaching the court for a decision of his dispute. Hence we have turned to Alternative Dispute Resolution Mechanisms. The legislature by the Code of Civil Procedure (amendment) Act 1999, amended Section 89 of the CPC which effect from 1/7/2002 whereby mediation was envisaged as one of the modes of settlement of disputes. The amendment in section 89 was made on the recommendation of the Law Commission of India and the Justice Malimath Committee. It was recommended by the Law Commission that the court may require attendance of parties to the suit or proceeding to appear in person with a view to arrive at an amicable settlement of the dispute between them and make an attempt to settle the dispute amicably. Justice Malimath Committee recommended making it obligatory for the court to refer the dispute, after issues are framed, for settlement either by way of Arbitration, Conciliation, Mediation or Judicial Settlement through Lok Adalat. It is only when the parties fail to get their disputes settled through any of the alternative dispute resolution methods that the suit could proceed further. Thus Section 89 has been introduced to promote alternative methods of dispute resolution.

Hon'ble Mr. Justice R.C. Lahoti, the then chief justice, Supreme Court of India consitituted a Mediation and Conciliation project committee (then chaired by Hon'ble Mr. Justice N. Santosh Hegde). A pilot project on mediation was initiated in Delhi in the month of August 2005.The first batch of Senior Additional District Judges were imparted mediation training of 40 hours duration. The trained mediators started Judicial mediation from their chambers in the end of August 2005. Thereafter, 24 more Additional District Judges have been trained as mediators during the month of September and November 2005. A permanent mediation centre with all modern facilities was established at Tis Hajari Court Complex[146] in October 2005. Judicial mediation was started at Karkardooma Court Complex in the month of December, 2005 and a litigant friendly and modern mediation centre was established in May 2006. Eleven more Additional District Judges have been trained as mediators during the month of June 2006.A large number of cases have been referred to the Tis Hajari Mediation Centre and the Karkardooma Mediation Centre. The Settlement rate at the two centres being over 60% is very encouraging considering that Judicial mediation is entirely a new concept in our country**.**

3.3.2 Meaning of Mediation

As a form of Alternative Dispute Resolution (ADR) mediation is a

process through which two or more parties may explore and reach a negotiated solution to their conflict with the help of a third neutral and disinterested party, the mediator. The primary and basic option for dispute redressal should shift to voluntary mediation, whereby the process of self-determination enhances the development of the parties problem-solving capacities, their ability to craft individualized justice in their own terms based on their own interests and values[147]. Mediation is a method of non-binding dispute resolution with the assistance of a neutral third party who tries to help the disputing parties to arrive at a negotiated settlement.[148]

The mediation process is most successful when based on the will of the parties to engage in a meaningful dialogue regardless of the depth of their differences. Anyone wishing to explore a negotiated solution to a problem whatever its nature should do so with an open mind, for the goal of mediation is to explore common grounds upon which the parties may build an agreement acceptable to all involved. Because of his/her impartiality, independence and professional experience, the mediator can help the parties understand the motives and needs of all involved. However the mediation process does not seek a solution at any cost, nor may a mediator impose a solution upon the parties. Rather mediation is truly the parties process; the parties themselves offer solution; they weigh, reject, modify and accept mutually exchanged proposals; they build their own accord with the help of the mediator. Though the mediator is not required to follow the procedural law in arriving at a settlement between the contending parties, he must not act contrary to the principles of natural justice and fair play. He should be impartial and neutral in his conduct of negotiation with the parties.

3.3.3 Types of Mediation

There are five types of mediation:

- **Family Mediation**

Family mediation may help the parties reach an agreement and resolved all types of family related issues. Family mediation is not however, therapy. Mediation is intended for and may be of help to any person having a conflict with a spouse a companion, a child, a parent or with any other family member.

1. Family mediation helps the parties resolve their own differences on their own terms allowing them to:

a. Strengthen their ability to communicate;

b. Reach solutions adapted to their unique personal circumstances;

c. Understand and appreciate the needs of other members of their family;

d. Reach lasting agreements.

Practically any family related issue may be resolved through mediation; among them are;

(a) Separation and divorce;
(b) Separation of persons having lived out of wedlock;
(c) Prenuptial agreements;
(d) Division of property and custody of children;
(e)Family businesses;
(a) Inheritance.

- **Commercial Mediation**

Mediation as an alternative dispute resolution method is being increasingly used in the commercial sector at national and international level because it is relatively cheap, less time consuming and settles disputes in a consensual manner. This mode of settlement being out of the purview of formal legislative enactment helps the parties to avoid rigid legal procedures and technicalities of law and reach a solution with their mutual consent.

The goal of commercial mediation is to reach an agreement between the parties. Mediation is suitable for any business having a dispute with another regarding their contractual rights and obligations.

Among the business issues which can be resolved through mediation are the following:

1. **Relations with business partners;**
2. Relations with customers and providers;
3. Relations within the company's professional team.

Business mediation is based on equity, privacy and the freedom of individuals to resolve their own disputes. Business mediation therefore, intends to;

A. Restore or facilitate communication;

B. Obtain a solution adapted to each specific situation;

C. Consider the needs of each party to the dispute;

D. Reach long-lasting agreements.

- **School Mediation**

The goal of school mediation is to reach an agreement between parents, students, teachers and schools when disagreements arise between any, several or all of them.

- **Inter-Cultural Mediation**

Utilized to resolve a great variety of disputes arising often not so much as a consequences of a direct and conscious will to harm or cause a dispute, but out of the unfamiliarity with vastly different attitudes, behavior, beliefs and idiosyncrasies in multicultural societies.

- **Penal Mediation**

Penal mediation used in certain jurisdictions to reconcile and offenders generally when the crime is not so serious as to be legally costigated with long-term imprisonment. In some jurisdictions, penal mediation is also employed for serious offenders as a means of both rehabilitate the offender and serve as therapy for the victim.

3.3.4 Process of Mediation

The mediation process[149] is carried out by the mediator through a series of meetings (caucuses) with the parties. Combining meetings that may be held jointly with all parties involved or privately with each one of the parties, allows the mediator to gain sufficient insight into the nature of the dispute to enable him/her to become a meaningful "broker" of proposals made by the parties themselves. The number of mediation sessions to resolve a problem varies according to each case's complexity and number of issues to be resolved. A Mediator must follow the following process:

STAGE ONE-PREPARATION

Mediators lets lawyers and clients know what to expect and how to prepare; arranges logistics; and addresses authority issues and ensures the attendance of decision-makers.

STAGE TWO- THE MEDIATOR'S INTRODUCTION

The mediator explains the process; establishes procedural guidelines; sets tone of neutrality and optimism. For this purpose the mediators informally chats with the parties and explains his position, experience and neutrality, explains the advantages of a negotiated settlement or conflict resolution as also the limitations and disadvantages of court adjudication. The object is to make the parties relaxed, gain the trust of the parties and motivate them to arrive at a negotiated settlement. The mediator encourage both parties to explain their side of the dispute/ differences, put forth their claims and express their grievances and complaints. This gives an opportunity to the mediator to understand the dispute and the underlying cause. This also enables each party to hear and understand the other party's view point and grievances. The mediator should "Model"(i.e. demonstrate) a calm, but businesslike demeanor when mediating a dispute. The mediator should be relaxed, but focused. The atmosphere can be described as similar to a business meeting. Anxiety, frustration and the anger are highly contagious emotions. The mediator should not display any of these emotions. When a mediator adopts a moderate tone, the parties are likely to follow. Explain that statements made in mediation are confidential. This means that parties should feel more comfortable to talk about their ideas and positions knowing that their words can not be used against them at a later date. Explain whether the confidentiality is based on law or upon the agreement of the parties (before they start mediating).

STAGE THREE-IDENTIFYING THE PROBLEM

Parties and lawyers counsel state their views of the dispute and identifying issues that remain in dispute.

α. What would you like the other party and me to understand about your perspective on this dispute?

β. Discussed any aspects of the disputes you would like the other party and factual background?

χ. What is important to you about the disputes?

δ. What you need to conclude it, the law?

- **STAGE FOUR-EXPLORING THE PROBLEM**

Mediator assists parties in recognizing their underlying values, needs and interest.

1. What about-----is important to you?

2. What needs to be taken into consideration for you to resolve this disputes?

3. What interests of yours does-------meet?

4. What if you don't get?

5. What goals/interests/needs of yours could be furthered by an agreement?

6. What considerations/ concerns/ needs/ interests of yours must be met by any agreement?

7. If the other party were to agree to-

8. What would that mean?

9. What problems would that solve?

10. What needs would be served?

11. If other party were not to agree to-

12. What problems would that create?

13. What needs would go unmet?

14. Why it is important to you to have----?

15. Why do you want----?

- **STAGE FIVE-DEVELOPING OPTIONS FOR RESOLUTIONS**

Mediators and parties identifying and evaluate options for resolving the disputes; parties choose mutually agreeable options.

16. What ideas do you have for addressing the problem you identified?

17. What solutions will meet as many of your needs as possible?

18. Brain stroming options?

19. Evaluating options?

You said----- was important to you. How well does this option meet those interest/needs/concerns?

- **STAGE SIX- CONCLUDING THE MEDIATION**

Mediator and for counsel document the terms of agreements, mediator confirms the parties understanding and acceptance of the agreement; define future responsibilities of the parties; acknowledge conclusions of mediation.

3.3.5 Types of Disputes resolved by mediation[150]

1. Aviation Banking and finance
2. Boundary Disputes Broker Liability
3. Business Disputes Charities
4. Clinical & Medical Negligence Competition
5. Commercial agencies Commercial contracts
6. Construction & Development Corporate finance
7. Distribution agreements Employment
8. Energy Engineering & Manufacturing Disputes

9. Environmental issues Financial Services

10. Franchises Group/Class actions

11. Insurance & Reinsurance Intellectual Property, Trade Mark and Copyright

12. Landlord & Tenant Leasing & Supply Contracts

13. Lender Liability Libel & Defamation

14. Maritime & Shipping Multiparty actions

15. Neighbor Disputes Nuisance

16. Oil & Gas Contracts Partnership Disputes

17. Passing-off Actions Pensions

18. Personal Injury Pollution Claims

19. Product Liability Personal Indemnity.

3.3.6 Communications Techniques used in mediation

Following techniques used by a mediator for mediation process-

3.3.6.1 "Summarizing" –

Is a technique used by a mediator to briefly, clearly and accurately re-state the essence of a statement by a party or attorney regarding issues, positions or proposed terms of agreement. In summarizing, a mediator must be careful to:

(1) Be accurate

(2) Be brief

(3) Re- state the issues, position or terms in words that are natural

(4) Be complete.

3.3.6.2 "Acknowledgment"

Is a communication technique used by a mediator to-

Reflect back a person's statement or position.

In a manner that recognizes the perspective of the party regarding the statement or position.

One purpose of acknowledgement is to convey that the mediator has accurately heard and understood the statement/position. Another purpose of acknowledgement is to convey that the mediator understands the importance of the statement/ position to the party.

3.3.6.3 "Re-Directing"

Is a Communication technique in which the mediator shifts the focus of a party from one subject to another. Re-directing may be used to:

A. Focus on the details

B. Refocus on general issues

C. Respond to a hostile or highly adversial statement by a party.

3.3.6.4 "Deferring"

Is a Communication technique in which mediator postpones a response to a question or statement by a party. It may be used:

1) Where a party or attorney requests a premature evaluation;

2) To follow an agenda established by the mediator;

3) To gather additional information;

4) To de-fuse hostile or highly adversial statement.

3.3.6.5 "Setting an Agenda"

Is a communication technique used by mediators to establish the order in which issues, position, claims, or proposed settlement terms will be addressed. Emphasizing the need for utilization etc. As means of settlement of disputes the apex court in-

In the case of **Guru Nanak Foundation v. Rattan Singh & Sons**[151] it was held that Interminable, time consuming, complex and expensive court procedure impelled Jurists to search for an Alternative Forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to the Arbitration Act 1940. However, the way in which the proceedings under the Act are conducted and without exception challenged in Court, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the act have become highly technical, accompanied by unending prolixity. At every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditions disposal of their disputes has by the decision of the Court, been clothed with "legalese" of unforceable complexity.

SC observed in **Vellikannu v. R. Singaperumal** [152] that mediation proceedings are totally confidential proceedings. This is unlike proceedings in court which are conducted openly in the public gaze. If the mediation succeeds then the mediator should send the agreement signed by both the parties to the court without mentioning what transpired during the mediation proceedings. If the mediation is unsuccessful, then the mediator should only write one sentence in his report and send it to the court stating that the 'Mediation has been unsuccessful ' beyond that the mediator should not write anything which was discussed, proposed or done during the mediation proceedings. This is because in mediation, very often, offers, counter offers and proposals are made by the parties but until and unless the parties reach to an agreement signed by them, it will not amount to any concluded contract. If the happenings in the mediation proceedings are disclosed it will destroy the confidentiality of the mediation process**.**

In yet another Case the Supreme Court in **Raipur Authority v. Chokhamal Contractors**[153] inter-alia, observed "The System of dispute resolution has of late, acquired a certain degree of notoriety by the manner in which in many cases, the financial interests of Government have come to suffer by awards which have raised eyebrows by doubts as to their rectitude and propriety". The need for popularising ADR's found further support by a resolution passed at a meeting of the State Chief Ministers and Chief Justices held in Delhi on December 4,1993. The participants noted that the courts were not in a position to cope up with the mounting arrears of pending cases and the same could be conveniently disposed of by resorting to alternative methods such as Arbitration, Conciliation, Mediation, Negotiations etc. Therefore, It was highly desirable to launch a movement towards ADR's

and encourage the litigants to adopt them because they are less expensive, less time consuming and less formal in procedure as compared with the traditional proceedings in a Civil Court**.**

3.3.7 Restrictions on Mediator

Mediation not being a statutory process, the powers of mediator are not defined under any statute. His main function is to appraise the parties about the Pros and Cons relating to the subject-matter of the dispute and help them in reaching a settlement by mutual consent. There are, however, certain restrictions on the powers of a mediator which may briefly be stated thus:

(1). He cannot compel attendance of any person or production of any document.

(2). Mediator being a consensual process, there is no question of mediator making an ex- parte settlement.

(3). The settlement arrived at by mediator lacks enforceability because of the non- statutory nature of his functions.

(4). He can only persuade the parties to reach a settlement and has no power to compel them to accept his settlement decision.

(5). He functions as a mediator only till the parties so desire and seizes to act as such if any party withdraws his consent.

(6) The mediator cannot modify or alter the subject-matter of the dispute and

(7) He has no power to penalize a recalcitrant party.

As stated earlier, the settlement made by the mediator isn't legally enforceable because it lacks statutory recognition. Therefore, the enforcement of settlement made by mediator depends upon the willingness of the parties. However, if the settlement is converted into a written agreement between the parties, it becomes enforceable like any other contract under the law of contracts, Section 74 of the Arbitration and Conciliation Act 1996 also support this contention.

3.3.8 What is expected of a mediator?

A mediator who is trained, experienced and committed can increase the chances of settlement. Any half- baked or half-hearted or clumsy attempts will be counterproductive. These are the following qualities which is expected of a mediator:

3.3.8.1 Common Sense

Abundant common sense give a mediator understanding and an awareness of ground realities, acceptable solution. It creates trust and confidence in the parties.

3.3.8.2 Neutrality

A mediator should be neutral and also seem to be neutral. Consciously or even unconsciously, he should not take sides. Without neutrality he cannot give solution to the parties which is sufficient and real.

3.3.8.3 Understanding of Human Nature

Mediation is conflict resolution. Conflict arise on account of selfishness, greed, jealously, ego, lack of understanding and sometimes feeling of hurt or wounding of pride. To remove conflicts one has to understand the reasons for the conflict and be able to recognize the area of conflict. The mediator should remember that the more closer the earlier relationship, more bitter will be the flight when disputes occur. For example, disputes between two parties who have no personal relationship are the easiest to settle. Slightly more difficult are commercial disputes. The degree of difficulty increase in proportion to the previous closeness in relationship in the following ascending order; members of societies employer/employee. Landlord / tenants, neighbors, partners, siblings, parent/child and the most difficult being husband/ wife relation ship.

3.3.8.4 Patience

Only a few cases can be settled in a single sitting. Different types of cases may require different skills and different number of sittings. A mediator should be able to give the time needed for the parties to proceed from stage to stage, step by step.

3.3.8.5 Confidentiality

The parties tend to openly discuss their problems with the mediator. The strengths and weaknesses of the case of the parties become known to the mediator. Matters which would not be divulged in a court hearing including trade secrets and family secrets will be routinely disclosed during the

negotiation process. A mediator has to be discreet and maintain confidentiality. He should neither disclose the facts/secrets of the parties to outsiders, nor use them for personal benefit or to the detriment of the parties.

3.3.8.6 Persuasive Skills

Mediator should have communication skills and felicity of language. He should be able to freely communicate with the parties. He should also be able to persuade parties to open up and disclose their mind and heart, their grievances and the solution they expect, so that he can asses them and suggest solution.

3.3.8.7 Legal/Technical Knowledge

A mediator should have the ability to assess the strengths and weaknesses of the case and be able to put across the same to the respective parties. He should also be able to highlight the strength of the opponent's case, so as to make a party to see reason. But at the same time, he should remember that he is not a judge; and it is not his duty to render judgment or decide who is right or who is wrong, but only a facilitate a mutually acceptable solutions/settlement.

3.3.9 Why mediation?

3.3.9.1 Disadvantages of Adjudicatory Process[154]

The dispute resolution by courts, is adjudicatory and adversial in nature resulting in a binding decision. Whether the parties like it or not. Litigant have identified the following six shortcoming with reference to adjudication by court.

We can refer to each one of them briefly:

3.3.9.1.1 Delay in Dispute Resolution

Court's function under procedural laws which were made to ensure fair play, uniformity and avoidance of judicial error. The procedural laws encourage appeals, revisions and reviews. They permit the litigants to file a series of interlocutory applications which often results in the main matter being delayed or even lost sight of seeking adjournments in considered to be moral and routine. The proliferation of laws and increase in the volume of litigation. The overloaded judicial system is finding it difficult to cope up with the demands on it, having regard to the inherent limitation of the

system placed by age-old procedural laws and several redundant or archaic substantive laws. The demands for more judge, more court, better infrastructure and better laws have remained unfulfilled. Those laws were intended to ensure fair play, uniformity and avoidance of judicial error. They permit appeals, revisions, reviews, innumerable interlocutory applications and adjournment. Civil disputes are fought for several decades through the hierarchy of court. Delay has thus virtually become a part of the adjudicatory process. Delay leads to frustration and dissatisfaction among litigant public and erasion of trust and faith of the common man in the justice-delivery system. In commercial litigation, delay destroy businesses. In family disputes, delay destroy peace, harmony and health, thereby turning litigants into nervous wrecks.

3.3.9.1.2 Uncertainty of Outcome

The outcome of a case depends among other things on the facts, the legal position, the evidence that is let in, the ability and efficiency of the advocate, and the perception and capacity of the judges at trial and appellate stage. The personal philosophy of the judges also adds to the uncertainty and inconsistency in views. Benjamin Cardozo put it apply thus in[155] :

"There is in each of us a stream of tendency. Whether you choose to call it philosophy or not, which gives coherence and direction in thought and action. Judges can't escape that current any more than other mortals. All their lives, forces which they do not recognize and can't name, have been tugging at them-inherited instincts, traditional beliefs, acquired convictions,…It is often through these subconscious forces that judges are kept consistent with one another."

On account of their personal philosophies, some judges are identified as acquitting judges and some as convicting judges; some as liberal and some as strict; some as pro-landlord and some as pro-tenant; some as pro-labour and others as pro-management.

In the words of Mr.Fail S.Nariman,[156] before memory fades…. - ***"Justice is so often a matter. Resultantly, many cases similar on facts and laws, end up with different result with different judges. In short, there are several factors which many result in uncertainly in regard to the outcome. A litigant may win in the trail court, but lose in appeal. He may win in the trail court, and the first appellate court, but may lose in a further appeal. On the other hand, he may lose before the trail court as also in the first***

appellate court but succeeded in a further appeal. The hierarchy of appeals and further reversals. These again lead to uncertainty as to what the result will be, when someone wants to initiate a legal action. Nothing is certain.

3.3.9.1.3 Inflexibility in the Result/Solution

When a party with a grievances approaches a civil court, the decision is regulated by law. Courts can't grant relief which is most beneficial to parties, nor a decision which is most convenient, just and equitable, but can only grant a relief or render a decision that is prescribed or permissible in law. As a result a party may succeed in a case but he may not be satisfied with the decision or result. A party to a conflict would therefore prefer a system which will enable him to find an amicable solution to the conflict or dispute, tailored to take note of his viewpoint, claims, hardships and conveniences or which gives him choices in the solution.

3.3.9.1.4 High Cost

A court litigation means payment of court fee, lawyer's fee, clerical fee and expenditure for securing documents and witnesses. All this costs money. Mere expenditure of money is not sufficient. He must be willing to invest his time. Innumerable adjournments mean that many times of attendance in courts and visits to lawyer's office and consequential absence from work or business. He has to secure the documents and get witnesses and conduct the case. He has to stay motivated for decades and keep his lawyer "motivated". It is not merely spending money and time, but also requires spending energy and staying committed. Dealing with the delay, procedural wrangles, technicalities, expenditure and the need to coordinate with lawyers and witness in a non-friendly atmosphere, requires considerable perseverance, commitment and energy to pursue the litigation.

3.3.9.1.5 Difficulties in enforcement

It is said that the difficulties of a litigant often begin, not when he files a case but when he obtains a decree. The process of execution or enforcement is more arduous and time consuming than the main litigation. Pendency of executions for periods exceeding the time spent for obtaining the decree, is quite common. Many a time, a decision obtained by a plaintiff remains a paper decree and he never sees the real fruits of such decree, because of the artificial division of suits into preliminary decree proceedings, final decree proceedings and execution proceedings, many trial judges tend to concentrate only upon the adjudication of the right (which is considered as a judicial function) and do not give importance to the final decree proceedings and

execution proceedings (which are considered to be ministerial function). The focus is on disposing of cases, rather than ensuring that the litigant gets the relief. Even among lawyers, importance is given only to securing of a decree and not securing of relief. Many lawyers handles suits only till preliminary decree, then make it over to their juniors to conduct the final decree proceedings and then to their clerks for conducting the execution proceedings. Many a time, a party exhausted his finance and energy by the time he secures the preliminary decree and has neither the capacity nor the energy to pursue the matter to get the final relief. As a consequences, we have cases where the suits are decreed or preliminary decrees are granted within two or three years but the final decree proceeding and/ or execution takes decades for conclusion. This is an area which contributes to the loss of credibility of the civil justice delivery system.

3.3.9.1.6 Hostile atmosphere

The litigants find court's atmosphere intimidating and unfriendly. They find the procedures complicated, the judges, lawyers and the infrastructure, wholly inadequate with little or no facilities or amenities for them. They feel that no one in courts (Judges, lawyers or staff) understands their difficulties, tensions worries and no attempt is made to make the procedures and formalities user-friendly. The entire litigation process is structured in a manner where the litigant is required to adjust himself to the convenience of the judges and lawyers adjusting themselves to serve the common man.

The delay, the uncertainty and inflexibility, the technicalities and frequent changes in laws, the absence of choice, the difficulties in execution, and the enormous expenditure of time, energy and money associated with adjudicatory process take a tall on the litigant. Many a time, the litigant feels that the remedies, reliefs and solutions, are all illusive and elusive. This leads to frustration, dissatisfaction and erosion of faith in courts and the adjudicatory process. As a result persons with grievances start looking for a quicker and satisfactory remedy. They are tempted to approach the underworld or unscrupulous element in police and politics, to secure relief. This leads to criminalization of civil society and weakens the rule of law. Therefore, there is an urgent need to introduce quicker alternative dispute resolution processes and also improve the adversarial adjudicatory process by giving speedy, satisfactory and cost –effective justice, weaker and downtrodden section of the society, Who are subjected to injustice being ignorant of their rights and remedies, and not being able to get effective and speedy justice, tend to take law into their own hands. Several disputes which ought to have found solution in civil litigations end up in crimes. It

has, therefore, become necessary to educate the weaker and downtrodden section of the society, about their rights and obligations, as also about the remedies and for a that are available for securing justice, and also make available free legal aid to approach relevant fora, for securing relief, when there is a gradual increase in such awareness, there will be more and seekers of justice demanding enforcement of rights and claiming equitable and effective distribution of nation's resources. The overloaded adjudicatory dispute resolution process will not be capable of effectively taking such additional load, resulting in further frustration and again driving justice- seekers towards extra- judicial remedies.

3.3.10 DISADVANTAGES OF MEDIATION

Mediation has its limitations and is not without its disadvantages. As noticed above, it is effective and useful only in certain types of civil litigation. It can be resorted only when the parties mutually agree. Reference to mediation does not guarantee a settlement or solution. Unless the parties show maturity, understanding, tolerance and co-operation. There can be no solution or settlement. Where even if one of the parties, is cantankerous or greedy or egoistic, or refuses to negotiate, there can't be mediation and conciliation. Where no settlement is reached, the matter will have to go back to court for adjudication. There are also several factors working against mediation/ conciliation. We may refer to some of them briefly.

3.3.10.1 Mindset of litigants

Each litigant normally believes or is led to believe that he has a very strong case. Such impression may either be on account of his own perception of the legal or factual position or based on the opinion expressed by his counsel. He therefore, feels that any settlement involves giving up a part of his rights or claim and showing a concession to the other side. As a consequences there is resistance to any suggestion of mediation.

3.3.10.2 Absence of incentive

The litigant has no incentive to seek mediation in a pending litigation. The major part of the expenditure for a litigant would have been incurred when he commences the litigation by way of court fee and lawyer's fee. Litigation costs awarded by the courts in India are inadequate when compared to other jurisdictions. Even the court fee payable is usually a nominal amount, except in a few categories of cases where it is payable ad valorem. Once a

litigation reaches the stage of trial, there is no compelling reason for a litigant to settle a case. Unlike in countries like USA, UK and Australia, where once a civil dispute goes to trial , the costs escalate and the losing party will have to bear huge cost; whereas a litigant in India, on losing a litigation does not bear and pay the actual costs of the succeeding party, but only pays nominal costs. As there is no fear of heavy costs at the conclusion of the trial, there is no incentive to a party to a litigation to settle the matter.

3.3.10.3 Reluctance of advocates

The reluctance on the part of some sections of advocates, to settle cases, stems from their fear that they may lose the fee, if the case is settled. The fee received for a case involving a full- fledge trial with possibilities of appeal, it is felt is several times more than the fee that can legitimately, be claimed if a matter is settled without trial. Many lawyers are reluctant to participate in the settlement process. Unless the Bar recognizes and accepts negotiated settlement as part of an effective alternative dispute resolution process, so significant success can be achieved in mediation. There is therefore an urgent need to educate the lawyers and litigants about the advantages of the Alternative Dispute Resolution methods in general and Mediation in particular.

The impact of mediation on justice delivery system resulting in increasing of the faith, trust and confidence in the system; CJI for mediation, resolving disputes at pre-litigation stage.[157] It is the duty of the judiciary to see that people do not lose faith in it and resort to violence to show their dissatisfaction, Chief Justice of India K G Balakrishnan said on favouring mediation as an alternative to litigation. Referring to recent examples of vigilante justice, he said alternative dispute resolution (ADR) could help share courts' burden and ensure that people's confidence in the judicial system "does not get eroded." "It is our duty that people shall not resort to violence and show dissatisfaction with the present system," he said. "The mindset of judges, lawyers and litigants needs to change to ensure some disputes are solved through ADR," Chief Justice Balakrishnan inaugurating an international conference on Alternative Dispute Resolution attended, among others, by Lord Chief Justice of England and Wales N A Phillips. "For this, the rules should be flexible and friendly for the litigants... and lawyers should also play a constructive role," he said, suggesting a system where case can be settled at pre-litigation stage. He said the legal fraternity wasn't solely responsible for the pendency of cases and pointed to the need to upgrade infrastructure in courts. We need infrastructure for courts for their effective functioning so that it could be said "while justice delay is justice denied, justice hurried is not justice buried." Mediation effective in reducing cases'

pendency. The UP State Legal Services Authority organized the first regional conference on 'mediation'. Inaugurating the conference, governor B L Joshi said, "Indian judiciary, right from subordinate courts up to the Supreme Court, has shown great diligence and activism in redressing the grievances of the masses by making every effort to impart timely justice."[158] He, however, regretted that judiciary, despite all its efforts, has not been able to arrest the mounting pendency of cases. "The malady has been that justice and the recipients of justice - both received a setback due to delay in disposal of pending cases," he said. He added, "The constitutional vision of justice in our country can be realised only if the ever-increasing work load on regular courts is checked. This can happen only when other methods are explored to find out solutions to the disputes." Mediation and conciliation may be such other methods which may help resolve the problems faced by regular courts in dealing with a large number of pending cases, the governor said.[159]

"Mediation and conciliation are two different terms and methods of seeking resolution to disputes. Mediation is a form of alternative dispute resolution and aims at assisting two or more rival parties in reaching an agreement. Mediation can be successful only when the mediators use appropriate techniques and skills to open and improve dialogue between the parties to help them reach an agreement,"

"Chances of a mediator succeeding to bring the parties to an agreement will be higher if he enjoys the confidence of rival parties. Therefore, impartiality and objectivity of a mediator are of paramount importance", he said. Addressing the conference, Supreme Court judge Dalveer Bhandari said that alternate dispute resolution and mediation methods have been prevailing since ancient times.

Pendency of cases is enormous and litigation continues generation after generation, hence mediation is helpful in pre-litigation matters, he added. "Mediation needs awareness and its process is flexible and cost effective. It should not be confined to matrimonial matters only, but must be taken up in other matters as well," he said. Another Supreme Court judge Swatantra Kumar said that mediation is a way of accessing justice and can provide additional choice. Allahabad HC chief justice Rafat Alam said, "Mediation is the need of the hour. It is a matter of concern that courts are overburdened." Mediation is gaining ground in the state. Mediation as an alternate way of settling disputes is gaining momentum in Karnataka and it'll improve faith in the judiciary, acting chief justice of Karnataka high court Vikramjit Sen has said.

If figures are any indication, the Bangalore Mediation Centre, since its

inception in 2007, is handling 21,000 cases, referred to it by lower courts and the high court. As of now, the centre has solved 63% cases by amicable settlement. "It is obligatory on the part of every court to refer parties to mediation so that they can arrive at amicable settlements," said Dalveer Bhandari, judge of the Supreme Court and chairman of Mediation Conciliation Project Committee (MCPC). Sen and Bhandari were among a host of legal experts who had gathered at the high court to participate in the second regional conference of southern states on 'Mediation - Future predictions and expectations'. Sen said mediatory process will go a long way in establishing people's faith in the judicial system. Taluk advocates are being trained to make them more aware on this issue. Given the huge pendency of cases in courts across the country, Bhandari said mediation should be considered an alternate dispute resolution method. *"There is a need to sensitize lawyers and increase awareness on mediation so that people start believing in the process."*

3.4 Third Method: Conciliation

The other method of Alternative Dispute Resolution Mechanism is Conciliation. Indian courts carry a burden almost beyond their apparent capacity and judicial system is on the verge of collapse. The cases drag and continue to drag for many years. The courts are flooded with litigation and economist of Queen Elizabeth, propounded the famous maxim which is known as Graham's law:

"Bad coins drive good ones out of circulation. law of litigation is equally sound, Bad cases drive out good ones and prevent their being heard in time[160]".

New law recognize autonomy of the parties to agree to rules for settlement of their disputes. Now the disputes can be settled very fast may be in hours or days depending upon the facts of cases. The conciliation settlement agreement can be enforced as if it were a decree of the court. Now the parties can settle the civil disputes as early as possible by the conciliator of their choice in privacy instead of waiting for court decision for years together. There is a long standing tradition for settlement of dispute by conciliation in our country. Conciliation is as old as Indian history. In Mahabharata when both parties had determined to resolve the conflict in battle fields, conciliation efforts were made by the Lord Krishna to resolve the conflict and he went to Kauravas to avoid the war. Unfortunately the efforts of conciliation failed and the war took place causing very heavy losses not only to the looser, but also to the winner. The standing and moral

authority of elder persons is conducive to settlement of the dispute panchayat system in villages provided amicable settlement of dispute by conciliation. The moral power of the conciliator is greater than of a judge. Conciliation is a friendly settlement of disputes in Indian culture and mentality. When there is a dispute between two friends, third friend comes forward to mediate for settlement of disputes amicably. After independence India is experiencing an unprecedented increase in the number of cases in the courts litigation has adverse impact on the financial and personal resources of the parties and also cause detrimental effect on the relationship. Both parties are faced with hostility and disappointment which is detriment to the interest of persons involved in business.

Conciliation is a viable procedure for settlement of commercial disputes. Article33 of the Charter of United Nation also includes conciliation as one of the possible settlement methods to which parties should resort to resolve international commercial disputes. There is a big backlog of cases in our courts, which keeps on mounting. If the saying "Justice delayed is justice denied" is true, entire nation is being deprived of the justice. There are more than 2-3 crores cases pending in the various courts in India. A person who gets decision in his life time is a lucky man. In the meeting of Chief Minister and Chief Justice on 4 december,1993 a resolution was adopted and they were of the opinion that courts were not in a position to bear in the entire burden of justice system and that a number of disputes lent themselves to resolution by alternative modes such as arbitration mediation and negotiation. They emphasized the desirability of disputants taking advantage of alternative dispute resolution (ADR) which provided procedural flexibility saved valuable time and money and avoided the stress of a conventional trial.

Conciliation can be applied with or without a lawyer. It reduces workload of the courts. It permits parties to choose lawyers who are specialized in the subject matter of the dispute. A lawyer is helpful in conciliation and has following role-

- Identification of contentious issue.
- Ex- position of strong and weak points in a case[161]

The proceedings relating to Conciliation are dealt under sections 61 to 81 of Arbitration and Conciliation Act, 1996.

3.5 Fourth Method: Lok Adalat

3.5.1 Introduction

Resolution of disputes is an essential characteristic for societal peace,

amity, comity and harmony and easy access to justice.[162] The lok adalat are the flagship of the Indian Judiciary for dispension of justice to the poor.

The Indian legal system has evolved a new technique of alternative dispute resolution (ADR) which is popularly known as "Lok Adalat" system. It owes its origin to the constitutional acceptance of legal aid under Article 39-A which subsequently received statutory recognition consequent to the passing of Legal Service Authorities Act 1987.

3.5.2 History of Lok Adalat

To understand the historical perspective of lok adalat we can divide it into two parts as:

3.5.2.1 Pre-independent era

1. Ancient period
2. Muslim period
3. British period

3.5.5.2 Post- independent era

3.5.5.3 Ancient period

The Lok Adalat system or people's court were exist since Vedic period. The study of Vedic period reveals that the village communities have always had their staff as the headman, who collected revenues, settled disputes through amicable means and exercised general superintendence over affairs of the villages. The foundation of the system of local administration of justice through people's participation generally called panchayat was deeply embedded in the Indian culture and civilization[163]. It is believed that king Prithu first introduced the system of such panchayat. In the Manu Smiriti and Shanti Parva of the Mahabharat, there are many reference to the existence of Gram Sanghas or rural communities. A description of these rural communities is also found in the Arthshastra of Kautaliya, who lived in 400 BC. Similarly, in Valmiki's Ramayana, we find references about Ganapada, which was perhaps a kind of federation of village republic. In India most villages and towns were ruled by councils constituted by freely elected members, which were free in matters affecting taxation, justice, individual rights and policy.[164] There was 'parishad'

which had the jurisdiction to determine the truth of the accusation of sins and prescribed adequate penance. Even the king had no jurisdiction to interfere with the help of Jurors. There was a great thrust on the system of 'Madhyamasi'. The reference to the effect occurs in the "Rigveda" itself, which is understood by Vedic Scholars as an arbitrator or conciliator. There are number of scriptures and historical account which support that there was system of an amicable settlement of disputes. Narad Smiriti discloses four types of traditional courts of judicator, namely, the family, occupational group, class and the king.[165] Even at district level, the courts were presided over by Government Officers, who dispensed justice under the authority of the king[166]. Similarly, Yagnavalkya Smiriti makes it abundantly clear that it was the duty of the king to cultivate and establish the family, the caste, the occupational groups, the class and the village, so that they observe their respective paths[167]. The ancient period throws a flood of light on the people's court that these court were in existence in ancient India. There are number of scriptures and historical accounts[168] which lend support to the people's court in which mainly, amicably system of settlement of disputes was followed. These courts for the first mentioned in Yajnavalkya Smiriti. Narada Smiriti also discloses three types of traditional courts of adjudicature, viz., Puga, Sreni and Kula. Though the King was an overall guardian of these institutions, the King seldom intervened in their working.[169] It is revealed that there was hardly any rigid and complex laws dealing with the disputes in people's courts during ancient times. King was guided by Dharma. He was expected to live upto the ideals of kingship as laid down in Dharmasastra. In his functions of administering justice, he had to act according to the advice of the priests and learned Brahmanas[170]. So far as judiciary was concerned, the King appointed judges to help him in administering justice, he himself remained head of the administration of civil law and penology[171].

3.5.2.1.1 Muslim period

The advent of Muslim rule in India, the character of popular courts underwent a tremendous change. Their link with the King at the last resort was not to be found in the Muslim rule. Hence, these courts became only popular village courts unconnected with the Muslim Royal Courts. They became important instruments and began to serve the legal purpose of Hindus almost exclusively, so far as the civil side atleast was concerned.[172] The people's court thus played a very conspicuous role during Muslim rule. There were not so many Royal court which could be within the easy reach of the people. According to Sir Jadunath Sarkar[173],

"In India villagers in the Mughal empire had to settle their differences locally by appeal to the caste courts or the arbitration of an impartial

empire."

The people courts were vested with the power to try both civil and criminal cases. The local courts enjoyed the power to decide local disputes and acted as an effective instrument for administration of justice both civil and criminal. It is revealed that people were satisfied by the decisions of the popular courts and relieved the government to a very great extent of its function.[174]

3.5.2.1.2 British period

The advent of Britishers in India, gave a death blow to the functioning of popular courts as there was a complete centralization of the judiciary and local courts were discouraged and replaced by the Royal Courts. The ultimate result was that these institutions were eclipsed and there came a dawn of new judicial system entirely dominated by the British Rulers. They moulded the Indian legal system according to their vested interested with the result that the functioning of people's court withered away and became empty and suffocating. The administration of villages by the agencies of Central Government, extension of jurisdiction of modern civil and criminal courts with their adversary system of adjudication which was unknown and new to the village population, increase in the means of communication, migration of people from village to town and consequent lessening of communities influence over the members may be said to be some of the main factors which gradually attributed towards the decay of the people's court in India[175]. However, it is quite evident that the British rulers did not immediately dislocate the system of Kazi nor did they interfere with the Panchas. But the establishment of adjudicatory courts in course of time brought about the formalization of the justice system.[176] The Britisher's brought with them the concept of ruler and the ruled and the sense of superiority over the local men. Therefore, Britisher's not subjected to the local law and the system of justice kept him out of the preview of law that bound the local people[177]. Gradually, the adjudicatory process became more and more formal with the introduction of Anglo-Saxon system of jurisprudence and when India came to be a part of the British Empire under the direct suzerainty of the Crown, a full- fledged adjudicatory set up came into being. Unfortunately the judicial administration during British period became more complexed, both in terms of substance and procedure[178] with the result that the judicial administration at the lower level turned to be an instrument of exploitation for the obvious reason that the common man was at the victim end[179]. In this way the advent of British rule gradually led to the decline of people's court in India[180].

3.5.2.2 Post-independent era

The dawn of independence brought many golden things to the people of India. The restructuring of the judicial system at grass-root level may be said to be one of them. It was realized by the wise founding fathers of the constitution that the Anglo-Saxon judicial system must be reorganized as to make legal relief easily accessible to the indigent and backward in our villages. To quote, Mahatma Gandhi:

"*India lives in her villages and most of the countryside is countrysideis smeared with poverty and social squalor. Today the poor and disadvantaged are cut-off from the legal system- they are functional out laws not only because they are priced out of judicial system by a reason of its expansiveness and dialatoriness but also because of the nature of the legal and judicial system. They have distrust and suspicion of the law, the law courts and the lawyers for several reasons. There is an air of excessive formalism in law courts which overowes them and sometimes scares them. They are completely mystified by the court proceeding and this to a large extent alienates them from the legal and judicial process. The result is that it has failed to inspire confidence in the poor and they have little faith in its capacity to do justice".*

In these circumstances it was thought proper by makers of the Constitution that the judicial process must be reorganized with a view to bring justice nearer to the people. They rightly thought that the soul of good government was justice to the people and that is why the Preamble of our Constitution highlights it in its triple aspects, namely, political, social and economic. The question therefore, arose as to how we can redeem this tryst with justice on behalf of our teeming millions in rags and tatters. The main problem that haunted the minds of our makers of the Constitution were: who are our people? Where is their habitate? What, in human terms, does justice mean to them? How can law and its administration, through conventional court processes, fulfill the hunger of the common man for simple and quick justice which assures to him a fair share of good things of life? Why cannot we abolish the causes of litigation and build a new way of life or legal order? How can the gap between the lawyers law and the rule of law be abridged?

These were the basic radical issues for which the founding fathers of the Constitution wanted answers. Moreover, it was also badly felt that we in India need a new legal technology, new judicature models and a remedy-oriented juridicare that is designed as a pervasive and potent delivery system of law and justice to the people in rural remoteness. Having given

full weight to these thoughts Article 40 was incorporated in our National Charter which mandates the State to organize village Panchayats and invests them with necessary authority and power. The intention behind the reorganization of the indigenous judicial system is to insure people's participation in the administration of justice at the lowest level which will ultimately help in delivering justice to the poor and the backward in rural areas without any delay and at practically no cost. The revival of ancient judicial system has been intended to bring justice to the door-steps of the poor and make it cheaply, easily and expeditiously available to them. It would certainly assist them in asserting their legal rights against those who are inclined to violate them. They are also expected to remove many of the defects of the British system of administration of justice. Drastically low-cost, informal atmosphere, absence of technicalities, nearness both geographical and psychological community of shared attitude and values and a great scope for compromise have been expected as some of the definite advantages of these local judicial institutions.

However, the modern version of Lok Adalat arose out of the fact that the present judicial system as forum for resolving conflicts, civil, criminal and revenue, has floundered on a single major piece of rock- inordinate delay and the monumental wastage of time in deciding cases. Litigants have often found themselves impaled on this unholy trident of delay, cost and complexity with the result that the accumulated frustration of the people desirous of quick decisions has responded them with a hope, excitement and zeal to experiment in holding Lok Adalats for dispute ending for dispute pending. Thus the idea for the need of Lok Adalat as a different kind of forum for expeditious settlement of dispute is currently sweeping the nation. Moreover, the modern version of Lok Adalat has arisen out of the concern expressed by the committees set up to resort on organizing Legal Aid to the needy and poor people and alarm generated by judicial circle on mounting arrears of cases pending for long at different levels in the court systems.[181] .P.N.Bhagwati and V.R. Krishna Iyer, J.J., laid emphasis on the need for revival of informal systems of dispute resolutions including the Nyaya Panchayats. They mobilized social action groups, public spirited citizens and a section of lawyers to experiment settlement of disputes outside the courts. Further, setting up of the committee for implementing Legal Aid Schemes (CILAS) by the Union Government in 1980 under the Chairmanship of P.N. Bhagwati, C.J. gave an impetus to the Legal Aid Movement in general and concept of Legal Aid Camps and Lok Adalats in particular[182]. Hence the introduction of Lok Adalat in 1982 as part of the strategy of Legal Aid Movement has virtually raised a fond hope to the millions of poor people who are denied equal justice under the present existing system.

It may thus be summed up that modern version of Lok Adalat has appeared because the judicial model borrowed from the British rulers has virtually failed to meet out the demand of justice imbibed in our Constitution. It has really come into existence because of grave concern expressed by various committees constituted to report on the reorganization of Indian Legal system. The Report of Gujrat Legal Aid Committee (1971), Report on Processual Justice to the People (1973), Juridicare: Equal Justice- Social Justice report (1977) and Committee for Implementation of Legal Aid Schemes(1980) have laid emphasis on the need for revival of informal system of dispute resolution. The Legal Services Authority Act 1987 with a fond hope to allow people's participation in the administration of justice and to away the legal complexities which have come in the way of administration of justice.

3.5.3 Object of Lok Adalat

The main objective behind holding lok adalat is to root out on war footing the triple vices of delay, cost and complexity from the exiting Courts[183]. Lok adalat is functioning as a para-judicial institution with an endeavour to find an appropriate structure and procedure in the struggle of common people for social justice. It may be called as the brain child of necessity. The rationale which speaks for the on-going of this institution is that an adversary adjudication ending up in one party declaring the victor and other the vanquished does not remove the dispute from the society and may lead to further disputes or social tensions. Therefore, the Lok Adalats is a design to avoid all sorts of confrontation and adopt a peaceful method of conciliation with the hope to maintain peace and amity in the society[184]. The main objective of Lok Adalat is to settle the disputes which are pending in the Courts and also those which have not yet reached the Courts by negotiation, conciliation and by adopting persuasive, commonsense and humane approach to the problems of the disputants with the assistance of specially trained and experienced members of a team of conciliators[185]. The basic principle and underlined idea of the Lok Adalat is to provide cheaper and quicker justice at the door-steps of the people so as to relieve the workload on the regular Courts[186]. It implies participatory justice in which people and judges participate and resolve disputes by discussions, counseling, persuasion, conciliation and mutual consent.

3.5.4 Organization of Lok Adalat[187]

Section 19 of the Legal Services Authorities Act,1987 deals with organization of Lok Adalat[188].

(II) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(JJ) Every Lok Adalat organized for an area shall consist of such number of-

(a) Serving or retired judicial officers; and

(b) Other persons.

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the high Court legal Services committee or, as the case may be, the Taluka Legal Services Committee, organizing such Lok Adalat.

1. The experience and qualifications of other persons referred to in clause

(b) of sub-section (2) for Lok Adalats organized by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

2. The experience and qualifications of other persons referred to in clause

(b) of sub-section (2) for lok Adalat other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

3. A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of-

    a. any case pending before; or

    b. any matter which is falling within the jurisdiction of, and is
    c. not brought before, any court for which the Lok Adalat is organized:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

3.5.5 Cognizance of cases by Lok Adalat

Section 20 of the Legal Services Authorities Act, 1987 deals with the cognizance of cases by Lok Adalat.

(1) Wherein any case referred to in clause (i) of sub-section (5) of Section 19;

(i) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is *primafacie* satisfied that there are chances of such settlement; or

(ii) the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the Court shall refer the case to the Lok adalat: provided that no case shall be referred to the Lok adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organizing the Lok Adalat under sub-section (1) of Section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of Section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or

settlement between the parties and shall be guided by the principle of justice, equity, fair play and other legal principles.

(5) Where no award is made by the lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the Court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat, on the ground that no compromise, or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a Court.

Where the record of the case is returned under sub-section (5) to the Court, such record shall proceed to deal with such case from the stage which was reached before such reference under sub-section(1).

The organization of Lok Adalat is informal and flexible apart from some minimum requirements in respect of procedures and approaches, the rest of the exercise is simple and varied as the nature of the problems and the culture of the community demands.

(1) The following types of cases can be brought before the Lok Adalat-

(a) Pre-litigation cases i.e. the disputes, which have not yet gone to the law courts;

(b) Pending cases i.e. the disputes which have already gone to the law courts;

(c) Matrimonial cases;

(d) Cases arising out if motor accidents;

(e) Compoundable offences;

(f) Landlord-tenant disputes relating to the enforcement of rent and vacating of the premises.

3.5.6 Award of Lok Adalat[189]

Section 21 of the Legal Services Authority Act, 1987 deals with the

award of Lok Adalat.

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court, or as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870(7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

3.5.7 Powers of the Lok Adalat or Permanent Lok Adalat

Section 22 deals with the power of Lok Adalat and Permanent Lok Adalat[190].

(1) The Lok Adalat or Permanent Lok Adalat shall, for the purpose of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely-

(a) The summoning and enforcing the attendance of any witness and examining him on oath;

(b) The discovery and production of any document;

(c) The reception of evidence on affidavits;

(d) The requisitioning of any public record or document or copy of such record or document from any court or office; and

(e) Such other matters as may be prescribed.

(2) Without prejudice to the generally of the powers contained in sub-section (1), every Lok Adalat or Permanent Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.
(3) All proceedings before a Lok Adalat or Permanent Lok Adalat shall be deemed to be judicial proceedings within the meaning of Section 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat or

Permanent Lok Adalat shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973(2 of 1974).

3.5.8 Significance of Lok Adalat

The concept of Lok Adalat implies resolution, of people's dispute by discussion, counseling, persuasion and conciliation. It precisely implies speedy and cheap justice to common man at his doorstep. Mutually agreed settlements arrived at by the disputants in the Lok Adalats contribute to the greater social solidarity and better cohesion among litigants[191]. In Lok Adalat there is neither victor, nor a vanquished but there is victory for both because of concert and conciliation resulting in peace, that a case ends in the Lok Adalat the enemy disappears.

The success of Lok Adalat in India is tremendous. Lok Adalat has provided an important juristic technology and vital tool for easy and early settlement of disputes. It has been proved to be a successful and viable national imperative and incumbency, best suited for the larger and higher sections of the present society and Indian system. The concept of legal services which includes Lok Adalat is a "revolutionary evolution of resolution of disputes[192]."

In **State of Punjab & another v. Jalour Singh & Others[193]** held that "the lok adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A lok adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the lok adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No lok adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the lok adalats are guided by principles of justice, equity, fair play. When the Legal Services Authorities Act, 1987 refers to 'determination' by the lok adalat and 'award' by the lok adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the lok adalat. The 'award' of the lok adalat does not mean any independent

verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the lok adalat, in the form of an executable order under the signature and seal of the lok adalat. "The endeavour and effort of the lok adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strength and weaknesses, advantages and disadvantages of their respective claims", the Bench said. This form of redress is needed for enablingthe common people to ventilate their grievances against the state agencies or against other citizens and to seek a just settlement if possible.There are certain definite advantages of this institution. The parties are saved from extremely technical court procedures, which are followed in a regular court. They are saved from protracted litigation, anxiety, bitterness apart from the saving of expenses, which they are likely to incure in future litigations by way of further appeal etc.

3.5.9 Various types of Lok Adalat

- **Lok Adalat for Gas Victims**[194]

Bhopal Gas Tragedy Relief and rehabilitation Minister Babulal Gaur inaugurated a Mega lok Adalat held for gas affected people by the welfare commissioner Bhopal Gas Tragedy at Bhpoal. Gaur said that cases of gas-affected people are very sensitive. A number of them are still suffering from Kidney, Cancer and other serious disease even 27 years after the tragedy. Additional sum of Rs.134 crore has been sanctioned for the assistance of such patients at a recent meeting of group of Ministers. Gaur said that the affected people should put up their cases directly at the lok Adalat and do not misguided by any broker. Sanctioned amount will be provided to patients as per their respective eligibility.

Additional Commissioner Relief Bharat Bhusan Shrivastava informed that gas-affected people, especially those suffering from cancer and kidney disease will be heard at the lok adalat and assistance will be sanctioned to them as per their respective entitlements. A meeting of Group of Ministers had earlier sanctioned Rs.740 crore for 48,500 cases. Out of this Rs. 627 crore has been distributed to 42,000 claimants so far. Applications have been received from about 12,000 cancer and kidney patients. A compaign will be launched again and again in coming months for identifying absentee claimants.

- **SBI Lok Adalat for recovery of dues**[195]

The State Bank of India in Patna held a lok adalat under the Debt Recovery Tribunals Scheme. According to Chief Manager N.P. Singh, as many as 13 cases were settled at the adalat. The SBI recovered about 3.5 crore by way of mutual settlement at the adalat. He said adding that SBI would continue to hold such kind of adalats not only to recover dues from the borrowers but also to facilitate those customers who have failed to pay dues to the bank for a long time.

- **Lok Adalat for Motor Accident Claim**[196]

Nowadays lok adalat continiously held for motor accident claim. Since April 1985, lok adalats have been exclusively organized for settlement of motor third party claims. Although the concept of lok adalat was very much vague since early years. This form was made available for settlement of motor third party claims under the initial time of former Chief Justice of India, Shri P.N. Bhagwati, since then number of lok adalats have been organized throught the country through this forum to the satisfaction of the claimants. It is expected to gather further momentum foe settlement of these claims through this medium as both claimants do and the Insurance Company get benefit out of it. That is the reason why Insurance Companies are interested in settling third party claims by lok adalat. The increase in cases in Motor Accident Claim Tribunal (MACT) and backlog of pending cases pressed the insurer and the judicial system to think about the quick disposal oriented system like lok adalat. Lok adalat now is playing sole role in solving dispute and settling MACT cases.

- **Lok Adalat for Cheque Bounce Cases under Negotiable Instrument Act, 1881**[197]

The Supreme Court provided a huge impetus to cost-effective and litigant friendly process under lok adalats set up to settle disputes and pass unassailable decrees by empowering them to find solutions in criminal cases including those relating to Cheque Bounce Offences. In allowing lok adalats to settle cheque bounce cases under Section 138 of Negotiable Instrument Act, a bench of Justices P. Sathasivam and J. Chelameswar set aside a judgment of the Kerala High Court. The HC had held that a lok adalat decree in criminal case could only be regarded as a trial court order which was appealable in higher courts. The Supreme Court said the HC's view went against the object and purpose of establishing lok adalats, which was to find amicable solution to a dispute and record the settlement

as a decree. Lok adalats were meant to reduce burden of arrears in regular courts as also to take justice to the doorsteps of the poor and needy and make justice quicker and less expensive. This judgment would help ease the burden of 38 lakh cheque bounces cases pending in trial courts. Chief Justice of India S H Kapadia had expressed concern over this type of cases clogging the justice delivery mechanism.[198]

Justice Sathasivam, who authored the judgment for the bench, said "there is no restriction on the power of the lok adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by a criminal court under Section 138 of NI Act and by various courts (both civil and criminal), Tribunals, Consumer Redressal Forum, Motor Accident Claims Tribunals and other forums of similar nature and it has to be treated as a decree capable of execution by a civil court[199]."

- **Lok Adalats reduce number of cases[200]**

Bangalore Supreme Court Judge and Executive Chairman of National Legal Services Authority Justice Altamas Kabir hailed the Mega Lok Adalat model as an effective means to reduce pendency of cases in courts. He was speaking at the valedictory programme of Mega Lok Adalat organized in Karnataka from October 2011 to January 2012. Justice Kabir observed that,

"People are gaining awareness of alternative dispute resolution mechanism and the problem that arises for us is to learn how to manage the rush. Cases in Courts are building up like a pressure cooker. This is where the lok adalat comes in".

He added that disposal of pending cases would increase with more lok adalat. The main purpose here is to facilitate mutually satisfactory settlements between parties. The lok adalat reaches out to all parties, something that cannot happen in Courts.

3.5.10 Case Laws

In **Abdul Hasan and National Legal Services Authority v. Delhi Vidyut Board and others**[201] Hon'ble Delhi High Court has given a landmark decision highliting the significance of lok adalat movement. It has far reaching ramifications. In this case the petitioner filed a writ petition before Delhi High Court for restoration of electricity at his premises, which was disconnected by the Delhi Vidyut Board (DVB) on account of non-payment of Bill. Interalia, the grievances of the citizens were not only confined to the

DVB but also directed against the State agencies like DDA, Municipal Corporation, MTNL, GIC and other bodies. Court notices were directed to be issued to NALSA and Delhi State Legal Services Authority. Hon'ble Mr. Justice Anil Dev Singh passed the order giving directions for setting up of permanent lok adalat. The scholarly observations of this lordship Mr. Justice Anil Dev Singh deserve special commendations and are worthy of note. It will be profitable to reproduce the important text and abstract from this judgement; which should be an eye opener for all of us. It should also steer the conscience of all, as there is an increasing need to make lok adalat movement a permanent feature. If we closely scrutinize the contents of the decision of Delhi High Court, there has been an alarming situation of docket-explosion and the ultimately remedy is the disposal of cases through the mechanism of Lok Adalat.

In **United India Insurance Co. Ltd. v. Ajay Sinha**[202] it was observed that any award made by the Permanent Lok Adalat is executable as a decree. No appeal there against shall lie. The decision of the Permanent Lok Adalat is final and binding on parties. Whereas on the one hand, keeping in view the Parliamentary intent, settlement of all disputes through negotiation, conciliation, mediation, Lok Adalat and Judicial Settlement are required to be encouraged. It is equally well settled that where the jurisdiction of a court is sought to be taken away, the statutory provisions deserve strict construction. A balance is thus required to be struck. A court of law can be created under a statute. It must have the requisite infrastructure therefor independence and impartiality of Tribunal being a part of human right is required to be taken into consideration for construction of such a provision. When a court is created, the incumbents must be eligible to determine the lis. An option is given to any party to a dispute. It may be a public utility service provider or a public utility service recipient. The service must have some relation with public utility. Insurance service would not come within the public utility service. But having regard to the statutory scheme, it must be held to be included thereunder. It is one thing to say that an authority is created under a statute to bring about a settlement through alternate dispute resolution mechanism but it is another thing to say that an adjudicatory power is conferred on it[203].

In the case of **State of Punjab v. Jalour Singh**[204] it was held that If there is no consent by any of the parties to the dispute, Permanent Lok Adalat shall refrain itself, from exercising powers under Sub-section (8) of Section 22-C of the Legal Service Authorities Act, 1987.

In **Relience General Insurance Company v. Vijay Kumar**[205] it was decided that many sitting or retired Judges, while participating in the Lok

Adalats as members, tend to conduct the Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through the Lok Adalats, will drive the litigants away from the Lok Adalats.

In the case of **State of Punjab v. Jalour Singh**[206] it was evident that the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. When the LSA Act refers to "determination" by the Lok Adalat and "award" by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The "award" of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

The award passed by the Lok Adalat in **Gulzar Begum v. Lok Adalat**[207], directing the petitioner to withdraw even the criminal cases filed for offences under Sec. 498A & 147 of IPC which are admittedly non-compoundable in nature, as per the judgment of the apex Court in **United India Insurance Co. Ltd. case**[208] wherein it was held that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence of non-compoundable under any law and also the Permanent Lok Adalat shall not have jurisdiction in the matter where the value of the property in dispute exceeds Rs. Ten lacs, the same is not maintainable**.** In the case of **Dr. Smt. Shashi Pathak v. Charan Singh Verma**[209] it was observed that Lok Adalat has the jurisdiction to recall the award if it is found to have been obtained by fraud or misrepresentation. In **Life Insurance Corporation of India v. Suresh Kumar**[210] SC held that the permanent lok adalat is not a regular court authorized to adjudicate the

dispute between the parties on merits. It is needless to state that permanent lok adalat has no jurisdiction or authority vested in it to decide any lis, as such between the parties even where the attempt to arrive at an agreed settlement between the parties has failed. It is a clear case where the lok adalat converted itself into a regular court and disposed of the claim of the respondent on merits. The impugned order suffers from jurisdictional error and is liable to be set aside.

It was propounded by the SC in **Meena Choudhary v. Dr. Dilip Choudhary**[211] that powers of lok adalat are co-extensive with that of Civil Courts who have full power to take evidences including oral evidence and also to exercise necessary powers under Sec.151 of the Code of Civil Procedure.

Lok Adalat decision is basically meant for resolution of people's dispute by conciliatory technique and voluntary actions. Lok adalat implies speedy and cheap justice to common man at his door step. It is now the lok adalats are conferred the jurisdiction of the court for trying the lis between the parties, there will be no difference between the court and the lok adalats. This is the clear distinction between the Court and lok adalat.

The character of Lok Adalat had viewed in **State Bank of Indore v. M/s Balaji Traders**[212]**,** It is treated as a forum for conciliation where the source of power emanates from the goodwill and consent of both the parties. In unambiguous term the judgment states that Lok Adalat had been a forum for alternative dispute resolution and the bench of Lok Adalat as having only a conciliatory function and not any adjudicatory function. In **M/s. India Machinery Stores (Pvt.) Ltd. v. Presiding Officer, Labour Court, Patna**[213] the matter of the case was first sent to the Lok Adalat but the parties did not reach any settlement. Therefore, the matter was heard by the Supreme Court. It had looked into the records and has considered submissions advance before it. The court was of the view that there is no merit in the appeal and the same was accordingly dismissed. It does not mean that the court would always dismiss the petition for unsettled matter in Lok Adalat. But it shows that the quality of justice through Lok Adalat should not be under estimated in all cases[214]. It was held that the most important factor to be considered while deciding the cases at the Lok Adalat is the consent of both the parties[215]. It cannot be forced on any party that the matter has to be decided by the Lok Adalat. However, once the parties agree that the matter has to be decided by the Lok Adalat, then any party cannot walk away from the decision of the Lok Adalat. In several instances, the Supreme Court has held

that if there was no consent the award of the Lok Adalat is not executable and also if the parties fail to agree to get the dispute resolved through Lok Adalat, the regular litigation process remains open for the contesting parties.[216]

From the above case laws and description we can say that Lok Adalat is between an ever-burdened court system crushing the choice under its own weight and Alternative Dispute Resolution Machinery including an inexpensive and quick dispension of justice. The lok adalat and Alternative Dispute Resolution experiment must succeed otherwise the consequence for an over-burdened court system would be disastrous. The system needs to inhale the life giving oxygen of justice through Lok Adalat.

3.6 Fifth Method : Judicial Settlement

Judicial settlement is a term in vogue in USA referring to a settlement of a civil case with the help of a Judge who is not assigned to adjudicate upon the dispute[217]. Judicial settlement is a confidential form of facilitative mediation performed by a Judge other than the trial Judge to whom the case is assigned for disposal. The settlement Judge serves as a facilitator to create a conducive atmosphere for negotiations among the disputant parties. First he holds session with each party separately and offers an objective assessment of the case and suggests settlement options. Thereafter, he holds joint sitting with the parties to dispute and tries to make them agree for a consensual settlement. Thus Judicial settlement is understood as referring to a compromise entered by the parties with the assistance of the Court adjudicating the matter, or another Judge to whom the Court had referred the dispute.

It would be pertinent to refer to the Civil Procedure Code (Amendment) Act, 1999 in the context of Judicial Settlement as an alternative dispute resolution mechanism. The provision contained in Section 89 of the Code of Civil Procedure is designed to enable the Courts to bring about a settlement of dispute outside the Court. Therefore, if the Court is of opinion that there exist a reasonable chance of dispute being settled outside the Court, it may refer the dispute to any of the ADR forums stated above at any stage of proceedings. The researcher has given description about Judicial settlement and related provisions in Chapter IV.

At the end we can briefly say that Alternative Dispute Resolution mechanisms as a means to achieve speedy disposal of justice is a crucial issue. The sea-change from using litigation as a tool to resolve disputes to using Alternative Dispute Resolution mechanisms such as conciliation and

mediation to provide speedy justice is a change that cannot be easily achieved. The disputants want a decision, and that too as quickly as possible. As the problem of overburdened Courts has been faced all over the world, new solutions were searched. Various Tribunals were the answer to the search. In India, we have a number of Tribunals. However, the fact of the matter is that even after the formation of so many Tribunals, the administration of justice has not become speedy. Thus, it can be safely said that the solution lies somewhere else. All over the globe the recent trend is to shift from litigation towards Alternative Dispute Resolution. It is a very practical suggestion, which if implemented, can reduce the workload of Civil Courts by half. Thus, it becomes the bounden duty of the Bar to take this onerous task of implementing ADR on itself so as to get matters settled without going into the labyrinth of judicial procedures and technicalities. ADR processes, such as mediation and conciliation, have an important role to play in providing greater access to justice, ADR is not a panacea for all disputes, it has its limitations and it is not always appropriate[218]. Indeed, opponents of mediation argue that it is soft justice,' nothing more than an additional layer of costs in the litigation stream and a process fundamentally at odds with the role of the court as decision maker.[219]

The utility of ADR has been dealt by the Europian Commission as:

ADRs are an integral part of the policies aimed at improving access to justice. In effect, they complement judicial procedures, insofar as the methods used in the context of ADRs are often better suited to the nature of the disputes involved. ADR can help the parties to enter into dialogue where this was not possible before, and to come to their own assessment of the value of going to court.[220]

ADR system would go a long way in plugging the loopholes which are obstructing the path of justice. All ADR method are effective in speedy settlement of disputes. The Supreme Court of India has also suggested making ADR as 'a part of a package system designed to meet the needs of the consumers of justice[221]'. ADR is perceived both as a preventive measure and as a method for channelising disputes outside the formal justice system.[222]

The legal fraternity should change its mindset about the alternative dispute resolution mechanism and members of the Bar should co-operate in this endeavour, Supreme Court judge Justice K G Balakrishnan said. The Supreme Court judge was speaking at the inaugural of a Bruhat Lok Adalat organised by the Karnataka State Legal Services Authority and Advocates Association, Bangalore on Saturday. Justice Balakrishnan said

that with pendency of case high in courts across the country, Lok Adalats will help in quick disposal and also boost confidence among citizens in the justice dispensation system. Supreme Court Judge S B Sinha, also present at the Lok Adalat, said that such sittings have become part of the judicial process in Karnataka and it has now also got a statutory status.

Citing one of the merit of the alternative dispute resolution mechanism, Karnataka High Court Chief Justice Cyriac Joseph said the system of Lok Adalat does not allow differences between litigants to continue as there is a mutual settlement. It is said that, "While Arbitration and Conciliation Act,1996 is a fairly standard western approach towards ADR, the Lok Adalat system constituted under National Legal Services Authority Act, 1987 is a uniquely Indian approach".

The ADR mechanisms in India are also not in the smoothest of form and need urgent attention and thought.

Chapter- 4

LEGISLATIVE MEASURES DEALING WITH ADR

4.1 Introduction

The globalization of economy and competitive market policy has witnessed a tremendous increase in trade, commerce and industries as a result of which disputes relating to commercial transactions and business have increased in large proportion. The business community and the industrial entrepreneurs cannot afford to indulge in protracted litigation and therefore prefer to get their disputes resolved through ADR rather than moving a Civil Court for justice. Disputants want expeditious disposition of their cases and innovation of ADR methods has proved a boon to the disputants in civil matters.

The closing years of the 20th century witnessed a significant change all over the world towards resolving the problems of disputants. Alternative Dispute methods were found to be a good substitute for the conventional judicial adjudication. Most countries have accepted arbitration, conciliation, mediation and lok adalat as the best ADR techniques for resolution of civil disputes, particularly those relating to money suits, injunction, specific performance of contracts and suits involving commercial transactions. In the Indian context, if money suits and claims pertaining to property rights are referred to arbitration or conciliation, it would reduce the files of the various courts by about fifty percent.

There is coming a new trend in every field that if dispute arises party will prefer to resolve their dispute by settlement, if there is some possibility for that. According to this view, every laws consists of some dispute resolution methods so that party will not go to the Court and arbitration, conciliation, mediation and lok adalat will resolve their disputes. In this chapter researcher has tried to describe that those provision which are related with ADR methods. In India, there are various Acts and laws which contain provisions relating to ADR's method for resolution of disputes.

A. Under the Constitution of India

Access to justice by the poor and the disadvantaged remains a worldwide problem. Article 21 of the Constitution of India declares in a mandatory tone that "no person shall be deprived of his life or his personal

liberty except according to procedure established by law". The words "life and liberty" are not to be read narrowly in the sense monotonously dictated by dictionaries, they are organic terms which are to be construed meaningfully.

The right to speedy trial has been held to be a part of right to life or personal liberty by the Supreme Court of India[223]. The Supreme Court has allowed Article 21 to stretch its arms as wide as it legitimately can. The reason is very simple. This liberal interpretation of A-21 is to redress that mental agony, expense and strain which a person proceeded against in litigation has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself effectively. Thus, the Supreme Court has held the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in A-21. A speedy trial appeal, revision and re-trial. In other words, everything commenting with an accusation and expiring with the final verdict falls within its ambit. The same has received recognition from the "legislature" as well in the from of introduction of Alternative Dispute Resolution (ADR) mechanism (ADRM) through various statute[224]. The right to speedy trial[225] is not a fact or fiction but a "constitutional reality" and it has to be given its due respect. The courts and the legislature have already accepted it as one of the medium of reducing the increasing workloads on the courts. The same is also gaining popularity among the masses due to its advantages. The management and maintain of a welfare state is no doubt the task of the three sovereign organs of the Constitution and speedy disposal of cases is also one of the tasks on their agenda. The same, however, cannot see the light of the day unless citizens also participate in that movement. The citizens can help in the achievements of these benign objectives by restraining themselves while invoking jurisdictions of the "traditional courts" where the matter in dispute can be conveniently and economically taken care of by ADR mechanisms.

Article 39A of the Constitution directs the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. To give effect to the said mandate the Government has taken various measures to strengthen the judicial system by simplifying the procedural laws; incorporating various alternative dispute resolution mechanism such as arbitration, conciliation and mediation, conducting of Lok Adalat etc., establishing Fast Track Courts, Special Courts and Tribunals and providing free legal aid to the poor, women and children.

Arbitration has been included in the **Concurrent List of the Constitution (Entry 13) of seventh schedule** of the Constitution.

According to Article 51(c) the State shall Endeavour to encourage settlement of international disputes by arbitration.

(I) Under Various Laws

1. The Indian Contract Act 1872

The Indian Contract Act, 1872 also provisioned about the Arbitration which is also a means of ADR Mechanism. It's Section 28 provisioned that the Agreements in restraint of legal proceedings, is void. But it's exception provisioned that-

Exception-1- Saving of contract to refer to arbitration dispute that may arise- This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception-2- Saving of contract to refer questions that have already arisen- Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

In order to attract this exception following conditions must be fulfilled that-

(1) the agreement must be in writing; (2) it must be to refer any question which has already arisen. Besides the above two conditions, it should also be in conformity with the law relating to arbitration.

2. **Civil Procedure Code, 1908**

Code of Civil Procedure, 1908 also provisioned about the ADR methods.

These provisions are[226]:

(1) Notice (Section 80) Section 80(1) of the Code of Civil Procedure lays down that no suit shall be instituted against government or public officer unless a notice has been delivered at the government office. Stating the cause of action, name etc. The object of S-80 of CPC the whole object of serving notice u/s 80 is to given the government sufficient warning of the case which is of going to be wished can settle the claim without litigation or afford restitution without recourse to a court of laws.

In Ghanshyam Dass v. Domination of India[227] it was held that the object of S-80 is to give the government the opportunity to consider its or his legal position and if that course if justified to make amends or settle the claim out of court.
Similar decision was given by the Supreme Court in the case **Raghunath Das v. Union of India**[228]**.**

A. Settlement of disputes outsides the Court (Section 89)

(1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, reformulate the terms of a possible settlement and refer the same for-

3. Arbitration;
4. Conciliation;
5. Judicial settlement including settlement through Lok Adalat; or
6. Mediation

(2) Where a dispute has been referred-

(a) For arbitration or conciliation, the provisions of the Arbitration and the Conciliation Act 1996(26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) To Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section(1) of section 20 of the Legal Service Authority Act, 1987(39 OF 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) For judicial settlement, the court shall refer the same to a suitable institution refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Service Authority Act, 1987(39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of the Act;

(d) For mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.''

(c) Direction of the Court to opt for any one mode of alternative dispute resolution (Order 10 Rule 1-A)

After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section(1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

(d) Appearance before the conciliatory forum or authority (Order 10 Rule 1-B)

Where a suit is referred under Rule1-A, the parties shall appear before such forum or authority for conciliation of the suit.

(e) Appearance before the court consequent to the failure of efforts of conciliation (Order 10 Rule 1-C)

where a suit referred under rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then it shall refer

the matter again to the court and direct the parties to appear before the court on the date fixed by it.

(f) Duty of Court to make effort for the settlement (Order 32-A)

(1) In every suit or proceedings to which this order applies, an endeavor shall be made by the court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject matter of the suit.

(2) If, in any such suit or proceedings, at any stage it appears to the court that there is a reasonable possibility of a settlement between the parties, the court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule (2) shall be in addition to and in derogation of, any other power of the court to adjourn the proceedings.

(g) Duty of court in suits against the government or a public officer to assist in arriving at a settlement (Order 27 Rule5)

(1) In every suit or proceeding to which the Government or a public officer acting in his official capacity, is a party, it shall be the duty of the court to make, in the first instance every endeavor, where it is possible to do so consistency with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such or proceeding at any stage, it appears to the court that there is a reasonable possibility of a settlement between the parties, the court may adjourn the proceedings for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(3) The power conferred under sub-rule (2) is in addition to any other power of the court to adjourn proceedings.

3. Industrial Dispute Act 1947

One of the fields where justice gets eclipsed in pursuit of social justice are to be found in industrial adjudication and in cases between employer

and employee and between rich and poor.

BHAGWATI C.J. made some very sweeping observations as under, in

Peoples Union for Democratic Rights v. Union of India[229] **,**

"The time has been come when the courts must become the courts for the poor and struggling masses of this country."

This is at best an emotional observation out of sympathy and compassion for the poor who are unable to assert their claims against the rich and powerful parties due to ignorance and poverty. The observation apparently means that justice should not be denied to the poor on technical grounds and every efforts should be made to ensure that poverty does not come in the way of meting out justice to the poor. It does not mean that in a case between the rich and the poor scales of justice should be tilted in favour of the poor irrespective of the merits of their claim.
In **Grindlays Bank v. Central Government Industrial Tribunal**[230]**-** J.

A.P.Sen. followed by the line adopted by the court in **Crown Aluminium**[231]work and observed as under, "Industrial Dispute Act 1947 is a piece of legislation calculated to ensure social justice to both employer and the employee and advance progress of industry by bringing harmony and cordial relation between the parties."

The purpose of the Industrial Disputes Act has been to harmonise the relations between the employer and employees and thereby to restore and maintain industrial peace. The object of the enactment of the Industrial Dispute Act 1947 as indicated in the object and reason; was to provide effective machinery for settlement of Industrial Disputes, to avoid delay by specially authorised courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiation, conciliation and adjudication as per the need of the society keeping in view the fast changing social norms of a developing country like India.

Section 2(p) of the Industrial Dispute Act 1947 provisioned about the settlement which is also a method of Alternative Dispute Resolution Mechanism[232].

(a) Settlement {Section- 2(P)} means a settlement arrived at in the course of conciliations proceedings and includes a written agreement between the employer and workman arrived at otherwise than in the course of

conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate government and the conciliation officer.

It indicates that settlement means an adjustment arrived at in the course of conciliation proceeding before a conciliation officer or before Board of conciliation. It also includes a written agreement between the employer and the workman otherwise than in the conciliation proceedings.

In such a case the agreement must be signed by the parties in the prescribed manner and a copy of which must be sent to an officer authorized in this behalf by the appropriate government and the Conciliation officer. Thus the settlement indicates the agreement arrived at either in the Conciliation proceedings or otherwise between employer and the workman.(P. Virudhachalam and others v. Management of Lotus and others[233]).

(b) Authorities under Industrial Dispute Act 1947

The main purpose of codification of this Act was investigation of Industrial Disputes the machinery for adjudication has been made available. The Act makes available authorities for investigation and settlement of Disputes which are as follo Except this there are other authorities also but these said authorities primarily related to the resolution of dispute by conciliation and arbitration which is the whole essence of this thesis. These authorities have been provided for settlement of Industrial Disputes in the first instance by the conciliation and failing it by arbitration or adjudication.

(i) Conciliation Officer

Conciliation is also called Mediation in many countries. It is the oldest and most widely used known technique for adjustment of labour disputes. It is a recognized process of settling mutual conflicts not only between individuals and groups but also between nations.

According to Alfred stinger[234],

Conciliation implies a compromise -a basically voluntary process- the success of which depends on the citizens willingness to relinquish certain individual liberties as part of his duty and to respect for his fellow men and to accept the other party as equal partner in conciliation proceeding.

Industrial Dispute Act 1947, Section 2(d) provisioned that the "Conciliation Officer" means a Conciliation officer appointed under this Act.
The appropriate Government has been empowered to appoint such number of persons as it thinks fit to be conciliation officers. The Government may appoint such officers either for a specified area or for specified industries in a specified area or for one or more specified industries charged with the duty of mediating in and promoting the settlement of Industrial Disputes. The appointment is made by notification in the official Gazette either permanently or for a limited period.

(ii) Duties of conciliation Officers

The main duty of the conciliation officer is to mediate in and to promote the settlement of Industrial disputes. Section 12 of the Act lays down following duties of conciliation officers in respect of settlement of Industrial disputes:-

1) Where any industrial dispute exists or is apprehended, the conciliation officer may or where the disputes relates to a public utility service and a notice under section 22 has been given ,shall hold conciliation proceedings in the prescribed manner.

(I) The conciliation officer shall, for the purpose of brining about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do as he thinks fit for purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(J) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorized in this behalf by the appropriate Government together with a memorandum signed by the parties to the dispute.

(K) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for

bringing about a settlement thereof, together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion a settlement could not be arrived.

If, on a consideration of the report referred to in sub-section (4) the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does make such a reference it shall record and communicate to the parties concerned its reasons therefore.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or fixed by the appropriate Government within such shorter period as may be.

Provided that subject to the approval of conciliation officer the time for the submission of the report may be extended by such period, as may be agreed upon in writing by all parties to the dispute.

(II) Board of Conciliation

According to Section 5(1) of the Industrial Dispute Act 1947, in order to promote the settlement of an industrial dispute the appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation.

(a) Duties of Board- Section 13 of the Industrial Dispute Act 1947 enumerates the following duties of the Board of Conciliation:-

(V) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose, the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(W) If a settlement of the dispute or of any the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a Memorandum of the settlement signed by the parties to the dispute.

(Y) If no such settlement is arrived at, the Board shall, as soon as practicable after close of the investigation, send to the appropriate Government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its finding thereon, the reasons on account of which in its opinion, a settlement could not be arrived at and its recommendation for the determination of the dispute.

(5) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal under section 10, it shall record and communicate to the parties concerned its reasons therefore.

(6) The board shall submit its report under this section within two months of the date, on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government:

Provided that the appropriate Government may, from time to time extend the time for the submission of the report by such further period not exceeding two months in the aggregate:

Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

The Board of Conciliation shall have the same powers as are vested in a Civil Court, under the Code of Civil Procedure, 1908. It has been provided that every inquiry or investigation by a Board shall be deemed to be judicial proceeding within the meaning of Section 193 and 288 of the Indian Penal Code,1860.[235]

(iii) Arbitrator

Arbitrator includes an umpire.[236]

Industrial Dispute Act 1947 makes provision for constitution of Arbitration Machinery. Where any industrial dispute exists or is apprehended the parties to the dispute, the employer and the workmen may make an agreement to the effect that their dispute may be referred to arbitration for adjudication. This would be a voluntary reference to such arbitration for

adjudication. Section 10-A under its different clauses contains the following provisions regarding voluntary reference of industrial dispute:

(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the Presiding Officers of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators, as may be specified in the arbitration agreement.
(1-A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitration, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.

(2) An arbitration agreement referred to in sub-section (1) shall be form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

(3-A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such a manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(4-A) Where an industrial dispute has been referred to arbitration and a notification has been issued, under sub-section (3-A) the appropriate Government may, by order, prohibit the continuance of any strike or lock-

out in connection with such dispute which may be in existence on the date of the reference.

(5) Nothing in the Arbitration Act, 1940(10 of 1940), shall apply to arbitration under this section.

4. The Special Marriage Act, 1954

The provision of Section-34(2) and 34(3) of the Special Marriage Act are *pari meteria* to the provisions contained in Sec. 23(2) and 23(3) of the Hindu Marriage Act. Even though the marriage contracted under the SMA does not have the same sacramental sanctity as marriage solemnized under the HMA, the Indian parliament in its wisdom has retained the provisions for reconciliation of marriages in the same terms in the SMA as they exist in the HMA the mandatory duty on the court is thus in similar terms. For purpose of ready reference, Section 34(2) and 34(3) SMA are quoted hereunder-

(a) Duty of Court in passing decree (Section 34)

(1) XX XX XX XX

(2) Before proceeding to grant any relief under this Act it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently, with the nature and circumstances of the case, to make every endeavors to bring about a reconciliation between the parties: provided that nothing contained in this sub-section shall apply to any proceeding where relief is sought on any of the grounds specified in clause(c), clause(e), clause (f), clause(g) or clause(h) of sub-section (1) of section 27 the SMA,1954.

(3) Before proceeding to grant any relief under this Act it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavors to bring about a reconciliation between the parties:

provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause(c), clause(e), clause(f), clause (g) or clause (h) of sub-section(1) of section 27 of the SMA,1954.

(4) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this

behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.[237] It may be noticed that the provisions under both the statues are almost identical and accordingly every endeavor to bring about reconciliation is mandatory.

(b) Petition for divorce by mutual consent (Section 28)

Under Section 13 B of Hindu Marriage Act and Section 28 of Special Marriage Act, divorce by mutual consent is available. However, it is not granted. instantly and a joint motion made by both parties in the first instance has to wait for 6 months but not longer than 18 months to be confirmed for granting a divorce by mutual consent in the second motion.

It is evident that reconciliation may be out of question in a petition for divorce by mutual consent. But there is an inbuilt opportunity for reconciliation of parties wish to avail of it. When a joint petition is presented, it is adjourned for a minimum period of six months. This period is to enable them to think over the matter of divorce and if the parties want to prolong their consideration of reconciliation, they can do so far another year (total period is eighteen months, within which they can move the motion of a decree of divorce). Section-28 of Special Marriage Act contains similar provisions with similar bars. The logic in these enactments is again to provide for reconciliation in a thinking period between the first and the second motion. Some precedents settled by Indian courts may be cited in support.

(c) Reconciliation by the Court{Section 34 (2)}

Sub-section (2) of the Section 34 of the Special Marriage Act, 1954 lay down that at first instance it is the duty of the court to make every effort to bring about reconciliation between the parties where it is possible to do so consistently with the nature and circumstances of the case. The words are “before proceedings to grant relief.” At one time a view was propounded that the reconciliation endeavor should be made towards the end of the proceedings when the courts comes to a conclusion that it is going to grant “relief”. But then the provision has also the words “at the first instance” and these have been interpreted to mean that before the court takes up the case for hearing, it should make an effort at reconciliation. Presently, the latter is the prevalent view and hence reconciliation is to be attempted in the first instance.

5. Hindu Marriage Act 1955

(a) Reconciliation: (Section 23(2) of the Hindu Marriage Act 1995) mandates the duty on the Court that before granting relief under this Act, the Court shall in the first instance, make an endeavor to bring about a reconciliation between the parties, where it is possible according to nature and circumstances of the case.

(b) Section 23(3) of the Hindu Marriage Act, 1955

For the purpose of reconciliation the Court may adjourn the proceeding for a reasonable period and refer the matter to person nominated by court or parties with the direction to report to the court as to the result of the reconciliation.

(c) The Pre-emptive measures under the Hindu Marriage Act, 1955

Section 14 of the Hindu Marriage Act 1955 is another pre-emptive measure provided by said Act, which was presumably designed with the object of preventing hasty recourse to legal proceedings by the spouses without making a real effort to reconcile and save their marriage from being dissolved. In this context, it may be useful to quote S- 14(1) Hindu Marriage Act which states that notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of marriage by a decree of divorce[238], unless at the date presentation of the petition one year has elapsed since the date of marriage. Thus, S-14 of Hindu Marriage Act provides a deterrent from initiating divorce proceedings in the first year of marriage. The logic again being to advocate settlement and reconciliation between parties and avoid hasty divorces. However, under the proviso, to S-14 Hindu Marriage Act, 1955 the court is conferred a discretionary power to entertain a petition before the expiry of one year, if it finds on the allegation in the affidavit filed in the support of the petition that prima facie there is exceptional hardship to the petitioner or depravity on the part of respondent (Gulzar singh v. State of Panjab[239]).

If presupposes an application for leave of court to present a petition for divorce before the expiry of one year from the date of marriage. Hence, the statute provides discretion to the court in entertaining a petition for divorce in the first year of marriage on the ground of exceptional depravity. Sec- 14(2) Hindu Marriage Act further states that "In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year[240] from the date of marriage, the court shall have regard to the interests of any children of the marriage and to the question whether reasonable probability of a reconciliation between the parties before

the expiration of the said one year.[241] When a petition for divorce under the Hindu Marriage Act,1955 is presented on the ground of change of religion [Clause(ii) of Sec.13(1)], unsoundness of mind[Clause(iv) of Sec. 13(1)], venereal disease[Clause (v) of Sec.13(1)], renunciation of world[Clause (vi) of Sec.13(1)] or presumption of death[Clause(vii) of Sec.13(1)] reconciliation efforts need not be made, that is to say, the provisions of Sec. 23(2) do not apply. The proviso, in Sec. 23(2) Hindu Marriage Act, 1955 exempts the mandatory requirements of attempting reconciliation between the parties when divorce is sought on any of the grounds in Hindu Marriage Act above.

6. The M.P. Industrial Relations Act, 1960

An Act to regulate the relations of employers and employees in certain matters, to make provisions for settlement of industrial disputes and to provide for certain other matters connected therewith. In this Act the power of a court to enforce attendance have been withdrawn from the conciliation's powers as by its nature conciliation has to be voluntary. Now we will discuss the provisions related with conciliation and arbitration. These are-

(a) Conciliator(Section 4)

As section 2(11) provisioned "conciliator" means any conciliator appointed under section 4 and includes the Chief Conciliator.

(1) The State Government shall, by notification, appoint a person to be the Chief Conciliator for the State.

(2) The State Government may, by notification, appoint a person to be a Conciliator for any or all industries in a local area or areas specified in the notification.

(b) Board of Arbitration (Section 11)

(b) The State Government may, by notification, constitute a Board of Arbitration.

(c) The State Government shall, in the prescribed manner, prepare panels of members representing the interests of employers and employees, who may be appointed member of the Board.

(d) Whenever a Board is to be constituted each party to the dispute shall be called upon by the prescribed authority to submit a panel of

not less than five persons representing its interests and to propose jointly a person to be appointed as Chairman within such time as may be prescribed.

(e) The Board shall consist of an equal number of persons nominated by the State Government from the respective panels of the parties submitted by them under sub-section (3) and the Chairman jointly nominated by them:

Provided that-

1) If either or both the parties fail to submit the panels as required by sub-section(3), the State Government shall appoint the requisite number of persons as representing the interests of the party in default from the panels of persons prepared under sub-section (2);and

2) If the parties fail to agree to the appointment of any persons as Chairman within the prescribed period the State Government shall appoint a member or the President of the Industrial Court to be the Chairman of the Board.

(5) If any vacancy occurs in the office of the Chairman or a member of the Board before the Board has completed its work, it shall be filled in the manner prescribed and the proceedings shall be continued before the Board so reconstituted from the stage at which they were when the vacancy occurred.

Chapter viii, Section 39 to 48 of this Act provisioned about Conciliation proceedings.

These provisions are:-

(c) Report of Dispute (Section 39)

1. If any proposed change in respect of which notice is given under [sub-

section(1) and (2)][242]section 31 is objected to by the representative of employees or the employer, as the case may be, the party who gave such notice shall, if it still desires that the change should be effected, forward to the Conciliator for the local area for the industry concerned and to such other authorities and in such form and in such manner as may be prescribed a full statement of the case within fifteen days from the date of service of such notice on the other party or within one week of the expiry

of the period fixed by both the parties under clause (a) of sub-section (2) of section 33 for arriving at an agreement.

2. When a notification, is issued under section 32 in respect of such change, any employer or employee in the industry may, within seven days from the date of publication of such notification, forward such statement to the said officer.

Explanation- For the purposes of this section a change shall be deemed to be objected to by the representative of employees or the employer, as the case may be, if within seven days from the date of service of such notice or within the period fixed by both the parties under clause(a) of sub-section(2) of section 33 for arriving at an agreement, a memorandum of agreement has not been forwarded to the registrar under the said sub-section.

(d) Commencement of Conciliation Proceeding (Section 40)

On receipt of the statement of the case under section 39 the conciliator shall, except in a case in which by reason of the provisions of section 47 a conciliation proceeding cannot be commenced, within a week enter the industrial dispute in the register kept for the purpose and thereupon the conciliation proceeding shall be deemed to have commenced from the date of such entry in the register, which date shall be communicated by him the parties concerned.

(e) Conciliation proceeding (Section 41)

It shall be the duty of the conciliator to endeavour to bring about the settlement of the industrial dispute and for this purpose the conciliator shall enquire into the dispute and all matters affecting the merits thereof pad may do all such things as he thinks fit for the purpose of persuading the parties to come to a fair and amicable settlement of the dispute and may, subject to the provisions of section 45,adjourn the conciliation proceeding for any period sufficient in his opinion to allow the parties to arrive at settlement[or for any other reason[243]]

(f) Power of chief conciliator to intervene (Section 42)

(1) The chief conciliator may intervene or direct any conciliator to intervene at any stage in any conciliation proceeding held by another conciliator, and thereafter the chief conciliator or the conciliator so directed shall hold the conciliation proceeding with or without the assistance of the conciliator.

(2) The chief conciliator may from time to time issue such directions as he deems fit to any conciliator at any stage of a conciliation proceeding. He may also intervene in the conciliation proceeding before any other conciliator to assist such conciliation.

(g) Settlement and report (Section 43)

1. If a settlement of an industrial dispute is arrived at in a conciliation proceeding, a memorandum of such settlement shall be drawn up in the prescribed from by the conciliator and signed by the employer and the representative of employees. The conciliator shall send a report of the proceedings along with a copy of the memorandum of settlement to the registrar and the chief conciliator. The registrar shall record such settlement in the register of settlement and intimate to the parties the date on which it is so recorded. The change, if any, agreed to by such settlement shall come into operation from the date on which it is recorded in the register.

2. If no such settlement is arrived at, the conciliator shall, as soon as possible, after the close of the proceeding before him, send a full report to the Chief Conciliator stating the steps taken by him for ascertaining the facts and circumstances relating to the disputes and the reasons on account of which, in his opinion, settlement could not be arrived at.

3. The Chief conciliator shall forward the report submitted to him under sub-section (2) or if he is himself the Conciliator his report to the government with such remarks as he deems fit.

4. Notwithstanding- anything contained in this section where an industrial dispute is settled in regard to some of the industrial matters included therein and has not been settled in regard to others and the parties agree in writing that the settlement shall take place in regard to the industrial matters so settled, the settlement of the said industrial matter shall be registered and a report of the industrial matters not settled shall be sent in accordance with the provisions of this section.

5. The government shall notify in the Gazette that no settlement was arrived at in the dispute, in its entirety or, as the case may be, as regards the industrial matters specified in the notification.

6. Before the close of the proceeding before him the Conciliator shall

ascertain from the parties whether they are willing to submit the dispute to arbitration and make a note to that effect in his report under sub-section(2).

7. (a) Notwithstanding anything contained in the foregoing sub-sections, if at any stage of a conciliation proceeding the parties agree in writing to submit the dispute to arbitration, the agreement shall deemed to be a submission within the meaning of section 49.

(b) Where the agreement provides for arbitration either by an Arbitrator or by a Labour Court, or by the industrial Court or by a board, the Conciliator shall forthwith refer the dispute to the Arbitrator or a Labour Court or the Industrial court or submit it to the State Government for reference to a Board, as the case may be[244].

(c) Where the agreement provides for arbitration without an arbitrator being named therein, the, Conciliator shall forthwith submit the dispute to arbitrator being named therein, the Conciliator shall forthwith submit the dispute to the state Government to giving directions under the proviso to sub-section (2) of section 49[245].

(h) Procedure and Powers of Conciliator (Section 44)

1. The proceedings before a Conciliator shall be held in camera.

2. If a party to an industrial dispute or a witness or any other persons giving any information or producing any document in a conciliation proceeding makes a request in writing to the conciliation that such information or the contents of such document be treated as confidential, the Conciliator shall direct that such information or document be treated as confidential:

Provided that the Conciliator may permit the information or the contents of the document to be disclosed to the other party.

3. Save as provided in sub-section (2), a Conciliator or any person present at or concerned in the conciliation proceeding shall not disclose any information or the contents of any document in respect of which a request has been made under sub-section (2) without the consent in writing of the party making the request under the said sub-section.

4. Nothing in this section shall apply to the disclosure of any information or the contents of any document for the purpose of a prosecution under this Act or under any other law for the time being in force.

5. The Conciliator shall have the powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (V of 1908) in respect of the following matters, namely:-

a. Summoning and enforcing the attendance of any person;

b. Examining any person:

c. Provided that such examination shall not be on oath;

d. Compelling the production of documents and material objects; and

f. Such other matters as may be prescribed[246].

(i) Completion of conciliation proceeding(Section 45)

A conciliation proceeding shall be deemed to have been completed-

a. When a memorandum of the settlement arrived at in such proceeding is signed by the parties under sub-section (1) of section 43; or

b. When the parties agree in writing to submit the dispute to arbitration; or

c. If no settlement is arrived at when the notification under sub-section(5) of section 43 is published; or

d. When the time limit fixed for the completion of such proceeding under section 45 has expired.

Explanation- when an industrial dispute is settled in regard to some of the industrial matters included therein, the conciliation proceeding in regard to those matters only shall be deemed to have been completed within the

meaning of this section.

(j) Conciliation proceedings, not to be commenced or continued in certain Cases (Section 47)

No conciliation proceeding in respect of an industrial dispute shall-

(a) Be commenced if-

1. The representative of employees is directly affected by the dispute is a party to submission relating to such dispute or a dispute relating to an industrial matter similar to that regarding which the dispute has arisen;

2. It has been referred to arbitration under the provisions of section 51 or 52;

3. By reason of a direction issued under sub-section (2) of section 97 or by reason of any of other provisions of this Act the employers and employees concerned are in respect of the dispute bound by a registered agreement, settlement, submission or award;

(b) Be continued after the date on which-

(i) A submission relating to such dispute is entered into by the employer and employees concerned under section 43 or 49;
(ii) The dispute is referred to arbitration under section 51 or 52;
(iii)The direction referred to in sub-section (iii) of clause(a) is issued.

(k) Conciliation proceeding discontinued deemed to be completed (Section 48)

A conciliation proceeding which is discontinued under clause (b) of section 47 shall be deemed to have been completed on the date referred to in the said clause, and the provisions of section 43 with regard to the submission and forwarding of report shall apply to such conciliation proceeding.

Chapter IX Section 49 to 60 of this Act deals with Arbitration. These provisions are as follow-

(l) Submission (Section 49)

(1) Any employer and a representative union or where there is no

Representative Union a representative of employees may, by a written agreement, agree to submit any present or future industrial dispute or any class or classes of such industrial disputes to the arbitration of a labour Court, the industrial court, a board or any other person, or to arbitration without any arbitrator being named therein.

(2) Such agreement shall be called a submission and a copy of every such submission shall be sent to the registrar who shall record it in the register to be maintained for the purpose and inform the parties of the date of registration:

Provided that if no person is named in the submission the arbitrator shall be labour court, the industrial court or a board as the government may direct.

(m) Submission when revocable (Section 50)

(1) Every submission, shall in the absence of any provision to the contrary contained therein, be irrevocable:

Provided that a submission to refer future disputes to arbitration may at any time be revoked by any of the parties to such submission by giving the other party six months' notice in writing:

Provided further that before the expiry of the said period of six months the parties may agree to continue the submission for such further period as may be agreed upon between them.

(n) Reference of dispute to Labour Court, Industrial court or board (Section 51)

(1) Notwithstanding anything contained in this Act, the government may, if on a report made by the Labour officer or otherwise it is satisfied that an industrial dispute exists, and[247]-

(a) It is not likely to be settled by other means; or

(b) by reason of the continuance of the dispute-

(1) a serious outbreak of disorder or breach of the public peace is likely to occur; or

(2) serious or prolonged hardship to a large section of the community is likely to be caused; or

(3) The industry concerned is likely to be seriously affected or the prospects and scope of employment therein curtailed; or

(2) It is necessary in the public interest to do so;

Refer the dispute or any matter appearing to be connected with or relevant to the dispute for arbitration to a Labour court or the Industrial court or a Board: Provided that-

(i) no reference under this section shall be made to a board [without referring the matter to the parties and obtaining consent[248]] in writing of one of the parties to the dispute; and

(ii) no reference shall be made to a Labour court under this section if the matter in dispute is included in schedule I or if the dispute is between employees and employees.

(2) A copy of the report sent by Conciliator under sub-section(1) of section 43 and forwarded by the Chief Conciliator to the State Government under sub-section(3) of the said section shall also be made available to the Labour Court, or the Industrial Court or the Board, as the case may be, before it proceeds to deal with the reference under sub-section(1).

(O) Reference to arbitration by unions (Section 52)

(1) Notwithstanding anything contained in this Act, a Representative Union may refer in the prescribed manner any industrial dispute for arbitration to a Board or the Industrial Court, if it relates to matters in Schedule I or otherwise to a Labour Court:

(2) Provided that no such dispute shall be referred-

(i) After two months from the date of the completion of the proceedings before the Conciliator;

(ii) Where the employer has offered in writing before the

Conciliator to submit the dispute to arbitration under this Act and the union has not agreed to do so;

(iii) Unless the dispute is first submitted to the Conciliator and the conciliation proceedings are completed or the Conciliator certifies that the dispute is not capable of being settled by conciliation.

(3) A copy of the reference made under sub-section (1) shall also be forwarded to the State Government, the Labour Commissioner and the Conciliator having jurisdiction, as early as possible.[249]

(p) A Power of State Government to include other undertakings in reference[250] (Section 52A)

Where an industrial dispute concerning any undertaking in an industry or branch thereof has been or is to be referred to a Labour Court, the Industrial Court or a Board under section 51 or section 52, and the State Government is of opinion that the dispute is of such a nature that any other undertaking, group or class of undertaking of similar nature in that industry or any branch thereof is likely to be interested in or affected by such dispute, the State Government may-

(a) In the case of a reference under section 51 at the time of making such reference or at any time thereafter; or

(b) In the case of a reference under section 52 at any time after such a reference has been made, but before the award is made,

Include in that reference such undertakings, groups or class of undertakings whether or not at the time of such inclusion any dispute exist or is apprehended in that undertakings group or class of undertakings.

(q) Bar of application of Arbitration Act of 1940 (Section 53)

Nothing in the Arbitration Act, 1940(X of 1940) shall apply to arbitration under this Chapter.

(r) Procedure of arbitration proceedings (Section 54)

Subject to the provisions of this Act and the rules framed thereunder in this behalf, an arbitrator, a Labour Court, the Industrial Court or a Board shall follow such procedure in arbitration proceedings as it may think fit.

(s) Arbitration to be concluded expeditiously (Section 55)

Where an Industrial Dispute has been referred to any Arbitrator, Labour Court, Industrial Court or a Board, it shall hold its proceedings expeditiously and give its award as soon as practicable.

(t) Award by arbitration (Section 56)

The arbitrator shall, after hearing the parties concerned, make an award which shall be signed by him.

(u) Chairman to decide in case of disagreement (Section 57)

Where members of a Board are unable to agree as to their award the matter shall be decided by the Chairman acting as Umpire.

(v) Award (Section 58)

1. The Arbitrator, Labour Court, Industrial Court or of a Board shall forward copies of the award made by him or it to the parties, the Registrar, the Commissioner of Labour and the State Government.

2. On receipt of such award, the Registrar shall enter it in the register kept for the purpose and shall inform the parties of the date of registration.

3. Every award shall be published in the manner as may be prescribed.

4. The arbitration proceeding shall be deemed to have been completed on the date of the publication of the award under sub-section(3).

5. An award published under sub-section (3) shall be final and shall not be called in question by any Court in any manner whatsoever.

(w) Commencement of award (Section 59)

The award shall become enforceable on the date specified therein in this behalf or if no such date specified on the expiry of three days from the date of its publication under sub-section(3) of section 58.

(x) Award on whom binding (Section 60)

An award of an arbitrator, a Labour Court, the Industrial Court or a Board shall be binding on-

1. All parties to the industrial dispute[251]

2. All parties who were summoned to appear as parties to the dispute whether they appeared or not;

3. In the case of an employer who is a party to the arbitration proceeding his successors in interest, heirs and assigns in respect of the undertaking to which the dispute relates;

4. In the case of a Representative Union, any other or the Labour officer who is a party to a dispute, all person represented by it [on the date of the award, as well as thereafter[252]].

7. The Family Court Act 1984

An Act to provide for the establishment of Family Courts[253] with a view to promote conciliation in and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

(a) Establishment of family court (Section 3)

This section provisioned about the establishment of family court for the purpose of speedy settlement of family disputes.

(b) Duty to Family Court to make efforts for settlement (Section 9)

(1) In every suit or proceeding, endeavor shall be made by the family court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a family court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If in any suit or proceedings, at any stage, at appears to the family court that there is a reasonable possibility of a settlement between the

parties, the family court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to and in derogation of, any other power of the family court to adjourn the proceedings. Thus we can say that the Family Court Act 1984 provides a stage for settlement of disputes relating to marriage and family affairs. Family Courts have duty to make efforts for settlement in matters relating to marriage and the family affairs. The proceedings of the Courts can be held in Camera, if any party desire so. No party in case before family is entitled to be represented by a legal practitioner except where Courts consider it necessary in the interest of justice. The Act has tried to resolve family matter in a simple manner without complicated and lengthy procedures. It also tries to solve these matters by settlement. Any order or judgment of Family Court is appealable in H.C.

8. Legal Services Authorities Act, 1987

Preamble of Legal Service Authorities Act,1987 has a great importance in highlighting the goal for which the act in question is passed by the parliament. Organizing Lok Adalats for settlement of disputes is one of the main function u/s 4(e), 7(2)(b), 10(2)(b) and 11B(b) of the Legal Services Authorities Act,1987 in so far as the Central Authority, State Authority, District Legal Services Authority and Taluka Legal Services Committee, respectively are concerned.

Legal Service Authority Act,1987 provisioned about the Lok Adalat Syestem which has a amicable role in the adjudication of disputes. Sections 19-22 of the Act deal with Lok Adalat.

Section 19(5)(i) deals about the jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute in respect of any case pending before the Courts.

Section 19(5)(ii) states that even any matter which is falling within the jurisdiction of and is note brought before any court can be decided by organizing Lok Adalat. The only embargo found in the proviso to Section 19(5)(i) and (ii) is that Lok Adalat cannot take up criminal cases which are not compoundable under any law. This Section is a very progressive step in the direction of settlement of disputes which have not yet reached the courts.

Section 20(1)(ii) states that whenever a party intends to get his or her pre-court dispute settled in a Lok Adalat, he or she has to make an application

to the jurisdictional District Legal Authority or Taluka Legal Services Committee, as the case may be, whereupon a notice will have to be issued to the opponent about such an application. After giving a reasonable opportunity of being heard to both the parties and after satisfying that there are chances of settlement, matter will be referred to Lok Adalat.

Section 20(2) deals about the manner in which the pre-litigation Lok Adalat has to be organized.

The system of Lok Adalat is a success of democracy and is a most up-to-date and cheap method of providing justice at your doorstep. It is the justice visiting your place to shower blessing. The feeling of a Lok Adalat is a feeling of a compromise and it is a philosophy which strikes the balance and urges the spirit of philosophy of Give and Take. So far as the cases which are not arising out of the dealing with the state are concerned the results have been wonderful.

(a) Permanent Lok Adalat

In order to strengthen the system of Lok Adalat and to make participatory justice more effective the Parliament of India made amendment in the Legal Services Authorities Act 1987, to be known as the Legal Services Authorities (Amendment)Act,2002. The aim of the Act is to encourage pre-litigation settlement and to establish Permanent Lok Adalats specially for settling disputes in public utility services. The Act received the assent of the President on the 11th June 2002.

The Central or State Authorities may establish by notification, Permanent Lok Adalats at any place, for determining issues in connection to Public Utility Services.

Public Utility Service include-

(1) Transport services,
(2) Postal, Telegraph or telephone services,
(3) Supply of power, light and water to public,
(4) System of public conservancy or sanitation,
(5) Insurance services and such other services as notified by the Central or State Government.

PLA have the same powers that are vested on the Lok Adalats, mentioned under section 22(1) of the Act.

(b) Organisational structure of Permanent Lok Adalat

1. Chairmen

A person who is or has been a District judge or Additional District Judge or has held judicial office higher in rank than that of a District Judge, shall be the chairmen.

2. Members

Two other persons having adequate experience in public utility service to be nominated by the Central Government on the recommendation of Central Authority and by the state government on the recommendation of the State Authority.

(c) Cognizance of pending cases by Permanent Lok Adalat[254]

(1) Any party to a dispute can apply to PLA for settlement of a dispute in respect of a public utility service, which is not pending before any court.

(2) PLA does not have jurisdiction to entertain a dispute involving offences which are not compoundable.

(3) PLA does not have jurisdiction to entertain a matter where the value of the property involved exceeds ten lacks, which limit can be enhanced as provided for.

(4) Once an application is preferred to PLA for determination of a dispute, no party to such application can invoke the jurisdiction of any court in the same dispute.

(d) Procedure by Permanent lok Adalat for determination

Where the PLA services an application for determination of a dispute[255]-

(1) The PLA should direct each party to file before it a written statement stating therein, all the facts and the nature of the dispute, points or issues and the grounds in support or opposition.PLA may

require the parties to file additional statement at any stage.

(2) The party may also file any document or such other evidence, in proof of such facts and ground urged.

(3) The copy of the written statement and the documents or such other evidence filed has to be sent to the other parties of the application.

(4) When the statement and additional statement and reply if any are filed, PLA shall conduct conciliation process between parties to the application, as it thinks fit, considering the circumstances of the dispute.

(5) PLA should assist the parties in their attempt to reach an amicable settlement, in an independent and impartial manner. Every party is duty bound to co-operate in good faith, in the conciliation process.

(6) If after the conciliation process, the PLA is of an opinion that there exists elements of settlement in such proceedings, which may be acceptable to the parties, PLA may formulate the terms of a possible settlement of the dispute and give it for the consideration of the parties. If the parties are agreeable to the same, they shall sign the same and PLA shall pass an award in terms of the settlement agreement.

(7) If the parties are not agreeable to the settlement formulated, if the dispute is not an offence, then the PLA should decide the dispute on merits.

(8) PLA shall, while conducting conciliation proceedings or deciding a dispute on merit, shall be guided by the principle of nature, justice, objectivity, fair play, equity and other principles of justice.

(9) The PLA, when deciding a dispute on merit, shall not be bound by the code of civil procedure,1908 and the Indian Evidence Act, 1872.

(10) Every award made by the PLA shall be by the majority of the persons constituting the PLA.

The award rendered by PLA shall be deemed to be a decree of a civil court

and shall be final. The PLA may transmit the award to the court having local jurisdiction of execution.

9. The Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act 1966 is a Golden Act which provisioned about efficient and effective Alternative Dispute Resolution (ADR) method by promoting arbitration and conciliation methods for resolving civil commercial disputes and for avoiding litigation in courts.

10. Electricity Act 2003

Electricity Act 2003 also provisioned about the Dispute Resolution. Its part 16, section-158 provisioned about the Arbitration, which is a method of Alternative Dispute Resolution Mechanism.

a. Arbitration (Section 158)

"Where any matter is by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licencee, be determined by such persons as the appropriate commission may nominate in that behalf on the application of either party; but in all other respects, the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act 1996".

11.The Gram Nyayalayas Act, 2008[256]

An Act to provide for the establishment of Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto.

(a) Duty of Gram Nyayalaya to make efforts for conciliation and settlement of civil disputes (Section 26)

(1) In every suit or proceedings, endeavour shall be made by the Gram Nyayalaya in the first instances, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the subject matter of the suit, claim or dispute and for this purpose, a Gram Nyayalaya shall follow such procedure as may be prescribed by the High Court.

(2) Where in any suit or proceeding, it appears to the Gram Nyayalaya at any stage that there is a reasonable possibility of a settlement between the parties, the Gram Nyayalaya may adjourn the proceeding for such period as it thinks fit to enable them to make attempts to effect such a settlement.

(3) Where any proceeding is adjourned under sub-section(2), the Gram Nyayalaya may, in its discretion, refer the matter to one or more Conciliators for effecting a settlement between the parties.

(4) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Gram Nyayalaya to adjourn the proceedings.

(b) Appointment of Conciliators (Section 27)

(1) For the purpose of section 26, the District Court shall, in consultation with the District Magistrate, prepare a penal consisting of the names of social workers at the village level having integrity for appointment as Conciliators who possess such qualifications and experience as may be prescribed by the High Court.

(2) The sitting fee and other allowances payable to, and the other terms and conditions for engagement of, Conciliators shall be as may be prescribed by the State Government.

C. The Law Commission of India Reports

(a) 129th Report

The Law Commission of India in its 129th Report recommended that alternate modes of dispute redressal be obligatory on the courts after framing of issues. It is only after the parties fail to get their disputes settled through any one of the alternate dispute resolution methods that the suit may proceed further in the court where it was filed and where the matter was pending before settlement was attempted. According to Law Commission, 129th report after having been satisfied that the system at present in vogue is unsuitable for resolution of disputes arising in rural areas, devised a new model- Gram Nyayalya for resolution of disputes arising from rural areas. It is also suggested that increasing the judge strength proportinately after taking into consideration volume of litigation

in all district in the states. The report suggested about Conciliation Court and given importance to all ADR methods.

(b) 179th Report

According to Law Commission, 179th report, the Commission has kept in mind the broad principles of speedy arbitration and least court intervention. It has made several special provisions for speedy disposal of the arbitration proceedings as well as Court proceedings. It is hoped that the amendments will improve the state of arbitration in India and will remove the blot of delays.

So we can say from the above description that the legislative has also intented to make provision about the arbitration, conciliation and settlement for resolving of dispute. Now there is an inclination and tendency of all the peoples to avoid litigation in their disputes as much as possible and try for the settlement of dispute. As we have noted that in our Supreme law i.e. Constitution of India also provisioned about the ADRs methods, in which Arbitration is placed in the Concurrent List of the Constitution (Entry 13) of Seventh Schedule.

The Supreme Court has held the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in A-21. A speedy trial appeal, revision and re-trial. In other words, everything commenting with an accusation and expiring with the final verdict falls within its ambit. The same has received recognition from the "legislature" as well in the from of introduction of Alternative Dispute Resolution (ADR) mechanism (ADRM) through various statutes.[257] The right to speedy trial is not a fact or fiction but a "constitutional reality" and it has to be given its due respect. The courts and the legislature have already accepted it as one of the medium of reducing the increasing workloads on the courts. The same is also gaining popularity among the masses due to its advantages. To give effect to the Article 39A mandate the Government has taken various measures to strengthen the judicial system by simplifying the procedural laws; incorporating various alternative dispute resolution mechanism such as arbitration, conciliation and mediation, conducting of Lok Adalat etc., establishing Fast Track Courts, Special Courts and Tribunals and providing free legal aid to the poor, women and children.

It is important that the legislature introduce certain provisions which discourage initiation of litigation in cases where out of court

settlements can easily be worked out. Cases under the Hindu Marriage Act (1954), Motor Vehicles Act (1988), Industrial Disputes Act (1947) and The Contract Act (1872) etc. are cases where the major cause for initiation of litigation is conflict of interests of the parties involved. The Family Courts Act, 1984 to provide for the establishment of family courts with a view to promote conciliation in and to secure speedy settlement of disputes relating to marriage and family affairs. So we say that evolution of new juristic principles for dispute resolution is not only important but imperative. In India the need to evolve alternative mechanisms simultaneous with the revival and strengthening of traditional systems of dispute resolution has been reiterated in reports of expert bodies[258] .Each of these reports saw the process of improving access to justice through legal aid mechanisms and alternative dispute resolution (ADR) as a part of the systemic reform of the institution of the judiciary coupled with substantive reforms of laws and processes. These are precisely the type of cases where ADR mechanisms can be pressed into action without any second thoughts. Similarly cases involving certain civil matters, certain matters under family law, insurance, industrial dispute etc. can be brought under the aegis of obligatory ADR.

Chapter-5

ARBITRATION AND CONCILIATION ACT 1996

The Arbitration and Conciliation Act 1996 is a golden Act in the field of Arbitration and Conciliation. The researcher has given the special reference of Arbitration and Conciliation Act 1996 in this research work. This chapter deals with the-

1. Salient features of the Arbitration and Conciliation Act 1996,

2. Main objectives of Arbitration and Conciliation Act 1996,

3. The whole description of Arbitration and Conciliation Act 1996

The law of Arbitration and Conciliation has assumed great importance in the immediate past and it has witnessed remarkable advances in recent times. It is a branch of law which is being increasingly developed as a tool of Alternative Dispute Resolution Mechanism in most parts of the world.

The law on arbitration in India is at present substantially contained in three enactments, namely, the Arbitration Act,1940 the Arbitration (Protocol and Convention) Act,1973 and the Foreign Awards (Recognition and Enforcement) Act,1961. It is widely felt that the 1940 Act, which contains the general law of Arbitration, has become outdated. The procedure and practices developed with the Arbitration Act,1940 had failed to remedy the evils of over-crowding of court dockets and mounting arrears of cases awaiting disposal has shaken public perception of delayed justice has raised a question mark on some basic assumptions on which judicial system is based. Along with excessive intervention of courts at every stage of Arbitration. The Law Commission of India, several representative bodies of trade industry and experts in the field of Arbitration have proposed amendments to this Act to make it more responsive to contemporary requirements. It is also recognized that our economic reforms may not become fully effective if the law dealing with settlement of both domestic and international commercial disputes remains out of tune with such reforms like Arbitration, Conciliation is also getting increasing worldwide recognition as an instrument for settlement of disputes.

The United Nations Commission on International Trade Law

(UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. The General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice. The UNCITRAL, also adopted in 1980 a set of conciliation rules. The General Assembly of the United Nations has recommended the use of these rules in cases where the disputes arise in the context of international commercial relations and the parties seek amicable settlement of their disputes by recourse to conciliation. An important feature of the said UNCITRAL Model Law and Rules is that they have harmonized concepts on arbitration and conciliation of different legal systems of the world and thus contain provisions which are designed for universal application.

Though the said UNCITRAL Model Law and Rules are intended to deal with international commercial arbitration and conciliation, they could, with appropriate modifications, service as a model for legislation on domestic arbitration and conciliation. The present bill seeks to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the said UNICITRAL Model Law and Rules. The main objectives of the Bill are as under-

1. To comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation;

2. To make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;

3. To provide that the arbitral tribunal gives reasons for its arbitral award;

4. To ensure that the arbitral tribunal remains within the limits of its jurisdiction;

5. To minimize the supervisory role of courts in the arbitral process;

6. To permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes;

7. To provide that every final arbitral award is enforced in the

same manner as if it were a decree of the court;

8. To provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same statues and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal; and

9. To provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two international conventions relating to foreign arbitral awards to which India is a party applies, will be treated as a foreign award.
   The bill seeks to achieve the above objects.

The Arbitration and Conciliation Act consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental hereto.

This Act not only removes many serious defects of the earlier arbitration law but also incorporates modern concepts of arbitration which are internationally accepted. This new act is obliviously aimed at introducing basic and qualitative change in the arbitration practice in India.

Some of the salient features of the Arbitration and Conciliation Act, 1996 are as follows-

1. Very Comprehensive and Consistent Act

The Arbitration and Conciliation Act, 1996 is more comprehensive than the earlier Act of 1940. It consists of 86 sections spread over four parts.

Part I relates to arbitration in India while Part II relates to enforcement of foreign awards under the New York and Geneva Conventions. Part III of the Act contains provisions relating to conciliation and Part IV is devoted to supplementary provisions empowering the High Court to make rules regarding arbitration which are consistent with the Act. Besides, the Act also contains three schedules, the first dealing with the convention on the recognition and enforcement of Foreign Arbitral Awards; the second containing the Geneva Protocol on Arbitration clauses and the third embodying the provisions relating to convention on the

execution of Foreign Arbitral Awards.

Thus the Act has sought to make the arbitration and conciliation law in consonance with the recommendations of the United Nations and the model law adopted by United Nations Commission on International Trade Law i.e, UNCITRAL. So we can say that, the Act is very consistent with the instruments of International Arbitration Law.

2. Abolition of the Umpire System

The Arbitration and Conciliation Act, 1996 is significantly aboliate the umpire system[259]. The Arbitration Act, 1940 provided that where even number of arbitrators was appointed and such arbitrators failed to make an award within the specified time, the umpire should enter on the reference in lieu of arbitrators. The number of arbitrators to determine the dispute was now been left to the parties, the only limitation being that an even number of arbitrators shall not be appointed. The arbitrators so appointed shall appoint a third arbitrator called the presiding Arbitrator, who was referred to as umpire under the Arbitration Act, 1940 where the parties fail to appoint the arbitrator, the Chief Justice of the concerned High Court shall have the power to appoint an arbitrator or presiding Arbitrator as the case may be and in disputes involving International Commercial Arbitration, the Chief Justice of India shall have such power.

3. **Arbitral award enforceable as a decree of the Court**

The other notable feature of the Arbitration and Conciliation Act, 1996 is that the arbitral award and the settlement arrived at during conciliation proceedings have been treated at par with the decree of the court. In other words, the arbitral award is enforceable in the same manner as a decree of a law-court. The change has enabled reduction of litigation in some areas of arbitration proceedings. Earlier, an award could not be executed in its own right unless the court ordered that award be filed and a decree issued in terms thereof.

4. **Minimize the courts interference**

The court's power under the Arbitration and Conciliation Act, 1996 have been considerably curtailed[260] as compared with the earlier Arbitration Act of 1940. Under the new Act, 1996 the arbitrator has been endowed with unfettered and plenary powers and he is completely immune from the Court's control during the arbitration proceedings. He can even decide his own

jurisdiction. The mitigation of court's interference in arbitrator's power is intended to confer him greater autonomy as also to enable him to work more independently and impartially with added sense of responsibility.

5. Ascertained the qualification of Arbitrators

The Arbitration and Conciliation Act 1996 is provisioned about the qualification of the arbitrator. No qualifications for appointment as an arbitrator were prescribed in the earlier Arbitration Act of 1940. It has now been realized that quite a large number disputes arising between the parties are of a technical nature whether relating to science, technology, mining, industry or other similar special fields of knowledge etc. Therefore, the rival contentions can be appreciated and decided only by the arbitrators who are really competent and well versed in such matters.

6. Mandatory provision for the arbitrator to give reasons for the award

The Arbitration and Conciliation Act, 1996 contains a salutary provisions making it mandatory for the arbitrator[261] to give reasons for the award. Under the Arbitration Act, 1940 the arbitrator was under no obligation to give reasons in support of his conclusions or decisions reached by him[262].

7. Empowering the arbitrators to decide on their jurisdiction

The Arbitration and Conciliation Act 1996 gives the vital power to the arbitrator/ arbitrators to decide their own jurisdiction. The term 'jurisdiction' signifies 'the power to decide' [263]. The question of jurisdiction is a vital issue because in absence of 'jurisdiction' no arbitration proceedings can commence, and if commenced they shall be null and void.

8. Limiting the number of statutory appeals from the award

This is also a very significant provision of the new Act 1996. Every order is not appealable and only specified orders are appealable. The reason behind this is that avoid so much delay in proceedings, litigation has to be excluded and make final and binding arbitral award.

9. Enforcement of certain foreign awards

The Act provides for enforcement of certain foreign awards made

under the New York Convention and Geneva Convention respectively.

10. Provision of Interim measure

This is also a significant feature of the Arbitration and Conciliation Act 1996.

The Supreme Court in its decision in **Food Corporation of India v. Indian Council of Arbitration**[264] has pointed out that the legislative intent of the Arbitration Act of 1996 is to minimize the supervisory role of the Court in arbitral process and expeditious appointment of arbitrator so that all contentions issues may be decided by the process of arbitration without recourse to litigation.[265]

In **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd**.[266]**,** observed that the Act is meant to provide speedy and alternative solution of disputes so as to avoid protracted litigation.

B. Main objectives of the Arbitration and Conciliation Act 1996

We can describes the object of Arbitration and Conciliation Act 1996 as follows:

1 To give the effectiveness of the arbitration and conciliation provisions so that parties can resolve their disputes in a harmonious way with the help of same.

2 To make provision for an efficient and effective procedure to meet the needs and requirements of specific arbitration.

3 To cover International commercial arbitration and conciliation as also the domestic arbitration and conciliation within its fold.

4. To ensure that arbitral tribunal functions within the framework of the Act.

5. To minimize supervisory role of courts in the arbitral process and thus ensure minimal judicial intervention.

6. To ensure making of an award on settled terms of the parties.

7. To encourage amicable settlement of disputes between parties using arbitration and conciliation as an alternative dispute resolution mechanism.

8. To provide that every final award is enforced in the same manner as if it were a decree of the court and thus eliminate the necessity of approaching a law court to make the award a decree of the court.

9. To provide conditions and procedure for the purpose of enforcement of foreign awards under New York and Geneva Convention.

10. To give the arbitral award same importance and status as a decree of a court.

C. The whole description of Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 came into force on 25th January, 1996 i.e., the date on which the first Ordinance on the law had come into force. 'Arbitration' has been included as Entry 13 of the Concurrent List of the Seventh Schedule to the Constitution of India. Therefore it is a subject of legislation both for the Parliament as also the State Legislatures. The Arbitration and Conciliation Act, 1996 comprises Four Parts as under:

1. Part I Arbitration

2. Part II Enforcement of certain Foreign Awards

3. Part III Conciliation

4. Part IV Supplementary Provision

Part I divided into 10 Chapters in which Chapter 1 of Section 2 deals with the Definitions. But the definitions appearing to be applicable only to this part of the Act. If otherwise provided these provisions may be applicable to other parts as well.

Under the Arbitration and Conciliation Act, 1996; Section 2(1) (a) defines "Arbitration", it means any arbitration whether or not administered by a permanent arbitral institution.

In the case of **Babar Ali v. Union of India and Ors.**[267], the constitutionality of the act was challenged. The apex court held that the Act

of 1996 was not unconstitutional and it does not in any way offend the basic structure of the Constitution of India. The act was further strengthened when in the case of **Kalpana Kothari v. Sudha Yadav and Ors.**[268] the Hon'ble Supreme Court held that as long as the arbitration clause exists, a party cannot take recourse to the Civil Courts for appointment of Receiver etc. without evincing an intention to start the arbitration proceedings.

In a landmark decision in **Bharat Aluminium v. Kaiser Aluminium**[269]**,** the Constitutional Bench of the Supreme Court of India overruled its earlier controversial decision in **Bhatia International v. Bulk Trading SA.** In the case of ***Bharat* Aluminium v. Kaiser Aluminium,** the five-judge panel held that Part I of the Indian Arbitration and Conciliation Act 1996 ("IACA") will not apply to international commercial arbitrations which have their seat outside of India. the Supreme Court of India held that:

1 Part I of the IACA would only apply to arbitrations seated in India;

2 Awards which are rendered in foreign seated arbitrations will only be subject to the jurisdiction of the Indian courts when they are sought to be enforced in India under Part II of the IACA;

3 Indian courts cannot order interim relief in support of foreign seated arbitrations; and

4 The decision of Bhatia International will continue to apply to any arbitration agreements entered into before 6 September 2012.

The decision of the Supreme Court of India has been welcomed by the international arbitration community because it limits the intervention of the Indian courts in arbitrations seated abroad. Nonetheless, as the decision in Bharat Aluminium will only apply to arbitration agreements entered into after 6 September 2012, the Bhatia International legacy will live on for a number of years.

Section 3 (1) deals with the receipt of written communication. The section divides communication in two parts firstly, where there is communication the other party in person. In case the party is not available or the party may be avoiding service the service has been provided as per clause

(C). But in the case of judicial authority no such division has been made and the Act is quite particular for service[270]. Communication deemed to have been delivered when it reaches the other party's place of business, habitual residence or mailing address. If such an address cannot be traced recorded attempt to find out and mail to the old address is sufficient.

It was held in **Kailash Rani Dang v. Rakesh Bala Aneja**[271] that if a written communication is delivered to the addressee personally at his place of business, it shall be deemed to have been received by him on the day it was delivered.

In the event that either of the parties know of a provision from which either parties derogate, or any part of the agreement has not been complied with, if no obligation is raised to such non-compliance, it is taken that the party has given up his right to object and that right will be waived. (Section 4)

The extent of Judicial Intervention and Administrative assistance are discussed in Ss. 5 & 6 of the Act. Section 5 brings out the object of the New Act 1996, namely that of encouraging resolution of disputes expeditiously and less expensively when there is an arbitration agreement the Court's intervention should be minimal in such cases. There is a specific provision that no judicial authority shall intervene except so provided in this part. There is a good deal of prohibition and the judicial authorities are not to interfere with the normal working of the Tribunal, though it is a different matter that on some points there is a specific provision where the Courts have to intervene.

Supreme Court observed in **New India Insurance Co. Ltd. v. Smt. Shanti Mishra**[272] that the discretion vested in the court under Section 5 cannot be defined or crystallized so as to convert a discretionary power into a rigid rule of law and that the expression 'sufficient cause' should receive a liberal construction.

In **Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors.**[273] SC held that Section 5 was meant to enable the court to do substantial justice by deciding the cases on their merits. The court further declared that the expression 'sufficient cause' was elastic enough to enable the courts to apply the law in a meaningful manner so that the same subserves the ends of justice which was in any case the life-purpose for the existence of the institution of courts.

Part II of the Act deals with Arbitration Agreements. This Section corresponds to Sec.4 of Arbitration Act, 1940 (10 of 1940). This Section lays down the requirements of an arbitration agreement.

According to Section 2(1)(b)"Arbitration agreement" means an agreement referred to in section 7.

Section 7 defines an arbitration agreement as "an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not." An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement and it shall be in writing. In brief we can give some important requirement which is inherent in Section 7 as:

1. Existence of dispute

The existence of dispute is a prerequisite for arbitration. A dispute in the context of Arbitration Act means a dispute arising out of assertion of claim by one party and its repudiation by the other party. A dispute implies some kind of disagreement between parties concerning some legal claim or liability[274].

2. Parties

According to Section 2(1)(h)"Party" means a party to an arbitration agreement. Existence of parties is also a essential condition for arbitrationagreement because for a valid agreement parties must also competent for the same. Parties to agreement must be persons in existence. A party to arbitration agreement got incorporated to Company subsequently, it was held that agreement was not arbitration as it was not person in existence on the date of agreement.**[275]**

Intention of the parties is also required as to whether they have agreed for resolution of the disputes through arbitration[276].

3. Existence of arbitration agreement

This is also a relevant factor for arbitration. The Supreme Court observed in **Indian Oil Corporation Ltd. v. Raja Transport (P) Ltd.**[277]that Arbitration clause is a package which may provide for what disputes are arbitrable, at what stage the disputes are arbitrable, who should be the arbitrator, what should be the venue, what law would govern the parties etc.

While dealing with what is an arbitration agreement in **K. K. Modi v. K. N. Modi**[278]**,** it was held:

Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:

(a) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement.

(b) That the jurisdiction of the tribunals to decide the rights of parties must derive either from the consent of the parties or from an order of the Court or from a statute, the terms of which make it clear that the process is to be an arbitration.

(c) The agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal.

(d) That the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides.

(e) That the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law.

(f) The agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.

In **S. N. Prasad v. Monnet Finance Ltd.**[279] and **Vijay Kumar Sharma v. Raghunandan Sha*rma***[280]it was held that "arbitration agreement" as an agreement by parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship whether contractual or not.

Existence of arbitration agreement is necessary and in that arbitration agreement, there should be a clause that dispute between parties be decided by appointment of Arbitrator.[281]

4. Arbitration agreement to be in writing and signed by the parties

The Arbitration and Conciliation Act 1996, makes it mandatory that all arbitration agreements must necessarily *be in writing.*[282]

An arbitration agreement has to be in writing whether it is in the form of an

arbitration clause in a contract or in form of separate agreement.[283]

A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite agreement. The transaction should be of a composite nature where performance of mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute[284].

In case of a judicial application[285] being filed for a dispute between parties who have agreed to arbitrate, the judicial authority may refer the case to arbitration if he feels and arbitration can take place even if the issue is pending before the judicial authority (Section 8). This section corresponds to Section 3 and 20 of Arbitration Act, 1940 (10 of 1940). This section deals with power to refer parties to arbitration where there is an arbitration agreement.

The conditions which are required to be satisfied under sub-section (1) and (2) of Section 8 before the Court can exercise its power to refer parties to arbitration are:

(a) There is an arbitration agreement ;

(b) A party to the agreement brings an action in the Court against the other party;

(c) Subject- matter of the action is same as the subject- matter of arbitration agreement;

(d) The other party moves the Court for referring the parties to arbitration before it submits his first statement on the substance of the dispute[286].

The Court examined the scope of Section 8 of the Arbitration and Conciliation Act 1996, in the case of **Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. & Ors**[287]. which provides that a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration. The Court held that "though section 8 does not prescribe any time limit for filing an application under that section, and only states that the application under section 8 of the Act should be filed before submission of the first statement on *the substance of the dispute, the scheme of the Act and the* provisions of the section clearly indicate that the application thereunder should be made at the earliest. Obviously, a party who willingly participates in the proceedings in the suit and

subjects himself to the jurisdiction of the court cannot subsequently turn round and say that the parties should be referred to arbitration in view of the existence of an arbitration agreement. Whether a party has waived his right to seek arbitration and subjected himself to the jurisdiction of the court, depends upon the conduct of such party in the suit. When plaintiffs file applications for interim relief like appointment of a receiver or grant of a temporary injunction, the defendants have to contest the application. Such contest may even lead to appeals and revisions where there may be even stay of further proceedings in the suit. If supplemental proceedings like applications for temporary injunction on appointment of Receiver, have been pending for a considerable time and a defendant has been contesting such supplemental proceedings, it cannot be said that the defendant has lost the right to seek reference to arbitration." The Court however held that "even if there is an arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court where the civil suit is pending, will refuse an application under Section 8 of the Act, to refer the parties to arbitration, if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal." The question raised in a very recent case was as to whether on the death of a named arbitrator, the arbitration agreement survives or not. Existence of an arbitration agreement was not in dispute, the question was about its enforceability on the death of the named arbitrators. The Apex Court has held the arbitration clause would have life so long as any question or dispute or difference between the parties exists unless the language of the clause clearly expresses an intention to the contrary. The question may also arise in a given case that the named arbitrators may refuse to arbitrate disputes, in such a situation it is possible for the parties to appoint a substitute arbitrator unless the clause provides to the contrary. Objection can be raised by the parties only if there is a clear prohibition or debarment in resolving the question or dispute or difference between the parties in case of death of the named arbitrator or their non-availability, by a substitute arbitrator. In the absence of such debarment or prohibition of appointment of a substitute arbitrator, the court's duty is to give effect to the policy of law that is to promote efficacy of arbitration[288].

The provisions regarding interim measures are made under Section 9 of the Act. Section 41 (b) read with Second Schedule of Arbitration Act, 1940 had dealt with this aspects. Parties can apply to Court for interim measures of protection before or during arbitral proceedings. Section 9 of the said Act corresponds to Article 9 of the UNCITRAL Model Law which is as follows:

"It is not incompatible with an or arbitration agreement for a party to request, before or during arbitral proceedings, from a Court an interim measure of protection and for a Court to grant such measure."

For this purpose Court means according to Section 2(1)(e),

"the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having, jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

While dealing the case of **M/s. Kamla Solvent v. Manipal Finance Corporation Ltd.**[289]**,** the High Court of Chennai held that under Section 9 of the Act, High Court is vested with jurisdiction to pass interim order to safeguard and protect the interest of the parties but not to challenge the appointment of the arbitrator and the venue of Arbitration.

The Supreme Court in its decision in **M/s. Sundaram Finance Co. Ltd. v. M/s. NEPC India Ltd.**[290] has held that interim orders by Court can also be passed even before the commencement of arbitral proceedings. According to the Court, the words "before or during arbitral proceedings" occurring in Section 9 clearly contemplate two stages when the Court can pass interim orders i.e., during the arbitral proceedings or before the arbitral proceedings. A plain reading of Section 9 as a whole makes it clear that the Court has jurisdiction to entertain an application under this Section for interim measures either before arbitral proceedings or after making of the arbitral award.

Thus this Section confers wide pre- emptive powers on the Courts to order interlocutory measures of protection in certain situations. The provision of Section 9 empower the Civil Court only to take interim measure for preservation and safe custody of the subject matter in arbitration agreement and for that purpose issue interim injunction.

Part III of which Section 10 to 15 of Arbitration and Conciliation Act, 1996 contains provisions regarding the composition of an Arbitral Tribunal.

According to Section 2(1)(d) "Arbitral tribunal" means a sole arbitrator or a panel of arbitrator.

Section 10 (1) has given the full power to the parties to determine the number of arbitrators they want and any person, of any nationality may be appointed as the arbitrator. This Section corresponds to Sec.11 and 38 of

Arbitration Act, 1940 (10 of 1940). The provision relating to appointment of Umpire as existed in the old Arbitration Act[291] , 1940 has been dropped in the new Act of 1996. An arbitration agreement specifying an even number of arbitrators cannot be a ground to render such agreement invalid under the present Act.[292]

In **M/s. Group Chimique Tunisien SA v. M/s Southern Petrochemicals Industries Corpn. Ltd.**[293] it was held that Section 10 of the Act 1996 provides that the number of Arbitrators shall not be 'even'.

Section 10 of sub-section (2) will apply where parties are fail to determined the Arbitrator then Arbitral Tribunal shall appoint a sole arbitrator.

Section 11 of the Act, 1996 deals with the appointment of arbitrators. This Section corresponds to Sec. 4,8 and10 of Arbitration Act,1940. An arbitrators are appointed in pursuance of the arbitration agreement. The appointment of arbitrators may be (1) by the parties, (2) by Chief Justice or designated authority or (3) by Arbitral institution.

In case of arbitrator appointed by parties, he can enter on the reference forthwith and proceed with the arbitration proceedings. A person of any nationality may be appointed as arbitrator but where the dispute involves an international commercial transaction, an arbitrator of a nationality other than those of the parties must be appointed. In **M/s. Bel House Associates Pvt. Ltd. v. General Manager, Southern Rly. Chennai**, the High Court of Kerala held that under sub-section (2) of Section 11, the parties are free to agree on a procedure for appointing an arbitrator or arbitrators.

Where an order of appointment of Arbitrator was passed with consent of parties, no appeal would be maintainable it was held in **State of M.P. v. Bastar Oil Mills & Industries.**[294] It was observed in **Anil Kumar v. B.S. Neelkanta**[295] that the function performed by the Chief Justice or his nominee under this section is a judicial function. Similarly in SBP & Co. v. Patel Engineering Ltd.[296], it was held conclusively that the power exercised by the Chief Justice or his designate under Section 11(6) of the Act, is not an administrative but a judicial power and that the designate of the Chief Justice has to judicially determine the issues arising under Section 11(6) of the Act. Every year that there are no less than a 100 cases of the Supreme Court reported on arbitration and especially appointment of Arbitrator under Sec. 11 (4) , (5) & (6) of the Arbitration Act, 1996[297]. This has been adding to the existing burden of the Court and in spite of that, a large number of appeals are filed in the

Supreme Court. The Parties to an arbitration are free to agree on the procedure for appointing of arbitrators. The situations suitable for intervention of the Chief Justice or his designate naming an arbitrator are:

(A) The procedure agreed is not followed

(B). There is no agreement on procedure

In both situations, the intervention of the Chief Justice or his designate are necessary. Under the first situation, if a party fails to act under such procedure, or the parties (or the two arbitrators, one appointed by each party) are unable to reach an agreement expected of them under such procedure, or a third party (including an institution) fails to perform any function entrusted to it under such procedure, any part may request the Chief Justice or his designate to take necessary measure, unless such other measure have been provided in the agreement for securing such appointment.

An arbitrator can be appointed by the institutions also. The arbitrators appointed by the institution are chosen from the penal of experts who are specialized and well experienced in administering arbitration cases over the years. The Ministry of Commerce and Department of Public Enterprises has issued circulars to Central Public Undertakings, Government Department etc. to use the services of the Indian Council of Arbitration for administering arbitration for the settlement of disputes instead of appointing their own officials of the same department as arbitrators. This will infuse an element of fairness and impartiality in the functioning of arbitrators as the institutional arbitrators do not have any direct or indirect interest and are completely neutral to both the parties to arbitration.

The parties are also free to decide on the procedure of arbitration. In case of a “three arbitrator approach” each party nominates an arbitrator and the two said nominees should nominate a third arbitrator. In case either of the parties fails to nominate an arbitrator or the two nominees do not appoint a third arbitrator in 30 days the Chief Justice or any other institution may on a request by either party appoint the arbitrator. Other provisions regarding the appointment of arbitrators have been discussed at length under S.11 of the Act. Under this Act, an arbitrator may be challenged in case there are circumstances, which give rise to justifiable doubts regarding his independence or impartiality, or if he does not possess the qualifications agreed to by the parties (S.12). This Section corresponds to Sec. 30 and 36 of Arbitration Act, 1940. In the earlier Arbitration Act of 1940, there were no qualifications prescribed for the appointment of an arbitrator. But the new Arbitration and Conciliation Act 1996 of section 12(3) provisioned that the

appointment of an arbitrator may be challenged if he does not possess the qualifications agreed by the parties. Today, there are number of disputes arises between the parties are of technical nature and need for expertise and deep knowledge for that disputes as contract, manufacturing, building construction, engineering, insurance, blasting, mining and industries as Tea, Jute, Sugar, Cotton, Textile etc. and these type of disputes can be resolved by only person well versed and experienced in such matters.

The main intension behind this section is to cast a obligation upon the parties to make sure that the persons whom they propose to appoint as arbitrators are willing to be so appointed and do not suffer from any disqualification or position which is likely to impair their independent and impartial decision in the dispute under arbitration. The obligations upon the arbitrators are two fold as *before the commencement of the arbitralproceedings* and *during the conduct of the arbitral proceedings*, anycircumstances which are likely to give rise to reasonable apprehension as to his impartiality or independence.

Impartiality, independence and capability of the arbitrator are of paramount importance[298]. A party might have participated in the appointment of an arbitrator or even if he himself has appointed him as an arbitrator even then he has a right to challenge his appointment in case after appointment the arbitrator has shown some facts in his conduct or the party might have come to know of his disqualification after the appointment or even in his conduct of the proceedings he might have been noticed to be incapable of remaining impartial, independent and incapable.

The Supreme Court in its important decision of **Oil & Natural Gas Corporation v. Wig Brothers Builders & Engineers Pvt. Ltd[299].** held that an Award is not open to challenge on the ground that the arbitrator had reached a wrong conclusion or had failed to appreciate some facts. But if there is an error apparent on the face of the award or if there is misconduct in conduction the proceedings or in making the award, the court will interfere with the award.

A prayer was made for change of arbitrator in **State of Jharkhand v. Rites Ltd[300].** on ground that arbitrator did not possess technical qualification and there was also some aspersions and doubt about his integrity. Prayer for revocation of authority of arbitrator or change of arbitrator could not be made by filing application under Section 151, C.P.C.,1908.

Supreme Court has observed in **Nandyal Co-operative Spinning**

Mills v. Mohan Rao[301] that the law expects utmost honesty, impartiality and confidentiality from the arbitrators. He is also a duty to inform the parties in writing about any circumstances which are likely to affect his independence or impartiality unless the parties already aware of the circumstances.

A person who has appointed as a arbitrator or who have offered to be an arbitrator can decline the offer by express or implied refusal. It was decided by the SC in the case of **State of West Bengal v. National Builders**[302] as "refusal to act means denial to do something which one is obliged to do under law". So we can say that if a arbitrator is bias, not willing to perform his duty and reluctant, he cannot be forced to act.

In **Sabyasachi v. Swapan**[303] it was held that the refusal of the person nominated in the agreement as arbitrator does not frustrate the arbitration clause, but party can substitute a new arbitrator in his place. In a petition moved under Section 11 of the 1996 Act, the Supreme Court has in a catena of cases held that the broad issues which can be decided by the Chief Justice are as follows:

(a) Territorial Jurisdiction

(b) Existence of an Arbitration Agreement

(c) Appointment of an Arbitrator

(d) Subsistence of an Arbitrable Dispute

The challenged arbitrator overrules the objection, the party aggrieved by the decision cannot resort to Court until final award is given. Thereafter the party can move the Court under Section 34 to get the award set aside[304].

A party who has appointed the arbitrator may also challenge him. The parties may freely determine the procedure for arbitration, and in the event that they do not decide such procedure, the arbitral tribunal relating to the agreement will look into the challenge and pass an arbitral award. In case this award is also challenged, then the court will pass a decree (S.13).

Sections 14 and 15 lay down provisions relating to failure or impossibility to act by the arbitrator and the termination of mandate and substitution of arbitrator respectively. Section 14 contemplates a situation where the arbitrator is rendered incapacitated to perform his function *de*

jureor de facto. When he becomes unable to perform his functions due to loss ofnationality, ill-health, death, accident or withdrawal from his office. Arbitrator having acquired some interest in the subject-matter of the dispute renders him de jure incapable to continue acting as arbitrator. This provision referred in the Section 8(1) (b) of the old Arbitration Act, 1940. De facto incapacity may also be caused due to withdrawal of arbitrator from the arbitral tribunal or where he expresses inability to proceed with the arbitration after entering upon the reference.

The term used in Sub-section (2) that 'termination of the mandate' means the termination of authority by which the arbitrator i.e. the arbitral tribunal has entered upon the 'reference' of dispute for arbitration. The effect of the termination of the mandate of arbitrator under Section 14(1) (b) is that a vacancy of arbitrator is caused and a substitute arbitrator shall be appointed.

We can cite a case as an illustration on this point. As in the case of **V. K. Constructions v. Army Welfare Organization**[305] the arbitrator resigned soon after entering upon the reference by giving notice to V.K. Constructions. The Army Welfare Organization appointed another person as arbitrator whose appointment was challenged by the appellants. After hearing both the parties, the Court held that the appointment of arbitrator by resignation of the previous arbitrator was in accordance with the provisions of Section 8 (1) of the old Act (Arbitration Act 1940) which are now contained in Section 14 of the new Arbitration and Conciliation Act, 1996. The Court further observed that the Court's power to supply the vacancy caused on account of resignation of the previous arbitrator could only be invoked where the party (Army Welfare Organization in this case) failed or neglected to fill up the vacancy.

Section 15 deals with the termination of mandate and substitution of arbitrator. This section will apply when the reason of termination is any other than specified in Section 14 (1) (a) i.e. *de jure and de facto* inability or neglect.

Chapter IV of the Arbitration and Conciliation Act, 1996 deals with the jurisdiction of Arbitral Tribunals. Sections 16 and 17 deals with it. Section 16 clearly emphasizes that the arbitral tribunal may rule on its own jurisdiction even with regards to any objection raised on the validity of the arbitration agreement itself – the reason being that the arbitration clause, a part of the agreement is treated as an independent contract of its own. A decision by the arbitral tribunal that the contract itself is null and void does not render the arbitration clause as invalid. A plea that the arbitral tribunal does not have jurisdiction cannot be raised later than after

submitting the statement of defence and this plea should be submitted as soon as the matter alleged to be beyond the scope of its authority is raised in the arbitral proceedings. Interim measures regarding the dispute may be taken at the request of a party unless otherwise agreed by the parties.

Thus the Scheme of Section 16 is that the party should have all the rights to place his case before the Tribunal but no party has the right to retard the progress of the conduct of the proceedings. Thus the Tribunal is to decide and proceed with the work. There is no question of any stay in the matter.

The Supreme Court in **N.P. Lohiya v. N.K. Lohiya & others**[306] observed that under Section 16, a party can challenge the composition of the Arbitration Tribunal before the Arbitral Tribunal itself. But such objection must be taken under Section 16 (2), not later than the submission of the statement of defence. Section 16 (2) makes it clear that such a challenge can be taken even though the party may have participated in the appointment of arbitrator and/ or may have himself appointed the arbitrator.

Section 17 gives the power[307] to parties that they may apply by an application to the Arbitral Tribunal for taking any measures of protection of the subject matter of the dispute and the Arbitral Tribunal may take any interim measures of protection of the subject matter of the dispute and the party concerned may be so ordered. It is all for the preservation of the subject-matter of the dispute. The power conferred on the Arbitrator under this section is a limited one[308].

Chapter V deals with the basic conduct of an arbitral proceeding. It comprises of Section 18 to 27 inclusively. Section 18 states that there should be equal treatment of parties and both parties must be given equal opportunity to present the case. Section 19(1) lays down that the arbitral tribunal is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The Arbitral Tribunal the arbitral is to make use of wisdom which has made the legislative frame these enactments. It is desirable that the Arbitral Tribunal will frame its own rules of procedures and evidence while taking account of the consent of the parties. The Arbitral Tribunal may have different sets of procedures and incidental rules for different cases. The parties are free to determine the procedure to be followed by the Arbitral Tribunal in the course of proceedings[309]**.** In the event that no such procedure is established by the parties, the tribunal may follow any procedure it deems fit[310].The power of the Arbitral Tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence[311]. The parties are free to agree upon the place of arbitration or, if not determined, the power lies with the tribunal[312] having regard to the circumstances of the case, including the convenience of the parties. The provisions of sub-section (1) and

(2) are not exhaustive and subjected to the agreement of the parties. The Tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties or for inspection of documents, goods or other properties[313]. Arbitration proceedings commence immediately after a dispute is submitted for arbitration, unless agreed upon otherwise.[314] The party may agree on the date the arbitral proceedings shall commence but in case the parties have not agreed on any date then one party may request the other party for reference of the dispute to the arbitrator. When the other party received that request on a particular date then that date will be the commencement of the arbitral proceedings and in the absence of the agreed date, the arbitral proceedings cannot be said to have been commenced.[315] Thus the date of commencement of the arbitral proceedings is very material. The language preference also lies with the parties, or the tribunal,[316] which may use a language it thinks fit. The language or languages agreed upon or determined by the Arbitral Tribunal shall be the language of the Tribunal including the orders, decisions and award of the Tribunal. The communications and hearing proceedings shall also be in the said language or languages.[317] All documents submitted and received should be in the language adopted in the proceedings or must be translated into it.[318]

Statements of claim and defence are dealt with under Section 23 as[319],

(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect these particulars, unless the parties have otherwise agreed as to the required elements of those statements.[320]

(2) The parties may submit with their statement all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.[321]

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.[322]

Section 24 deals with hearing and written proceedings. It states that in the absence of a particular clause, the arbitral tribunal shall decide whether to carry on the proceedings orally or on the basis of documents and evidence. It also says that the parties should be given sufficient notice[323] of any meeting for the purposes of inspection of documents, goods or other property and all documents, statements or other information submitted

must be shown to the other party.[324]

Section 25 deals with the default of the party to claim or to respond or to appear for the oral hearings. In the case of the former, the proceedings are terminated by the arbitral tribunal whereas in the case of the latter two instances, the proceedings would continue with the document evidence on hand.

In the case of **Balmukund Pandey v. V.K. Singh**[325] it was held that there was termination of arbitral proceedings due to petitioner having failed to submit has claim that too without sufficient cause despite being given repeated opportunities by Tribunal. Termination of proceedings by Tribunal was proper.

Similarly it has been held that the default by party is only for one day. There had been no successive failure on his part to appear, pre-emptory notice should be given, discretion under Section 25 (3) be not exercised.[326]

The arbitral tribunal may appoint an expert to seek opinion, to collect information, and to produce a report backed up by relevant documents unless otherwise agreed by the parties. The parties may also examine the report, documents with the expert, again unless otherwise agreed to by the parties[327]. This section is totally new, it was not there in the 1940 Act.

The arbitral tribunal or the party with the approval of the arbitral tribunal may apply to the court for evidence. The court may order the evidences to be given directly to the arbitral tribunal or it may furnish details about processes in earlier cases of similar nature. Disregard to this order by personnel in absenting themselves to attend to the arbitral tribunal or for any other default in producing the relevant evidence, invites punishment and penalties. Section 27 elaborates on the summonses and commissions for the submission of witnesses and summonses for submission of documents.

An Arbitral Tribunal can, if necessary take the help of expert in terms of Section 27 and sole Arbitrator can always take such assistance.[328]

Making of arbitral award and termination of proceedings are written in the chapter VI and Section 28 to 33. Section 28 speaks on the rules applicable to the substance of dispute. In other than the international commercial arbitration, the existing rules of arbitration prevalent at that time are taken into account. In international commercial arbitrations, the rules designated by the parties as applicable to the substance of dispute, the substantive law of the countries and not their conflicts;

In the absence of any such specifications the rules as circumstantially viable and if the parties so agree, decide *ex aequo et bono* or as amiable compositeur. In all cases, the terms of the contract and the trade usages form a ground for decision making by the arbitral tribunal. Emphasizing on the majority decision of the arbitral tribunal in case there are more than one in the tribunal.

Section 29 spells that the presiding arbitrator would decide on the questions of procedure.

Section 30 elaborates on the settlement, the conciliatory proceedings, the terms agreed on, and if requested by the party and if there is no objection by the arbitral tribunal, to record and issue an award on the terms agreed as per Section 31.

Section 31 lists the various aspects of, and the requirements for, the laying down of the terms of the award of settlement, the date and place specifications, the monetary details, the costs and expenses – everything pertaining to the arbitration award.

Under Section 32 and 33, termination of proceedings and the corrections to the award (made within 30 days) respectively. The various instances under which the termination of proceedings occurs be it for having reached a consensus or withdrawal by either party or if the arbitral tribunal finds it unnecessary to proceed further for reasons substantiated by the tribunal. Once the award is issued and if there need be any corrections or amendment, and if within 30 days, it has been put forth to the arbitral tribunal, an amendment to the award could be given as stated in Section 33. This Section corresponds to Section 16 of the Arbitration Act , 1940(10 of 1940) It is an innovative provision in the New Arbitration and Conciliation Act 1996 which is based on the analogy of the interpretation of international commercial arbitral awards. According to this Section parties can approach the arbitrators to make corrections of errors in computation or any clerical, typographical or similar other errors. It also permits the parties to seek interpretation of specific points or part of the award from the arbitral tribunal.

This section empowers the arbitral tribunal to make corrections in or give interpretations of awards and for making additional awards under certain conditions.

Section 33 has discussed in **Mcdermott International Inc. v.**

Burn Standard Co. Ltd. and others[329]. It was held that Section 33 of the Act empowers the arbitral tribunal to make correction of errors in arbitral award, to give interpretation of a specific point or a part of the arbitral award, and to make an additional award as to claims, though presented in the arbitral proceedings, but omitted from the arbitral award. Sub-section(4) empowers the arbitral tribunal to make additional arbitral award in respect of claims already presented to the tribunal in the arbitral proceedings but omitted by the arbitral tribunal provided,

1 There is no contrary agreement between the parties to the reference;

2 A party to the reference, with notice to the other party to the reference, requests the arbitral tribunal to make the additional award;

3 Such request is made within thirty days from the receipt of the arbitral award;

4 The arbitral tribunal considers the request so made justified; and

5 Additional arbitral award is made within sixty days from the receipt of such request by the arbitral tribunal.

Sub-section (7) provisioned that the correction, interpretation or additional award made under Section 33 will be signed by the majority of arbitrators and must also be dated by the arbitral tribunal and a signed copy of the decision must be given to each party.

This Section also empowers the arbitral tribunal to modify the award any of the parties to arbitration agreement has brought to its notice that a part of the award is open and does not affect the decision on the matters referred to or the award is imperfect in form or contains an apparent error which can be rectified or the awards suffers from an accidental slip or omission. The power of the arbitral tribunal to modify the award is discretionary.

In **Gannon Dunkerley & Co. v. Union of India**[330] it was held that where modification is not possible, a party may apply to the Court under Section 34 of the Act to stay the proceedings and the Court at its discretionary power may return the award to the Arbitral Tribunal for rectifying the defect or it may set aside the awards.

Chapter VII encompasses Section 34, which covers Recourse against Arbitral

Award. This Section corresponds to Secs.19, 30, 34 and 36of Arbitration Act, 1940 (10 of 1940).This Section provisioned that the party who is aggrieved with an arbitral award may take recourse to a Court against the said award on any of the grounds stated in sub-section (2) of this Section. According to Section 34(1), if the party decides to have recourse to the Court of law against the arbitral award, the party has to make an application for that. This is the first resort to a judicial forum against the award so all the relevant factors need to be mentioned and pleaded in the application. So here we can say that without an application under Section 34 no award will be challenged.

According to Section 34(2) the arbitral award can be challenged on the following grounds;

1. Incapacity of party;
2. Invalidity of arbitration agreement;
3. Parties making the application was not given proper notice of the appointment of an arbitrator;
4. Arbitral award is beyond the scope of the submission to arbitration;
5. Improper composition of the Arbitral Tribunal;

Alternatively, if the court finds that the

6. subject-matter of the dispute is not capable of settlement by arbitration under the law, for the time being in force;
7. if the arbitral award is in conflict with the public policy of India.

Now we can throw light on all of the above.

As stated in ground (1), that if a party making the application has to furnish proof that the *party was under some incapacity*. The incapacity may be physical or legal[331].

As stated in ground (2), the *validity of the agreement* for arbitration is challenged and proved as per the law to which the parties are subjected[332].

As stated in ground (3), that the party making the application was *not given proper notice of the appointment of the arbitrator* because the

appointment of an arbitrator is a judicial act and the parties have right to question the appointment in a Court of law[333]. Even reasons beyond it which stood in the way of the party to present the case before the Arbitral Tribunal will also have the same effect as in the case of the absence of the proper notice. The party must have a proper notice of the appointment of the arbitrator and the arbitral proceedings including the fact that the party suffers from any incapacity to present his case before the Arbitral Tribunal.

As stated in ground (4), there is a *submission to the arbitral tribunal* and the limits of the submission are quite important[334]**.** In case the award transgresses the limits of the submission then the award would be bad to that extent. The dispute contemplated by or falls within the submission to arbitration the award would be accepted but if it transgresses the submission and contains decisions on matters beyond the scope of the submission to arbitration it would be bad in law and it might be set aside.

But there is a proviso which deals with the case where the award can be split in two parts, one which is within the limits of the submission and the other which is beyond the submission then the award within the submission will be accepted and the remaining part of the award would be set aside. This type of tearing the awards in two parts is with the intent that award should be made to be acceptable.

As stated in ground (5), that the parties may have an agreement regarding the *composition of the arbitral tribunal or the procedure before the arbitral tribunal* and the agreement had not been in conflict with the provisions of this part from which the parties cannot derogate or failing such agreement, was not in accordance with this part[335]. The provision respects the agreement but within limits of the statute.

As stated in ground (6), the arbitral award may be set aside by the Court if court finds that the *subject matter of the dispute is not capable ofsettlement* by arbitration under the law for that time being in force[336].

As stated in ground (7), the award could be set aside if it is *against thepublic policy of India*[337]. We can say that if it is contrary to fundamentalpolicy of Indian law, the interest of India, justice and morality, or if it is illegal. Similarly, if it was induced or affected[338] by fraud or corruption or was in violation of Section 75 or Section 81(conciliation provisions).

In the case of **State of Haryana v. S.L. Arora and Company**[339]**,** it was observed by the SC that if court in an application for setting aside of award under Section 34 finds that interest awarded is in conflict with or violating public policy of India, it may set aside that part of the award.

In **Renusagar Power Co. v. General Electric Co.**[340],the Indian Supreme Court, interpreting the scope of public policy as a ground to refuse enforcement of a foreign award, held that an arbitral award is contrary to the public policy of India if it is contrary to: (1) a fundamental policy of Indian law, (2) the interest of India, or (3) justice or morality[341]. Though Renusagar was not interpreted or decided under the 1996 Act, it is frequently cited as an example of an appropriately narrow interpretation of public policy for the review of arbitral awards[342]. With this interpretation of public policy in mind, in 2003 the Supreme Court addressed a public policy challenge to a domestic arbitral award in ***Oil & Natural Gas Corp. v. SAW Pipes Ltd***[343]**.** The aggrieved party challenged an adverse arbitral award because the arbitral tribunal had incorrectly applied the law of liquidated damages to the case. In holding that the challenged award was legally flawed, the Court held that, in addition to the interpretation of public policy in *Renusagar*, a domestic arbitral award may be set aside if it contravenes the "provisions of the [1996 Arbitration and Conciliation] Act or any other substantive law governing the parties or is against the terms of the contract." The holding of the Supreme Court in ***SAW*** *Pipes* added"patent illegality"as a fourth public policy consideration to thethree considerations previously enumerated in Renusagar. By its very nature, the phrase "public policy" is not susceptible to a "plain meaning" reading by the courts; it requires interpretation, as a "dynamic concept that evolves continually to meet the changing needs of society, including political, social, cultural, moral, and economic dimensions[344]." This sentiment was echoed by the Supreme Court of India in **Murlidhar Aggarwal v. State of Uttar Pradesh**[345]**,** where the Court explained that "public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all times." In **Bhatia International v. Bulk Trading S.A.**[346]faced with the question of whether an Indian court can provide interim relief under section 9 of Part I of the 1996 Act to arbitrations held outside of India, the Court held that the entirety of Part I of the 1996 Act, the part of the Act previously applying only to domestic Indian arbitrations, applies to international commercial arbitrations held outside of India, regardless of the applicable law under the contract. In 2008, the ruling in Bhatia was extended by the Supreme Court in **Venture Global Engineering v. Satyam Computer Services Ltd.**[347], it was held that the concept of public policy in Arbitration and Conciliation Act 1996 as given in the explanation has virtually adopted the aforesaid

international standard, namely if anything is found in excess of jurisdiction and depicts a lack of due process, it will be opposed to public policy of India. When an award is induced or affected by fraud or corruption, it will fall within the aforesaid grounds of excess of jurisdiction and a lack of due process. Therefore, the explanation to Section 34 of Arbitration and Conciliation Act 1996 is like "a stable man in the saddle" on the unruly of public policy. Section 35 and 36 under Chapter VIII deal with Finality and Enforcement of arbitral awards.

Section 35 makes it final and binding on the parties to adhere to the arbitral award and Section 36 gives the arbitral award the power under the code of Civil Procedure, 1908 and in the same manner as if it were a decree of court.

The expression "final award" means an arbitral award complete in all respects leaving nothing more to be done by the Arbitral Tribunal. Such an award is legally binding on the parties.

Delhi High Court held in **M/s. Oriental Structural Engineers Ltd. v. M/s. Rites & another**[348] that finality of award makes it a rule of Court enforceable as decree of the Court.

Chapter IX covers Section 37 on Appeals, the instances when appeals are allowed and it also states that it a noting under this section shall take away any right to appeal to the Supreme Court. Also, there is no second appeal provision.

Chapter X deals with miscellaneous provision of law. The provisions which do not strictly pertain to arbitration. This Chapter is from the Section 38 to Section 43.

Section 38 deals with Deposits. In Section 38(1) the arbitral tribunal is to fix the costs of arbitration which includes various items. This Section requires the parties to make payment for advance deposit of costs with the arbitral tribunal. The Section ostensibly seeks to protect the interests of permanent arbitral Institutions by empowering the arbitral tribunal to determine the costs or revise them or ask for payment of deposits in advance to meet the expenses of administering International or non-international commercial arbitrations.

According to sub-section (2), advance deposits are to be paid by both the parties in equal shares. But where one party fails to pay his share of the deposit, the other party may pay that share i.e., the share of its own as also that of the defaulting party's share. If the amount of deposit of claims or

counter-claims is not received from the parties the arbitral tribunal may suspend or terminate the proceedings in respect of such claim or counter-claim.

Sub-section (3) casts a duty upon the arbitral tribunal to submit the account of the advance deposits received from the parties by way of costs or claims and counter-claims upon the termination of arbitral proceedings and refund the unspent balance to the parties.

As regards the arbitrator's fees, the Supreme Court in **Jeevan Industries v. Hali Bawhruddin**[349], has observed that it would be better if the Government prescribes a Model scale of fees payable to arbitrators so that it may provide some guidelines to the Court to determine its reasonableness.

In accordance with Section 38 of the Arbitration and Conciliation Act, 1996, the Indian Council of Arbitration (ICA) which is a permanent arbitral Institution in its Rules of Arbitration effective from 1st March, 1998, has incorporated provisions relating to deposits and fees, costs and expenses etc.[350]

Section 39 deals with Lien on Arbitral award and deposits as to costs. The arbitral tribunal has also been conferred a lien on the arbitral award for an unpaid costs of arbitration. The section provides that the court may also assist the arbitral tribunal in this matter by directing the applicant to effect payment in the Court and only thereafter the arbitral tribunal may be directed to summit the arbitral award before the court for being made available to the parties as the case may be.

Sub-section (2) provides that the parties may apply to the court where they consider that the arbitral tribunal has withheld the award without any good reason or the costs or deposits fixed by the arbitral tribunal are excessive and unreasonable. But while challenging the arbitrator's lien the party or parties have to deposit the costs etc. in the court along with the application. Where there is already an agreement between the party and the arbitrator regarding arbitral fees, no application can be made if the fees so agreed is not paid to the arbitrator.

The Privy Council has held that costs or fees are in the discretion of the arbitrator but the discretion must be exercised judicially in **Mohd Akbar v. Attar Singh.**[351]

Section 40[352] makes it clear that the arbitration agreement shall not be

extinguished on the death of the parties and the mandate of the arbitrator shall not be terminated on the death of any party by whom he was appointed. The provision of sub-sections (1) and (2) apply equally to both the parties i.e., the claimant as well as the respondent, whether it is to their advantage or disadvantage. The Federal Court observed in the case of **Tirath Lal Dey v. Smt. Bhuwanmoyee dasi**[353]**,** that "it shall be the duty of the arbitrator to serve notice upon the legal representatives of the deceased party calling upon them to appear before him and continue with the reference. If the notice is served, the legal representative will not be bound by the award passed by the arbitrator."

Section 41 makes provision for a party who cannot represent himself due to some legal disability such as insolvency to represented by the Receiver or official Assignee in whom the party's right to be represented vests.[354] If the receiver does not adopt the matter is required to be submitted for proceedings with the arbitration, then the receiver for that limited purpose or any other party may apply to the judicial authority having the insolvency proceedings with him to refer the dispute to the arbitrator, then the judicial authority is given the jurisdiction to decide the matter for submission of the dispute to the arbitrator.

Section 45 deals with the Power of judicial Authority to refer parties to arbitration. This is obligatory for the Court under the circumstances envisaged in Section 45 to refer the parties to arbitration, which in result would necessitate stay of the suit or other legal proceedings. Explaining the scope of Section 45, the Supreme Court in Owners and Parties Interested in **Vessel Mv 'Baltic Confidence' v. STC**[355]**,** observed that:

"Attempt should be made to give meaning and effect to the incorporation clause, if the intention of the parties to refer disputes to arbitration is clear…….The incorporation clause ought not to be invalidated or frustrated by use of literal, pedantic and technical interpretation. Where incorporation clause in conditions of carriage of bills of lading clearly set out that all terms and conditions of the charterparty including the law and arbitration clause are herewith incorporated, the arbitration clause in cherterparty was applicable to dispute between the endorse of bills of lading and owners and charteres of the ship concerned. It was immaterial that the expression "charterparty" in the arbitration clause in the charterparty agreement was not changed to bill of lading. The High Court erred in not allowing application of the owners of the ship under Section 45 seeking stay filed by the endorsee of the bills of lading and for reference to arbitration."

Section 45 of the Act empowers the judicial authority (the Court) to refer the parties back to arbitration if the following conditions are satisfied-

1. There is an agreement between the parties to which the New York or Geneva Convention applies;

2. The action relates to a matter agreed to be referred to arbitration;

3. The Court is satisfied that the arbitration agreement is not void or inoperative or incapable of being performed;

(7) The dispute arose out of the legal relationship, whether contractual or not:

(8) Such differences are considered as 'commercial' under the law enforce in India.

Section 46 provides that when foreign award binding. An award becomes 'binding' once the ordinary, means of recourse such as an appeal is no longer available.

Section 47 lays down the method of proof for the enforcement of the foreign award. The idea behind the provisions of this Section is that all possible lawful efforts be made to bring home to the Court the most authenticated picture of the situation so that a decision based on full facts may be given.

Section 48 deals with the conditions for enforcement of foreign awards and enumerates the circumstances which justify Court's refusal to enforce the award. These circumstances are:

1 If the arbitral agreement is invalid;

2 Due process of law has been violated;

3 Arbitrator has exceeded his authority;

4 Irregularity in the composition of Arbitral Tribunal or arbitral proceedings;

5 Award being set aside or suspended in the country in which, or under the law which, that award was made;

6 Non-arbitrability of the dispute;

7 Award being contrary to public policy.

Section 49 confers the status of decree on foreign award as a result of which it becomes executable by its own force. This deeming provision has been incorporated in this section with a view to ensuring smooth and speedy execution of recognized and unobjectionable foreign awards.

Any person who is interested in enforcing a foreign award may apply in writing to any Court having jurisdiction over the subject matter of the award. The Court for this purpose would be Principal Civil Court of Original Jurisdiction in a District and High Court exercising original jurisdiction in civil suits.

Enforcement of foreign award was discussed in **Bhoomata Para Boiled Rice and Oil Mill v. Maheshwari Trading Company**[356] it was held that Application for enforcement of foreign award shall have to be made only before District Court.

Section 50 deals with the provision of Appeal.

The provision contained in Section 51 is a saving clause which is self-explanatory and hardly and any further comments.

Section 52 is the last Section of Part II of Chapter 1. This section contemplates that Chapter II shall not be applicable to foreign awards to which the provisions New York Convention as contained in Chapter I apply.

Chapter II of Part II of Section 53 to 60 deals with the Geneva Award. This Chapter covers the awards which have to be executed after 28th day of July, 1924. Section 53 contained the definition of "foreign award" for the purpose of Geneva Convention. Section 53 of Geneva Convention reproduced in third Schedule, makes submission to arbitration in pursuance of arbitration agreement, an essential and mandatory requirement of foreign award to qualify for enforcement under the Arbitration and Conciliation Act, 1996.

Section 54 deals with the Power of judicial authority to refer parties to arbitration. The award becomes final under the Geneva Convention in the country in which it has been made. The provision of Section 54 are quite specific that notwithstanding anything contained in Part I or in the Code of Civil Procedure a judicial authority on being seized of a dispute has to take its decision.

Section 55 contemplates that the foreign award shall be treated as binding on the parties as between whom it was made and it shall be enforceable in the country in which it was made. The 'binding' nature of the award as envisaged by this section refers to its effectiveness which should no longer be open to attack in the arbitral procedure. The award when made binding automatically becomes final like a decree of the Court on expiry of the period for making an application for setting aside of the award or on refusal of the application made under Section 34 of the Arbitration and Conciliation Act, 1996.

Section 56 deals with the method of proof. The burden of proof under this section is on the party applying for the enforcement of a foreign award.

Section 57 lays down the conditions for enforcement of a foreign award and the conditions of refusal to enforce a foreign award.

Section 58 deals with the enforcement of foreign awards. The enforcement of a foreign award may be refused if the applicant furnishes evidence before the Court that the agreement which was entered into between the parties was invalid or that the party was suffering from some incapacity stated in Section 57 (2) or that the party did not receive proper notice of the appointment of arbitrator or arbitral proceedings or was otherwise unable to present the case.

Section 59 limits the scope of appeal against an order of the Court refusing to recognize or enforce a foreign award. The Section provides that an appeal shall lie against an order refusing to refer the parties to arbitration under Section 54 or refusal to enforce the award by the Court under Section 57 of the Act 1996. The section prohibits second appeal but this would not take away the right of the aggrieved party to move in appeal to the Supreme Court against the order of the appellate Court.

Section 60 is a saving clause. Many of the rights of persons regarding enforcement of a foreign award would have become redundant or obsolete had this saving clause not been inserted in this Chapter.

Therefore, the right for enforcement of a foreign by a person or availing himself in India of any award has been preserved unless a different intention appears in the repealing Act.

The proceedings relating to Conciliation are dealt in Part III under Sections 61 to 81 of Arbitration and Conciliation Act, 1996. This Act is aimed at permitting Mediation conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes. This Act also provides that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal.

Section 61 says[357] that conciliation shall apply to disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto. Unless any law excludes, these proceedings will apply to every such dispute while being conciliated. The parties may agree to follow any procedure for conciliation other than what is prescribed under the 1996 Act. If any law certain disputes are excluded from submission to conciliation, the third part will not apply. According to Section 62(1)[358] one of the parties may take the initiative and send invitation to conciliate under this part after identifying the dispute. This is the first step and it gives all possible details of the dispute which need to be resolved. The brief statement of facts and dispute thereon will be included in the invitation.

Section 62(2) deals with the acceptance of invitation in writing which is the starting point of conciliation. This acceptance of the invitation by the other party concludes the fact that both the parties are willing for settlement of the dispute and the issue of the dispute is also demarcated in the conciliation.

Section 62(3) provisioned that there is no compulsion on the other party to accept the invitation and if the other party does not accept the invitation and rejects it, then there will be no further proceedings of conciliation.

Section 62(4) says that if the other party does not reply and not attend the invitation for thirty days or within such period of time as specified in the invitation to conciliate, it may elect to treat this as rejection and inform in writing to the other party accordingly. The

intension behind this sub-section is that to end uncertainty and not to keep the invitation for unlimited period of time.

Section 63(1) provisioned about the numbers of Conciliators who is normally one Conciliator shall be appointed by the parties unless they agree to the contrary and decide to appoint two or three conciliators. Section 63 (2) contained that where parties have agreed for more than one conciliator, all such conciliators would act jointly. The joint effort and approach has been the idea behind unanimity. This is the fundamental of conciliation. Although two or three conciliators may involve unnecessary delay in conciliation proceedings.

Section 64 related with the Appointment of conciliators. This section is in two parts section 64 (1) and section 64 (2), but the appointment as per Section 64(1) are subjected to Section 64(2). According to section 64(1) conciliators will appoint by the parties but Section 64(2) deals with the appointment of conciliators by suitable institution. According to Section 64 (1):

1) There will be only one conciliator, unless the parties agree to two or three.

2) Where there are two or three conciliators, then as a rule, they ought to act jointly.

3) Where there is only one conciliator, the parties may agree on his name.

4) Where there are two conciliators, each party may appoint one conciliator.

5) Where there are three conciliators, each party may appoint one, and the parties may agree on the name of the third conciliator, who shall act as presiding conciliator.

6) But in each of the above cases, the parties may enlist the assistance of a suitable institution or person.

Section 64(2) and proviso of the new law lay down as under:

5) Parties may enlist the assistance of a suitable institution or person

regarding appointment of conciliator. The institution may be requested to recommend or to directly appoint the conciliator or conciliators.

6) In recommending such appointment, the institutions etc. shall have regard to the considerations likely to secure an "independent and impartial conciliator".

7) In the case of a sole conciliator, the institution shall take into account the advisability of appointing a conciliator other than the one having the nationality of the parties.

This proviso is intended to ensure impartiality and independence of the conciliators.

In sections 65 to 73 contains provisions spread over a number of sections as to the procedure of the conciliator. Their gist can be stated in short form.

(1) According to section 65 (1) the conciliator, when appointed, may request each party to submit a statement, setting out the general nature of the dispute and the points at issue. Copy is to be given to the other party.

(2) As per section 65(2) conciliator may request to each party to submit to him a further written statement of his position and the facts and grounds in support thereof. The parties are to supplement their statements with documents and other evidence that party deems appropriate. The parties have to exchange amongst themselves including the documents and the other evidence if any.

(3) As per section 65(3) after due study of the respective contentions of the parties the conciliator if he thinks desirable may ask the parties at any stage to submit him additional information.

This will complete the requirements of the conciliator and he is in full control of all the facts required by him to move further in the conciliation proceedings.

Section 66 provisioned that conciliator not bound by certain enactments as Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The technicalities of the procedural law are not to be a hurdle to him as these

enactments are not binding on him. But despite of this liberty in adopting his own procedure, he is supposed to follow the principles of natural justice so as to ensure utmost impartiality and fairness in his decision.

Section 67 deals with role of conciliator. According to Section 67 (1) the conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their disputes. The basic fact which the conciliator has to take is that he should always remember that the parties are anxious to have a mutual settlement.

The conciliator is to be guided by the principles[359] of "objectivity, fairness and justice". He is to give consideration to the following matters:

i. Rights and obligations of the parties;
ii. Trade usages; and
iii. Circumstances surrounding the dispute, including previous business practices between the parties.
iv. The circumstances of the case;
v. Wishes expressed by the parties;
vi. Need for speedy settlement.

When conciliator conduct the proceedings he see the wishes of the parties and act in such a manner that the wishes of the parties may coincide at an amicable point. On the request of the parties or on his own account he may, at any stage, propose a settlement, even orally, and without stating the reasons for the proposal[360].

Section 68 provides for administrative assistance to the conciliator in conducting the conciliation proceedings expeditiously and effectively. The conciliator may also seek administrative assistance by a suitable institution if the parties to the dispute consent to it.

Section 69 authorises the conciliator to invite the parties (for discussion) or communicate with them jointly or separately. The place of the meeting will be decided by the conciliator after consultation with the parties having regard to their convenience.

Section 70 allows the conciliator, shall not to disclose the information when a party furnishes information to him and such information should be kept confidential. Conciliator should adhere to the principles of impartiality and fairplay.

Section 71 underlines the need for the Parties in good faith, co-operate with the conciliator and supply the needed written material, provide evidence and attend meetings[361]. The co-operation of parties constitutes the very core of conciliation as a dispute- resolution mechanism. Without the active co-operation of the parties, the conciliator cannot function effectively and his conciliatory effects would not succeed.

Section 72 allows the parties that they may at their initiative or at the invitation of the conciliator, submit their suggestions to the conciliator for speedy settlement of dispute.[362]

Section 73 deals with the Settlement agreement. If the conciliator finds that there exist "elements of a settlement, which may be acceptable to the parties", then he shall formulate the terms of a possible settlement and submit the same to the parties for their observation. On receipt of the observations of the parties, the conciliator may re-formulate the terms of a possible settlement in the light of such observation[363].

If ultimately a settlement is reached, then the parties may draw and sign a written settlement agreement. At their request, the conciliator can help them in drawing up the same[364].

The Legal Effect of the Settlement agreement is that the settlement agreement signed by the parties shall be final and binding on the parties.[365]

The agreement is to be authenticated by the conciliator.[366] Now let us consider on Section 74. This section deals with status and effect of settlement agreement. This section specifically provisioned that the settlement agreement shall have the same status and effect as that of an award rendered by an arbitral tribunal under Section 30 of the Act. Settlement agreement in order to have the same effect and status as that of an arbitral tribunal should satisfy the pre-requisites of Sec.73 of the Act. Then only it can be enforced as a decree of the Court.[367] Similarly, a compromise petition signed by both the parties and filed in the Court cannot assume the status of a settlement award and enforced unless it is accepted by the Court and approved as a decree passed by it[368].

Section 75 deals with the Disclosure and Confidentiality. Factual information received by the conciliator from one party should be disclosed to the other party, so that the other party can present his explanation, if he so desires. But information given on the conditions of confidentiality cannot be so disclosed. Notwithstanding anything contained in any other law for the time being in force, the conciliator and a party shall keep

confidential "all matters relating to the conciliation proceedings".

This section imposes obligation and duty upon the conciliator and parties to keep confidential all matters relating to conciliation proceedings including settlement agreement except where disclosure is necessary for the purposes of implementation and enforcement of the settlement agreement. The intention behind this section is that the conciliation proceedings should progress uninfluenced by the extraneous forces.

Section 76 enumerates the circumstances which would result into termination of the conciliation proceedings. Firstly, The conciliation proceedings shall be terminated on the ground that by signing of the settlement agreement by the parties on the date of the agreement. Secondly, If the conciliator after consultation with the parties has given the declaration that no further efforts for conciliation are required. Thirdly, The parties may give a written declaration to the conciliator to the effect that the conciliation proceedings are terminated on the date of the declaration. By this way conciliation proceedings will terminated. Last way is that a party may give a written declaration to the other party and the conciliator appointed, to the effect that the conciliation proceedings are terminated on the date of the declaration.

Section 77 provides that parties to the conciliation proceedings shall not initiate any arbitral or judicial proceedings regarding a dispute which is the subject-matter of the conciliation proceedings. The bar under Section 77 becomes operative only during the conciliation proceedings and it is justified because such proceedings are likely to hinder the success of conciliation proceedings.

Section 78 and 79 contains provisions on certain other miscellaneous matters, such as costs and deposit.

Section 80 deals with the role of conciliator in other proceedings. Conciliator not to act as Arbitrator unless otherwise agreed by the parties, the conciliator cannot act as arbitrator, representative or counsel in any arbitral or judicial proceedings in respect of the conciliated dispute. Nor can he be "presented" by any party as a witness in such proceedings.

Section 81 deals with the admissibility of evidence in other proceedings. In any arbitral or judicial proceedings (whether relating to the conciliated dispute or otherwise), the party shall not rely on, or introduce as evidence-

(1) Views expressed or suggestions made by the other party for a possible settlement;

(2) Admissions made by the other party in the course of conciliation proceedings;

(3) Proposal made by the conciliator; and

(4) The fact that the other party had indicated his willingness to accept a settlement proposal.

The idea behind this section is that the failure of the conciliation is not to adversely or favourably affect the parties. The conciliation proceedings are closed and the experience or the knowledge of the parties of the position of each other and the knowledge and experience of the conciliation shall not be available to any party in the matter of arbitral proceedings or otherwise.

Part IV of Section 82 to 86 deals with the Supplementary Provisions. Section 82 lays down that the High Court has the power to make rules consistent with the Act as to all proceedings before the Court under this Act. The High Court may be required to make rules for the procedure to be followed while considering application for interim measure of protection under Section 9 and appointment of arbitrators. It may also be necessary for the High Court to make rules for the procedure to be followed for enforcement of award as a decree under Section 36 or disposing of appeals under Section 37(2) of the Act. The making of rules by High Courts is also deemed necessary for regulating the functioning of permanent arbitral institutions.

Section 83 empowers the Central Government to make rule for removing any difficulty under this Act only for a period of two years from the date of commencement of the Act, i.e., 25th January, 1996. The provisions so made could not be inconsistent with any of the provisions of the Act and they had to be published in the Official Gazette. These provisions were required to be laid before each House of the Parliament as soon as possible after they were made but the Section did not require that they need formal approval of the Parliament.

Section 84 empowers the Central Government to make rule for "carrying out the provisions of the Act." This power of Central

Government has no limitation and it is perpetual.

Section 85 is a repealing and saving section. It says that with the coming into force of the Arbitration and Conciliation Act, 1996, the Arbitration (Protocol and Convention) Act, 1940 and Foreign Awards (Recognition and Enforcement) Act, 1961, stand repealed. However, sub-section (2) (a) is inserted as a saving clause which provides that the arbitral proceedings which commenced before the new Arbitration Act of 1996, will not be affected by the Act, but the parties are given liberty to agree that the new Act would apply in their case even though the arbitration proceedings have commenced before coming into force of the Act.

Section 86 provisioned that the Arbitration and Conciliation Act, 1996 has substituted the Arbitration and Conciliation Ordinance, 1996 which was promulgated on 21st June, 1996. The new Act is deemed to have commenced from 25th January, 1996 when the First ordinance had come into force.

Sub-section (2) contains a deeming provision which saves any rule, notification or order made in pursuance of the Ordinance shall be deemed to have been made under the corresponding provisions of the Arbitration and Conciliation Act, 1996.

When an Act is repealed and it is substituted by a new enactment to consolidate and the reform the law a 'Repeal and Savings Clause' is invariably incorporated in the New Act with regard to application of the provisions of the old repealed Act to the pending proceedings.

Although Arbitration and Conciliation Act 1996 is a boon in the Arbitration field but some of the major shortcomings in the existing Act are as follows:

(A) There is no provision for expediting awards or the subsequent proceedings in Courts when applications are filed for setting aside awards;
(B) For challenging an award an aggrieved party has to start again from the District Court;
(C) There is no provision enabling the Indian parties to obtain interim measures from Indian Courts before a foreign arbitration could commence outside India,
(D) The language of sections 20 and 28 is such that multinational company, even if the entire contract had to be implemented in India, could stipulate that foreign law could apply or parties could

have a foreign venue— a procedure which is inconsistent with the sovereignty of the laws of our country.

The Law Commission of India undertook a comprehensive review of the existing Act and made recommendations in its 176th Report. The Report also contains a draft Arbitration and Conciliation (Amendment) Bill, 2003. The Government, after inviting comments of the State Governments and certain commercial organizations, on the Report and draft Bill has decided to accept almost all the recommendations. In addition some suggestions made in a special seminar organized by the Law Ministry by the leading senior lawyers, jurists and representatives of commercial organizations have also been accepted.

Important features of the Amendment Bill 2003 are as follows:

a) To enable the judicial authority to decide jurisdictional issues, subject to strict rules, where an application is made before it by a party raising any jurisdictional question;
b) To empower the Courts to make reference to arbitration in case all the parties to a legal proceeding enter into an arbitration agreement to resolve their disputes during the pendency of such proceeding before it;
c) To provide for the appointment of arbitrators by the Chief Justice of the Supreme Court or the High Court or his nominees to be an appointment made on the judicial side with a view to prevent writ petitions being filed on the basis that it is an administrative order of the Chief Justice.
d) To provide that where the place of arbitration under Part I of the existing Act is in India, whether in regard to arbitration between Indian parties or an international arbitration in India and arbitration between Indian parties Indian law will apply.
e) To provide for completion of arbitrations under the existing Act to be completed within one includes any ‘quasi-judicial statutory authority’. This word occurs in Section 8 and also in the amendments proposed in Section 5 and 42.

Chapter-6

Judicial Attitude

The Courts of this country should not be the places where resolution of disputes beings. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.

-Sandra Day O'Conner[369]

Dispute resolution in India is a tiring process, not because of the legal rigmarole but more due to inordinate and inexplicably delay. In 1952 Mr. Motilal C. Seetalvad, the first Attorney General of free India, wrote,

"A burning problem which the citizens, lawyers and judges face alike is that of the congestion of courts of law and the consequent inordinate delays in the administration of justice[370] ……."

The pressure on the judiciary due to large number of pending cases has always been a matter of concern as that being an obvious cause of delay. The culture of establishment of special courts and tribunal[371] had started early in independent India[372]. The rationale for such an establishment ostensibly was speedy and efficacious disposal of certain types of offences[373]. Tribunals were also set up through statutes to deal with specific issues as alternative to adjudication in regular court[374]. The delay and efficiency reasons were further supplemented by the need to include specialists or persons well versed in the issue, in adjudicatory process as a means of achieving a just end[375]. Such reasons are still mooted as witnessed by the recent entanglement about the qualification of the chairperson and members of Competition Commission. It is pertinent to note here that although special fora were prescribed, the process therein remained more or less adjudicatory[376]. The trend next followed was the establishment of specialized fora to deal with cases of the same genre. The founding of Labour Courts, Industrial Tribunals, Consumer Forums, Motor Accidents Claims Tribunals, Family Courts etc[377]. are examples of this phase. The justification remained the same but the process of dealing with disputes began to undergo transformation. A mixed process of mediation, adjudication and reduction of procedural content are the highlights of this

stage.

The main purpose of Alternative Dispute Resolution (ADR) methods is to avoid going to the court. However, intervention by court is inevitable. Some call it interference. At times the interference is desirable so as to prevent the arbitration process from going astray. Interference by courts is universal and is observed throughout the world. After all the, buck stops at the Courts. In most of jurisdictions, the subordinate judiciary is empowered to look into arbitration matters. However, a number of matters reach the highest Court. India follows the same system and a large number of arbitration matters are filed in the lower courts. Pendency of cases in courts across the country has turned out to be a "gigantic problem" with about three crore cases waiting for redressal and the undue delay making people to shy away from justice delivery system.[378]

The role of judiciary is inevitable in Dispute Resolution. In ***Sitanna v. Viranna***[379] the Privy Council affirmed the decision of the Panchayat and Sir

John Wallis observed that the reference to a village Panchayat in the time time honoured method of detecting dispute. It avoids protected litigation and it is based on the ground realities verified in person by the adjudicators and the award is fair and honest settlement of doubtful claims based on legal and moral ground.

It was held in the case of **Jammu Kashmir State and others v. Devdatt Pandit**[380] by the SC that there are many cases pending in Courts and our litigation procedure is very expensive, due to this reason to promote Arbitration in the form of Alternative Dispute Resolution procedure.

3.7 Judicial attitude in

3.7.1 Arbitration Cases

The only field where the Courts in India have recognized ADR is in the field of arbitration. The arbitration was originally governed by the provisions of the Indian Arbitration Act, 1940. The Courts were very much concerned over the supervision of Arbitral Tribunals and they were very keen to see whether the arbitrator has exceeded his jurisdiction while deciding the issue, which has been referred to him for arbitration. We can see the role of Judiciary in the field of Arbitration which is governed by the Arbitration and Conciliation Act 1996 of which Sec.9 (interim measures), Sec. 14(2) (impossibility on the part of the arbitrators to act), Sec. 34(3) (filing of objection to the award), Sec.36 (enforcement of award), Sec.37 (appeals),

Sec.39 (2) and (4) (lien and deposit), Sec.42 (jurisdiction) and Sec. 43 (limitation).

Now we can understand the Judiciary attitude from the above Sections.

1. In the context of Section 9, in **Union of India v. Saravana Constructions Pvt. Ltd.**[381] it was held that a wider power has been conferred to this Section of 9 of the Arbitration and Conciliation Act 1996. The construction of Section 9 of the Act in respect of securing the amount in dispute in the arbitration makes it clear that the order need not relate to preservation, interim custody, etc., of the subject-matter of the arbitration agreement, for the powers given to the Court under Section 9 of the Act in respect of securing the amount in dispute is wider, provided such order is satisfied to be just and convenient to the Court.

2. In connection with the Section 14 (2), in **N.B.C.C. Ltd. v. J.G. Engineering Pvt. Ltd.**[382], it was held that Arbitrator's mandate can be terminated if he fails to act without undue delay or withdraws from his office or parties agree to the termination of his mandate.
3. In the context of Section 34(3) it was observed that no provision under the Act for the Court to fix a time limit for the conclusion of an arbitration proceeding, but the Court can opt so in the exercise of its inherent power on the application of either party.[383]

It was held in **Uttar Pradesh Co-operative Federation Ltd. v. Three Circles**[384], that Court can interfere if award is passed upon a proposition of law which is unsound in law.

4. Court's role in the execution of award under Section 36 is also, because the award is a decree of the Civil Court. Award could be enforced or executed by the competent Civil Court having territorial and pecuniary jurisdiction to entertain the matter[385]**.**

5. The aggrieved party has a right to appeal under Section 37 of the Act. There will be a specific court to which the appeal shall lie and that specific court should have been so authorized by the law to hear appeals from original decree of the court as it may be the Principal Civil Court/District Judge or it may be the High Court. All orders granting or refusing to grant any measure under Section 9 of the Act are appealable. All orders of setting aside or refusing to set aside an arbitral award under Section 34 of the Act are

appealable.

6. We can discussed Section 39(2) and (4) in this regard. Section 39 of Sub-section (2) provides that the parties may apply to the Court where they consider that the arbitral tribunal has withheld the award without any good reason or the costs or deposits fixed by the arbitral tribunal are excessive and unreasonable. But while challenging the arbitrator's lien the party or parties have to deposit the costs etc. in the court along with the application.

   Section 39 of Sub-section (4) provisioned that if there are no sufficient funds to meet the expenses of arbitration the court may pass such orders as it thinks fit in the case where the question of costs comes for the consideration of the court. There is a lien on the deposit and there is a lien on the award amount.

   As Supreme Court decided in the case of **Uttar Pradesh Co-operative Federation Ltd. v. Three Circles**[386] that awarding cost is a matter of discretion of Arbitrator under 1940 Act.

   The scope of Interference of the award passed by an arbitrator was dealt with by the Apex Court in the decision reported in **Food Corporation of India v. Jogindarlal Mohindarpal**[387] as follows:

"Arbitration as a mode for settlement of disputes between the parties has a tradition in India. It has a social purpose to fulfill today. It has a great urgency today when there has been an explosion of litigation in the Courts of law established by the sovereign power. However in proceedings of arbitration, there must be adherence to justice, equality of law and fair play in action. The proceedings of arbitration must adhere to the principles of natural justice and must be in consonance with such practice and procedure, which will lead to a proper resolution of the dispute and create confidence of the people, for whose benefit these procedures are resorted to. It is therefore, the function of the Court of law to oversee that the arbitrator acts within the norms of justice. Once they do so and the award is clear, just and fair, compel to adhere and obey the decision of their chosen adjudicator. It is in this perspective that one should view the scope and limit of corrections by the Court on an award made by the arbitrator. The law of arbitration must be made simple, less technical and more responsible to the actual realities of the situation but must be responsible to the canon of justice and fair play. The arbitrator

should be made to adhere to such process and norms which will create confidence not only doing justice between parties but by creating a sense that justice appears to have been done".

The Courts were anxious to see whether there was any jurisdiction to the arbitrator to decide such dispute or not while interpreting the arbitration clause in the agreement. The power to decide such dispute or not while interpreting the arbitration clause in the agreement. The power to decide the jurisdiction of the arbitrator to decide a particular issue or not was vested with the Law Courts. There was much delay in settlement of disputes between the parties in law Courts which prevented investment of money in India by other countries. Further there was no provision in the Indian Arbitration Act 1940 to resolve a dispute between an Indian and a non-Indian as the law-relating contract between the parties were different which caused difficulties to refer such matter for arbitration. In order to avoid such a difficulty, India has undertaken major reforms in its arbitration law in the recent year as part of economic reforms initially in 1991. simultaneously many steps have been taken to bring judicial reforms in the country, the thrust being on the minimization of Courts intervention in the arbitration process by adoption of the United Nations Commission on International trade Law (UNCITRAL). With this in mind, the Government has given birth to a new legislation called. "The Arbitration and conciliation Act 1996". There are distinctive features in this Act compared to 1940 Act. India judiciary has played a substantial role in up gradation of ADR mechanism. The Apex court has recognized the alternate forum in its various decisions.

Supreme Court observed in the case of **Guru Nanak Foundation v. Rattan & Sons**[388] that "Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedure claptrap". The realization of concepts like speedy trial and free legal aid by apex Court in various cases has also helped in the up gradation of Alternate dispute redressal mechanism.

In the case of **Amarjit Singh v. Armor Finance & Commerce Ltd. (M/s)**[389], respondent gave loan for purchase of Car to deceased whose legal representatives are appellants. Dispute arose as amount was not paid in time. Arbitrator was appointed in the civil suit. Award was passed on 25-5-1999. Appellant prosecuted objections in the civil suit from 25-6-1999 to 4-3-2002. These were dismissed; thereafter, appellants filed application under Section 34 on 18-11-2002 wherein validity of award dated 25-5-1999 was challenged. During pendency of these proceedings Car was sold in execution proceedings by the Court below and application was dismissed on 25-9-

2004 against it, this appeal held. Court below committed error in dismissing objections it was proved that appellants prosecuted objections in civil suit before the wrong Forum, *bonafied* hence, impugned judgment dated 25-9-2004 set aside and Appeal allowed.[390]

Section 2(1) (e), 34 and 42 of the Arbitration and Conciliation Act 1996 and Section 7 and 8 of the M.P. Civil Courts Act,1958 had discussed in

Dr. Pratap Singh Hardia v. Sanjay Chawrekar[391] The Objection that application under Section 34 of Arbitration and Conciliation Act is maintainable only in the Court of District Judge and he cannot also transfer the application to Additional District Judge, because as per Section 42 of Arbitration and Conciliation Act, if any application under the Act is filed in a particular Court then that Court alone has jurisdiction to deal with the subsequent applications and no other Court has jurisdiction to decide the same. In this case first application is filed by the petitioner by mentioning cause title "Before the learned District Judge, Indore" .But the same was fixed by the Present section of the District Court before the Additional District Judge and the Additional District Judge dealt with the case. In the case in hand, there is nothing on record to show that any other Court has heard any previous application or dealt with it. Thus, under Section 7 of the Civil Courts Act, the Additional District Judge is also a Principal Civil Court of original jurisdiction. Hence, he had powers to hear the application in question and it cannot be said that he has no jurisdiction to proceed with the application in question.

This case was related with the reason given by arbitrator. In **Bharat Sanchar Nigam Ltd. Bhopal v. Himachal Futuristic Communication Ltd.(M/s), New Delhi**[392], the reasons given by the arbitrator are reasonable and interpretation placed by him is neither perverse nor against any statutory provisions or substantive law. The same does not invite the wrath or frown of Section 34 of the 1996 Act and hence does not become liable to be set aside. The submission that the contract has become void, we are unable to accept, as it has been executed in entirety. Additionally, it only related to the prices and not to the supply. In any case the entire material had been supplied. The supply has been accepted by the owner. The dispute only relates to rate and hence, it cannot be termed as a void contract and by no stretch of imagination Section 32 of the Contract Act would get attracted. Thus the construction of the documents by the arbitrator is just and proper and does not offend any public policy. In view of the aforesaid, we do not find any error in the award passed by the arbitrator and the stamp of approval given to it by the learned Trial Judge.

Similarly Section 4 and 37 and Micro, Small and Medium Enterprises Development Act (27 of 2006) of Section 19 was questionable in the **Bisleri International Pvt. Ltd. (M/s) v. Sun Petpack Jabalpur Pvt. Ltd. (M/s)**[393],case. It is clear that under Section 37 (1) (b) of the Act of 1996 every order is appealable setting aside or refusing to set aside an arbitral award under Section 34 of the Act of 1996. The effect of non-compliance of order passed under Section 19 of the Act of 2006 in the instant case is that main application under Section 34 of the Act of 1996 stands dismissed in which prayer was made to set aside the award. Such an order in our considered opinion would be appealable within provision of Section 37 (1) (b) of the Act of 1996. Refusal may be on some other ground also.

The dispute related with the Section 30,33 and 39(1) of the Arbitration Act 1940, Article 137 of the Limitation Act(36 of 1963) and Section 55 of the Contract Act (9 of 1872) had discussed in **Krishna Bai (Smt.) v. Hindustan Steel Limited**[394]. Parties have contracted for lifting mixed coke. Appellant was to lift mixed coke between 22-5-1972 to 22-04-1973. Sale order was for one year. Until the expiry of period, no coke was lifted. Respondent cancelled sale order on 14-6-1973 and also directed refund of security deposit. Appellants invoked arbitration clause on 9-3-1977. Umpire allowed the claim of appellants. Respondent filed application under Section 30 of the Act, 1940 for setting aside award on the ground that the claim of appellants was barred by limitation. Against it, this appeal was filed. It was held that cause of action arose on 14-6-1973. Right to apply for appointment of arbitrator accrued to appellants on that date, i.e. 14-6-1973 when sale order was cancelled. Parties did not enter into any negotiation for settling dispute between them after cancellation of sale order on 14-6-1973, hence, no fresh cause of action arose to appellants. So appeal was dismissed[395]**.** Court settled that Article 137 of the Act of Limitation 1963 would apply to any petition or application for appointment of arbitrator under the Arbitration Act 1940. Period of three years would commence when the dispute arose between the parties, i.e. when a claim is asserted by one party and denied by another party on whatever ground, and right to apply accrues. A party is precluded from challenging the award on the ground of jurisdiction of the arbitrator when he has participated in the arbitral proceedings. However, where ground is based upon breach of mandatory provisions of law, such objection to the award can be raised even after he participated in the arbitral proceedings. The question whether the claim was a dead one or long-barred claim that was sought to be resurrected may be decided by the Arbitral Tribunal on taking evidence along with merits of the claim involved in the arbitration. Objection based on breach of

mandatory provision of law can be raised even after participation in this proceeding and the party cannot be estopped from raising the same in his objection to the award even after he participated in the arbitration proceeding in view of the well-settled maxim that there is no estoppels against statute.[396]

The question whether a claim is barred by Res-Judicata, does not arise for consideration in a proceeding under Section 11 of the Arbitration and Conciliation Act , it was decided in **Indian Oil Corporation Ltd. v. M/s SPS Engineering Ltd.**[397], Such an issue will have to examined by the arbitral tribunal. The limited scope of Section 11 of the Act does not permit such examination of the maintainability or tenability of a claim either on facts on law. There can be no threshold consideration and rejection of a claim on the ground of Res-Judicata, while considering an application under Section 11 of the Act. The designate had clearly exceeded his limited jurisdiction under Section 11 of the Act, by deciding that claim for extra cost, through covered by the arbitration agreement was barred by the limitation and the principal of Res-Judicata. He was also not justified in terming the application under Section 11 of the Act as "misconceived" and "malafied" nor could attribute 'malafieds' to a public sector company, in filing an application under Section 11 of the Act within any material to substantial.

7.Section 42 reflects the Court Jurisdiction in matters relating to arbitration at various stages, namely ordering reference to an arbitral tribunal, deciding the questions as to validity effect or existence of arbitral agreement, matters arising out of the conduct of arbitration proceedings and filing of the arbitral award.

This power has been expressed by the Calcutta High Court in **Tata Finance Ltd. v. Pragati**[398] wherein the Court held that only the Court at the place which has jurisdiction under the Code of Civil Procedure, can be vested exclusive jurisdiction under the agreement by the parties.

Section 9, 27, 34, 36 and 37(2) of Arbitration and Conciliation Act 1996 provide for grounds on which recourse to Court can be had on arbitration matters including the arbitration agreement, proceedings and the arbitral award.

8. Section 43 empowered the Court to extend the time to refer the dispute to arbitration even after the expiry of such time-limit.

In **Sai Priya Construction Company v. Anantha Kumari Satya Raju**[399] held that Limitation Act, 1963 applies to arbitration proceeding. The Court

may extend the time of limitation if it is just in the facts and circumstances of the case and if interests of justice so require. Until recently, the Indian judiciary was known to have adopted an interventionist approach in arbitration matters due to which most of the judicial decisions are not in tune with the spirit of the Act. Initially, the conduct of the judiciary was nowhere nearing the primary objective of the Act and this can be gauged by the decisions of the Indian courts. While the Supreme Court in **Bhatia International v. Bulk Trading SA** [400], extended Part I of the Act to international commercial arbitration held outside India This interpretation has also opened up a plethora of grounds for challenging an international arbitration awards; in **Venture Global Engineering v. Satyam Engineering**[401], which heavily relied on Bhatia international, the Supreme Court largely rendered superfluous the statutorily envisaged mechanism for enforcement of foreign awards by applying domestic arbitration law to foreign awards and consequently setting aside the foreign award (under Part I of the Act as against merely refusing to enforce the foreign award under Part II of the Act).

Thereafter, the Supreme Court, vide the **ONGC v. Saw Pipes** [402] judgment, widened the scope of 'public policy', by including 'patent illegality' within the ambit of 'public policy', which is one of the grounds available for setting aside an arbitral award. Till then, the concept of 'public policy' was interpreted in a narrower sense, in line with the court's previous decisions which insisted that no new heads of 'public policy' should be easily created.

A further blow came by way of the Supreme Court's decision in **SBP & Co v. Patel Engineering Ltd**.[403], wherein the power of the chief justice in appointing an arbitrator was held to a judicial power and not an administrative power. This meant that Indian courts had to actually look into the validity of the arbitration agreement before proceeding to appoint arbitrators. Subsequently, there have been a number of instances where the Supreme Court and also various High Courts have assumed jurisdiction in arbitration matters both onshore and offshore.

However, in recent years, there has been a shift in this trend by the Indian courts. As regards the applicability of Part I to arbitrations held outside India, amongst other decisions of various High Courts in India, the decision of the Supreme Court in **Dozco India Pvt. Ltd. v. Doosan Infracore Co. Ltd.**[404], has more or less settled this position by holding that even if the parties to a foreign arbitration have not expressly excluded Part I, it would be deemed to have been excluded, if the parties have agreed to a foreign

governing law of contract, and a foreign seat of arbitration. This position was further confirmed by another decision of the Supreme Court in **Videocon Industries v. Union of India**[405], wherein the Court went a step ahead and held that even if the law governing the contract is Indian law; Part I would be impliedly excluded if the parties have agreed to a foreign law governing arbitration and a foreign seat of arbitration. Likewise, recently in **Yograj Infrastructure Limited v. Ssang Yong Engineering and Construction Company Limited**[406] ,the Supreme Court refused to entertain an appeal against an interim order passed by an arbitral tribunal seated outside India and concluded that the seat of arbitration being outside India and the law governing the arbitration proceedings being foreign law, Part I of the Act is impliedly excluded.

The recent decision of the Supreme Court in **Shin-Etsu Chemical Co. Ltd v. Aksh Optifibre Ltd**[407]. is a very fine example to study whether the court is promoting international arbitration as a method of resolving disputes or not. The judiciary in their own rights have strived hard to bring in efforts to promote arbitration in India.

The issue of the appointment of Arbitrators has also solved by the judiciary. Section 11 provides for the procedure of appointment of Arbitrator by the Chief Justice. S. 11 (7) of the 1996 Act provides that 'a decision on a matter entrusted by ss. (4) or ss.(5) or ss.(6) to the Chief Justice or the person or institution by him is final.' This led to a number of disputes regarding the nature of the order passed by the Chief Justice on appointment of Arbitrators and whether the same was judicial or administrative in nature[408]? The decision of the Supreme Court in SBP was a watershed moment in the history of the Arbitration Act in India. The decision in SBP has gone a long way in clearing many a legal hurdle in appointment of arbitrators under the Act. It has clearly laid down the law applicable to the exercise of powers by the Chief Justice or his designate under S. 11 of the Act.

In the case of **Harsha Construction v. Union of India & others**[409]**,** held by the Supreme Court that, even if a non-arbitrable dispute is referred to arbitrator or even if an issue is framed by arbitrator as to such dispute, it is not open for an arbitrator to arbitrate since it is beyond his jurisdiction. Mere reference of non-arbitrable dispute to arbitration or arbitrator framing an issue

3.7.2 Contract cases

In the field of Contract first case was **Hakam Singh v. M/s Gamon (India) Ltd.**[410] Which is related with arbitration agreement . In this case the appellant agreed to do certain construction work for respondent on terms and

conditions of written tender which also provided that any dispute arising shall be referred to arbitrators and that City Court of Bombay alone shall have jurisdiction to adjudicate thereon. Dispute arising the appellant filed a petition in the court of subordinate judge of Varanasi for an order of reference to arbitrator or arbitrators under Section 20 of Arbitration Act, 1940. The respondent resisted it on the ground that as provided in the contract the City Court of Bombay alone had jurisdiction. The Trial Court rejected this contention of the respondent and decided in the favour of the appellant. On an appeal, the High Court of Allahabad in exercise of is revisional powers set aside the order of the Trial Court. Consequently, this appeal was filed by the appellant in the Supreme Court. The Supreme Court dismissed the appeal and marked- "It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where the two Courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceedings an agreement between the parties that the dispute between them shall be tried in one of such court is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act.[411]

This decision of this case was reaffirmed by the Supreme Court in **A.B.C. Laminart Pvt. ltd. v. A. P. Agencies, Salem[412]**, delivering the judgment, K.N. SAIKAI, J, observed:

"Thus it is now well settled principal that where there may be two or more competent courts which can be entertain a suit consequent upon a part of the cause of action having arisen there within, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vogue it is not hit by Section 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the statute. Mercentile Law and practice permit such agreement.[413]

The parties under contract were required to have their disputes adjudicated by reference to arbitration. The arbitrators were however, situated in foreign country. The Apex Court had to decide in **M/s Atlas Export Industries v. M/s Kotak and Company[414]** the plea that said arbitration clause impliedly excluding remedy available to both disputing Indian parties under ordinary law of India was opposed to public policy. The court had to decide that whether the fact of arbitrators being in foreign country was sufficient to nullify arbitration agreement. The Supreme Court held: "The case at hand is clearly covered by Exception 1 to Section 28. Right of parties to leave recourse to legal action is not excluded by the agreement. The parties are only

required to have their disputes adjudicated by having the same referred to arbitration. Merely because the arbitrators are situated in a foreign country cannot by itself be enough to nullify the arbitration agreement when the parties have with their eyes open willingly entered into the agreement. Moreover, in the case at hand the parties have willingly initiated the arbitration proceedings on the disputes having arisen between them. They have appointed arbitrators, participated in arbitration proceedings and suffered an award. The plea, raised before us was not raised either before the learned judge of the High Court in the objections filed before him, nor in the Letters Patent appeal filed before the Division Bench. Such a plea is not available to be raised by the appellant Atlas before this for the first time.[415]

3.7.3 Electricity cases

The famous case of Electricity Act, 2003 related with arbitration was Gujrat Urja Vikas Nigam Ltd.v. Essar[416]. An appeal was Special leave filed against the judgment of the learned single judge of the Gujrat High Court which was passed on a petition under section 11(5) & (6) of the Arbitration and Conciliation Act 1996. The appellant- company is engaged in the business of generation of electrical energy. The appellant company has its generation station at Hazira, Surat, on 30 May 1996 the appellant company entered into a power purchase agreement with the Gujrat Electricity Board. Under the aforesaid agreement the parties agreed, inter alia, that out of the total generating capacity of 515 mw electricity the appellant company would allocate 300 mw electricity to the Board and 215 mw electricity to the Essar Group of companies. Under Clause 11 of the agreement the parties agreed that in the event of any dispute arose the same may be resolved by the parties by mutual agreement as envisaged by the clause 11(1) of the aforesaid agreement. In the event of failure to resolve the dispute by amicable settlement, the parties agreed that such dispute be submitted to vide clause 11(2). Shri K.K. Venugopal relied on Section 158 of the Act of 2003 which states- "where any matter is by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licencee, be determined by such persons as the appropriate commission may nominate in that behalf on the application of either party; but in all other respects, the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act 1996".

It was submitted that Section 11 of the 1996 Act no application because the Act of 2003 has provided for Arbitration of disputes between licensees and generating companies by the commission or its nominated arbitrator. He submitted that the general provision in section 11 of the

Arbitration and Conciliation 1996 will not apply for appointing an arbitrator for such disputes in view of the Maxim "generalia specialibus non derogant"[417]. The main question before us is whether the application under S.-

11 of the Act 1996 is maintainable in view of the statutory specific provisions contained in the Electricity Act of 2003 providing for adjudication of disputes between the licensee and the generating companies. We make it clear that it is only with regard to the authority which can be adjudicate or arbitrate disputes that the Electricity Act 2003 will prevail over Section-11 of the Arbitration & Conciliation Act 1996. However as regards the procedure to be followed by the state commission and other matters related to arbitration. Section-86(1)(f) is only restricted to the authority which is to adjudicate or arbitrate between licensee and the generating companies procedural and other matters relating to such proceedings will of course be governed by Arbitration & Conciliation Act 1996; unless there is a conflicting provision in the Act of Electricity 2003.

3.7.4 Family Disputes

The duty of making or amending laws is on the legislature but to develop it and to interpret it to suit the needs and circumstances of the society is the call of the judiciary. Hence, unless and until the beneficial provisions of the matrimonial legislation promoting and advocating reconciliation in matrimonial disputes in India is favourably interpreted and strictly implemented by the courts, the letter of law may be an illusory mirage which remains on the statute book only. It is therefore the solemn duty of the matrimonial courts in India to ensure that the mandatory settlement efforts are actually put into practice and parties are encouraged to actually utilize them for out-of-court settlements. Thus, there is a heavy burden on the courts to discharge this solemn duty failing which it will neither be possible nor useful to enforce reconciliatory measure in matrimonial disputes in the Indian jurisdiction. Accordingly, it would be most useful to cite and quote some recent prominent verdicts of superior Indian courts which have stressed and highlighted the dire necessity of the beneficial provisions of Indian legislation which provide mandatory reconciliation procedures.

Judiciary has also tried to resolve family matters by ADR methods. The provisions of the matrimonial legislation promoting and advocating reconciliation in matrimonial disputes in India is favourably interpreted and strictly implemented by the Courts. It is therefore the solemn duty of the matrimonial courts in India to ensure that the mandatory settlement efforts are actually put into practice and parties are encouraged to actually utilize them for out of court settlements. So there is a heavy burden on the courts to

discharge this solemn duty failing which it will neither be possible nor useful to enforce reconciliatory measure in matrimonial disputes in the Indian jurisdiction. Accordingly, it would be most useful to cite and quote some recent prominent verdicts of superior Indian courts which have stressed and highlighted the dire necessity of the beneficial provisions of Indian legislation which provide mandatory reconciliation procedures.

Settlement, reconciliation and mediation in family law matters are largely unutilized. Upholding the statutory provisions to endeavour reconciliation in the first instance, the Supreme Court in the **Jagraj singh v. Birpal kaur case** [418] clearly confirms that the settlement efforts in matrimonial matters are not an empty, meaningless ritual. Matters of the family which can be repaired must be mediated and settled by sewing and patchwork.

Human relationships must be bonded by the settlement and as far as possible, not litigated in court. Litigation- whether divorce, maintenance, alimony, child custody or any other matrimonial cause should not be viewed in terms of failure or success of legal action. The amicable settlement of family conflicts is a social therapeutic problem. These disputes should be reconciled with the family fold so as not to disrupt the family structure. Adjudication is entirely different from conventional civil or criminal proceedings. Reverberations of a family dispute are felt in society. Their effective resolution by mediation or conciliation may provide lasting solutions for overall good.

Section 23 of the Hindu Marriage Act, 1955 and Order XXXII-A of the Code of Civil Procedure, 1908 and the duty enjoined upon the court came up for interpretation before the Supreme Court recently in the case **Jagraj Singh v. Bir Pal Kaur**[419] the Indian Apex Court, in its landmark judgment held as follows: From the above case law in our judgment, it is clear that a court is expected, may, bound, to make all attempts and section (2) of section 23 is a salutary provision exhibiting the intention of the parliament requiring the court 'in the first instance' to make every endeavor to bring about a reconciliation between the parties. If in the light of the above mentioned intention and paramount consideration of the legislature in enacting such provision, an order is passed by a Matrimonial Court asking a party to the proceeding (husband or wife) to remain personally present, it cannot successfully be contented that the court has no such power and in case a party to a proceeding does not remain present, at most, the court can proceed to decide the case ex parte against him/her. Upholding of such argument would virtually make the benevolent provision nugatory, ineffective and

unworkable, defeating the laudable object of reconciliation in matrimonial disputes. The contention of the learned counsel for the appellant therefore cannot be upheld. Hence, the Order of the Apex Indian Court upholding the directions of the High Court summoning the respondent – husband in the above case through non-bailable warrants clearly reflects the legislative intent of attempting mandatory reconciliation procedures. This judgment of the Supreme Court clearly confirms that settlement efforts in matrimonial matters are not an empty meaningless ritual to be performed by the matrimonial court. The verdict clearly reflects the benevolent legislative purpose.

In a very recent case **Aviral Bhatla v. Bhavana Bhatla**[420], the Supreme Court has upheld the settlement of the case through the Delhi mediation centre, appreciating the effective manner in which the mediation centre of the Delhi High Court helped the parties to arrive at a settlement.

In the case of High Court of Kerala in **Bini v. K. V. Sundaran**[421] a novel question came up for decision before the H.C. whether conciliation is mandatory after the introduction of the Family Courts Act, 1984, even on the excepted grounds of conversion to another religion, renunciation of the world, mental disorder, venereal diseases and leprosy. Calling the Family Courts Act, 1984 a special statute, and its provisions to make attempt at reconciliation mandatory at the first instance, the High Court held: The parties can disagree on matters of faith and still lead a happy marital life if they could be convinced that matters of faith should not stand in the way of union of hearts. Thus though under the Hindu Marriage Act, 1955, no endeavor for reconciliation need be made in a petition for divorce on the ground of conversion to another religion, or other grounds excepted under Section 13 (1) of the Hindu Marriage Act, 1955 or on similar or other grounds available under any other law also, after the introduction of the Family Courts Act, 1984, the Family Court is bound to make an endeavor for reconciliation and settlement. The requirement is mandatory. That is the conceptual change brought out by the Family Courts Act, 1984 which is a special statute.

The Court further said that "the primary object is to promote and preserve the sacred union of parties to marriage. Only if the attempts for reconciliation are not fruitful, the further attempt on agreement on disagreement may be made by way of settlement"[422]**.** Hence, from a reading of the above judgment it is clear that the be golden duty cast upon the matrimonial courts to attempt mandatory reconciliation cannot be avoided and cannot be circumvented even when divorce is sought on certain exceptional grounds which under the HMA and SMA do not provide compulsory settlement action. Still further, stressing the need to treat the cases pertaining to family matters in a humanitarian way. The Supreme Court in the **Gaurav Nagpal v. Sumedha Nagpal**[423] case emphasized that efforts should be made to bring about conciliation to bridge communication gaps to prevent people from rushing to courts. The processing need in the current

social milieu is to create an infrastructure machinery for Alternative Dispute Resolution (ADR) mechanisms. Particularly, marriages solemnized in India and fractured abroad in the 30 million NRI community can be mended and settled. It is these limping unions which need reconciliatory formulas in India to prevent them from being split. Conflict arising locally or overseas should not deteriorate into other anciliary issues multiplying the problem.

The Supreme Court of India in the case of **Baljinder Kaur v. Hardeep Singh**[424] laid down that "stress should always be on the preserving the institution of marriage. That is the requirement of law. One may refer to the objects and reasons which lead to setting up of Family Courts under the Family Courts Act, 1984. For the purpose of settlement of family disputes emphasis is "laid on conciliation and achieving socially desirable results" and eliminating adherence to rigid rules of procedure and evidence."[425] The Supreme Court further held that "it is now obligatory on the part of the Family Court to endeavor, in the first instance to effect a reconciliation or settlement between the parties to a family dispute." "Even where the Family Courts are not functioning, the objects and principles underlying the constitution of these courts can be kept in view by the Civil Courts trying matrimonial causes."[426] The Supreme Court held that the objectives and principles of section 23 of the Hindu Marriage Act, 1955 govern all courts trying matrimonial matters[427]**.**

While deciding the case of **Shiv Kumar Gupta v. Laxami Devi Gupta** [428] it was observed that the importance of making an attempt at reconciliation at the first instance, a Division Bench of the Calcutta High Court found that the compliance with section 23(2) of the Hindu Marriage Act, 1955 is a statutory duty of the judge trying matrimonial cases. The court in this case relied upon the decision of the Supreme Court in **Balwinder Kaur v. Hardeep Singh**[429] and held that: on a reading of Section 23(2) of the Act and on the perusal of the judgment in Balwinder Kaur on the interpretation of Section 23(2) this Court held that the decree, which was passed without complying with Section 23(2) of the said Act, cannot be sustained.

In another perspective, in **Love Kumar v. Sunita Puri**[430] it was held that the matrimonial court had acted in haste to pass a decree of divorce against the husband for his non-appearance at the time of reconciliation proceedings. The High Court accordingly set aside the divorce decree and remanded the matter back to the matrimonial court to be decided on merits.

The object of Section 23(2) of the HMA was explained in the following terms

in paras 19 and 21 of this judgment as follows: Under S. 23(2) of the Act it is incumbent on the matrimonial Court, to endeavour to bring about reconciliation between the parties, a great responsibility is cast on the Court. A Hindu marriage is not contractual but sacrosanct, it is not easy to create such ties but more difficult to break them; once annulled, it cannot be restored. A Judge should actively stimulate rapprochement process. It is fundamental that reconciliation of ruptured marriage is the first duty of the Judge. The sanctity of marriage is the corner stone of civilization. The object and purpose of this provision is obvious. The State is interested in the security and preservation of the institution of marriage and for this the Court is required to make attempt to bring about a reconciliation between the parties. However, omission to make attempts at reconciliation will not take away the jurisdiction of the Court to pass any decree under the Act. This is not correct to say that in a divorce case reconciliation efforts have to be timed immediately preceding the grant of decree and not at any other stage of the proceedings of the trial. Such an attempt can be and should be made at any stage. The matrimonial Court is required to call parties and make a genuine effort for their reconciliation, there is not even a whisper in this provision that the matrimonial Court has the power to strike off the defence of that spouse, who after being given opportunities for reconciliation fails to appear. But under S. 23(2) of the Act neither such a liability is cast on the one spouse nor such a right is given to the other spouse. Reconciliation is a mutual dialogue to bury their differences. A duty is cast on the Court to call the parties at the initial stage for reconciliation. Even before delivering judgment and decree, the Court can make effort for reconciliation. Thus, the stage of trial for calling the parties for reconciliation is left to the discretion of the Court. From a reading of the above judgments, it is clear that though reconciliation is a mandatory process, the timing and stage at which it is to be implemented may vary depending on the facts and circumstances of each case. At the same time causing prejudice to the rights of one party by striking off the defence or dismissing the petition may actually work injustice to the rights of such party. Therefore, the matrimonial court in its wisdom may fashion and design the stage of attempting matrimonial reconciliation depending on the facts of each case without causing prejudice to the substantive rights of the parties. However, at the same time, the matrimonial court ought not to give the mandatory settlement procedure a go by.

In another case, the High Court of Allahabad called it the bounded duty of the Family Court for making an attempt for conciliation before proceeding with the trial of the case[431].

The utility of Section 9 of the Family Courts Act 1984 was upheld

in K.A. **Abdul Jalees v. T.A. Sahida**[432] it was observed that Section 9 of the Family Courts Act 1984, lays down the duty of the family court to assist and persuade the parties, at first instance in arriving at a settlement in respect of subject-matter.

The Court has given the importance of compulsory time wait of six month in **Hitesh Narendra Doshi v. Jeshal Hitesh, Doshi**[433] and it was held that the minimum six month waiting period from the date of the presentation of the petition for severing the marital lies between the parties by mutual consent under S-13B(2) of the HMA was held that the court has no power to relax the said compulsory time wait of six months and can not pass a decree of divorce forthwith. However, In **Mohinder Pal Kaur v. Gurmeet Singh**[434] it was held that the six months waiting period can be brought down in cases, where an existing divorce petition is already pending for more than six months and efforts for reconciliation have been made earlier but without any success. Thus, the waiting period cannot be curtailed in a freshly instituted petition for divorce by mutual consent if an earlier petition on fault or other grounds, the parties have already been litigating for more than six months and reconciliation between them has been of no avail. Matters to which reconciliation does not apply-petition on certain grounds-

When a petition for divorce is made under Special Marriage Act,1954 on the ground of seven years sentence of imprisonment[Clause (c) of Sec. 27(1)], unsoundness of mind [Clause (e) of Sec.27(1)], venereal disease [Clause(f) of Sec.27(1)], leprosy [Clause (g) of Sec.27(1)], or presumption of death [Clause(h) of Sec.27 (1)] no efforts at reconciliation need be made. The proviso in Section 34(2) of Special Marriage Act exempts the mandatory requirement of attempting reconciliation between the parties when divorce is sought on any of the grounds in Special Marriage Act stipulated above.

However, it may added out of abundant clarification that on all other grounds of divorce, both under HMA and SMA, the court has an obligation to make efforts at reconciliation. This mandatory and statutory duty of the court can't be waived.

From a joint reading of the recent pronouncements of law discussed above, it can be apt to conclude that there is a growing emphasis on the need for attempting mandatory reconciliatory measures and wherever matrimonial courts have been lacking in their duties to do so, superior Indian courts have stepped in, to set the records straight. Therefore, there is a growing jurisprudence to adapt to out of court settlement reconciliation rather than litigating in matrimonial courts. However, the performance of this mandatory

exercise ought not to be reduced to an empty ritual or a meaningless exercise. Otherwise, the utility of the beneficial provision will be lost.

The Mediation cell of the Punjab and Harayana High Court which attempts to patch in matrimonial disputes, is an extremely positive development. The culture of settlement needs propagation. ADR cannot see the light of day unless citizens participate in the movement. The conventional people's courts can be a means to this end. Individual initiatives need awakening by self-consciousness and not by the implementation of laws. Spouses, parents and families need to realize the advantages of ADR in the family structure. Matrimonial relief carved out of settlement will serve better than the results obtained by adversarial litigation involving time, effort, finances and above all, breaking-up of a family. Issues of marriage, divorce and children ought to be put before family courts. Trained counselors, mediators and advisers should resolve them mutually. Superior Courts themselves must inject the spirit of mediation in appellate jurisdictions. A unanimous consensus saves a home, a family and a societal foundation. Mandatory reconciliation procedures should be affirmed with the seal of the court conclusively without any challenge. Creating more courts under the Family Courts Act will contribute to the resolution of family law disputes through ADR. The current handling of matrimonial litigation by conventional courts is a poignant reminder of what prevails. Trained Counsellors, professional mediators and above all, specialist family law judges could all from part of a well-organized adjudication team. This would give a new dimension to ADR in family law. Laws to promote ADR exist but the infrastructure, professionals assistance and the medium through which these beneficial reconciliatory mediation procedures are to be implemented are lacking. The package is wholesome. The numbers are huge. The need is dire. The solution is inbuilt. An effective implementation machinery is required. The lawmakers must aid assist and implement ADR.

3.7.5 Intellectual Property Right and ADR

Resolving intellectual property rights ("IPR") issues through alternative dispute resolution ("ADR") proceedings was a technique long-developing. What is common to intellectual property rights (IPR), information technology (IT) and maritime trade (export-import) in the sphere of law? It is that arbitration of disputes, especially "institutional arbitration," is becoming particularly important for these sectors that are growing in India in the context of liberalisation and globalization. Intellectual property rights are as strong as the means that exist to enforce them. In that context, arbitration, as a private and confidential procedure, is increasingly being used to resolve disputes involving intellectual property rights, especially when involving parties from different

jurisdictions. Alternative Dispute Resolution Mechanism provides a liable alternative to the traditional litigation processes involving intellectual property disputes with high stakes. In the case of Satyam **Infoway v. Siffynet Solutions**[435] Supreme Court held that the question of 'domain name' as a protectable intellectual property right.

3.7.6 Labour Dispute Cases

Labour law is increasingly developed in India as well as at Internationally level very fast. As it concerns two organized sections of the society, namely, the employer and employees, cases often come before courts for adjudication on various points where judiciary as adopted alternative dispute resolution mechanism for speedy resolution.

The matter of settlement was discussed in **Brook Bond India Ltd. v. The workmen**[436]. A settlement was arrived at not in the course of a settlement with the management. The resolution passed by the executive committee of the union did not support the claim that negotiation committee was empowered to enter into a settlement without seeking ratification from the Executive Committee. The office bearers who signed the agreement were not competent to enter into a settlement with the company and as such it could not be said that an agreement was reached between employer and workmen represented by the union.

It has been held by the Supreme Court that unless the Office bearers who signed the agreement were authorized by the executive committee of the union to enter into the settlement or the constitution of the union contained a provision that one more of its members would be capable to settle a dispute with the management ,no agreement between any officer bearer of the union and the management be called a settlement as defined in Section 2(P) of the Act .The terms of the settlement form part of contract of employment or terms of employment. A contractual obligation between an employer and employee can hardly be said to have the character of public nature. It is purely a private contract between two parties to the agreement. The writ of mandamus will not lie to enforce the contractual obligation. It is issued for the enforcement of public duty. (**Scindia Steam Navigation Co.Ltd. v. Scindia Employees Union and others**[437]**)** The Court directed the Government to reconsider the matter and record reasons if it decides not to make reference. In **Bombay Port Trust Employees Union v. Union of India**[438] a settlement was arrived at between the Union of India on the one part and the All India Port and Dock Workers Federation, the Indian National Port and Dock Workers Federation, Port Dock and water Transport Workers Federation and they all were covered by the settlement arrived at in 1981.The Union challenged the decision of the Government. It

was held by the High Court of Bombay that the fact that workmen had given a signed undertaking agreeing to abide by the terms of settlement dated 4 January and 26 February 1981, does not mean that they consciously accepted the terms of settlement. The workmen probably signed undertaking only to obtain the benefits conferred by the said settlement. Mere acquiescence in a settlement or acceptance could make the workers a party to the settlement. It was further observed that the settlement was signed by the Union of India which is the appropriate Government to make the reference. The reference can not be refused when once notice of strike has been given unless such notice is frivolous or vexation which is not the case or it is considered inexpedient to make a reference. No case of expediency has been made out.

In the management of **Binny ltd.(B and C) Mills v. The Government of TamilNadu**[439] pursuant to a notice of strike issued by the Joint Action Council comprising of representatives of Central Trade Union Organisation under Section 22 of the Industrial Dispute Act, together with a Charter of demands to almost all the Textile Mills in TamilNadu, conciliation proceedings were initiated but ended in failure. Thereafter the Government of Tamil Nadu issued five orders referring for adjudication. A special Industrial Tribunal was appointed. In the annexure to the Government Order, the names of the Mills with reference to which orders of reference were issued were listed B and C Mills was not included in the list. So the Labour and staff unions filed writ petition for directing the Government to include B and C Mills in the order of reference and also pass orders under Section 10 (B) of the Act. The Government of TamilNadu gave reasons for not including B and C Mills in the order of reference for adjudication. However a few days later and during the pendency of the proceedings several Mills entered into settlement with the workers under Section 18(1) of the Act and they prayed for passing an award in terms of said settlement. The request was rejected by the special Tribunal. Writ petitions were filed challenging award of the special Industrial Tribunal. It was held that the Industrial Dispute Act lays considerable sanctity and importance to a settlement reached between the workmen and the management. Seeking reference for adjudication of a demand contrary to terms of the settlement is not an offence under section 29 of the Act. However binding force of a subsisting settlement cannot be belittled or ignored. It was further held that settlement between management of individual units and their workmen after the reference cannot be rejected by the special Tribunal and it cannot decide about the inadequacies of the quantum of increases granted under the settlement without considering other relevant factors which prompted the workers to accept the settlement. Such individual settlements are package deals. The Joint Action Council has no *locus standi* to oppose the post-reference settlement, Water TransportWorkers Federation of India on the other part covering wage revision and liberalization

of terms and conditions of employment of Port and Dock workers at major ports. The settlement provided that during its currency no demand relating to issues covered by the terms could be raised. Bombay Port Trust Employees Union served a notice of strike on the trustees of Port of Bombay and the notice contained twelve demands made by them. The conciliation proceeding ended in a failure because the Trustees of the port of Bombay refused to reopen issues which were concluded under the settlement arrived at on 4th January 1981 as the said settlement has been accepted by the majority of workmen. The Central Government declined to refer the dispute on the ground the six demands of the Bombay Port Trust employees Union between management of individual units and their workmen. When the workmen have entered into settlement with their eyes open and when there is no opposition to the settlement from any of the concerned workers, the special Tribunal cannot reject the settlement. The award was hence quashed.

If the terms of settlement are not clear party aggrieved may seek clarification. In **Bharat Petroleum Corporation Ltd. Ex-Employees Association v. Bharat Petroleum Corporation Ltd**.[440] pursuant to the settlement , a lump sum of Rs. 50,000/- became payable to each of the appellants in lieu and final settlement of certain disputes which culminated in an award respecting their claims for HRA , Gratuity, Duty Allowances and Interest etc. In respect of these payments the corporation made certain deductions of income-tax at source on the ground that the payments constituted salary. But the corporation declined to indicate break down of this lump sum on the ground that the sum so paid was and intended to be, a lump sum payment and no break was either intended or was possible. Without knowing break up permissible refunds from the income- tax cannot be claimed.

The Supreme Court observed that the lump sum of Rs.50,000/- was not in its entirety referable to salary. Quite obviously some part of it was gratuity, some part HRA and some party Duty Allowances etc. Corporation explained its difficulty. But the intendment of the settlement makes it clear that the assessing authorities must, on the basis of appropriate criteria relevent to the matter, decide what part of the lump sum of Rs. 50,000/- was referable to gratuity as best as they can and give the benefits to the appellant that their hardship is mitigated and corporation should extend its co-operation otherwise to the appellants in working out a just arrangement in regard to the matter. It has been held in **General Manager, Security paper Mill v. R.S. Sharma** [441] that Section 12 (1) requires a conciliation officer to hold conciliation manner where an industrial dispute exist or is apprehended. Even though the conciliation officer is not competent to adjudicate upon the disputes between the management and its workmen, he is expected to assist them to arrive at a fair and just settlement. He is to play the role of an advisor

and a friend of both the parties and to see that neither party takes undue advantage of this situation.

The importance of an industrial dispute was discussed in the **Management of the Needle Industries v. The Labour Court**[442] it has been observed that the Section 12(1) stipulates the existence of an industrial dispute so as to enable the conciliation officer to take seizing of such control. There must exist an industrial dispute which could be taken cognizance of by the Conciliation Officer under Section 12. In this case, the dismissal per se created an industrial dispute and it is such a cause if the matter is referred to conciliation on behalf of the workmen by the Union the provisions enables the Conciliation Officer to exercise his jurisdiction as contemplated in the said provision.

The Apex court in the case of **Kurnal Leather Employess Union v. Liberty Footwear Co.**[443] has held that the remedy under section 10K is voluntary and alternative for settlement of industrial dispute but if the parties to the dispute have agreed in writing for settlement of their disputes through arbitrator, then the Govt. cannot refer the dispute to the Tribunal for adjudication.

If despite efforts of the conciliation officer, no settlement is arrived at between employer and the workman, The Industrial Dispute a provides for a three tier system of adjudication viz. Labour Courts , Industrial Tribunals and National Tribunals under section, 7, 7A and under section 7B respectively. Labour Courts have been empowered to decide disputes relating to matters specified in the Second Schedule. These matters are concerned with the rights of workers, such as propriety of legality of an order passed by an employer under the standing orders, application and interpretation of standing orders, discharge or dismissal of workman including reinstatement of grant of relief to workman wrongfully discharged or dismissed, withdrawal of any customary concession or privilege and illegality or otherwise of a strike or lockout. The industrial tribunal are empowered to adjudicate on matters specified in both the Second and Third schedule i.e. both rights and interest disputes. The jurisdiction of the Industrial Tribunal is wider that the labour courts.

In case of disputes which in the opinion of the Central Govt. involve question of national importance or is of such nature that workers in more than one State are likely to be affected. The Act provides for constitution of National Tribunals.

The Government under section 12(5), is empowered to refer a case to

the Board, Labour Court, Tribunal or National Tribunal, if the Government, after considering the failure report, is of the opinion that there is a case for reference. It has been observed in the **State of Tamil Nadu v. Subramaniam**[444]. Similarly, it may decline to refer, if in the opinion of the Government the reference is not called for. However, in that event it has to record the reasons and communicate to the parties concerned[445].

Industrial adjudication has undoubtedly played a conclusive role in the settlement of industrial disputes and in ameliorating the working and living conditions of labour class. In this context the National Commission of Labour observed: the adjudicating machinery has exercised considerable influence on several aspects of conditions of work and labour management relations. Adjudication has been on of the instruments for the improvement of wages and working conditions and for securing allowances for maintaining real wages, bonus and introducing uniformity in benefits and amenities. It has also helped to avert many work stoppages by providing an acceptable alternative to direct action and to protect and promote the interest of the weaker sections of the working class, who were not well organized or were unable to bargain on an equal footing with the employer.[446]

The Act empowers the appropriate government to refer industrial disputes when the industrial disputes exist or are apprehended. The Apex court has also held in **Shambu Nath v. Bank of Baroda**[447] that the power conferred by Section 10 (1) on the Govt. to make reference can be exercised not only when an industrial dispute exists but when it is also apprehended. In **Kotwal J. Kashmir Ceramtics Ltd. v. Labour Court**[448] it was observed that it is not permissible for the labour court to entertain more disputes than are contemplated in the reference not is it permissible for it to decline to adjudicate matters which clearly arise in the terms of the reference. In the case **State of Madras v. C.P. Sarathi**[449] and **Secretary, India Tea Association v. Ajeet Kumar Bharat**[450] , it was held that to make a reference is the administrative act of the Government and the same view has been taken in the case **Telecom Conway Divers Mazdoor Sangh & authorities v. State of Bihar**[451] and in **M/s Avon Services (Production Agencies) Pvt. Ltd v. Industrial Tribunal Faridabad**[452] with the result that the State Government has little choice in referring to make references of the disputes after failure of conciliation proceedings . The adjudication system is not immune from its weakness. The adjudication is dilatory and expensive. Under the Act, an award made by the adjudication authority is final as there is no appeal. However actual practice almost every award made against the employer is challenged in the High Court under Article 226 and 227 & in the Supreme Court under Article 136. It takes year

before final orders are passed in writ petitions pending before the High Court/Supreme Court. If the period taken before the adjudicating authority is counted, it does not take less 10 to 20 years before the protracted litigation could be disposed off. It is the weaker sections who are inconvenienced and handicapped the most, by the delay. It is submitted that the need of the day is to evolve the frame-work in which workers and the management perceive the need to co-operate. Bilateral regulation is the most effective method of evolving norms which enjoy wide acceptance.

It will be appreciate to recall the observation made by a jurist on the subject:

> No doubt, the state intervention in the form of compulsory adjudication has significantly contributed to the settlement of all sorts of industrial disputes between industrial employers and their employees. But its very success is the failure of the collective bargaining process as the normal method of settling industrial disputes. It follows that if collective bargaining has to gain ground, the state intervention through compulsory adjudication must wane to the vanishing point. It has outlive its utility. It is far better to leave the management and Trade unions to settle their differences and disputes among themselves than referring the issue to a third party settlement. Any attempt to solve socio-economic problems arising out of industrial relations within the old framework may have some limited usefulness, but cannot, in the nature of the case, achieve any, adequate solution. The frequent break-down in industrial relations must give way to constructive programmes. The State intervention through compulsory adjudication has often been directed to, in the words of Prof. Mathews, the peripheral area of legal pathology rather than to the healthy core of practical working cooperation.[453]

The settlement of disputes, reached by mutual discussion, debate and negotiation, leaves no rancour behind and helps to create an atmosphere of harmony and co-operation.

3.7.7 Mediation

It will be 2330 by the times Indian Courts, working at the current pace, clear the backlog of cases that exist today. This interesting observation was made by Justice V.V. Rao in a keynote address on e-governance in judiciary. Is there are a way to reduce the backlog before the next 320 years pass us by? There may be the Judicial system has been encouraging litigants to look towards alternative dispute resolution (ADR) mechanism. One such method that is picking up some converts is mediation.

(χ) Mediation method used in Assam and Nagaland Border Dispute on August 22, 2010, the Supreme Court passed an interim order on a suit filed by Assam in 1988 against Nagaland on a border dispute that they should attempt to resolve their dispute through mediation. It is in the first time a border dispute in the country has been referred to mediation. This has validated mediation as a form of grievance redressal.

(δ) Mediation in International Water Conflicts[454]

In international and national water disputes, parties tend to be pragmatic and do not fight over who is right or wrong. The benefits of joint problem solving far surpass any attempt to impose a unilateral outcome, because in most cases the parties need one another to reach a mutually agreeable solution.

Mediation in international conflicts is used when direct negotiation has failed, mediation is proposed by the court in The Hague, or the parties need and want to resolve the dispute and realize that they cannot do it on their own. The mediator in international conflicts can use his/her power and resources to influence, threaten, and put pressure on the disputants, as when the World Bank used its power to help the parties reach a resolution.

The partition of water of the Indus River between India and Pakistan was the cause of a dispute in 1947, which could have led to war. In 1952, the World Bank acted as a mediator with power, and managed to influence the parties. India and Pakistan started negotiation over the allocation of water[455].

In the Zambezi River dispute, where eleven countries are involved, they reached an agreement to manage and develop the Zambezi resources jointly. The Vatican played the mediator/facilitator and used its authority to influence the parties.

In the case of Moti Ram (D) Tr. LRs. v. Ashok Kumar and another, held that mediation proceedings are confidential in nature. The Supreme Court of India had referred a matter for mediation to the Mediation Centre at Chandigarh. The mediator laid the report of mediation proceedings before the Supreme Court. After perusing the report, the Supreme Court observed that mediation proceedings are totally confidential proceedings unlike proceedings in an open court. The Court held that in the event mediation is successful, the mediator should simply send the executed agreement between the parties to the court. Significantly, the Court noted that in the event the proceedings that transpired during mediation were disclosed, it would destroy the confidentiality of the mediation process. The Court further directed that a

copy of the order be sent to the Supreme Court Mediation Centre and the Mediation Centres in all the High Courts and District Courts in the country. Thus mediation has proved to be a much-favored method of alternate dispute resolution, specifically amongst various foreign entities, inter alia, due to its informal methods and reduced costs (compared to other forms of dispute resolution). More often than not, a trusted third party is appointed as a mediator between the disputing parties. Mediation is often used as the first step to resolve any dispute and failing any resolution under mediation, parties agree that disputes will be referred to arbitration. Thus, most commercial contracts now provide for mediation as a mechanism for dispute resolution, prior to proceeding for arbitration. Contractually, parties may agree to maintain confidentiality of the said mediation proceedings. However, unlike in conciliation and arbitration proceedings, there is no statutory provision in India that mandates maintaining confidentiality of such proceedings in relation to mediation proceedings. A significant concern that, therefore, typically arises in such circumstances is the confidentiality that is accorded to the various discussions and proposals made in such mediation proceedings. The instant judgment should help assuage concerns on the confidentiality surrounding the process of court-directed mediation. By the said judgment, the Court has specifically acknowledged that any discussions and proposals made during the course of mediation proceedings are confidential in nature. The said judgment should provide a fillip to mediation proceedings[456].

Mediation and other ADR systems are also gaining pace in other nations as well. In the UK, Lord Irvine, the then Lord Chancellor, announced in 2001 the government's pledge to use ADR mechanisms in all disputes, wherever feasible. Subsequent reports by the Department of Constitutional Affairs show that ADR has particular, the report deals with fundamental issues relating to procedure, such as timing of mediation, identification of mediators and the like.

A working group, set up in 1998, was entrusted with the task of fine-tuning court-based mediation in France and drafting flourished in the UK and led to speedy disposal of cases. As elucidated by Lord Woolf in the case of **R. (on the application of Cowl) v. Plymouth CC**[457]. Mediation and other forms of ADR can counteract increasing juridicalisation and, for a number of judges, it is akin to case management. Lord Woolf made a number of judicial decisions the promoted the use of ADR mechanisms in public law cases and today, there exists a legislative framework, case law as well as government policy that are very favorable for the promotion of Mediation and other forms of ADR. However, judges themselves cannot participate in the mediation process, which as to be handled by professional mediators. On the other hand, countries like France and Germany have been relatively slow to respond, and

mediations are resorted to very sporadically. In France, in 1993, the *Conseild'Etat* drafted a special report titled *"Solving Disputes Differently: conciliation, mediation and arbitration in administrative law"*. While dealingwith the issue of Mediation in guidelines for incorporating mediation in the system. In Germany, Article 87 of the German Administrative Code empowers Judges to encourage the parties to solve their dispute in an informal manner, and if they do so successfully, he can accept the agreement. However, it is to be noted that both these nations follow an inquisitorial procedure that is fundamentally different from our own, where the judge can play a more active role in directly helping the parties to settle their disputes.

3.7.8 Motor Accident Claims

Nowadays Judiciary also active in motor accident claims cases and trying to resolve these matters by ADRs methods. It can be seen in the latest judgment of SC in the case of **Jai Prakash v. National Insurance Co**.[458] considering consequential hardship to the victims and their families due to the procedural delays in adjudication/ settlement of claims by Motor Accidents claims Tribunals, the SC has issued direction to the police authorities and claims Tribunals to expedite and streamline the adjudication of Motor Vehicle Claims and disbursement of compensation.

Personal Injury claims fall broadly under four specific categories of disputes. The disputes over personal injuries include death or injuries on road at work place, deaths due to medical negligence and issues arising out of tortious liability.

For instance, if a person frequently plays music loudly and the neighbor gets disturbed leading to indignation and defiance, that incompatibility of interest would result in dispute. Negotiation or a form of third party intervention is an appropriate method to resolve it. In this case, the difference of opinion as to a legal right either to play the music or to be protected from nuisance then that will be justicable dispute.

The majority of disputes comes under the injury or death due to accident arising out of motor vehicle. The motor vehicle Act 1988 made insurance of motor vehicles as compulsory. The owner of every motor vehicle is bound to insure the vehicle against the third parties risk. If the vehicle is insured against the third party risk, the injured party can claim compensation from the insurance company. Insurance policy is a personal contract between the parties for indemnifying the insured in case of an accident covered under the policy. If a vehicle is not insured against third

party risk, the claimant still has a right to claim compensation from the owner of the vehicle under the principle of vicarious liability.

The judiciary in India has followed liberal approach in case of any questions relating to breach of insurance policy. In **Nagaraju v. Oriental Insurance Company**[459] the Supreme Court while uphelding the case of **Skandia Insurance Co. Ltd. v. Kokilaben**[460]**,** observed that "The exclusion term of insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damaged caused to the vehicle. In this case, the appellant was owner of the insured truck which was covered by a comprehensive insurance policy issued by Oriental Insurance Company covering risk to the limit above two lakhs. The truck sustained major damage in an accident with a gas tanker the repairs of which amounted to Rs. 8,7000/- At the time of the accident the truck was carrying nine persons while the policy did not cover use for carrying passengers in the vehicle except employees not exceeding 6 in number. The Supreme Court observed that the presence of nine persons had not contributed in any manner to the cause of accident and also the claim did not relate any injuries to those nine persons. The claim is primarily for damage caused to be insured vehicle, which not have been denied in the present case. The Law Commission of India in its 77^{th} report in 1978 suggested to set up conciliation boards in case of petty suits where the value of the suit is around Rs. 5000/-. The parties before filing a suit for recovery of money for the above amount should first approach conciliation boards and if it is not settled amicable within 3 months, then they should resort to litigation.

In case of motor vehicle accidents, the court sends the cases to concerned insurance companies for comments. The insurance company studies claims and intimate motor vehicle tribunal through their counsel the amount offered. The motor vehicle tribunal hears both parties and would try to bring out an amicable settlement.

In personal injury claims the plaintiff is required to pay court fee. This creates hardship for the victims or dependants. The Madhya Pradesh Government issued ordinance-exempting victims from payment of court fee after math of Bhopal tragedy. In all personal injury compensation cases, the victim, dependants or claimants should be exempted from payment of court fee. The court fee may be recovered after award of damages. The victims in personal injury cases are facing serious disadvantage and economic blackmail resulting from delayed decision on the dispute, which results in settling the dispute on unjust terms. The payment of interim relief alleviates financial hardship of victims. It improves the plaintiffs bargaining power, as they need

not settle for inadequate sum just to satisfy immediate economic needs.[461]

3.7.9 Public Sector undertaking of Government

Supreme Court started issuing various directions as so as to see that the public sector undertakings of the Central Govt. and their counterparts in the States should not fight their litigation in court by spending money on fees on counsel, court fees, procedural expenses and waiting public time.

In **ONGC v. Collector of Central Excise**[462], there was a disputes between the public sector undertaking and GOI involving principles to be examined at the highest governmental level. Court held it should not be brought before the Court wasting public money any time.

In ONGC v. Collector of Central Excise[463], dispute was between Govt. dept and PSU. Report was submitted by cabinet secretary pursuant to SC order indicating that instructions has been issued to all depts. It was held that public undertaking to resolve the disputes amicably by mutual consultation in or through or good offices empowered agencies of Govt. or arbitration avoiding litigation. GOI directed to constitute a committee consisting of representatives of different depts. To monitor such disputes and to ensure that no litigation comes to court or tribunal without the Committee's prior examination and clearance. The order was directed to communicate to every HC for information to all subordinate courts. In **Chief Conservator of Forests v. Collector**[464] were relied on and it was said that state/union Govt. must evolve a mechanism for resolving interdepartmental controversies-disputes between dept. of Govt. cannot be contested in court.

In **Punjab & Sind Bank v. Allahabad Bank**[465], it was held that the direction of the Supreme Court in ONGC III[466], to the Govt. to set up committee to monitor disputes between government departments and public sector undertakings make it clear that the machinery contemplated is only to ensure that no litigation comes to court without the parties having had an opportunity of conciliation before an in-house committee.

In the judgment of the Supreme Court of India in **Salem Bar Association v. Union of India**[467] the Supreme Court has requested prepare model rules for ADR and also draft rules of mediation under section 89(2)(d) of Code of Civil Procedure, 1908. The rule is framed as "Alternative Dispute Resolution and Mediation Rules, 2003".

3.7.10 Other Cases resolved by ADRs method:[468]

(CASE 1)

A middle class girl by force of the parents got married and went to Bahrain. The husband being in a very senior position of a big Company was habituated to drinking and throwing late night parties which frustrated the girl. A daughter was born but still the husband did not improve and with his promotion and status became more socialite. The wife out of frustration came back to India with a determination not to return to her husband. The husband made many efforts to bring her back and not having success came to India. When the wife refused to talk to him at the advice of the Advocates he filed for divorce making false and frivolous allegations. This was the first proceeding. The wife got very frustrated and pending the Divorce Petition filed an Application for Maintenance for the daughter and herself. This was the second proceeding. The Family Court gave a paltry amount which did not satisfy the wife. She filed a Letters Patent Appeal in the High Court. This became the third proceeding. The High Court passed an Order raising the amount with retrospective effect. Husband committed default in payment for ten months. Wife took out contempt proceedings. This became the fourth proceeding. Husband went in Appeal in which the Appellate Court admitted the Appeal but asked the husband to pay all the arrears as per the High Court Order and continue to pay till the Appeal is disposed of. This became the fifth proceeding. The husband filed Review Petition before the Trial Court. The Hon'ble High Court passed the Order referring the matter to Conciliation. This became the sixth proceeding. Conciliators took twelve hours to resolve the dispute to a win-win situation for both the parties who have not taken a divorce and are living as a happily married family for more than ten years. Extract of the Judgment of the Bombay High Court is as follows:

"This was a matrimonial dispute; the past tense can now be used with some deliberateness since Parties have resolved the dispute in terms of Consent Terms which have been arrived at between them. In the main Writ Petition which is before the Court, an Order was passed on 12th December 2002. The dispute which came up before the Court was in relation to an application for the grant of maintenance to the petitioning wife. After the order was passed, a Review Petition came to be filed. The Respondent resides in Sharjah and there was a serious grievance made that the arrears of maintenance had not been paid by him. Fortunately, when the Review Petition came up for hearing, all the learned counsel as well as the Parties expressed their willingness to attempt a conciliatory resolution of their dispute. Parties agreed to Conciliation before Mr. Firdosh Karachiwala and Ms. Rajani Iyer, both of whom are Advocates practicing before this Court.

The Conciliators have spent almost 12 hours facilitating the Parties to resolve their dispute and in attempting to move them towards a negotiated settlement. The Conciliation took place under the provisions of the

Arbitration and Conciliation Act, 1996. Parties have now appeared before the Court together with their counsel and have tendered Consent Terms which are signed by them and by the learned Advocates. The entire dispute between the Parties is resolved and they have agreed to divorce by mutual consent. The Consent terms are taken on record and marked as 'X'. The undertakings provided for in the Consent Terms are accepted. The Family Court at Bandra shall now proceed to pass a decree for dissolution of marriage by mutual consent as envisaged by the Parties in Clause 2 of the Consent Terms. In view of the settlement between the Parties, nothing further survives in the petition for review. There shall be an order in terms of the Consent Terms."

Though the order was passed granting divorce to the husband and wife they have not gone to Family Court and they are living as husband and wife in a happy situation. A marriage was on the rocks and with the efforts of the Conciliators the marriage was saved from breaking down and the poor child having to bear the brunt of separation and divorce between her father and mother. In this case wife realized that the husband has truly apologized for what he had done in the past and the husband was willing to sign the Consent Terms convincing the wife that the marriage could now survive. She was convinced that he would change his attitude towards life and be more faithful and caring towards his wife.

(CASE 2)

A young girl of about 27 years of age and Architect by profession got married to a wealthy businessman's son and during eleven months of marriage she was very happy and both husband and wife travelled throughout the world. Every night was a social night partying with friends living in a nice bungalow with car and chauffeur at their disposal and having big business. After eleven months of marriage one day the husband complained of certain pain in the body and certain swelling in the legs. He was taken to a very good hospital and after undergoing various tests the doctors came to a conclusion which was a shock to the whole family that the husband had whooping cancer and would not survive long. Three days later the husband expired which was a big shock and trauma to the wife and to her father-in-law. After the shock and trauma and religious ceremonies having got over friends of the wife in order to reduce her pain started taking her out of the house environment for dinner and socialising. The father-in-law became anxious and concerned for his daughter-in-law. He tolerated this for some months and thereafter called the wife's parents and pleaded with them to take her with them as she was still young. The wife's parents asked for alimony, maintenance etc. of Rs.5 crores i.e. 50 millions of rupees. This made the father-in-law very angry as he had lost his son and over and above there was a demand for such a huge amount. He refused to pay any amount and told the parents that

they could take any legal proceedings. The parents along with their daughter wants to legal proceedings against the father-in-law for the share of the wife in the estate of the deceased. Looking at the circumstances conciliator suggested to the parents and the daughter that instead of litigation why not try Conciliation. After consulting a Judge they agreed for Conciliation proceedings. The father in law who is an Architect turned bussinessman appointed his own partner as Conciliator. During the sessions Conciliator had observed the changes which were happening to the daughter-in-law as she was looking very sick and frustrated. A suggestion was made whether there was a possibility to hold private sessions to which they agreed. In the private session as the daughter-in-law was sitting across Conciliator asked her what was happening to her as she looked very pale and frustrated. She cried and cried for a long time and thereafter stated that she did not know why this fight was happening between her father-in-law and herself who all throughout her marriage life treated her as his daughter and there was never any bitterness or quarrel. She felt that today she cannot face her father-in-law or bear his anger. Conciliator asked her what did she want in her life and to the shock of Conciliator she said that she only wanted one small Flat in Mumbai and one of the cars and for maintenance initially till she gets a job Rs.25,000/- per month. She said that this was all that she required and she was not insisting of 50 million rupees. Thereafter Father-in-law in Private session also mentioned that the relationship was very cordial till demand was made from the daughter in laws' parents. Father-in-law said if in the place of his daughter in law if it was his own daughter he would ask for a Flat and reasonable alimony of Rs.50,000 and one car with Chauffer.

Conciliators knew that ice was broken and there was possibility of settlement. Conciliators then gave opportunity for the parties, relatives and Advocates to go in separate rooms and consider the proposal. After 20 minutes of deliberation the parties came back to the Conciliators and said that the settlement was agreeable. Terms were drawn up, signed by the parties and their Advocates and attested by the Conciliators. After the Agreement was signed the father-in-law assured that he would keep his daughter-in-law in his own office, as also give her professional work, take care of her and also if there is a suitable boy for her he would arrange the marriage and bear expenses for her.

(CASE 3)

An aged couple had a nice bungalow of ground and one upper floor at Vile Parle Mumbai. Their son for more than 25 years has been residing in USA. An Architect and Developer became friendly with this aged couple and promised

to redevelop the whole property by constructing 4 additional floors and share the profits with them. The aged couple got the documents completed by a Chartered Accountant and also executed an Irrevocable Power of Attorney in favour of the Developer for developing the property. The son in USA was kept informed. As the development of the building was taking place the aged couple realised that the Developer had constructed 6 floors instead of 4 and dispute arose between the aged couple and the Developer. To resolve the matter the son and his wife came from Los Angeles, looked at the project and found that the Developer had gone beyond the terms of the Agreement. He contacted the Developer and heated arguments took place. There was an Arbitration Clause in the Agreement which was invoked by both the parties and the matter came up before the Bombay High Court.

The Hon'ble Judge hearing both the sides and seeing that both sides were agreeable to the appointment of Arbitrator an Order was passed for referring the matter for Arbitration. A preliminary meeting was held with the Arbitrator mentioning his fees and gave necessary directions for filing the papers. The son who had come from USA inquired from his Advocate whether he would be arguing the matter before the Arbitrator. The Advocate said that a Counsel is appearing for the Developer and hence he would have to engage a Counsel. Looking at the frightful expenses the son started inquiring from his friends and relatives as to how to go about with such huge expenses and with time frame for the Arbitration to come to an end. Someone informed him to come to my office for advice. When the aged parents, the son and his wife came to my office they were totally frustrated and angry with the Developer and were not willing to go in for an expensive Arbitration. I suggested to them that I conduct Conciliation and explained to them the process of Conciliation and the benefits arising from the same. They liked the idea and I contacted the other side Advocate and asked him if he would like to do co-Conciliation to resolve this matter. The Advocate did not want to have co-Conciliation but "Without Prejudice" meetings or direct negotiations to see if the matter could be resolved amicably between the parties as the Developer was also not inclined to incur huge expenses on Arbitration proceedings. Meetings were held and the process though termed as negotiation was in reality a co-Conciliation where joint and private sessions were held and gradually the parties were brought to an Agreement in about 12 to 14 meetings. The Sole Arbitrator was kept informed about the progress and Consent Terms were filed before the Sole Arbitrator who gave Consent Award after going through the Consent Terms. The situation was win-win situation for both parties and the Advocates also benefited in their professional work. The Arbitrator also charged for his one day hearing and that is how the matter came to a happy ending.

(CASE 4)

One case came up in Court when a woman after 28 years of marriage was seeking divorce from her husband. The husband was addicted to hard drinks and he used to come home late at night, use abusive language and beat his wife and children mercilessly. Ultimately being fed up the wife filed a case for divorce. The Court referred the matter to Conciliation of an experienced Conciliator. The Conciliator called a preliminary meeting, introduced himself to the Parties and thereafter asked the Parties who would like to make the Opening Statement. The husband stated that let his wife begin her Opening Statement. The Conciliator informed the husband that whilst the wife was making her Opening Statement, he should listen carefully and should not interrupt her. The wife in her Opening Statement stated that for five years she was harassed and she and her children were beaten up and the husband was addicted to hard drinks. The husband did not provide any money for their maintenance and education of the children. She sought divorce from the husband, as she did not want to be humiliated, abused and beaten up and that her children too were fed up with the husband's habits. The Conciliator asked the wife if she had anything to say and she said that she wanted only a divorce and nothing more. The Conciliator then looked at the husband and said that he could make his Opening Statement and Response to the wife. The husband began by saying that five to six years ago he was a very responsible husband, had no vices and never used to drink or smoke. He was working in a Government office and had to travel from suburbs to his office. As he suffered from acidity as such, he could not take any canteen /hotel food. In those days upon his return his wife would serve him a hot dinner and then they would spend time together, eat together and would talk after the dinner. He loved his children very much and looked after their education and well being right from the day they were born. He further said that five to six years ago his wife had started watching Television and whenever he returned home by 8.00 pm she was glued to the Television set. The second time the husband repeated the term watching TV; the wife got up and slapped the husband in the presence of the Conciliator. The Conciliator had lost eye contact with the wife and if he had noticed the wife, this incident could have been prevented. The Conciliator immediately pointed out that this was an abuse of the process of the Court and this indiscipline would not be tolerated and that he would make report to the Court that the Conciliation had failed and the Court could proceed with the matter. The wife realized her mistake and profusely apologized for her behavior and assured that she would not repeat the mistake again. The Conciliator asked the wife to apologize to her husband which she did. Thereafter the Conciliator asked the husband to continue and he said that after returning home from office she did not serve him dinner or even offer a glass of water or tea. Looking at the behavior of

the wife the husband started going out and meeting friends and took up drinks. Then he got addicted to alcohol and in this manner he ruined his family life and his own happiness. He however desired to amend his mistakes.

The Conciliator tried to generate some options. Firstly, he asked the wife whether she could stop watching television for sometime and serve the dinner when her husband returned from work. She said that during the time her favourite serials would be coming and she would not like to miss them. The second option the Conciliator tried to generate was to ask the wife whether she could watch the serials which also come in the afternoon and at late night. She said that she is a teacher and she gets up early in the morning and goes to school by 8 am and returns home after 4 pm and thereafter her students come for tuitions which generates good income for her. By the time she takes tuitions it is 7 p.m. and thereafter she watches television for relaxation from the hard day of work. That is why she cannot see the serials in the afternoon as well as in the night. The husband was asked whether he could cooperate in any manner to save the marriage. He said that he was suffering from acidity problem and he looks forward to the home-cooked food when he comes back home from office. Then the Conciliator suggested why don't they buy Video Cassette Recorder (VCR) with a timer so that during the dinner time they could record the serials and later on or during the holidays could watch the serials together. The Conciliator requested them to try it out for two weeks and adjourned the matter. After two weeks both of them came to the Conciliator's office with broad smiles on their faces and said that they have made up their minds and there is no need for divorce. They also said that they are now going out in the evenings after dinner and watch movies in the cinema theaters and on holidays see the serials which is convenient in their VCR. They thanked the Conciliator and said their Advocates would make the application to the Court for withdrawing the Divorce Petition. Thus the marriage was saved and disputes reconciled to the entire satisfaction of both husband and wife and the children.

(CASE 5)

In a well known case in USA, there was dispute between the black farmers and white farmers which is now known as "black farmer's case" during the time tenure of President Bill Clinton. The white farmers have had received certain subsidies from Financial Institutions which black farmers did not receive. The black farmers strongly objected to the millions of dollars in subsidies given to white farmers and which was not given to the black farmers. A case was filed and proceedings were conducted. News Media published the matter in the Newspapers as a result of which the hostility between the black farmers and white farmers accelerated. Hatred, jealousy and enmity

prevailed. Judges of the Supreme Court in their wisdom referred the matter to Conciliation. Two Conciliators were appointed one on behalf of the white farmers and the other on behalf of the black farmers. Two Conciliators jointly worked for 2 to 3 months and brought about a win-win situation for both parties. In this case in respect of the finance, Financial Institutions representatives and all those concerned, participated in the process of Conciliation and reached a consensus by which the matter was resolved to the satisfaction of the parties, Government and Financial Institutions. If the matter were to be heard by the Court, then it would have further increased the enmity between the blacks and whites that could possibly have divided the country and have led to serious political consequences. Conciliation worked and the matter got resolved expeditiously to the satisfaction of all.

So here we can say from above description that Judiciary has increasing its role in the context of ADR mechanism day by day. There is an imminent need to supplement the current infrastructure of courts by means of Alternative Dispute Resolution (ADR) mechanisms. Apart from bringing efficiency in working of the judiciary, measures are being taken all over the world for availing ADR systems for resolving pending disputes as well as at pre-litigation stage. Efforts towards ADR have met with considerable success and good results elsewhere in the world, especially in the litigation-heavy United States, where professional teams of mediators and conciliators have productively supplemented the dispute resolution and adjudication process.

7. CONCLUSION AND RECOMMENDATION

"It is not in truth alternative. It is not in competition with the established judicial system. It is an additional rage of mechanisms within the overall aggregated mechanisms for the resolution of disputes. Nothing can be alternative to the sovereign authority of the Court system. We can, however, accommodate mechanisms which operate as additional or subsidiary processes in the discharge of the sovereign's responsibility. These enable the Court system to devote its precious time and resources to the more solemn task of administering justice in the name of the sovereign."

Sir Laurence Street[469]

The primary object of ADR movement is avoidance of vexation, expense and delay and promotion of the ideal of "access of justice" for all. ADR system seeks to provide cheap, simple, quick and accessible justice. ADR is a process distinct from normal judicial process. Under this, disputes are settled with the assistance of third party, where proceedings are simple and are conducted, by and large, in the manner agreed to by the parties. ADR stimulates to resolve the disputes expeditiously with less expenditure of time, talent money with the decision making process towards substantial justice, maintaining to confidentiality of subject matter. So precisely saying, ADR aims at provide justice that not only resolves dispute but also harmonizes the relation of the parties.

RECOMMENDATION

After completion of the study of Alternative Dispute Resolution Mechanism in Adjudication of Dispute with special reference to Arbitration and Conciliation Act 1996 certain suggestion or recommendation are being given regarding ADR Mechanism. In this juncture, few things are most required to be done for furtherance of smooth ADR mechanisms.

The following recommendation in this regard:

1. Inclusion of persons with proven integrity in the arbitral panels.

2. Keeping the vigil over the functioning of the members in the panels as arbitrators and reviewing their performance periodically.

3. Reviewing the panels atleast once in a year and delete from the panels the persons with unsatisfactory track record.
3. Fixation of a definite time period for filing the pleadings for giving the award and filing the award in the Court.
4. To make provisions for fixation of arbitrator's fee, specially where the mandate of an arbitrator is terminated and the fee payable to a substituted arbitrator.
5. There should be inserted a new chapter relating to Fast Track Arbitration.
6. To fix the time duration for settlement.
7. To include additional ground to set-aside the award and that additional ground will not be available where a specific question of law was referred to the Arbitral Tribunal.
8. To make provisions for Mediation in Arbitration and Conciliation Act 1996 because there is no specific law on Mediation so it should be placed in Arbitration and Conciliation Act 1996 or in a separate law.
9. The Arbitrator should make the award expeditiously after the close of the hearings preferably within 15 days.
10. Arguments preferably should be heard within 15 days of the completion of evidence to be followed by submission of written arguments.
11. To promote institutional and ad hoc arbitration in India.
12. To encourage online dispute resolution in India and afford means, technology and to make laws to govern this.
13. To establish e-Court in every state of India so dispute will be resolved in minimum time and pendency of cases in Courts will be decreased.

14. To make a separate code of ethics for arbitrators and conciliators.

15. To Conduct Seminars or Conferences especially on ADRs methods and on Arbitration and Conciliation Act 1996 so that student, lawyers, academicians can get deep knowledge about the methods and Act.

16. To cover the Intellectual property right issues by ADRs methods.

17. To establish institutions or centre for Conciliation.

18. Arbitration law should strive to attract Foreign Investors.

19. India create special judicial bench, or perhaps several special regional benches, specifically designed to hear and adjudicate arbitration-related petitions. Such a bench or benches would consist of a panel of judges who would review only petitions relating to arbitration.

20. Courts should have express power to compulsorily refer parties to a wide range of ADR options.

21. There should also be a panel of suitably qualified and experienced dispute resolution practitioners available to undertake ADR processes.

22. Institutional Arbitration should be encouraged and a full fledged Arbitration Bar should come into existence.

Secondly, there should be some modification in the Article 39-A of Directive Principles of State policy of the Constitution of India. The proposed amended Art.39-A would run as follows,

The State shall secure that the operation of the legal system promotes justice with the help of ADRs harmonious methods, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Recommendation regarding International Sphere of ADR:

In online dispute resolution method the problem of security may be

solved if ODR service providers implement appropriate security measures in protecting confidential information. Confidence in ODR may be built, if:

1. The communication made during the ODR processes remains confidential and third parties are unable to access such information without authority. Authentication of credentials and encryption of data through cryptography will solve this problem and assist in maintaining public confidence.

2. The integrity of confidential information and transmitted data is guaranteed. Digital signature and use of encryption will assist in maintaining integrity and the disputants will be able to identified the parties through digital signature.

3. The ODR service providers ensure the integrity of the ODR proceedings by encrypting confidential information exchanged during ODR proceedings.

4. Adequate security measures are adopted to ensure the confidentiality of the ODR processes.

    i. In order to solve the problem of confidentiality, the use of ODR may be kept confidential by publishing only statistical data related to the proceedings without revealing the parties to the dispute.

5. To make a uniform law on ADR and included all ADRs methods therein which is prevalent at international level as adjudication, partnering, fact- finding and expert-determination etc.

6. Creation of awareness and popularizing the methods is the first thing to be done. NGOs and Media's have prominent role to play in this regard. Awareness in view of this holding seminars, workshops, etc. would be imperative. ADR literacy programmes has to be done for mass awareness. Awareness camp should be to change the mindset of all concerned disputants, the lawyers and judges.

1. For Court- annexed mediation and conciliation, necessary

personnel and infrastructure shall be needed for which government funding is necessary.

2. Training programmes on the ADR mechanism are of vital importance. State level judicial academies can assume the role of facilitator or active doer for that purpose.

3. There should be changes at the structural level and at the operational level. Changes at the structural level challenge the very framework itself and requires an examination of the viability of the alternative frameworks for dispensing justice. It might required an amendment to the Constitution itself or various statutes. On the other hand, changes at the operational level requires one to work within the framework trying to indentify various ways of improving the effectiveness of the legal system. Needless to say, this will considerably reduce the load on the courts apart from providing instant justice at the door-step, without substantial cost being involved. This is also avoid procedural technicalities and delays and justice will hopefully be based on truth and morality, as per acknowledged considerations of delivering social justice. We cannot stop the inflow of cases because the doors of justice cannot be closed. But there is a dire need to increase the outflow either by strengthening (both qualitatively and quantitatively) the capacity of the existing system or by way of finding some additional outlets.

a. Equal justice for all is a cardinal principle on which entire system of administration of justice based. It is too deep rooted in the body and spirit of common law as well as civil law jurisprudence that the very meaning which we ascribe to the word "justice" embraces it. We cannot conceive justice which is not fair and equal. Effective access to justice has thus come to be recognized as the most basic requirement, the most basic human right, in modern egalitarian legal system which purports to guarantee and not merely proclaims legal rights to all. under this head, the following recommendations are given-

Mandatory reference to ADRs

In the first part which deals with *Mandatory reference to ADRs*, we should aim to achieve earlier and more proportionate resolution of legal problems and disputes by:

I. Increasing advice and assistance to help people resolve their

disputes earlier and more effectively;

II. Increasing the opportunities for people involved in court cases to settle their disputes out of court; and

III. Reducing delays in resolving those disputes that need to be decided by the courts.

IV. To implement the noble ideas and to ensure the benefits of ADR to common people, the four essential players (government, bench, bar litigants) are required to coordinate and work as a whole system.

(a) Case management by Judges

In the second part related with *Case management* includes

i. Identifying the issues in the case; summarily disposing of some issues and deciding in which order other issues to be resolved; fixing timetables for the parties to take particular steps in the case; and limiting disclosure and expert evidence.
ii. Government: Govt. has to support new changes. If the govt. support and implements changes, ADR institutes will have to be set up at every level from district to national level.

(L) Committed teams of Judges and Lawyers

In the third part related *to committed teams of Judges and lawyers*

ii. Bench: unless mindset of the judges are changed, there will be no motivation for the lawyers to go to any of the ADR methods.

iii. Bar: the mindset of the members of the Bar is also to be changed accordingly otherwise it would be difficult it is difficult to implement ADR. The myth that ADR was alternative decline in Revenue or Alternative Drop in Revenue is now realizing that as more and more matters

get resolved their work would increase and not decrease.

iv. Litigants: few parties are usually interested in delay and not hesitate in taking a stand so as to take the benefit if delay. Parties have to realize that at the end, litigation in court may prove very costly to them in terms of both cost and consequence.

For this purpose, judicial officers must be trained to identify cases which would be suitable for taking recourse to a particular form of ADR.

9) To have an effective of the ombudsman we can suggest that:

i. Sufficient security of offices to ensure independence;

ii. Independent control of a budget sufficient to allow fulfillment of the ombudsman's official mandate;

iii. Strong powers to investigation;

iv. Independent from the organization appointing him and establish an arms length relationship with the organization he or she serves;

v. For the ombuds to perform his/her duties diligently and responsibly, the appointing organization must make resources readily available so that the office is not perceived as slow and bureaucratic.

vi. The appointing organization must permit the ombuds to initiate investigations without unnecessary hindrance to ascertain processes, not with the goal of assigning guilt, but to make sound, fact- based recommendations on which management may change policy to cure negligence or improve processes;

vii. The ombudsperson must write his findings and recommendation in the from of a formal report. This report

must be public because it is the link between the organization and the group it serves. It lends legitimacy to the work of the ombuds and the intentions of the appointing organization. Without a public report, the endeavour, would lack transparency and without transparency there can be no legitimacy.

viii. Ombudsperson must be accountable and therefore, he/she must be the object of supervision supervisory/accountability mechanism must be transparent and objectives so as to not appear arbitrary in the eyes of the group being served by the ombudsman though the appointing organization.

To have an effective of Mediation we can recommend the following:

Need for Spreading awareness regarding mediation, Martin Luther King had said *"The bank of justice shall not be Bankrupt"* this is only possible if we develop effective and efficient mechanism of ADR by setting up of extra mediation centre's at all level in the country.

1. To make mediation successful, the Judges, the Lawyers and the public should understand:-

2. The importance and relevancy of mediation;

3. The nature and type of cases which are suitable for being referred to mediation process; Judges should have awareness about mediation and its effectiveness as an ADR process. They should be concerned about the huge pendency and have the commitment to render speedy and effective justice. Only then they can be expected to refer cases for mediation and persuade the litigants to go through the process of mediation;

4. Lawyers should understand that mediation helps and benefits the litigants, that their apprehensions that mediation will adversely affect their practice or income, is baseless; that mediation is an integrated part of dispute resolution process and is therefore a part of their brief; that they can themselves train to be mediators or as lawyers effectively assist their clients to arrive at a solution by mediation; that if a party gets satisfactory relief expeditiously it builds up his trust and confidence in the civilized and legal methods of dispute resolution and that only then slowly and steadily people will be weaned away from unhealthy and harmful extra-judicial solution (like

approaching the underworld or the police) to traditional civilized methods of dispute resolution with the assistance of the members of the Bar.

5.The litigants should understand the process of mediation so that he is convinced that by having recourse to mediation, he can secure better reliefs and benefits and improve his personal, business and social relationships and make society a better place to live.

The following steps are required to be taken to make mediation gain wide acceptance:

Drawing up a National Plan

Drawing up a national plan for making mediation a regular recognized alternative dispute resolution process and provide for inclusive participation of Lawyers, Judges, NGO's and social workers in the process of mediation.

Conductive Program

Conducting programmes for increasing the awareness among Judges, Lawyers and litigant public relating to mediation and its advantages.

Provide Necessary Infrastructure

Providing necessary infrastructure for mediation centres.

Framing Necessary Rules and Regulation

Framing rules necessary rules and regulation relating to registration of mediators, conduct of mediation, ethical standards of mediators, conduct and discipline of mediators and maintenance of records and registers relating to reference to mediation and settlement through mediation.

Providing Appropriate Training

1. To those who want to become mediators (ideally 40 hour of lectures and 10 mediations);

2. To Judges for identifying and referring cases to mediation;

3. To trainers to train mediators.

Preparing a User's manual

Preparing a user's manual for mediators and an ADR reference handbook for Judges; and manual for-

α. Training mediators;

β. Conducting awareness programes for building awareness among referral Judges, Lawyers and general public;

χ. Training mediators-trainers.

Evolving a Scheme

Evolving a scheme for using the infrastructure and facilities of state judicial academies and state legal services authorities for mediation related activities where no separate infrastructure or funds are available for mediation programmes.

(A) Ensuring reference

Ensuring reference of adequate number of suitable cases to mediation.

In order to promote the smooth functioning of Lok Adalat the following suggestions deserve immediate consideration:

a. The role of law teachers and law students should be encouraged as they are eminently suited to undertake preparatory survey and research and to extend supportive services in its efficient execution.

b. There must be set-up a Monitoring Cell to ensure proper accounting and strict- financial discipline of the Lok Adalat.

c. To ensure improvement in the functioning of Lok Adalat orientation programmes must be organized where the functionaries of the Lok Adalat should be given chance to express freely their views on the procedure which it must follow in the course of their decisions.

d. The scope of the Lok Adalat should be enlarged so as to include within its fold cases relating to landlord tenant dispute, insurance cases and other matters found suitable.

e. To organize awareness camps at the grass-root level so that the ignorant people living in the far-flung Lok Adalat and reap the benefits. It is of great importance if the non-governmental agencies participate in highlighting the role of the lok Adalats amongst the people.

f. It is desirable to give wide publicity to the functioning of Lok Adalat so that more and more disputants are attracted to refer their cases before Lok Adalat for amicable settlement.

(B) To ensure fair justice, plea bargaining must encompass the following requirements:

a. Any Court order rejecting a plea bargaining application must be kept confidential to prevent prejudice to the accused.

b. The hearing must take place in the Court room.

c. The Court must satisfy itself that the accused is pleading guilty, knowingly and voluntarily.

(C) Implementation

Judicial officers must be trained to identify cases which would be suitable for taking recourse to a particular form of ADR. So here we can say that implementation of any law or mechanism is more important than making legislation or Statute. Implementation of ADR mechanism will prove a good justice delivery system in India. In addition to meeting preparation criteria, program designers should also ensure that the ADR program meets implementation criteria— effective selection, training and supervision of ADR providers, financial support, outreach, effective case selection and management, and program evaluation procedures. If ADR appears feasible, program designers should ensure that the ADR program meets key preparation criteria— needs assessment and identification of goals, participatory design process, adequate legal foundation, and

effective local partner.

(D) Establishing a state-run parallel authority for ADR

A nationwide network needs to be envisaged for providing solutions through ADR. An apex body viz. the *International Commission for Alternate Dispute Resolution* needs to be constituted to lay down policies and principles formaking ADR available to the common man to frame most effective and economical schemes for ADR. It should also disburse funds and grants to State ADR Authorities and NGOs for implementing ADR schemes and programmes for the common man. In every state a State ADR Authority should be constituted to give effect to the policies and directions of the Central Authority. State ADR Authority should be headed by the Chief Justice of the State High Court or the Advocate-General of the state or any such eminent person in the field of law. District ADR Authority then needs to be constituted in every district to implement ADR programmes and schemes in the district.

(E) Public Support is also important for the development of ADR mechanism. Given the interest of government and public authorities in channeling the resolution of disputes into ADR, it is likely that ADR mechanisms will be supported and encouraged by public regulation. Hybrid dispute resolution systems result if a public authority defers to solutions developed through private ADR, or lends its authority to the outcome of ADR procedures. Increasing public attention to ADR is also likely to result in more active policing of minimum procedural safeguards, while public scrutiny has so far largely been confined to regulating arbitration**.**

(F) There is a need for standards to **enhance the quality of ADR practice, to facilitate consumer education about ADR,** to build consumer confidence in ADR services, to improve the credibility of ADR and to build capacity and coherence of the ADR field. NADRAC recommends that ADR service providers adopt and comply with an appropriate code of practice. Education is the basis of all reforms. A properly structured and suitably designed ADR Course with appropriate training and support from the bar and bench can certainly provide the opportunity to lawyers to take up the mission of implementation of ADR mechanisms.

(G) The lok adalats should resist their temptation to play the part of judges and constantly strive to function as conciliators. The endeavour and effort of the lok adalats should be to guide and persuade the parties with

reference to principles of justice, equity and fair play to compromise and settle the dispute by explaning the pros and cons, strengths and weakness, advantages and disadvantages of their respective claims.

(I) We need to re-look and strengthen our own available alternative mechanisms with positive framework and proper teaching programme for law student.

(J) Education is the basis of all reforms. A properly structured and suitably designed ADR Course with appropriate training and support from the bar and bench can certainly provide the opportunity to lawyers to take up the mission of implementation of ADR mechanisms.

(K) Mobile Courts and Special Courts should be introduced as an effective strategy for reaching out to more and more litigants in the rural/ urban area.

(L) Summary trial should be implemented in all the cases where it can be possible or if the matter can be resolved by the ADR methods.

(M) To give more and effective advertisement for ADR methods as arbitration, conciliation, mediation and lok adalat sothat people can know about the ADR methods.

(N) Effective ADR requires that parties have the capacity to bargain effectively for their own needs and interests. A party may be vulnerable where there is an unequal power relationship, particularly if the party is not represented.

(O) To establish Conciliation Committees at the Village/ Tehsil/ District level for resolving dispute at pre-litigations stage.

(P) To establish Mediation Centres/ Conciliation Centres in rural areas with the objective of promoting settlement of disputes before they are taken to Courts.

Although there are some disadvantages of ADR there have some utility also in this method. ADR is better than litigation. The promise of ADR is that it is less expensive, simple, quick and accessible. The latent but more germane rationale is its capacity to have a flexible and responsive process, the possibility of achieving results that suit the society, social harmony and the possibility of autonomy.[21] Causes like docket explosion, backlog of cases are

the restated reasons for the promotion of ADR. The experience of success of ADR globally is also a persuading point to many to advance ADR.

ADR programs can *increase access to justice* for social groups that are not adequately or fairly served by the judicial system as *women's access to justice,* especially when discrimination against women inherent in local normsor traditional dispute resolution mechanisms can be overcome in the new ADR mechanism. ADR programs can support not only rule of law objectives, but also other *development objectives*. ADR can be *cooperative, faster, flexible* and *creative.* ADR can produce *good results and can reduce stress*.

In addition, because ADR can be speedier and save money, and because the parties are normally cooperative, ADR is less stressful. Before developing an ADR program, it is critical to determine whether ADR is appropriate for meeting development objectives, or whether establishment of rights, strengthening of the rule of law, and/or creating a more even balance of power among potential users should precede the use of ADR. If ADR is appropriate in principle, program designers must assess background conditions to ensure that ADR will be feasible in practice. These include political support, institutional and cultural fit, human and financial resources, and power parity among potential users.

ADR may not be suitable for every dispute—for example, if a party wishes to have a legal precedent or it is a public interest case, judicial determination may be more appropriate. If ADR is binding, the parties normally give up most court protections, including the right to a decision by a judge or jury, based on admissible evidence, and appeal rights; also, in the case of judicial decisions, the right to reasons for the decision. The durability of ADR agreements can be an issue if they lack enforceability. There is generally less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information about the strengths and weaknesses of their respective cases. Dispute resolution practitioners may charge a fee for their services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a court hearing. ADR adds an extra step, which may increase delay. ADR processes may not be as fair as court proceedings. Procedural rules and other laws governing the conduct of court proceedings contain many safeguards to ensure the fairness of the process and the outcome. These are not necessarily included in ADR. In addition, there may be power imbalances if a party is not represented. ADR processes can be used as a delaying tactic or to obtain useful intelligence on an opponent

before proceeding with litigation. ADR programs cannot be a substitute for a formal judicial system. In the decision of House of Lords in Dunnett v. Railtrack ill (In railway administration), the Court had noticed that: "the encouragement and facilitating of ADR by the court in an aspect of active case management which in turn is an aspect of achieving the overriding objective. The parties have a duty to help the court in furthering that objective and therefore, they have a duty to consider seriously the possibility of ADR procedures being utilized for the purpose of resolving their claim or particular issues within it when encouraged by the court to do so."

However, ADR programs can complement and support judicial reforms. The ADR mechanisms in India are also not in the smoothest of form and need urgent attention and thought. The present study seeks to analyse and suggest ways of improvement and implementation of the ADR mechanisms in India keeping in mind the supremacy of the judiciary and the convenience of the parties involved. All ADR method are effective in speedy settlement of disputes. The Supreme Court of India has also suggested making ADR as 'a part of a package system designed to meet the needs of the consumers of justice'. India has to improve its justice delivery system in line with other countries. The recommendations made by various Commissions and expert bodies need to be implemented without delay. It is high time to India to modernize its legal infrastructure and promote ADR methods of dispute resolution.ADR is perceived both as a preventive measure and as a method for channelising disputes outside the formal justice system. ADR system would go a long way in plugging the loopholes which are obstructing the path of justice. At the end researcher emphasize that this research work included every aspect of ADR Mechanism whether it is National scenario or International scenario. All legislative measures including Arbitration and Conciliation Act 1996 and Judicial contribution have discussed. So the research work on the title A Study of Alternative Dispute Resolution Mechanism in the Adjudication of Dispute (with special reference to Arbitration and Conciliation Act 1996) is a complete work with full description of ADR methods prevailing in India and International also.

REFERENCES

1. http:// www./awi.com/isp/pa/type.
2. M.G.Chitkara, Lok Adalat And The Poor, 1993, p.35.

3. National Alternative Dispute Resolution Advisory Council, Legislating for Alternative Dispute Resolution—A Guide for Government Policy-makers and Legal Drafters (2006) 100.

4. The definition given in 6th edition of Oxford Advanced Learners Dictionary.

5 www.abysinialaw.com.
6 Rubin et al. in Social Conflict (1986).
7 Alternative Dispute Resolution Approaches and their Applicability by Yona Shamir
8 SARVESH CHANDRA, ADR: Is Conciliation The Best Choice, in Rao, supra note 6, at 83
9 Lipner, entitled 'Methods of Dispute Resolution: TORAH TOTALMUD TO TODAY.
10 1976.
11 P. N. Bhagwati, quoted in M.G. Chitkara, Lok Adalat And The Poor (1993), p.100.
12 V.R. Krishna Iyer, "The Judicial System- Has It a Functional Future In Our Constitution Order"? , 3 SCC, 1979, p.1.
13 Ibid, p.4.
14 Quoted in V.R. Krishna Iyer, "Judicial Perestroika", Illustrated Weekly of India, Dec. 31, 1989, p.51.
15 P.C. Jain , "Time For Conciliatory justice", The Tribune, April 15, 1993, p.6.
16 MARC GALANTER, Fifty Years on, in SUPREME BUT NOT INFALLIBLE:

ESSSAYS IN HONOUR OF THE SUPREME COURT OF INDIA (B.N. Kirpal et al. eds., 2000).

17 Report of the International Conference On ADR, Conciliation, Mediation And Case Management, http://www.isdls.org/reports_india_may2003.html.
18 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1080602.

19 K.G. Balakrishnan, Chief Justice of India, Law Day Address to the Nation, (Nov. 25, 2008) (transcript available at : http://www.supremecourtofindia.nic.in/new_links/Law_Day_Message-As_recorded_on_24[1].11.08.pdf.

20 Richard C. Reuben, Public Justice: Toward a State Action Theory of Alternative Dispute Resolution, 85 Calif. L.Rev. 557, 557-558 (1997).

21 LEONARD L. RISKIN ET AL, DISPUTE RESOLUTION AND LAWYERS, 2 (1987). See also, Rao, *supra* note 11, at 24-25.

22 RAO, *supra* note 11, at 24.

[23] August 16, 2009 PTI.
[24] http://library.findlaw.com/1995/Jun/1/126578.html.

[25] http://library.findlaw.com/1995/Jun/1/126578.html.

[26] Ibid.

[27] http://www.ibabc.org/idrsbc/benefits.html.

[28] January 23, 2012 , TNN.
[29] Stephen B. Goldbergetal . DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES 3-6 (2d ed. 1992).
[30] http://www.worldbank.org/publicsector/legal/ADR%20Workshop.pdf.
[31] Example could be enactment of a validation Act when competency to tax is challenged by the assessee, or when ownership of land is disputed, the state making a law acquiring the land or ceasing the land. An attempt to stop a dispute and controversy at least temporarily was done in Ayodhya by bringing the Acquisition of Certain Area at Ayodhya Act, 1993.
[32] To illustrate; in a claim for workmen compensation it will be easy for the defendant to force a settlement for a lesser sum due to the weaker financial position of the claimant. It is also possible to dissuade a person even from filing a claim by the threat of loss of employment.
[33] Sidhartha Mohapatra and Hailshree Saksena, *Plea Bargaining: A unique remedy*, INDIALAW NEWS.COM, http://www.indlawnews.com/display.aspx?4762.
[34] Ibid
[35] LAW COMMISSION OF INDIA REPORTS (101 – 169), http://lawcommissionofindia.nic.in/101-169/index101-169.htm.
[36] State of Uttar Pradesh v. Chandrika 2000 Cr.L.J. 384(386).
[37]K.P. Pradeep, Plea Bargaining- New Horizon in Criminal Jurisprudence, available at http://kja.nic.in/article/PLEA%20BARGAINING.pdf.
[38] U. S. 742 (1970), also available at JUSTIA: US SUPREME COURT CENTRE http://supreme.justia.com/us/397/742/case.html
[39] Melissa Lewis & Les McCrimmon, The Role of ADR Processes in the Criminal Justice System: A View from Australia, available at http://www.doj.gov.za/alraesa/conferences/papers/ent_s3_mccrimmon.pdf.
[40] John R. Gehm "Victim-Offender Mediation Programs: An Exploration of Practice and Theoretical Frameworks", *Western Criminology Review* 1 (1). [Online]. Available: http://wcr.sonoma.edu/v1n1/gehm.html.
[41] RESTORATIVE JUSTICE ONLINE: *Victim Offender Panels,* http://www.restorativejustice.org/university-classroom/01introduction/tutorial-introduction-to-restorative-justice/processes/panels (last visited 5th Apr. 2010)
[42] OVC: *OVC Links to Victim Assistance & Compensation Programs*, http://www.ojp.usdoj.gov/ovc/help/links.htm.
[43] Prevention: Community Programs – The History Of Community Crime Prevention, Chicago Areas Project, Political Mobilization, Evaluations Of Community Crime Prevention Programs, http://law.jrank.org/pages/1739/Prevention-Community-Programs.html#ixzz0kxrprMHD.

[44] MEDIATION OF CRIMINAL MISDEMEANOR DISPUTES, http://www.hamilton-co.org/MunicipalCourt/mediation/mediation_of_criminal.htm.
[45] Marty Price, *Crime and Punishment: Can Mediation Produce Restorative Justice for Victims andOffenders?* VORP, available at http://www.vorp.com/articles/crime.html.
[46] Id
[47] Grace, Maggie T., *Criminal Alternative Dispute Resolution, Restoring Justice, RespectingResponsibility, and Renewing Public Norms*. Available athttp://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1017&context=stude nt_pubs.
[48] Zeno Daniel Sustac, Mediation in the Criminal Law, MEDIATE.COM, http://www.mediate.com/articles/sustacZ3.cfm.
[49] Peggy L. Chown, J.D. and John H. Parham, *Can We Talk? Mediation In JuvenileCriminal Cases*, http://www.lectlaw.com/files/cjs08.htm.
[50]Marty Price, *Crime and Punishment: Can Mediation Produce Restorative Justice for Victims and Offenders?* VORP, available at http://www.vorp.com/articles/crime.html.
[51] www.answers.com/tpoic/adr.
[52] Loi No 95-125 of 18 feb.1995.
[53] [2002] QBD.
[54] [2004].
[55] [2002] Ch Div.
[56] [2002] CA
[57] (2002) Ch Div.
[58] [2003] CA.
[59] www.uiowa.edu/cyberlaw/arbitration.origin.html.
[60] *Reflections on the Philosophy of International Commercial Arbitration and Conciliation"*– Jerzy Jakubowski in Schultz and Van Den Berg.

[61] H. Van Houtte, ''Arbitration and Arts". 81 and 82 EC Treaty.
[62] www.encyclopedia.in.
[63] www.wikipedia/arbitration/adr/in.
[64] http://www.answers.com/topic/arbitration.
[65] 1957.
[66] 1960.
[67] 1991.
[68] (2000) CA arbitration.
[69] (2000) CA
[70] [1953] CA.
[71] 2000) [ADR - Ombudsmen - Pensions Ombudsman – Investigations].
[72] [2001] CA[ADR - courts powers in disputes between public authorities and the public - importance of avoiding litigation].
[73] The WIPO Arbitration and Mediation Center in general is available at *http://arbiter.wipo.int/center/index.html.*
[74] Information on the Center's activities in the area of domain name dispute resolution is *available under* http://arbiter.wipo.int/domains/index.html. *See also paras.213-218.*

[75] http://arbiter.wipo.int/neutrals/index.html.
[76] "Dispute Avoidance and Resolution Best Practices for the Application Service Provider

Industry", WIPO Publication No. 837.
[77] http://adrresources.com/print_adr.php&method.htt.
[78] II (2000) CPJ 6(SC).
[79] http://en.wikipedia.org/wiki/Conciliation.
[80] http://en.wikipedia.org/wiki/Expert_Determination.
[81] 1953 Ch. 590 at 591.
[82] http://en.wikipedia.org/wiki/Fact_Finding.
[83] http://adrresources.com/print_adr.php?method=12.
[84] Derek Minus, Innovative Hybrid Processes—Mediation-Arbitration, (Paper presented at the Victorian Bar Continuing Legal Education Program, Melbourne, 25 September 2007) 4.

[85] Megan Telford, 'Med-Arb: A Viable Dispute Resolution Alternative', (paper included in Industrial Relations Centre–Queen's University Current Issues Series, Ontario, 2000) 4–5
[86] American Arbitration Association, Sports Arbitration including Olympic Athlete Disputes, AAA Online Library, <www.adr.org/sp.asp?id=29154> at 26 September 2007.

[87] www.adr/resources/minitrials.

[88] http://en.wikipedia.org/Neutral_Evaluation.

[89] Dispute Resolution: Negotiation, Mediation, and Other Processes (1992).

[90] http://adrresources.com

[91] Alexander, N., Mediators without Borders: How Technology is leading the Charge to Global Dispute Resolution (2006) 8 (9) ADR Bulletin, pp.169-174.
[92] Boulle, L., On-line ADR(2005)Vol.24, No.2, The Journal of the Institute of Arbitrators and Mediators, Australia, pp.9-14
[93] Boulle, L., Mediation: Principles, Process, Practice,(2nd Edition, LexisNexis Butterworths, Australia, 2005)pp.206-312
[94] Jack, P., Mediation- Are Negotiations Confidential? (1998) October, Australian Construction law Newsletter available at http://www.philipsfox.com.au/publications/Pno98006.htm.
[95] Brown, K., 'Confidentiality in Mediation and implications'(1991) 2 Journal of Dispute Resolution, 307;
[96] Astor, H., and Chinkin,C., Dispute Resolution in Australia (2nd Ed. Lexis Nexis Butterworths, Australia,2002).
[97] Astor, H.,and Chinkin,C., Dispute Resolution in Australia 2nd Ed., Lexis Nexis.
[98] Raghu, A.,'The legal challenges Facing Online Dispute Resolution: An Overview'(2006) August, Galexia-Intelligence Reports, Articles, Papers, Conference and Seminars,p.1-10

[99] Cremean, D., Agreement to Negotiate in Good Faith(1996) 3 Commercial Dispute Resolution Journal,p.61

[100] Manevy, 1;'Online Dispute Resolution: What Future'? 12 January 2002.pp 46-49 http://www.juriscom.net accessed on 15 may 2010.
[101] Pryles, M., 'Assessing Dispute Resolution Procedures' (1997) 16 The Arbitrator,p.101-12.

[102] Edward, V.B., Alternative Dispute Resolution Becomes Online Dispute Resolution(2002) www.ukans.edu/-CIJ/htm accessed on 21 sep.2009.
[103] http:// www.Onlineresolution.com accessed on 20 Sep. 2009.

[104] Manevy,1; Online Dispute Resolution: What Future? 12 January 2002, pp.46-49 http://www,juriscom.net accessed on 15 Sep. 2009.

[105] Clark, E., Cho. G. and Hoyle, A., 'ODR: present realities, processing problems and future prospects'(2003) volume 17, 1 international review

of law computers and technology, p.20.

[106] Kovach, k., 'Good faith in Mediation- Requested, Recommended or Required?(1997) South Texas Law Review,575

[107] Pecnard, c., 'The Issue of Security in ODR' (2004) Volume 7, No. 1 ADR Bulletin, p.3

[108] Crosbie, F., 'Aspects of Confidentiality in Mediation: A Matter of Balancing Competing Public Interests'(1995) 2 Commercial Dispute Resolution,51

[109] Rabinovich- Einy, O., 'Going Public: Diminishing Privacy in Dispute Resolution(2002) Volume 7, No.2 Virginia Journal of law and Tecnology', p. 43.

[110] Freedman, L., and Prigoff, M., 'Confidentiality in Mediation: The Need for Protection (1986) 2 Ohio State Journal On Dispute Resolution', p.32
[111] Viejo, H., Dispute Resolution in International Electronic Commerce Journal of International Arbitration (1999) Volume 16, No.3 p.32.
[112] Dr. S.K. Kapoor, International Law & Human Rights, CLI, Edn.28 2010.
[113] International Tribunal, (1944), p.5.
[114] Starke, note 6 at p.436.
[115] H.G. Darwin, "Negotiation", note 2 at p.77
[116] Article 4 of the Hague Convention on the Pacific Settlement of Disputes, 1899 has described the role of the mediator as reconciling the opposing claims and appearing the feelings of resentment which have arisen between States at variance.
[117] Hudson, International Tribunals, (1944), p.323
[118] Article 14 of the Charter.
[119] Department of Justice, Victoria, Department of Justice Strategic Priorities (2006) 1.
[120] www.Investopedia.com/adr.

[121] The *British East India Company* was an early English joint-stock company that was formed initially for pursuing trade with the East Indies, but that ended up trading mainly

with the Indian subcontinent and China. The Company also came to rule large areas of India, exercising military power and assuming administrative functions, to the exclusion, gradually, of its commercial pursuits. Company rule in India, which effectively began in 1757 after the Battle of Plassey, lasted until 1858, when, following the events of the Indian Rebellion of 1857, and under the Government of India Act 1858, the British Crown assumed direct administration of India in the new British Raj. The Company itself was finally dissolved on 1 January 1874. (Wikipedia).

[122] Supreme Court of India in its decision dated 29/09/1981 in *"*Guru Nanak Foundation v. Rattan Singh and Sons" (AIR 1981 SC 2075).

[123] *"Hot, Flat & Crowded"* –Thomas L. Friedman.

[124] Report of the Committee on Legal Aid (1971), Report of the Expert Committee on Legal Aid: Processual Justice to the People, Government of India, Ministry of Law, Justice and Company Affairs (1973), Report on National Juridicare Equal Justice – Social Justice, Ministry of Law, Justice and Company Affairs (1977).

[125] Arbitration and Alternative Dispute Resolution, Dr.V.N.Paranjape.3rd Edition, Central Law Agency.

[126] Act xiv of 1882.

[127] Act v of 1908.

[128] Section 1 to 16 of the second schedule of CPC, 1908 dealt with arbitration in suits, section 17 to 19 provided for mechanism to enforce an agreement for reference and section 20 and 21 contained the procedure to enforce in a court of law an arbitration award made without the intervention of a court.

[129] Brenstein, handbook of Arbitration Practice,3rd Ed.(1998) P.13.

[130] DR. A.M.Singhavi, Justice delayed in justice denied. Blue print for Reform, ALL India Seminar Papers on Judicial Reforms (1998) P.41.

[131] Dr. V.N.Paranjape, Ed.10th, 2010.

[132] Russel on Arbitration 20th Ed.P 1.

[133] Amar chand v. Ambika Jute mills, AIR 1996 SC 1036.

[134] Arbitration and Alternative Dispute Resolution, Ed.3rd CLA.

[135] Interview with Mr. C.G. Krishnamutthy ,Treasurer , ICADR, Hyderabad on April 19,2008.

[136] ICADR also conducts workshops and other training programmes in district and rural areas where ADR techniques are shared with participants.

[137] Interview with Mr.Arun Chawala; Senior Director,FICCI New Delhi on April 24, 2008.
[138] Interview with Mr. Syed Khursheed; Deputy Director, Consumer Affairs Department, Government of Andhra Pradesh on April 19, 2008.

[139] The National Highway Authority of India (NHAI) has adopted DRB clause in its construction contracts.

[140] AIR 1986 GUJRAT 62.
[141] AIR 1994 Del.75.
[142] AIR 1994 SC II 36.

[143] AIR 1968 ALL 22
[144] Alternative methods can contain litigation explosion, November 2, 2009 ,TNN.

[145] http://delhimediationcentre.gov.in/history.htm.

[146] Central Hall, 3rd Floor, Room No.325.

[147] *The Merger of Law and Mediation"* –Jacqueline Nolan-Haley.

[148] Black's Law Dictionary, 7th Edition, p.1377 and 996.

[149] NYAYA DEEP VOL.VII Issue 4 October,2006.

[150] http://www.adrgroup.co.uk/types.html.

[151] AIR 1981 SC 2073 (p. 2076).

[152] AIR 2005 SC 258.

[153] AIR 1990 SC 1426.

[154] Digest of Supreme Court Cases.

[155] The nature of judicial process, lecture –I.

[156] Published by Hay House India,2010, p.46.

[157] PTI Mar 29, 2008.

[158] TNN Feb 26, 2012.

[159] TNN Nov 21, 2011.

[160] Conciliation law café 2009,Informatory platform for law student.

[161] Conciliation Cafe 31.7.2009/Friday.
[162] Jitendra N. Bhatt, Round table justice through Lok Adalat (people's court) A Vibrant ADR in India,(2002) 1SCC (JOU.) 11, available at http://lok adalat.htm.

[163] M.N.Morje, "Lok Nyayalaya-A plea for common man in changing society", AIR.1984, Journal Section,68.

[164] M.Hidaytullah, Democracy in India and Judicial Process (1966),p.10-11.

[165] R Dayal, Panchayati Raj in India (1970),p.100.

[166] B.R.Sharma, Judiciary on Trial (1989),p.11.
[167] H.N.Tripathi, Pracheen Bharat : the Rajya Aur Nyayapalika (1965), p.152.

[168] Report of the Committee for Implementing Legal Aid Scheme(CILAS),1980.

[169] M.G. Chitkara, op.cit.,p.22.

[170] Dr.A.S.Altekar, State and Government in Ancient India(1977),p.246.
[171] Ibid.

[172] U.C. Sarkar, p.250.

[173] Ibid.

[174] Ibid.

[175] Law Commission of India: Fourteenth Report (1958), Vol. I, p.439.

[176] Legal Aid Newsletter, Vol. X (Part I&II), May-August, 1990. p.14.

[177] Ibid.

[178] Clark D. Gunninghan, "Legal Ethics- Gandhian Perspective," Indian Bar Review, Vol.15, (1&2), 1988,p.69.
[179] V.R. Krishna Iyer, "Judicial System- Has It A Functional Future in our Constitutional Order"? (1979) 3 SCC Journal 1 at 11.
[180] K. N. C. Pillai, Criminal Jurisprudence of Nyaya Panchayats, J.I.L.I.(1977), Vol.19:4, p.438-39.
[181] Report of the Gujarat Legal Aid Committee(1971), Report on Processual Justice to the People(1973), and Juridicare: Equal Justice-Social Justice Report(1977).
[182] Report of the committee for implementing Legal Aid Scheme(CILAS),1980.
[183] Virendra Singh Bharat, Judicial Courts v. Lok Adalats, A.I.R.1987, Journal Section, p.6.
[184] I.P. Massey, "Conciliation Through Subordinate Courts in Himachal Pradesh",Legal Aid Newsletter, Vol.VIII, Parts 1&2, May-August,1987,p.16-17.

[185] P.C. Juneja, Equal Access to Justice (1993),pp.288-89;Nomita Aggrawal, Handbook on Lok Adalat in India (1991),p.2.
[186] M.G.Chitkara, Lok Adalat and the Poor (1993), pp.100-101; Paras Diwan, Justice at the Door-step of People: The Lok Adalat System, AIR 1991(Journal Section),p.,86.
[187] Subs. for Section 19 and 20 by Act 59 of 1994, Section 15.
[188] Dr. S.S. Sharma, Legal Services, Public Interest Litigation & Para-Legal Services, Ed.2nd 2006, CLA.
[189] Subs. by Act of 59 of 1994, Section 16.
[190] Subs. by Act 37 of 2002, Section 3 for the words "Lok Adalat".
[191] B.R. Patial, Conciliation in India (1977), p.8.
[192] Bhatt Jitendra N., Judge, High Court of Gujarat, and, Executive Chairman, Gujarat State Legal Services Authority, Ahmedabad, "A Round Table Justice Through Lok-Adalat (Peoples' Court)— A Vibrant-ADR-In India", (2002) 1 SCC (Journal) 11.
[193] Civil Appeal No.522 of 2008, 18 January 2008.
[194] MP NEWSONLINE, Feb. 04.2012.
[195] www.times of India.com.
[196] www.lawyersclubindia.com.
[197] The times of India Nov.29, 2011.
[198] Articles. Times of India.com/india-lok-adalat-trial-court-order.
[199] K.N. Govindan Kutty Menonv. CD Shaji, SCC 2007.
[200] Expressbuzz.com/states/lok adalats reduce cases/360419.html.
[201] AIR 1999, Delhi p. 88.
[202](2008) 7 SCC 454.
[203] Anuj Garg v. Hotel Assn. of India, AIR 2008.
[204] (2008) 2 SCC 660.
[205] C.W.P.N.20825 of 2010.
[206] (2008) 2 SCC 660, para 8 and 10.
[207] W.P.NO. 14956 OF 2010, DECIDED ON 24TH MARCH 2011.
[208] (2008) 7 SCC 454, Para 25,26, 41.
[209] AIR 2009, Allahabad 109.
[210] (2011) 7 SCC 491.
[211] C. W .J .C. NO. 14426 of 2009.
[212] AIR 2003 M.P. 252, 254.
[213] AIR 1990 SC 1781.
[214] Dr. S.S. Sharma, Legal Services, Public Interest Litigations & Para- Legal Services, Ed.2nd, CLA.
[215] Jagtar Singh and another v. State of Punjab and others.
[216] Supreme Court 2004 , Decided on September 17, 2004; Criminal Appeal Nos. 1030-1031 of 2004; 2004 SC 784.
[217] Afcons Infrastructure Ltd. v. Constn. Co. Pvt. Ltd.2010 (5) M.P.H.T.
[218] LRC CP 50-2008 at 123.
[219] Speech delivered by The Hon. Warren Winkler Chief Justice of Ontario - Access to Justice, Mediation: Panacea or Pariah? (2007). Available at http://www.ontariocourts.on.ca/coa/en/ps/speeches/access.htm.
[220] Green Paper on alternative dispute resolution in civil and commercial matters COM/2002/0196 Final. Available at http://eurlex.europa.eu.
[221] FCI v. J Mohinderpal AIR 1989 SC 1263, 1266, Salem Advocates Bar Association v. Union of India (2005) 6 SCC 344, 375- 379.

[222] Jethro K. Lieberman & James F. Henry, *Lessons from the Alternative Dispute ResolutionMovement*, 53 U Chi L Rev 424, 425-426 (1986).
[223] Hussainara Khatoon(1) v. Home Secretary State of Bihar,(1980) 1 SCC 81.
[224] The culture of ADR in India-by "Praveen Dalal" [htt://www.odr.info/the%20culture%20OF%ADR%20IN%20INDIAd oc].
[225] G. Someshwar Rao v. Samimeni Nageshwar Rao, (2009) 14 S.C.C. 677, Vakil Prasad Singh v. State of Bihar, A.I.R. 2009 S.C. 1822.
[226] Code of Civil Procedure, V.N. Paranjape,Ed.2010,Central Law Publication.
[227] (1989)3 SCC 46.
[228] AIR 1969 SC 674.
[229] AIR 1992 SC 1473 at p.1478.
[230] AIR 1981 SC 606.
[231] AIR 1958 SC 309 .
[232] Dr. V.G. Goshwami, Labour Industrial Law, Edition 2008 Central Law Agency.
[233] 1998 SCC L& S 342.
[234] G.M. Kothari , loc. Cit., pg. 156 to 157.
[235] Section 11(6) of the Industrial Dispute Act 1947.
[236] Industrial Dispute Act 1947 Section 2(aa).
[237] Inserted by Act 68 of 1976, S.34 (w.e.f.27-5-1976).
[238] Substituted by Act 68 of 1976, S-9 for certain words.
[239] 1998 (2) HLR 204 (P&H).
[240] Substituted by the Act 68 of 1976[sec-9 for expiration of "three years"w.e.f.27-5-1976].
[241] Substituted by Act 68 of 1976, Sec-9 for said three year (w.e.f.27-5-1976).
[242] Substituted by M.P. Act 34 0f 1961.
[243] Substituted by M.P. Act 34 of 1961.
[244] Substituted by M.P. Act 34 of 1961.
[245] Ibid
[246] Ins. By M.P. Act 14 of 1981.
[247] Renumbered by M.P. Act 41 of 1981
[248] Subs.by M. P. Act 34 of 1961
[249] Ins. By M.P. Act 41 of 1981.
[250] Ins. By M.P. Act 41 of 1981.
[251] Subs. By M.P. Act 41 of 1981[26.1.1982] for the following:-"(a) all parties to the Industrial dispute who appeared or were represent before it".
[252] Added by M.P. Act 34 of 1961.
[253] R.K. Agrawal, Hindu Law,3rd Ed.2008,Central Law Agency.
[254] Section 22C of the Act.
[255] Section-22D of the Act.
[256] (No.4 of 2009), Allahabad Law Publications.
[257] The culture of ADR in India by"PraveenDalal" [http://www.odr.info/the%20culture%20OF%ADR%20IN%20INDIA.].
[258] Report of the Committee on Legal Aid (1971), Report of the Expert Committee on Legal Aid: Processual.
[259] Part II, schedule I of the Arbitration Act 1940. The umpire was to act only when the arbitrators failed to reach a decision and made an award for whatever reasons within the specified time or there was a difference of opinion between two arbitrators.

[260] Section 5 of the Act of 1996.
[261] Section 31(3) of the Act of 1996.
[262] Champsey Bhara Co. v. Jiwaji Balloo Spinning and Weaving Co.Ltd. AIR 1923 P.66.
[263] Syndicate Bank v. Gangadhar, AIR 1992 Knt. 163.
[264] AIR 2003 SC 3011.
[265] Shaymacharan Agrawal & Sons v. Union of India, AIR 2002 SC 2659.
[266] AIR 2001 SC 2291.
[267] (2000) 2 SCC 178.
[268] (2002) 1 SCC 203.
[269] 6 September 2012.
[270] Section 3 sub-section (3).
[271] AIR 2009 SC 1662.
[272] AIR 1976 SC 237.
[273] (1987) 2 SCC 107.
[274] Union of India v. Birla Cotton Mills, AIR 1967 SC 688, Salecha Cables v. H.P.S.E. Board, (1995) 1 Arb. LR 422 (MP).
[275] Andhra Pradesh Tourism Develpoment Corporation v. Pampa Hotels Ltd. AIR 2010 SC 1806.
[276] Nandan Biomatrix Limited v. D1 Oils Limited, 2009 (4) SCC 495.
[277]2009 (8) SCC 520
[278] AIR 1998 SC 1297 at 1302.
[279] 2010 (4) Arb. LR 205.
[280] 2010 (2) SCC 484.
[281] B.S.N.L. v. Telephone Cables Ltd. 2010 (4) Civil LJ 212 (*SC).*
[282] Sub-sections(3) and (4) of Section 7.
[283] Vijay Kumar Sharma v. Raghunandan Sharma AIR 2010 (2) SCC 486.
[284] Chloro Controls (I) Pvt. Ltd. v. Seven Trent Water Purification Inc. , C.A. No. 7134 of 2012; Decided on 28-9-2012 (SC).
[285] Power to refer parties to arbitration where there is an arbitration agreement, Section 8
[286] Branch Manager, Magma Leasing & Finance Limited v. Potluri Madhavilata, 2009 (10) SCC 103.
[287] Civil Appeal No. 5440 of 2002, decided on 15th April,2011.
[288] CC Ltd . v. Global Cements Ltd., SLP (C) No. 17689 of 2012; Decided on 11-6-2012 (SC) [K.S. Radhakrishnan and Jagdish Singh Khehar, JJ.]
[289] AIR 2001 Mad. 440.
[290] AIR 1999 SC 565.
[291] Section 10, Para 2 of the First Schedule of the old Arbitration Act, 1940.
[292] M.M.T.C. Ltd. v. Sterlite Industries(India) Ltd.: AIR 1997 SC 605:1996 (4) ALT 42 (D.N.) : 1996(8) SC 385.
[293]2006 (5) ALT 48 (SC) : 2006 (6) SCJ 363.
[294] 2001 (2) SLT 336.
[295] AIR 2010 SC 2715.
[296] 2005 (8) SCC 618.
[297]D.V. Subba Rao, "Towards a Final Court that is truly Supreme", AIR 2010 Jour 136, 140.
[298] The Arbitration Manual of India by Hari Singh Ruprah ,Ed. 1st 2012.
[299] 2010 (4) Arb LR 375 (SC).
[300] AIR 2010 Jhar 86.

[301] (1993) 2 SCC 654.
[302] AIR 1994 SC 200.
[303] (1994) 75 1 Arb LR Cal.
[304] Dr. N.V. Paranjape, Arbitration and Alternative Dispute Resolution, Ed. 3rd, CLA.
[305] (1995) 1 Arb LR 184.
[306] AIR 2002 SC 139.
[307] Interim measures ordered by arbitral tribunal.
[308] M.D. Army Welfare Housing Organisation v. Sumangal Services (p) Ltd. AIR 2004 SC 1344.
[309] Section 19(2).
[310] Section 19(3).
[311] Section 19(3).
[312] Section 20(2).
[313] Section 20(3).
[314] Section 21.
[315] AIR 1998 Bom.118.
[316] Section 22(2).
[317] Section 22(3).
[318] Section 22(4).
[319] Statement of claim and defence (Section 23).
[320] Section 23 (1).
[321] Section 23 (2).
[322] Section 23 (3).
[323] Section 24 (2).
[324] Section 24 (3).
[325] AIR 2010 MP 117.
[326] AIR 2006 Cal 288.
[327] Section 26.
[328] Sime Darby Engineering SDN. BHD. v. Engineers India Ltd. AIR 2009 SC 3158: 2009 (7) SCC 545.
[329] 2006(6) SCALE220=2006 AIR (SCW)3276.
[330] AIR 1963 Pat 71.
[331] Section 34 (2)(a)(i).
[332] Section 34 (2)(a)(ii).
[333] Section 34 (2)(a)(iii).
[334] Section 34 (2)(a)(iv).
[335] Section 34 (2)(a)(v).
[336] Section 34(2)(b)(i).
[337] Section 34(2)(b)(ii).
[338] The Arbitration Manual of India by Hari Singh Ruprah, 1st Ed.,2012.
[339] AIR 2010 SC 1511: 2010 (3) SCC 690.
[340] (1994) 1 S.C.R. 22 .
[341] *Id.* at 60.
[342] Sidharth Sharma, *Public Policy Under the Indian Arbitration Act: In Defence of the* Indian Supreme Court's Judgment in ONGC v. Saw Pipes, 26 J. INT'L ARB. 133, 140 (2009).
[343] (2003) 5 S.C.C. 705 .
[344] Gibson, *supra* note 77, at 1230.

[345](1975) 1 S.C.R. 575
[346](2002) 2 S.C.R. 411
[347] AIR 2010 SC 3371:2010 (8) SCC 660
[348] AIR 1999 Del.303.
[349] AIR 1975 Del.215.
[350] Rule 27, 28 & 30 of ICA.
[351] AIR 1945 PC 170.
[352] Arbitration agreement not to be discharged by death of party.
[353] AIR 1949 FC 195.
[354] Provisions in case of insolvency.
[355] AIR 2001 SC II 2381.
[356] AIR 2010 A.P. 137.
[357] Application and scope.
[358] Commencement of conciliation proceedings.
[359] Section 67(2).
[360] Section 67 (4).
[361] Co-operation of parties with the conciliator.
[362] Suggestions by parties for settlement of dispute.
[363] Section 73 (1).
[364] Section 73 (2).
[365] Section 73 (3).
[366] Section 73 (4).
[367]Mysore Cements Ltd. v. Svedala Burmac Ltd.,(2003) 10 SCC 375.
[368] Ibid , para 16.
[369] www.adr/quotation/php/in.com.
[370] Seetalvad, Motilal C.,1952 problems before legal profession, All India Reporter, Journal Section 2 Volume 39 AIR1952 .
[371] L. Chandra Kumar v. Union of India (1997) 3 SCC 261, 303-305. It has been observed that 'tribunals are set up to meet docket explosion.'
[372] Special Court provided under The Immoral Traffic (Prevention) Act, 1956.
[373] They are called special courts because of the distinction they have with related to the subject matter they deal. The reason of the establishment being expeditious disposal of matters. For example: Special Courts set up to deal with offences alleged to have committed during the period of emergency under The Special Courts Act, 1978. For specific discussion, see, S.P.SATHE, THE TRIBUNAL SYSTEM IN INDIA 2-5(1996).

[374] Ibid., at 1. Author suggests that the tribunals were set up as alternative to achieve 'quicker, economical, less formal' justice and 'possessed expertise in a subject compared to courts.'

[375] Ibid
[376] Ibid., at 6.

[377] It has been said that the nomenclature is very confusing, but the fact remains that court, tribunals and special courts has specific meaning and conceptual identity. See, *Id*., at 1-2. For an idea about the functioning and the nature of cases handled in *Lok Adalats* see, Jayant Krishnan & Marc Galanter, *'Bread for the Poor:'Access to Justice for the Needy in India*," Hastings Law Journal 789, (2004

[378] ADR MECHANISM FOR REDUCTION OF PENDING CASES, By Dr. T. Padma, Thursday 31 May 2012.
[379] AIR 1934 SC 105.
[380] (1999) 6 JT SC 283.
[381] AIR 2010 Mad 6 at 12.
[382]AIR 2010 SC 640: 2010 (2) SCC 385.
[383] N.B.C.C. Ltd. v. J.G. Engineering Pvt. Ltd., AIR 2010 SCC 640.
[384] 2009 (10) SCC 374.
[385] Bhoomatha Para Boiled Rice and Oil Mill v. Maheswari Trading Company, AIR 2010 AP 137.
[386] 2009(10) SCC 374.
[387] 1989(2) SCC 347.
[388] AIR 1981 SC 2075.
[389] 2008(4) M.P.H.T.505.
[390] AIR 2001 SC 4010, 2007 (1) MPLJ 7 (SC).
[391] 2009 (2) M.P.H.T. 351 (DB) = 2009 (1) MPLJ 471 = ILR (2009) MP 450.
[392] 2008 (4) M.P.H.T. 428 (DB
[393] 2010(1) M.P.H.T.200(DB)
[394] 2009(2)M.P.H.T.26(CG).
[395] 1988) 2 SCC 338,(2002) 3 SCC 175, (2006) 8 SCC 279, (2007) 4 SCC 599, (1999) 2 SCC 571, 1965 MPLJ 829,(2006) 4 SCC 658,(1992)3 SCC 608 and 2006 (1) M.P.H.T.61 (SC)= (2005) 8 SCC 618
[396] Municipal Corporation, Gwalior v. A.P.S. Kushwaha (SSI Unit) (M/s), 2010(2) 338 M.P.H.T. (DB)= 2010 (1)JLJ 331.
[397] Civil Appeal No. 1282 of 2011, Decided on 3-2-11.
[398] AIR 2000 Cal 241.
[399] 2006(2) ALT 70 (D.B).
[400] 2002(4) SCC 105.
[401] (2008) 4 SCC 190.
[402] (2003) 5 SCC 705.
[403] Supra at 4.
[404] (2011) 6 SCC 179.
[405] 2011 (2) Arb. LR 180 (SC).
[406] Civil Appeal No. 7562 of 2011, arising out of SLP No. 25624 of 2010, decided on 1st September 2011 by the Supreme Court.
[407] (2005) 7 SCC 234.
[408] *Anil Kumar v. B.S. Neelkanta*, AIR 2010 SC 2715 at para 14 it has been observed that the '*Chief Justice or his designate has to decide the issues if raised, regarding: (i) territorial jurisdiction; (ii) existence of Arbitration Agreement; (iii) Arbitrable Dispute.*'
[409] (2014) 9 SCC 246
[410] AIR 1971 SC 740.
[411] M/S Thakral and Sons v. Indian Petro Chemicals Corporation Ltd. AIR 1994 SC 226 at P. 231.
[412] AIR 1989 SC 123.
[413] Ibid, at P.1245.
[414] AIR.1999 SC 3286.
[415] Ibid, at P. 3288-3289.

[416] Appeal (civil) 1940 of 2008 Decided on13/3/2008.
[417] G.P. Singh's Priciples of Stautory Interpretation 9th edition 2004 page133.
[418] 2007 SCC(3).
[419] JT 2007 (3) SC 389.
[420] 2009 SCC (3) 448.
[421] AIR 2008 Kerala 84.
[422] Para 3and Para 7 of the judgment.
[423] 2009 SCC(3).
[424] AIR 1998 SC 764.
[425] Para 9 of the judgment.
[426] Para 10 and 11 of the judgment.
[427] Para 15 of the judgment.
[428] 2005 (1) HLR 483.
[429] Para 8 of the judgment.
[430] AIR 1997 Punjab and Haryana 189 : 1997 (1) HLR 179.
[431] Rajesh Kumar Sexena v. Nidhi Saxena, 1995 (1) HLR.
[432] (2003) 4 SCC 1667
[433] 2000(2) Hindu L.R.(A.P.)(D.B.)45: AIR 2000 AP 362.
[434] (2002)(1)Hindu LR (Pb&Hry) 537.
[435] (2004) 6 SCC 145.
[436] AIR 1981 SC 1660(1983)II LLJ 476 (Bom.).
[437] (1983)II LLJ 476 (Bom.).
[438] 1988 II LLJ 39
[439] 1989 I LLJ 180 (Madras).
[440] AIR 1991 SC 1971.
[441] 1986 Lab IC 667(670) SC.
[442] (1986) I LLJ 405.
[443] AIR 1990 SC 247.
[444] (1987)II LLJ 106 .
[445] CPMDPTM Sangam v. State of Tamil Nadu,(1986) I LLJ 303; Mercantile Employees Association v. State of Kerala and others,(1988) I LLJ 377.
[446] Government of India Gazette (1969) p. 325
[447] AIR 1978 SC 1088
[448] 1980 Lab IC 192 (J&K).
[449] AIR 1953 SC 53.
[450] AIR 2000 SC 507
[451] 1989 AIR 73 (SC).
[452] (1978), L.L.N. 503.
[453] Supra Note 13 Introduction, p. xxii-xxiii.
[454] Alternative Dispute Resolution Approaches and their Application by Yona Shamir
[455] Frederick, 1996.
[456] VYAPAK DESAI is a Partner & SAHIL KANUGA is an Associate at Nishith Desai Associates at its Mumbai office. Indian law journal.
[457] [2001] 1 W.L.R. 803
[458] SLP (civil) Nos. 11801-11804 of 2005; Decided on 17-12-2009;SC.
[459] (1996) 4 SCC 647.
[460] (1987) 2 SCC 654.
[461] http://www.goforthelaw.com/articles/adrpic.htm.

[462] [1992 Supp2 SCC 432],[ONGC I].
[463] [1995 Supp4 SCC 541] (ONGC II).
[464] (2003) 3 SCC 472 ONGC I AND II.
[465]2006(3) SCALE 557.
[466] [(2004) 6 SCC 437].
[467] (2005) 6 SCC 344.
[468] http://www.cadrmumbai.com/case_studies.html.
[469] www.adr.quotes.in

BIBLIOGRAPHY

Agrawal, Nomita	Handbook on Lok Adalat in India (1991), Interest Publications, New Delhi.
Avtar Singh, Dr.	Arbitration and Conciliation Law;7th Ed.(2005).
Bachawat, R. S. Justice	Law of Arbitration & Conciliation (1997).
Basu, N.D.	Arbitration & Conciliation Commentary; Orient Publishing House (2000).
Baxi, Upendra	Alternatives in development- The Crisis of Indian Legal System (1982), Vikas Publishing House Pvt. Ltd., New Delhi.
Boulle, L.	Mediation: Principles, Process, Practice (2nd Ed. LexisNexis Butterworths, Australia, 2005).
Chawala, S.C.	Law of Arbitration & Conciliation Practice & Procedure; Eastern Law House, Culcutta (2000).
Dube, M.P.	Role of Supreme Court in Indian Constitution, Deep & Deep Publications, New Delhi.
Goyal G.C.	Arbitration & Conciliation Act, Khetrapal Pub. Ltd. (2011).
Henry J. Brown and Arthur L.	ADR Principles and Practice (2nd Ed.), Sweet and Maxwell Vol. II) (1999).
John Sutton, Kendall & Judith Gill	Russell on Arbitration; Sweat & Maxwell, London (2001).

Johri, H.C.	Commentary on Arbitration and Conciliation Act, 1996, Kamal Law House, Culcutta (1997)
Judicial Centre	Manual for litigation, management ,cost and
	Delay Reduction (1992).
Kawatra, G. K	Arbitration and Alternative Dispute Resolution ICA, 2004.
Marchanda	Arbitration & Conciliation, Wadhwa & Co. Delhi (2001).
Mullick	Law of Arbitration & Conciliation; Eastern Law House, Culcutta (2004).
National Alternative Dispute Resolution Advisory Council	ADR Terminology: A Discussion Paper (2002).
Paranjape, V.N.	Arbitration and Alternative Dispute Resolution 3rd Ed. 2009, Central Law Agency
Sujan, M.A.	Law of Arbitration & Conciliation, Vol. I & II Universal Law Publishing Co. Pvt. Ltd.2000.
Sumeet Kachwaha	The Indian Arbitration Law: towards a new jurisprudence. A.L.R. 2007, p13 to 17.
Tripathi, Dr. T.P.	Human Rights and International Law, Ed. 2008 Allahabad Law Agency,

Nyaya Deep	The official Journal by Nalsa October, 2006 Vol. VIII, Issue 4.
Confidentiality proceedings- Recent Trends and Development	Arbitration Journal of Business Law 2006 (May) p. 300 to 311.
Confidentiality in Arbitration Proceedings	Dispute Resolution Journal 2005(Nov.) P.60 to 67.
Delaying tacties in Arbitration Dispute Resolution	Journal 2005(Nov.) p.40 to 53.
In Mediation	A Guide for Victorian Solicitors, 1995, Law Institute of Victoria, p. 41.
Javed Gaya, Judicial ambush of arbitration in India	L.Q.R.1004, 120 (OCT), p. 571 to 574.
Lok Adalat-"The Mission, The Movement & some thought for fresh Impetus"	AIR 2002 Journal, p. 97.
Judicial Independence and Accountability	Law Profile, Vol.3, Issue 1, January 2012.
Mediation Quarterly	No.1-Spring 1999- Jassey Bass Publishers.

Mediation Quarterly	No.2-Summer 1997-Jassey Bass Publishers.
Mediation Quarterly	No.3-Winter 2000-Jassey Bass Publishers.
Robert J.Niemic, Donna Stienstra and Randall E. Ravitz	Guide to Judicial Management of Cases in ADR, Federal Judicial Centre (2001).
Tyler, M.C., 'More than 1.5 Million Disputes Resolved online'	(2004) 7(3) ADR Bulletin, p.58.

WEBSITES

http://www.abysenialaw.com

http://www.lawinfo.com

http://www.adrgroup.co.uk/types.html

http://www.lawyersclub.india.com http://times of india.com

Expressbuzz.com/states/lok adalat reduce cases/360419.html http://eurlex.europa.eu

http://www.ontariocourts.com

www.adr/quotation/php/in.com

http://adr.definition.net

http://www.goforthelaw.com/articles/adrpic.htm
http://www.cadrmumbai.com/case_studies.htmlwww.uiowa.edu/cyberlaw/arbitration.origion.html http://www.answers.com/topic/arbitration http://adrresources.com http://wikipedia.org/wiki/conciliation http://wikipedia.org/wiki/expert_determination http://liberary.findlaw.com/html www.mightylaw.in

Annexure - II

Annexure-III

(Arbitration and Conciliation (Amendment) Bill 2003)

The Bill suggested that

- There should be change in the "Court", definition as.

(a) the principal Civil Court of original jurisdiction in a district;
(b) the Court of principal judge of the City Civil Court of original jurisdiction in a city;
(c) an individual who is a national of, or habitually resident in, any country other than India; or
(d) any Court of coordinate jurisdiction to which the Court referred to in sub-clause (a) or sub-

clause (b) transfers a matter brought before it, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject -matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court or Court of principal judge of the City Civil Court, or any Court of Small Causes; and

- Other suggestion is that "Domestic Arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, where none of the parties is— (i) an individual who is a national of, or habitually resident in, any country other than India; or
(ii) a body corporate which is incorporated in any country other than India; or
(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country, where the place of arbitration is in India and shall be deemed to include international arbitration and international commercial arbitration where the place of arbitration is in India;

- There should be change in "international arbitration" definition as arbitration relating to disputes arising out of legal relationships, whether contractual or not, where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or
(ii) a body corporate which is incorporated in any country other than India; or

(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or
(iv) the Government of a foreign country;

- "international commercial arbitration" means an international arbitration considered as commercial under the law in force in India;

- "judicial authority" includes any quasi-judicial statutory authority;'
- There should be some change in Section 8 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) Subject to the provisions of sub-sections (4) and (5), a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute unless such judicial authority has to decide any question referred to in sub-section (4) as a preliminary issue, refer the parties to arbitration.

(1A) The judicial authority before which an action is brought shall stay the action before it for the purpose of deciding any question raised before it under sub-section (4) and such stay shall be subject to the outcome of the order that may be made under sub-section (4) or sub-section (5).";

(b) in sub-section (3), the following proviso shall be inserted at the end, namely:—

"Provided that the arbitration proceeding so commenced shall stand terminated if the judicial authority, after hearing all the parties, makes an order under sub-section (4) to the effect that—

(i) a reference to arbitration cannot be made by virtue of its finding on any question referred to in clauses (a) to (d) of that sub-section; or

(ii) though a reference to arbitration has to be made, the proceedings are required to be conducted by a different arbitral tribunal.";

(iii) after sub-section (3), the following sub-sections shall be inserted, namely:—

(4) Where an application is made to the judicial authority by a party raising any question that—

(a) there is no dispute in existence; or

(b) the arbitration agreement or any clause thereof is null and void or inoperative; or

(c) the arbitration agreement is incapable of being performed; or

(d) the arbitration agreement is not in existence,

the judicial authority may, subject to the provisions of sub-section (5), decide the same and pass appropriate orders thereon.

(5) Where the judicial authority finds that any question specified in sub-section (4) cannot be decided for the reason that—

(a) the relevant facts or documents and the question are in dispute; or

(b) there is a need for adducing oral evidence from the question; or

(c) the inquiry into any such question is likely to delay reference to arbitration; or

(d) the request for deciding the question was unduly delayed; or

(e) the decision on the question is not likely to produce substantial savings in the costs of arbitration;

or

(f) there is no good reason for deciding the question at that stage, it shall refuse to decide the question and refer the same to the arbitral tribunal for decision.

(6) If the judicial authority holds that though the arbitration agreement is in existence but it is null and void or inoperative or incapable of being performed and refuses to stay the legal proceedings, any provision in the arbitration agreement which provides that the award is a condition precedent for the initiation of legal proceedings in respect of any matter, shall be of no effect in relation to the proceedings.".

• After section 8 of the principal Act, the following Section 8A shall be inserted, namely:—

‘8A. Without prejudice to the provisions of section 89 of the Code of Civil Procedure, 1908, where, at any stage of a legal proceeding in the Supreme Court or the High Court or the principal Civil Court of original jurisdiction in a district or the Court of principal judge of the City Civil Court of original jurisdiction in a city or any Court of coordinate jurisdiction or inferior in grade to the aforesaid Courts, as the case may be, all the parties to such proceeding enter into an arbitration agreement to resolve their disputes, then the Court in which the said legal proceeding is pending shall, on an application made by any party to the arbitration agreement, refer the dispute in relation to the subject-matter of the legal proceeding, to arbitration.

Explanation.— For the purposes of this section,“legal proceeding”means any proceedinginvolving civil rights of parties pending in any of the aforesaid Courts whether at the stage of institution or appeal or revision and includes proceeding involving civil rights instituted in a High Court under article 226 or article 227 of the Constitution or on further appeal to the Supreme Court.’.

• For Section 9 of the principal Act, the following section shall be substituted, namely:—

“9. (1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before application is filed for its enforcement in accordance with section 36, apply to a Court for interim measures.

(2) The Court shall have the same power for making orders under sub-section (1) as it has for the purpose of, and in relation to, any proceedings before it.

(3) In particular and without prejudice to sub-section (1), a party may apply to a Court—

(a) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(b) for an interim measure of protection in respect of any of the following matters, namely:—

(i) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(ii) securing the amount in dispute in the arbitration;

(iii) the detention, preservation or inspection of any property or thing which is the subject-matter or the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(iv) interim injunction or the appointment of a receiver; or

(v) such other interim measure of protection as may appear to the Court to be just and convenient.

(4) Where a party makes an application under sub-section (1) for the grant of interim measures before the commencement of arbitration, the Court shall direct the party in whose favour the interim measure is granted, to take effective steps for the appointment of the arbitral tribunal in accordance with the procedure specified in section 11, within a period of thirty days from the date of such direction.

(5) The Court may direct that if the steps referred to in sub-section (1) are not taken within the period specified in sub-section (4), the interim measure granted under sub-section (2), shall stand

vacated on the expiry of the said period:

Provided that the Court may, on sufficient cause being shown for the delay in taking such steps, extend the said period.

(6) Where an interim measure granted stands vacated under sub-section (5), the Court may pass such further direction as to restitution as it may deem fit against the party in whose favour the interim measure was granted under this section.".

12. In section 11 of the principal Act,—

(a) in sub-section (4),—

(i) in clauses (a) and (b), for the words "thirty days", the words "sixty days" shall be substituted;

(ii) for the words "the appointment shall be made, upon request of a party by the Chief Justice or any person or institution designated by him", the words "the right to make such appointment shall be deemed to have been waived, and the appointment shall be made, upon request of a party by the High

Court or any person or institution designated by it" shall be substituted;

(b) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within sixty days from receipt of a request by one party from the other party to so agree, then the right to make such appointment shall be deemed to have been waived if such appointment is not made within the said period and, the appointment shall be made by the High Court or any person or institution designated by it.";

(c) in sub-section (6), for the words " a party may request the Chief Justice or any person or institution designated by him", the words "and where no measures are taken for appointment of an arbitrator in accordance with the appointment procedure agreed upon by the parties, the right to take such measures shall be deemed to have been waived and a party may request the High Court or any person or institution designated by it" shall be substituted;

(d) in sub-section (7), for the words "the Chief Justice or the person or institution designated by him", the words "the High Court or any person or institution designated by it" shall be substituted;

(e) in sub-section (8), for the words "The Chief Justice or the person or institution designated by him", the words "The High Court or any person or institution designated by it" shall be substituted;

(f) in sub-section (9), for the words "international commercial arbitration, the Chief Justice of India

or the person or institution designated by him", the words and brackets "international arbitration (whether commercial or not), the Supreme Court or any person or institution designated by it" shall be substituted;

(g) in sub-section (10), for the words "The Chief Justice may make such scheme as he may deem appropriate ", the words "The High Court may make such scheme as it may deem appropriate" shall be substituted;

(h) in sub-section (11), for the words "the Chief Justice of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-

section shall alone be", the words "different High Courts or their designates, the High Court or its designate to which the request has been first made under the relevant sub-section shall alone be" shall be substituted;
(i) for sub-section (12), the following sub-sections shall be substituted, namely:—
'(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international arbitration (whether commercial or not) the reference to "High Court" in those sub-sections shall be construed as a reference to the "Supreme Court".

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal Civil Court or the Court of principal judge of the City Civil Court, as the case may be, referred in sub-clause (i) of clause (e) of sub-section (1) of section 2, is situate and, where the High Court itself is the Court referred to in that sub-clause, to that High Court.

(13) Where an application under this section is made to the Supreme Court or the High Court by a party raising any question specified to in sub-section (4) of section 8, the Supreme Court or the High Court, as the case may be, may, subject to the provisions of sub-section (14), decide the same.
(14) If the Supreme Court or the High Court, as the case may be, considers that the questions referred to in sub-section (13) cannot be decided having regard to the reasons specified in sub-section (5) of
section 8, it shall refuse to decide the said question and refer the same to the arbitral tribunal.
(15) The Central Government may, after consultation with the Chief Justice of India, prescribe by rules made under this Act the manner in which fee of members of an arbitral tribunal be fixed and the procedure to be followed in relation to fixation of such fee.'.

13. In section 12 of the principal Act, in sub-section (1), for the words "any circumstances likely", the words "the existence of any past or present relationship, either direct or indirect, with any of the parties or any of their counsel, whether financial, business, professional, social or other kind or in relation to the subject-matter in dispute, which is likely" shall be substituted.

14. In section 14 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Where the mandate of the arbitrator is terminated, the Court may decide the quantum of fee payable to such arbitrator.".
15. In section 15 of the principal Act,—

(a) in sub-section (2), for the words "a substitute arbitrator shall be appointed", the words "a substitute arbitrator shall be appointed within a period of thirty days" shall be substituted;

(b) after sub-section (4), the following sub-section shall be inserted, namely—
"(5) Where the mandate of an arbitrator is terminated, the Court may decide the quantum of fee payable to such arbitrator."

- For Section 17 of the principal Act, the following section shall be substituted, namely:—

"17. The arbitral tribunal may, pending arbitral proceedings,— (a) direct the other party, at the request of a party, to take steps for the protection of the subject-matter of the dispute in the manner considered necessary by it; or

(b) direct a party to provide appropriate security in connection with the directions issued under clause (a); or
(c) direct a party, making any claim, to furnish security for the costs of the arbitration; or
(d) give directions in relation to any property which is the subject-matter of the arbitral proceedings and which is owned by or is in possession of a party to the proceedings —
(i) for the inspection, photographing, preservation, custody or detention of the property by the arbitral tribunal, by an expert or by a party; or
(ii) for samples to be taken from, or any observation to be made of, or experiment conducted upon, the property; or
(e) direct that a party or witness shall be examined on oath or affirmation, and may for that purpose

administer any necessary oath or take any necessary affirmation; or
(f) give directions to a party for the preservation of any evidence in his custody or control for the purposes of the proceedings.".

- For Section 20 of the principal Act, the following section shall be substituted, namely:—

Where the arbitration is one under this Part, the place of arbitration shall be within India and in other cases the parties are free to agree on the place of arbitration:

Provided that where the parties fail to agree, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties:
Provided further that the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.".

- In Section 23 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) Within the period of time that may be determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars and the claimant may file his rejoinder, if any, and the parties shall abide by the time schedule so determined by the arbitral tribunal, unless the tribunal extends such time schedule.

(1A) The arbitral tribunal shall endeavour to expedite the arbitral process subject to such rules as may be made by the High Court in this behalf.".

- In Section 24 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) Subject to such rules as may be made by the High Court in this behalf, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral arguments, or whether the proceedings shall be conducted on the basis of documents and other materials, or to receive affidavit in lieu of oral evidence subject to the witness being examined orally: Provided that the arbitral tribunal may, at an appropriate stage of the proceedings, hold oral hearings for the purpose of calling for such oral evidence as it may deem necessary.

(1A) Subject to the provisions of sub-section (1), the arbitral tribunal shall pass orders regarding following the procedure before it.

(1B) Without prejudice to the provisions of sub-section (1A), the power of the arbitral tribunal to pass orders shall include—

(a) the fixing of the time schedule for the parties to adduce oral evidence, if any;
(b) the fixing of the time schedule for oral arguments;
(c) the manner in which oral evidence is to be adduced;
(d) the decision as to whether the proceedings shall be conducted only on the basis of documents and other materials, or in any other manner.

(1C) The procedure determined by the arbitral tribunal under sub-section (1A) and the time schedule fixed under sub-section (1B) shall be binding on the parties.".

- After Section 24 of the principal Act, the following sections shall be inserted, namely:—

"24A. (1) If a party fails, without showing sufficient cause, to comply with a directions made under section 17, or time schedule determined under section 23 or orders passed under section 24, as the case may be, the arbitral tribunal may make a peremptory order to the same effect, prescribing such time for compliance as it considers appropriate.

(2) If a claimant fails to comply with a peremptory order made under sub-section (1) in relation to a direction specified in clause (c) of section 17, the arbitral tribunal may dismiss his claim and make an award accordingly.

(3) If a party fails to comply with any peremptory order made under sub-section (1), other than the

peremptory order in relation to a direction specified in clause (c) of section 17, then the arbitral tribunal may—

(a) make such order as it thinks fit as to payment of costs of the arbitral proceedings incurred in consequence of the non-compliance;
(b) direct that the party in default shall not be entitled to rely upon any allegations in his pleadings or upon any material which was the subject-matter of the order;
(c) draw such adverse inference from the act of non-compliance as the circumstances may justify;

(d) proceed to make an award on the basis of such materials as have been provided to it, without

prejudice to any action that may be taken under section 25.
24 B. (1) Without prejudice to the power of the Court under section 9, the Court may, on an application made to it by a party, make an order requiring the party to whom the order of the arbitral tribunal was directed, to comply with the peremptory orders of the arbitral tribunal made under sub-section (1) of section 24A.
(2) An application under sub-section (1) may be made by—
(a) the arbitral tribunal, after giving notice to the parties; or
(b) a party to the arbitral proceedings with the permission of the arbitral tribunal, after giving notice

to the other parties.
(3) No order shall be made by the Court under sub-section (1), unless it is satisfied that the party to whom the order of the arbitral tribunal was directed, has failed to comply with it within the time fixed in the order of the arbitral tribunal or, if no time was fixed, within a reasonable time.

(4) Any order made by the Court under sub-section (1) shall be subject to such orders, if any, as may be made by the Court on appeal under clause (b) of sub-section (2) of section 37.".

- In section 28 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) In an arbitration other than international arbitration (whether commercial or not), the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India.

(1A) In an international arbitration (whether commercial or not), where the place of arbitration is situate in India,—

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed,

unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under clause (i) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.".

- In section 29 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Any decision of the arbitral tribunal in arbitral proceedings with more than one arbitrator shall be made by a majority of all its members:

Provided that where there is no majority, the award shall be made by the Presiding arbitrator of the arbitral tribunal.";

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The minority decision shall, if made available within thirty days of the receipt of the decision of the majority, be appended to the award.".

- After section 29 of the principal Act, the following section shall be inserted, namely:—

" 29A. (1) The arbitral tribunal shall make its award within a period of one year from the commencement of arbitral proceedings, or within such extended period specified in sub-sections (2) to (4).

(2) The parties may, by consent extend the period, specified in sub-section (1) for making award, for a further period not exceeding one year.

(3) If the award is not made, within the period specified in sub-section (1) or the extended period under sub-section (2), the arbitral proceedings shall, subject to the provisions of sub-sections (4) to (6), stand suspended until an application for extension or further extension of the period is made to the Court by any party to the arbitration, or where none of the parties makes an application as aforesaid, until such an application is made by the arbitral tribunal.

(4) Upon filing of the application for extension or further extension of the period under sub-section

(3), the suspension of the arbitral proceedings shall stand revoked and pending consideration of the application by the Court under sub-section (5), the arbitral proceedings shall continue before the arbitral tribunal and the Court shall not grant any stay of the arbitral proceedings.

(5) The Court shall, upon application for extension of the period being made under sub-section (3), whether the time for making the award as aforesaid has expired or not and whether the award has been made or not, extend the period for making the award beyond the period referred to in sub-section (1) or sub-section (2).

(6) The Court shall, while extending the time under sub-section (5), after taking into account,—

(a) the extent of work already completed;
(b) the reasons for delay;
(c) the conduct of the parties or of any person representing the parties;
(d) the manner in which proceedings were conducted by the arbitral tribunal;
(e) the further work involved;
(f) the amount of money already spent by the parties towards fee and expenses of arbitration;
(g) any other relevant circumstances which the Court may consider necessary,

make such order as to costs and as to the future procedure to be followed by the arbitral tribunal with a view to speed up the arbitral process till the award is made:

Provided that any order made by the Court as to the future arbitral proceedings shall be subject to such rules as may be made by the High Court for expediting the arbitral proceedings.

(7) The parties shall not by consent extend the period for making award beyond the period specified in sub-section (2) and save as otherwise provided in that sub-section, any provision in an arbitration agreement whereby the arbitral tribunal may further extend the time for making the award, shall be void and be of no effect.

(8) The first of the orders of extension under sub-section (5) together with directions if any, under sub-section (6), shall be made by the Court, within a period of thirty days from the date of service of notice on the opposite party.".

- In section 31 of the principal Act, in sub-section (7), for clause (b), the following clause shall be substituted, namely:—

"(b) A sum directed to be paid by an arbitral award shall carry interest at such rate as the arbitral tribunal deems reasonable from the date of award to the date of payment.".

- After section 33 of the principal Act, the following section shall be inserted, namely:—

'33A. (1) A photocopy of the arbitral award duly signed on each page by the members of the arbitral tribunal together with the original arbitral records shall be filed by the arbitral tribunal in the Court within sixty days of the making of the award along with a list of the papers comprising the arbitral record:

Provided that where the High Court is the Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2, then the award shall be filed in the principal Civil Court of original jurisdiction in a district or in the Court of principal judge of the City Civil Court of original jurisdiction in a city within whose local jurisdiction the subject-matter of arbitration is situate (hereafter in this section referred to as the said Court).

Explanation 1.—For the removal of doubts, it is hereby declared that for the purposes of this section,"arbitral award" means the arbitral award whether passed pursuant to a reference made by a judicial authority under section 8, or by any of the Courts referred to in section 8A, or by

the parties or by the High Court or by the Supreme Court under section 11, or by the parties to a Fast Track Arbitration under section 43C.

Explanation 2.— For the purposes of this section, "arbitral records" shall include the pleadings in the claim filed by the parties, documentary evidence, oral evidence if recorded, pleadings in interlocutory applications, pleadings and orders on interlocutory applications, proceedings of the arbitral tribunal and all other papers relating to the arbitral proceedings.

(2) Where the arbitral tribunal fails to file photocopy of the arbitral award and the arbitral records under sub-section (1), any of the parties may give notice to the arbitral tribunal to do so within a period of sixty days from the date of receipt of the award failing which, the party may request the said Court to direct the arbitral tribunal to file photocopy of the arbitral award and the arbitral records in the said Court.

(3) Upon filing of photocopy of the arbitral award and the arbitral records under sub-section (1) or sub-section (2), the presiding officer of the said Court or a ministerial officer of the said Court designated by such presiding officer, shall affix his signature with date and seal of the said Court on
each page of the photocopy of the arbitral award and shall acknowledge receipt of the arbitral award and the arbitral records, after verification with the list referred to in sub-section (1).
(4) The said Court shall maintain a register containing –
(a) the names and addresses of the parties to the award;
(b) the date of the award;
(c) the names and addresses of the arbitrators;
(d) the relief granted;

(e) the date of filing of the award into the said Court; and

(f) such other particulars as may be prescribed by rules made by the Central
Government in this behalf.
(5) If any party makes an application for a copy, the Court may grant a certified copy of photocopy of the arbitral award or of the arbitral records or of the arbitral proceedings, as the case may be, in accordance with the rules of the Court.
(6) The Court may transmit the arbitral records for use in any proceedings for setting aside the arbitral award or for enforcement thereof.
(7) The procedure for return of original documents or for preservation of the arbitral records so filed

shall be subject to such rules as may be applicable to the said Court from time to time.
(8) The filing of photocopy of the award under this section shall be only for the purposes of record.'.

- In section 34 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—
"(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award –
(a) in accordance with sub-sections (2) and (3); and
(b) in the case of an award made in an arbitration other than an international arbitration (whether commercial or not) in accordance with sub-sections (2) and (3), and section 34A.

(1A) An application for setting aside an award under sub-section (1) shall be accompanied by the original award:

Provided that where the parties have not been given the original award, they may file a photocopy of the award signed by the arbitrators.";

(b) in sub-section (2),—

(i) in clause (b), after sub-clause (ii), the following sub-clause shall be inserted, namely:—

"(iii) the arbitral award is such which does not state the reasons as required under sub-section (3) of section 31.";

(ii) The Explanation shall be renumbered as Explanation 1 and after Explanation 1 as so renumbered, the following Explanation shall be inserted, namely:—

"Explanation 2.— For the removal of doubts, it is hereby declared that while seeking to set aside an arbitral award under sub-section (1), the applicant may include the pleas questioning the decision of the arbitral tribunal rejecting—
(i) a challenge made under sub-section (2) of section 13;
(ii) a plea made under sub-section (2) or sub-section (3) of section 16.";
(c) after sub-section (4), the following sub-sections shall be inserted, namely:—

'(5) Where the Court adjourns the proceedings under sub-section (4) granting the arbitral tribunal an opportunity to resume its proceedings or take such other action and eliminate the grounds referred to in this section or in section 34A for setting aside the award, the arbitral tribunal shall pass appropriate orders within sixty days from the receipt of the request made under sub-section (4) by the Court and send the same to the Court for its consideration.

(6) Any party aggrieved by the orders of the arbitral tribunal under sub-section (5), shall be entitled to file its objections thereto within thirty days from the receipt of the said order from the arbitral tribunal and the application made under sub-section (1) to set aside the award shall, subject to the provisions of sub -sections (2) and (3) of section 37C, be disposed of by the Court, after taking into account the orders of the arbitral tribunal made under sub-section (5) and the objections filed under that sub-section.

Explanation 1.— Subject to clause (i) of sub-section (4) of section 42, for the purposes of this section and sections 34A and 36, the word "Court" means the Arbitration Division.

Explanation 2.— For the purposes of this section, clause (b) of sub-section (2) of section 48 and clause (e) of sub-section (1) of section 57, "public policy of India" or "Contrary to public policy of India" means contrary to (i) fundamental policy of India, or (ii) interests of India, or (iii) justice or morality.'.

- After section 34 of the principal Act, the following section shall be inserted,

namely:—
"34A. (1) In the case of an arbitral award made in an arbitration other than an international arbitration (whether commercial or not), recourse to a court against an arbitral award on the additional ground that there is an error which is apparent on the face of the arbitral award giving rise to a substantial question of law can be had in an application for setting aside an award referred to in sub-section (1) of section 34.

(2) Where the ground referred to in sub-section (1) is invoked in an application filed under sub-section (1) of section 34, the applicant shall file a separate application seeking leave of the Court to raise the said ground:
Provided that the Court shall not grant leave unless it is prima facie of the opinion that all the following conditions are satisfied, namely:—

(a) that the determination of the question will substantially affect the rights of one or more parties;

(b) that the substantial question of law was one which the arbitral tribunal was asked to decide or has decided on its own; and
(c) that the application made for leave identifies the substantial question of law to be decided and states relevant grounds on which leave is sought.

(3) Where a specific question of law has been referred to the arbitral tribunal, an award shall not be set aside on the ground referred to in sub-section (1).".

- For section 36 of the principal Act, the following section shall be substituted, namely :—

"36. (1) Where the time for making an application to set aside the arbitral award under sub-section (1) of section 34 has expired, then, subject to the provisions of sub-sections (2) to (4), the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court.

(2) Where an application is filed in the Court under sub-section (1) of section 34 to set aside an arbitral award, the filing of such an application shall not by itself operate as a stay of the award unless, upon a separate application made for that purpose, the Court grants stay of the operation of the award in accordance with the provisions of sub-section (3).

(3) Upon filing of the separate application under sub -section (2) for stay of the operation of the award, the Court may, without prejudice to any action it may take under sub-section (1) of section 37C and subject to such conditions as it may deem fit to impose, grant stay of the operation of the arbitral award for reasons in brief to be recorded in writing:

Provided that the Court shall, while considering the grant of stay, keep the grounds for setting aside the award in mind.

(4) The power to impose conditions referred to in sub-section (3) includes the power to grant interim measures not only against the parties to the award or in respect of the property which is the subject-matter of the award but also to issue ad interim measures against third parties or in respect of property which is not the subject-matter of the award, in so far as it is necessary to protect the interests of the party in whose favour the award is passed.

(5) The ad interim measures granted under sub-section (4) may be confirmed, modified or vacated, as

the case may be, by the Court subject to such conditions, if any, as it may, after hearing the affected parties, deem fit."

- In section 37 of the principal Act,—

(i) in sub-section (1), clause (b) shall be omitted;
(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) The procedure specified in sections 37C, 37D, 37E and 37F shall, in so far as may be, apply to appeals under sub-section (1) or sub-section (2).".

- After Chapter IX of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER IX A

ARBITRATION DIVISION, JURISDICTION AND SPECIAL PROCUDURE

37A. (1) Every High Court shall, as soon as may be after the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, constitute an Arbitration Division within the High Court.
(2) The Judges of the Arbitration Division shall be such of the Judges of the High Court as the Chief Justice of that High Court may, from time to time, nominate.

Explanation. — For the purposes of this sub-section, "Judges" shall include Judges appointed under article 224A of the Constitution.

(3) Without prejudice to the provisions of section 37F, the Arbitration Division shall consist of one or more Division Benches of the High Court, as may be constituted by the Chief Justice of the High Court and such Bench or Benches shall dispose of every application, appeal or proceeding allocated to it.

(4) Every application under sections 34, 34A and 36 shall, on and from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, irrespective of the value of the subject-matter, be filed in the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of Courts subordinate to such High Court and the said applications shall thereafter be allocated to the Arbitration Division of that High Court for disposal.

(5) Any appeal under clause (i), or clause (ii), or clause (iii) or clause (vi) of sub-section (1) of section 39 of the Arbitration Act, 1940 and any proceeding for execution of a decree based on an arbitral award under that Act shall, notwithstanding anything contained in that Act, irrespective of the value of the subject-matter, be filed, on and from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 in the High Court referred to in sub-section (4) and shall thereafter be allocated to the Arbitration Division of that High Court, for disposal in accordance with the provisions of the Arbitration Act, 1940.

37B. (1) Any application under section 34 or section 36 filed and pending in any Court subordinate to the High Court immediately before the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 shall, on such commencement, stand transferred to the High Court having jurisdiction over such subordinate Courts and shall thereafter be allocated to the Arbitration Division of that High Court for disposal.

(2) Any application under section 34 or section 36 or appeal under clause (b) of sub-section (1) of section 37 filed immediately before the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 and pending in the High Court shall, on and from such commencement, be allocated to the Arbitration Division of that High Court for disposal.

(3) Any appeal or proceeding referred to in sub-section (5) of section 37A pending in any Court subordinate to the High Court shall, on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, stand transferred to the High Court having jurisdiction

over such subordinate Court and shall thereafter be allocated to the Arbitration Division of that High Court for disposal in accordance with the provisions of the Arbitration Act, 1940.

(4) Any appeal or proceeding referred to in sub-section (5) of section 37A, pending in the High

Court shall, on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, be allocated to the Arbitration Division of that High Court for disposal in accordance with the provisions of the Arbitration Act, 1940.

37C. (1) The Arbitration Division, while dealing with an application under sub-section (1) of section 34, or any appeal referred to in sub-section (5) of section 37A, filed on and from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, may, if it thinks fit so to do, and after fixing a date for hearing the applicant or his counsel and hearing him accordingly if he appears on that day, dismiss the application or appeal, as the case may be, without giving notice to the respondent, for reasons in brief to be recorded in writing, if there are no merits in the application or appeal.

(2) No award passed by the arbitral tribunal shall be set aside, on an application under sub-section (1) of section 34 or an appeal filed under sub-section (5) of section 37A unless substantial prejudice is shown.

(3) The provisions of sub-sections (1) and (2) shall also apply to applications under sub-section

(1) of section 34, any appeal under section 37 or any appeal referred to in sub-section (5) of section 37A, pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, if no notice has been issued by the Court before such commencement.

37D. (1) Every application referred to in sub-section (1) of section 34 or section 36 shall be disposed of by the Arbitration Division within one year from the date of service of notice on the opposite party:

Provided that in case the Arbitration Division adjourns the proceedings under sub-section (5) of section 34, the period of one year shall be reckoned from the date of receipt of the order from the arbitral tribunal under that sub-section.

(2) Every appeal or proceeding for execution of decrees referred to in sub-section (5) of section 37A shall be disposed of within one year from the date of service of notice on the opposite party.

(3) Every application, appeal or proceeding referred to in sub-sections (1) to (4) of section 37B, pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, shall be disposed of within a period of six months from the date of service of notice on the

opposite party or from such commencement, whichever is later.

37E. (1) The applicants or appellants in matters referred to in sub-sections (1) and (2) of section 37D shall, within sixty days from the date of service of notice on the opposite party, file paper books containing relevant documents including copies of oral evidence recorded, if any, and the opposite party shall likewise file a paper book within sixty days from the date of service of notice on such party.

(2) The applicants or appellants, in matters referred to in sub-section (3) of section 37D, and the opposite parties shall file paper books within sixty days from the date of service of notice

on such parties or from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, whichever is later.

(3) Within thirty days from the date of filing of the paper books, all parties to the proceedings shall file brief written submissions after exchanging copies of the same.
(4) Where any party fails to comply with the time limits referred to in sub-sections (1) to (3), the Arbitration Division may, if reasonable cause is shown, extend the time for a further period not exceeding thirty days, subject, however, to such order as to costs as it may deem fit.
(5) In all matters coming up before the Arbitration Division, time limit for arguments shall be fixed by the Arbitration Division in advance at the case management conference referred to in sub-section (2) of section 37F.
37F. (1) Save, where conditional orders are passed which may lead to disposal of the matter for default or ex parte, a single Judge sitting in the Arbitration Division shall deal with the fixation of time schedules and dates for the purposes of section 37E.
(1) For the purposes of sub-section (1), case management conferences may be held by the Judge referred to in that sub-section.".

- For section 42 of the principal Act, the following sections shall be substituted,

namely :—
'42. (1) Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part is made in any of the Courts referred to in sub-sections (2) to (7) or in the Court referred to in section 43E, then all subsequent applications [other than the applications referred to in sub-section (2) of section 33A] arising out of that agreement and the arbitral proceedings (hereafter in this section referred to as the subsequent application) shall be made in the same Court in which the application was made and in no other Court.

(2) Where an application is made in a Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2, the subsequent applications shall be made in that Court and in no other Court.
(3) Where, in an action under section 8 pending before a judicial authority, an application is made seeking reference to arbitration with respect to an agreement, then the subsequent applications shall be made in the following manner, namely:—

(i) if the judicial authority is a Court within the meaning of subs-clause (i) of clause (e) of sub-section (1) of section 2, the subsequent application shall be made in the Court in which the application is made and in no other Court;

(ii) if the judicial authority is a Court which is inferior in grade to the principal Civil Court of

original jurisdiction in a district or the Court of principal judge of the City Civil Court exercising original jurisdiction in a city (hereinafter referred to as the principal Courts), as the case may be, the subsequent application shall be made in the said principal Court to which the Court where the application is made is subordinate and in no other Court;

(iii) if the judicial authority is a quasi-judicial statutory authority, the subsequent application shall be made in the principal Court within whose local limits the judicial authority is situate and in no other Court.

(4) Where, in a legal proceeding under section 8A before any of the Courts referred to in that section, an application is made seeking reference to arbitration with respect to an agreement, then the subsequent application shall be made in the following manner, namely:—

(i) if the application is made in the Supreme Court or in the High Court or in the principal Courts referred to in clause (ii) of sub-section (3), as the case may be, the subsequent application shall be made in the Court which made the reference and in no other Court;
(ii) if the application is made in a Court of coordinate jurisdiction or inferior in grade to the principal Courts referred to in clause (ii) of sub-section (3), as the case may be, the subsequent application shall be made in the principal Court from where the legal

proceeding was transferred to such Court of coordinate jurisdiction or to which the said Court is subordinate, as the case may be, and in no other Court.

Explanation 1.—In this sub -section, the expression "legal proceeding" shall have the same meaning as assigned to it in the Explanation to section 8A.
Explanation 2.—For the removal of doubts, it is hereby declared that in the case of
arbitral proceedings which have commenced pursuant to a reference made by the
Supreme Court or the High Court under section 8A and award passed pursuant thereto, the reference to "Court" in this Part shall, except in sections 27 and 33A, be construed as reference to the Supreme Court or the High Court, as the case may be.
(5) Where an application, seeking a reference to arbitration with respect to an agreement, is made under section 11 in the Supreme Court or in the High Court, as the case may be, the subsequent application shall be made in the Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2 and in no other Court.

(6) Where an application is made to the High Court in accordance with section 34, section 34A, section 36 or sub-section (4) of section 37A or where an appeal is preferred in the High Court in accordance with sub-section (5) of section 37A, the subsequent application shall be made in that High Court and in no other Court.

(7) Where application or appeal transferred to the High Court pursuant to section 37B, all subsequent applications shall be made in that High Court and in no other Court.
42A. The Chief Justice of India may prepare a scheme, for constituting a panel of arbitrators to enable either the parties, or the Supreme Court or the High Court under section 11, or the judicial authority under section 8, or the Courts referred to in section 8A, or the parties under section 43A, as the case may be, to appoint arbitrators from such panel and subject to such conditions as may be specified by the Chief Justice of India in that scheme.

42B. Notwithstanding anything contained in any other law for the time being in force, it shall be permissible to initiate any proceedings under this Act, for the purpose of enforcement of any right under sub-section (3) of section 69 of the Indian Partnership Act, 1932 to seek—
(a) the dissolution of a firm;
(b) the settlement of the accounts of a dissolved firm; or
(c) the realisation of the property of a dissolved firm.'.

- In section 43 of the principal Act,—

(a) sub-section (3) shall be omitted;
(b) after sub-section (4), the following sub-section shall be inserted, namely:—
"(5) In computing the time specified in the Limitation Act, 1963 for the commencement of proceedings in relation to any dispute, the period between the commencement of the arbitration and the date of the orders mentioned below, shall be excluded, namely:—
(a) an order of the arbitral tribunal accepting a plea referred to in sub-section (2) or sub-section

(3) of section 16;
(b) an order under clause (a) of sub-section (2) of section 37 by the Court affirming an order under clause (a) or an order of the Supreme Court on further appeal, if any, affirming the last mentioned order;

(c) an order declaring an arbitration agreement as null and void or inoperative or incapable of

being performed or as not in existence, passed by —

(i) the High Court under sub-section (13) of section 11 in the case of an arbitration, other than an international arbitration (whether commercial or not) or by the Supreme Court on further appeal;

(ii) the Supreme Court under sub-section (13) of section 11 in the case of international arbitration (whether commercial or not).".

- After section 43 of the principal Act, the following sections shall be inserted, namely:—

'43A. (1) The arbitral proceedings pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 before an arbitral tribunal —

(a) if such proceedings are pending for more than three years from the date of commencement of such proceedings, shall be completed within a further period of six months from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 or within such extended period specified in sub-sections (2) and (3);

(b) if such proceedings have not been pending for three years from the date of commencement of the proceedings, the proceedings shall be completed within a further period of one year reckoned from the date of expiry of three years of the commencement of the arbitral proceedings or within such extended period specified in sub-sections (2) and (3).

(2) If the award is not made within the further period of six months or one year, as the case may be, specified in sub-section (1), the arbitral proceedings shall, subject to the provisions of sub-section (3), stand suspended until an application for extension of time is made to the Court by any party to the arbitration or where none of the parties has made an application as aforesaid until such application is made by the arbitral tribunal.

(3) The provisions of sub-sections (4) to (8) of section 29A shall, so far as may be, apply for the disposal of application referred to in sub-section (2), with a view to speed up the arbitral proceedings, till the award is passed.
43B. (1) The provisions of sections 6, 23 and 24 shall, so far as may be, apply to arbitral proceedings under the Arbitration Act, 1940, pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 and shall override any provisions of the Arbitration Act, 1940 which are inconsistent with the said sections.

(2) In the case of non-compliance with any order passed by the sole arbitrator or arbitrators under the provisions of the Arbitration Act, 1940 or of orders passed under sub-section (1), the sole arbitrator or arbitrators, as the case may be, appointed under the Arbitration Act, 1940 may pass orders under section 24A.

(3) In the case of non-compliance with any peremptory order passed by the sole arbitrator or arbitrators, as the case may be, under sub-section (2), the Court, within the meaning of clause

(c) of section 2 or section 21 of the Arbitration Act, 1940, as the case may be, may pass orders under section 24B.

(4) Where arbitral proceedings are pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, before the sole arbitrator or arbitrators appointed under the Arbitration Act, 1940, the proceedings shall be completed within a further period of six months from such commencement or within such extended period specified in sub-sections (5) and (6):

Provided that where the arbitral proceedings are stayed by order of a Court, the period during which the proceedings are so stayed shall be excluded while computing the said period of one year.

(5) If the award is not made within the further period specified in sub-section (4), the arbitral proceedings shall, subject to the provisions of sub-section (6), stand suspended until an application for extension of time is made by any party to the arbitration to the Court referred to in sub-section (3), by any party to the arbitration, or where none of the parties has made an application as aforesaid, until such an application is made by the sole arbitrator or arbitrators, as the case may be.

(6) The provisions of sub-sections (4) to (8) of section 29A shall, so far as may be, apply for the
disposal of the application referred to in sub-section (5).

(7) The provisions of this section shall have effect notwithstanding anything inconsistent therewith contained in sub-section (2) of section 85.

CHAPTER XI

SINGLE MEMBERS FAST TRACK ARBITRAL TRIBUNAL AND FAST TRACK

ARBITRATION

43C. (1) The parties to an action before a judicial authority referred to in section 8, or a legal proceeding before any of the Courts referred to in section 8A, or to an arbitration agreement or to an application before the Supreme Court or the High Court under section 11, as the case may be, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their disputes resolved by arbitration in accordance with the provisions of this Chapter and the procedure specified in the First Schedule (hereinafter referred to as the Fast Track Arbitration).

(2) If the parties referred to in sub-section (1) agree to have the disputes resolved through Fast Track Arbitration, then the arbitral tribunal agreed to between such parties shall be called the Fast Track Arbitral Tribunal.
(3) Notwithstanding anything contained in the arbitration agreement—
(i) the Fast Track Arbitral Tribunal shall consist of a sole arbitrator;
(ii) the sole arbitrator shall be chosen by parties unanimously;
(iii) the fee payable to the arbitrator and the manner of payment of the fee shall be such as may be agreed between the sole arbitrator and the parties;

(i) the procedure set out in the First Schedule (hereinafter referred to as the Fast Track Procedure) shall apply.

43D. The other provisions of this Part, in so far as they are matters not provided in the First Schedule, shall apply to the Fast Track Arbitration as they apply to other arbitrations subject to the following modifications, namely:—
(a) the references to—
(i) "arbitral tribunal" shall, unless the context otherwise requires, be deemed to include the Fast Track Arbitral Tribunal; and
(ii) "Court" shall be deemed to be the High Court, except in sections 27 and 33A;
(b) in section 33, in sub-sections (1) to (4), for the words "thirty days", wherever they occur, the words "fifteen days" shall be substituted;
(c) in section 34,—
(i) in the proviso to sub-section (3), for the words "three months" and "thirty days", the words "thirty days" and "fifteen days" shall respectively be substituted;
(ii) in sub-section (5), for the words "sixty days", the words "thirty days" shall be substituted;
(iii) in sub-section (6), for the words "thirty days", the words "fifteen days" shall be substituted;

(d) in section 37, in sub-section (1), the provision for appeal shall not apply to orders referred to in clauses (a) and (b) of sub-section (1) of section 37;

(e) in sub-section (1) of section 37D, for the words "one year", the words "six months" shall be substituted.
43E. Notwithstanding anything contained in this Part or in any other law for the time being in force but subject to sub-clause (ii) of clause (a) of section 43D, where with respect to an arbitration agreement, any application is made or is required to be made before a "Court" in the manner mentioned in this Part, such an application shall be made to the "High Court" and all

subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that High Court and in no other High Court and shall be allocated to the Arbitration Division:
Provided that where reference under section 8A has been made for resolution of disputes under this Chapter by the Supreme Court, the subsequent applications shall be filed in the Supreme Court.

43F. The references to High Court in sections 43D and 43E shall be construed as a reference to the High Court within whose local limits, the principal Civil Court or the Court of principal judge of the City Civil Court referred to in sub-clause (i) of clause (e) of sub-section (1) of section 2, as the case may be, is situated.'.

- In section 44 of the principal Act, in clause (a), for the words "First Schedule", the words "Second Schedule" shall be substituted.
- In section 47 of the principal Act, for the Explanation, the following Explanation shall

be substituted, namely:—
'Explanation.— In this section and in all the following sections of this Chapter, "Court" means the Arbitration Division.'.

- In section 50 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely—

"(1) An appeal shall lie from the order refusing to refer the parties to arbitration under section 45 to the High Court referred to in sub-section (4) of section 37A, and the said appeal shall thereafter be allocated to the Arbitration Division for disposal.".

- In section 53 of the principal Act,—

(i) in clause (a), for the words “Second Schedule”, the words “Third Schedule” shall be substituted;
(ii) in clause (b), for the words “Third Schedule”, the words “Fourth Schedule” shall be substituted.

- In section 56 of the principal Act, for the Explanation, the following Explanation shall be substituted, namely:—

‘Explanation.— In this section and the following sections of this Chapter, “Court” means the Arbitration Division.’.

- In section 59 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely—

“(1) An appeal shall lie from the order refusing to refer the parties to arbitration under section 54 to the High Court referred to in sub -section (4) of section 37A, and the said appeal shall thereafter be allocated to the Arbitration Division for disposal.”.

- After section 60 of the principal Act, the following Chapter shall be inserted, namely—

“CHAPTER IIA

JURISDICTION OF ARBITRATION DIVISION OF HIGH COURT AND SPECIAL PROCEDURE FOR ENFORCEMENT OF FOREIGN AWARDS

60A. (1) Every application for the enforcement of foreign awards under Chapters I and II of this Part shall, on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, be filed in the High Court as referred to in sub-section (4) of section 37A and the said applications shall thereafter be allocated to the Arbitration Division for disposal.

(2) The applications for enforcement of foreign awards made under Chapters I and II of this Part and all appeals under sub-section (1) of section 50 or sub-section (1) of section 59 pending in any Court subordinate to the High Court shall, on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, stand transferred to the High Court having jurisdiction over such subordinate Court and shall thereafter be allocated to the Arbitration Division for disposal.

(3) The applications for enforcement of foreign awards under Chapters I and II of this Part and appeals under sub-section (1) of section 50 and sub-section (1) of section 59 and applications arising there from, pending in a High Court, shall, on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, be allocated to the Arbitration Division for disposal.

60B. (1) Every application referred to in sub-section (1) of section 60A shall be disposed of by the Arbitration Division within a period of one year of service of notice on the opposite party.

(2) Every appeal filed on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, under subs-section (1) of section 50 and sub-section (1) of section 59, on and from such commencement shall be disposed of by the Arbitration Division within a period of sixty days from the date of notice on the opposite party.

(3) The applications for enforcement of foreign awards referred in sub-sections (2) and (3) of section 60A and all appeals against orders refusing to enforce a foreign award under sections 48 and 57, pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, shall be disposed of by the Arbitration Division within a period of six months from the date of allocation to the Arbitration Division where notices have been served on the opposite parties on the date of such allocation, and within a period of six months from the date of service of notice on the opposite parties where notices have not been served on the opposite party on the date of such allocation.

(4) The appeals against orders refusing to refer the parties to arbitration under sections 45 and 54, pending on the commencement of the Arbitration and Conciliation(Amendment) Act, 2003, shall be disposed of by the Arbitration Division within a period of thirty days from the date of allocation to the Arbitration Division where notices have been served on the opposite parties on the date of such allocation and within a period of thirty days from the date of service of notices on the opposite parties where notices have not been served on the opposite party on the date of such allocation.

(5) The Arbitration Division while dealing with applications and appeals referred in sub-sections (1) and (3) shall, so far as may be, follow the same procedure as laid down in sections 37E and 37F.".

- Section 82 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

"(2) Without prejudice to the generality of the provisions of sub-section (1), rules may be made in respect of the following matters, namely:—
(a) the manner in which arbitral proceedings shall be conducted;
(b) the number of days for which the arbitral proceedings have to be conducted continuously on each occasion when an arbitral tribunal meets;
(c) the time schedule and the number of hours for which the arbitral proceedings have to be conducted on each day;
(d) the time schedule for the filing of the pleadings for purposes of sub-section (1A) of section

23;

(e) the time schedule in regard to the recording of evidence and submission of arguments for purposes of sub-section (1) of section 24;
(f) the time schedule as to the future procedure to be followed by the arbitral tribunal, referred to in sub-section (6) of section 29A.

(3) The Chief Justice of India may issue guidelines to the High Courts in relation to the matters

referred in sub-section (2) and other procedure to be followed by the arbitral tribunal so that uniform rules may be made by all the High Courts.".

- In section 84 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Without prejudice to the generality of the provisions of sub-section (1), rules may be made in respect of the following, namely:—

(a) the manner in which fee of the members of an arbitral tribunal may, after consultation with the Chief Justice of India, be fixed and the procedure relating thereto under sub-section (15) of section 11;
(b) the other particulars required to be entered in the register under clause (f) of sub-section (4) of section 33A.".

• The First Schedule, Second Schedule and Third Schedule to the principal Act shall be renumbered as the Second Schedule, Third Schedule and Fourth Schedule and before the Second Schedule as so renumbered, the following Schedule shall be inserted, namely:—

"THE FIRST SCHEDULE
(See sections 43C and 43D)
FAST TRACK ARBITRATION

1. (1) For the purposes of Fast Track Arbitration under sub-section (1) of section 43 C, a Fast Track Arbitral Tribunal shall be deemed to be constituted on the date on which the parties, after obtaining the consent of the sole arbitrator to be appointed, agree in writing that the sole arbitrator shall be the Fast Track Arbitral Tribunal under sub-section (2) of section 43C.
(2) The parties shall communicate the said agreement to the sole arbitrator on the same day.
2. The procedure specified in this Schedule shall on and from the day of the constitution of a Fast Track Arbitral Tribunal, apply to the Fast Track Arbitration.
3. (1) Within fifteen days of the constitution of the Fast Track Arbitral Tribunal, the person who has raised the dispute (hereinafter referred to as the claimant) shall send simultaneously to the Tribunal and the opposite party (hereinafter referred to as the respondent)—

(a) a claim statement containing the facts, the points at issue and the relief claimed;
(b) documentary evidence, if any, in support of his case;
(c) a copy of the witness's affidavit where reliance is placed on the testimony of any witness

(including that of a party);
(d) a copy of the opinion, along with the particulars relating to the expert, his qualifications and experience where reliance is placed on the opinion of an expert;

(e) a list of interrogatories, if any;
(f) an application for discovery or production of documents, if any, mentioning their relevancy;

(g) full address, including e-mail or fax, telephone numbers, if any, of all claimants and of all the parties, for the purpose of expediting communication and correspondence;
(h) any other material considered relevant by the claimant.

(2) The respondent shall, within fifteen days from the receipt of the claim statement and the documents referred to in sub-paragraph (1), simultaneously send to the Fast Track Arbitral

Tribunal as well as to the claimant, his defence statement, together with documentary evidence, witness's testimony by affidavit (including that of a party) and expert opinion, if any, in support thereof, together with counter claims, if any, supported by documents.

(3) The procedure specified in this Schedule shall apply to such counter claims as they apply to a claim.

(4) Within fifteen days from the receipt of the defence statement or the counter claims the claimant shall send to the Fast Track Arbitral Tribunal and to the respondent his rejoinder and statement of defence to the counter claim.

(5) Within fifteen days from the receipt of the defence statement or the counter claim, the respondent shall simultaneously send his rejoinder to the said statement or claim to the Fast Track Arbitral Tribunal as well as to the claimant.
(6) In case discovery or production of documents is allowed, the parties shall be permitted to

submit their supplementary statements, if any, to the Fast Track Arbitral Tribunal within the specified period and to simultaneously send copies thereof to each other.

(7) The Fast Track Arbitral Tribunal shall decide the disputes on the basis of the pleadings and documents, affidavits of evidence, expert opinion, if any, and the written submission filed by the parties.
(8) The Fast Track Arbitral Tribunal may permit any witness to be orally examined and lay down the manner in which evidence shall be recorded or for receiving affidavits in lieu of oral

evidence.

(9) The Fast Track Arbitral Tribunal may otherwise permit oral evidence to be adduced, if it considers that any request for oral evidence by any party is justified or where the Fast Track Arbitral Tribunal considers that such oral evidence is necessary.
(10) The Fast Track Arbitral Tribunal may, in addition, call for any further information or clarification from the parties in addition to the pleadings, documents and evidence placed before it.
4. The Fast Track Arbitral Tribunal shall permit the parties to appear and conduct the case personally or through their Counsel or by any person duly authorised by the parties to represent them.
5. After the conclusion of the evidence, the Fast Track Arbitral Tribunal may direct all the parties to file their written notes of argument or may, at its discretion, permit oral arguments and shall fix a time schedule therefor and may also restrict the length of oral arguments.

6. (1) The Fast Track Arbitral Tribunal shall conduct its proceedings in such manner that the arbitral proceedings are, as far as possible, taken up on day-to-day basis at least continuously for three days on each occasion.
(2) The Fast Track Arbitral Tribunal shall ordinarily fix the time schedule in such manner that the proceedings are conducted continuously from 10.30 A.M. to 1 P.M. and 2 P.M. to 4.30 P.M. every day.

7. The time schedule fixed under paragraphs 3 and 5 and the manner of conducting proceedings and fixing the time schedule under paragraph 6 by the Fast Track Arbitral Tribunal, shall be binding on the parties.
8. (1) At any time during the course of arbitration and before the passing of the award, the Fast Track Arbitral Tribunal may, at its discretion, if need be, consult any expert or technically qualified person or a qualified accountant for assistance in relation to the subject-matter in dispute, at the expense of the parties, and shall communicate the report of aforesaid person to the parties to enable them to file their response.
(2) If the Fast Track Arbitral Tribunal thereafter considers on its own or on the request of parties that any clarification or examination of a person referred to in sub-paragraph (1) or examination of any other person is necessary, it may call upon such person to clarify in writing or to call him or such other person as a witness for necessary examination.

9. (1) In case there is default on the part of any party to adhere to the time limits specified in this Schedule or as fixed by the Fast Track Arbitral Tribunal or there is violation of any interim orders or directions of the Fast Track Arbitral Tribunal issued under section 17 or under this Schedule, the Fast Track Arbitral Tribunal may pass peremptory orders against the

defaulting party giving further time for compliance including peremptory orders to provide appropriate security in connection with an interim order or direction.

(2) In case the Fast Track Arbitral Tribunal is satisfied that a party to the arbitration is unduly or deliberately delaying the arbitral proceedings, or the implementation of the peremptory orders, the Fast Track Arbitral Tribunal may impose such costs as itmay deem fit on the

defaulting party or may pass an order striking out the pleadings of the party concerned or excluding material or draw adverse inference against the said party and in case security for costs of arbitration is not furnished as required under sub-paragraph (1), the claim may be dismissed.

(3) Without prejudice to the provisions of sub -paragraph (2), the Fast Track Arbitral Tribunal may dismiss the claim if the claimant does not effectively prosecute the arbitral proceedings or file the papers within the time granted or neglects or refuses to obey the peremptory orders of the Fast Track Arbitral Tribunal or to pay the dues or deposits as ordered by the Fast Track Arbitral Tribunal:

Provided that the failure to file a statement of defence to the claim statement or to the counter claim shall not by itself be treated as an admission of the allegations in the claim statement or in the counter claim, as the case may be.
(4) If the opposite party does not file its defence or does not effectively prosecute its defence or file the papers within the time granted or refuses to obey the peremptory orders of the Fast Track Arbitral Tribunal, such Tribunal may make an ex parte award.

10. (1) The Fast Track Arbitral Tribunal shall make an award within six months from the date of its constitution or within such extended period specified in sub-paragraphs (2) to (4).
(2) The parties may, by consent, extend the period specified under sub-paragraph (1), by a further period not exceeding three months.

(3) If the award is not made within the period specified under sub-paragraph (1) or the period agreed to by the parties under sub-paragraph (2), the arbitration proceeding shall, subject to the provisions of sub-paragraph (4), stand suspended until an application for extension of time is made to the High Court by any party to the Fast Track Arbitration or where none of the parties makes an application as aforesaid, until such an application is made by the Fast Track Arbitral Tribunal.
(4) The provisions of sub-sections (4) to (8) of section 29A shall, so far as may be, apply for disposal of the application referred to in sub-paragraph (3), till the award is made.
11. The Fast Track Arbitral Tribunal shall make an award and give reasons therefor keeping in mind the time limit referred to in paragraph 10 unless it is agreed between the parties that no reasons need be given or the award is based on settlement of disputes.
44. (1) The provisions of the principal Act, as amended by this Act, shall, subject to the provisions of sub-sections (2) to (19), be prospective in operation and shall not, in particular, apply to—
(i) any application made under sub-section (1) of section 8 of the principal Act by a party to the arbitration agreement before a judicial authority, or any appointment made by the judicial authority under that section, before the commencement of this Act; or
(ii) any request made under section 11 of the principal Act to a party, or the Chief Justice of India or his designate, or the Chief Justice of a High Court or his designate, before the commencement of this Act; or
(iii) any appointment of arbitral tribunal made under section 11 of the principal Act by—
(a) the parties to the arbitration agreement;

(b) a party who is authorised under the arbitration agreement to make such appointment without
the consent of the other party or parties to the arbitration agreement; or
(c) the Chief Justice of India or his designate or the Chief Justice of a High Court or his designate, before the commencement of this Act;
(iv) any award passed under the principal Act, before the commencement of this Act.
(2) The provisions of this Act shall, subject to the provisions of sub-sections (3) to (19), apply to the arbitration agreements entered into before the commencement of this Act, where no—
(i) request for appointment of arbitral tribunal; or
(ii) application for appointment of arbitral tribunal; or
(iii) appointment of arbitral tribunal,
has been made under the principal Act, before the commencement of this Act.
(3) The provisions of clause (b) of sub-section (2) of section 2, as inserted in the principal Act by clause (b) of section 4 of this Act, shall apply to the applications made under section 8 of the principal Act before a judicial authority in a legal proceeding, or under section 9 of the principal Act before a Court, which are pending on the commencement of this Act in connection with the arbitrations of the nature specified in sub-section (2) of section 2 of the principal Act.
(4) The provisions of section 2A, as inserted in the principal Act by section 5 of this Act, shall apply to arbitral proceedings under the principal Act, pending before the principal Courts referred to in that section, on the commencement of this Act.
(5) The provisions of section 6 of the principal Act, as amended by section 7 of this Act, shall apply to arbitral proceedings under the principal Act, pending before an arbitral tribunal, on the
commencement of this Act.
(6) The provisions of sub-sections (4), (5) and (6) of section 9, as substituted by section 11 of this Act, shall apply to all applications under section 9, pending in the Court on the commencement of this Act.
(7) The provisions of section 17 of the principal Act, as substituted by section 16 of this Act, shall apply to arbitral proceedings under the principal Act, pending before an arbitral tribunal on the commencement of this Act.
(8) The provisions of sub-section (1) of section 20 of the principal Act, as substituted by section 17 of this Act, shall apply to arbitration agreements in relation to which requests for appointment of arbitral tribunal and applications for appointment of arbitral tribunal are pending decision on the commencement of this Act, if the arbitral tribunal has not been appointed on or before such commencement .
(9) The provisions of sub-section (1) of section 23 of the principal Act, as amended by section 18 of this Act, shall apply to arbitral proceedings under the principal Act, pending before an arbitral tribunal on the commencement of this Act, where the claim, defence or rejoinder statements have not been filed before the arbitral tribunal on or before such commencement.
(10) The provisions of sub-section (1) of section 24 of the principal Act, as amended by section 19 of this Act, and sub-section (1A) of section 24 of the principal Act, as inserted by that section, shall apply to arbitral proceedings under the principal Act, pending before an arbitral tribunal on the commencement of this Act, where oral evidence or oral arguments, as the case may be, have not been completed on or before such commencement.
(11) The provisions of section 24A, as inserted in the principal Act by section 20 of this Act, shall apply to the directions made under section 17, the time schedules determined under section 23 or the orders passed under section 24 by the arbitral tribunal, the principalAct before the commencement of this Act, where such directions, time schedules or orders have not been complied with on or before such commencement by the party to whom they were directed or ordered.

(12) The provisions of section 28 of the principal Act, as amended by section 21 of this Act, shall apply to arbitration agreements in relation to which requests for appointment of arbitral tribunal and applications for appointment of arbitral tribunal are pending decision on the commencement of this Act, if the arbitral tribunal has not been appointed on or before such commencement .

(13) The provisions of sub-section (3) of section 29, as inserted in the principal Act by section 22 of this Act, shall apply to arbitral proceedings under the principal Act pending before the arbitral tribunal on the commencement of this Act, if awards have not been passed on or before such commencement.

(14) The provisions of section 29A, as inserted in the principal Act by section 23 of this Act, shall, subject to –

(a) sub-section (3) of section 43A and sub-section (6) of section 43B, as inserted in the principal Act by section 33; and

(b) sub-paragraph (4) of paragraph 10 of the First Schedule, as inserted in the principal Act by section 43,

of this Act, apply to arbitration proceedings commenced on and from the commence-ment of this Act.

(15) The provisions of —

(i) section 34 of the principal Act, as amended by section 26; and

(ii) section 34A, as inserted in the principal Act by section 27,

of this Act, shall apply to arbitration awards passed before the commencement of this Act which have not become final, and applications seeking leave under sub-section (2) of section 34A may be filed within a period of three months from the date of such commencement in the Arbitration Division in respect of pending applications under sub-section (1) of section 34 of the principal Act or in pending appeals in the Supreme Court .

(16) The provisions of section 36 of the principal Act, as substituted by section 28 of this Act, shall apply to all awards made under the principal Act pending enforcement on the commencement of this Act.

(17) The provisions of sub-sections (1) and (2) of section 37C, as inserted in the principal Act by section 30 of this Act, shall apply to applications under sub-section (1) of section 34 of the principal Act and appeals under section 37 of the principal Act pending on the commencement of this Act, if no notice has been issued by the Court under sub-section (1) of section 34 or under section 37 of the principal Act before such commencement:

Provided that where the Court in such application or appeal has issued notice, the provisions of sub-section (1) of section 37C of the principal Act shall not apply.

(18) The provisions of section 42 of the principal Act, as substituted by section 31 of this Act, shall apply to subsequent applications which may be filed after the commencement of this Act.

(19) The provisions of sub-section (5) of section 43, as inserted in the principal Act by clause (b) of section 32 of this Act, shall apply to the orders referred to in that sub-section, if such orders are passed on or from the commencement of this Act, in arbitral proceedings under the principal Act, pending before an arbitral tribunal on such commencement.