Chapter-V

Non Adjudicatory Methods of Alternative Disputes Resolution

5.1 Introduction:

The field of law is experiencing a gradual evolutionary movement, as practitioners eschew the traditional adversarial approach in favor of cooperative methods which produce more beneficial, integrative outcomes. Disputes can be resolved at three levels, namely, power level, rights level and interests level. The power level reflects the ‘might is right’ phenomenon prevalent in early society, where the disputants engage in a contest of strength through political process, industrial action or armed conflict and the result goes in favour of the powerful party. At the rights level, an authoritative person decides the disputes on the rights premise and lawful base and the party who has law and social standards on its side wins. At the interests level, parties in conflict, either on their own or with varying degrees of assistance, negotiate their way to an agreed settlement. The alternative dispute resolution reflected by interests level is less costly and more beneficial for disputants than a rights approach, which in turn is less costly and more beneficial than a power approach. Rights-based and power-based approaches are used at times when parties cannot or are not willing to resolve their issues through interest-based negotiation.

2 WL Ury, JM Brett and SB Goldberg, “Getting Disputes Resolved: Designing Systems To Cut the Costs of Conflict”, 1986, Jossey-Bass, the University of Michigan, p. 3.
Non-adjudicatory methods of conflict resolution are also available and must be used. These include negotiation, conciliation and mediation. In general, these are less formal, encourage disputants to communicate and participate in the search for solutions, focus better on the root issues of the conflict, save relationships and have considerable savings in time and cost. Mediation, Conciliation and Arbitration are historically more ancient than Anglo-Saxon adversarial system of law. Mediation was very popular amongst businessmen during pre-British rule in India. Businessmen used to resolve disputes between members of the business associations. All these non-adjudicatory techniques are employed in the new concept of Lok Adalats.

Conflicts have existed in all cultures, religions and societies since time immemorial. There is a common belief in all cultures that it is best to resolve disputes and to reach an agreed end to them, because conflict is a destructive force. There are fears that the system is collapsing. Many suffer injustice because they are frightened of approaching the legal system. The resolution offered by the courts does not deal with the substantive issue in dispute or give the parties an effective solution and end to their conflict. Effective reform lies in measures which promote both efficiency and ethics. The adversarial system is the appropriate method in a number of situations especially those needing authoritative interpretation or establishment of rights or which manifest severe negotiating imbalance. It is also required as a last resort of resolution.

Court annexed mediation is comparatively a new phenomenon. This concept owes much of its origin from the notion of ‘multidoor courthouse’ propounded by Frank E.A.Sander – an American Professor. In 1976, Professor E.A.Sander had proposed the idea of a multidoor courthouse where individual disputes would be matched
to appropriate processes such as mediation, arbitration or fact finding. According to him, court room should be a comprehensive justice centre where disputes would be analysed according to various criteria to determine what mechanism would be best suited for the resolution of the problem. His idea was adapted in the American Civil Justice System and court annexed mediation system is a huge success story in the U.S.A.

In comparison to the adjudication (judicial or arbitral), negotiation, mediation and conciliation are private, informal, more mutual, facilitative, future-looking, interest-based processes that bring parties to an adjusted, multi-dimensional, win-win remedy that is more durable because of the parties’ consent in the outcome. The application of mediation and conciliation to the legal dispute resolution process is not intended to replace or supplant the need for public adjudication and pronouncements on the critical issues, but to complement and preserve the judicial system. These alternatives may provide to mitigate some of the pressures currently impeding the performance of current court systems.

Abraham Lincoln has observed, “Discourage litigation. Persuade your neighbours to compromise wherever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.”

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Mahatma Gandhi, the father of nation, has also said, “I had learnt the true practice of law. I had learnt to find out the better side of human nature, and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven as under. The lesson was so indelibly burnt unto me that the large part of my time, during the twenty years of my practice as a lawyer, was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby not even money, certainly not my soul.”

One must learn to negotiate in a manner that is less competitive and adversarial, thereby invoking the potential for cooperation. By working together as “joint problem solvers” seeking joint solutions and not working against one another, the participants can “enlarge the pie” that is to be divided. This can be done either by negotiation, or with the help of an impartial third party who will act as mediator. If anyone has a problem with a person or organisation one deals with regularly for example a neighbour, ADR can mean a better, longer-lasting solution to one’s problem. It may also result in better communication with them in the future. The non adjudicatory dispute resolution methods are useful not only for small claims like motor accidents, family disputes and petty crimes but also as an alternative dispute resolution mechanism for the most complex matters, including those involving environmental disputes and intellectual property law disputes which were previously considered to be irreconcilable. In the emerging global markets there is need to resolve disputes quickly and inexpensively as well as amicably, suitably and productively, in order to maximize long-term interests and to maintain continuing commercial relationships. One can also use some ADR schemes as well as going to court or a tribunal. For example, mediation can help everyone focus

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on the issues that are causing the problem, making it easier for one to reach an agreement or for a judge to make a decision.

5.2 Lok Adalats:

India has had a long history of resolving disputes through the mediation of village elders. The system of Lok Adalats is an improvement on that and is based on Gandhian principles. The ancient concept of settlement of dispute through mediation, negotiation or through arbitral process known as “Peoples’ Court verdict” or decision of “Nyaya-Panch” is conceptualized and institutionalized in the philosophy of Lok Adalat. Sometimes Lok Adalat seems to be similar to conciliation or mediation or negotiation. It involves people who are directly or indirectly affected by dispute resolution. Participation, adjustment, fairness, expectation, voluntariness, transparency, efficiency and lack of animosity are certainly, all important characteristics of this distinct Indian institution rooted in India’s history, culture and environment.7

The expression Lok Adalat comprises two words, namely, ‘lok’ and ‘adalat’ the former expressing the concept of public opinion while the latter denoting the accurate and through deliberation aspect of decision making. In simple terms, this refers to a forum for settlement of disputes, employing ADR techniques, such as Negotiation, Conciliation, and Mediation etc. It is a forum which ensures easier access to justice for the poor. It enables speedy disposal of cases through settlement between parties, supervised by a body of legally competent personalities.

The term ‘Lok Adalat’ literally means peoples’ court, but it is not a court in real sense. It is basically a statutory forum for conciliatory settlement of legal disputes.

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7 Justice Jitendra N. Bhatt, A round table Justice through Lok-Adalat (Peoples’ Court) - A vibrant - ADR - in India, (2002) 1 SCC (Jour) 11.
The concept of Lok Adalat\(^8\) is a concept of compromise. At this point lies the importance of this mechanism. The Lok Adalat is an old form of adjudicating system prevalent in ancient India. The concept of Lok Adalats was pressed back into unconsciousness in last few centuries before independence and particularly during the British regime.\(^9\) Now, this concept has, once again, been revived. It has become very popular and familiar amongst litigants. This is the system which has deep roots in Indian legal history and its close loyalty to the culture and perception of justice in Indian philosophy. Experience has shown that it is one of the very efficient and important ADRs and most appropriate to the Indian environment, culture and community welfare.

Subsistence of a society is because the members of it are bound by the give and take relations. The main aim of this forum is to settle the dispute in such a manner that the mutual relations of the disputants remain practically the same as these had been before the commencement of such dispute. They aim not only at the restoration of normal relations between the disputing individuals and families, but also at a better and more lasting resolution of the problem, so that their future relations might not get strained at the slightest provocation and a tense situation in immediate future might be evaded and avoided. All this lays a great importance on the social aspect of the dispute also. It holds that the aim of the justice is not to pronounce a unfruitful decision on the basis of the law of evidence only, but it should also have two aims and objectives in the decision making process. First, the wrongdoer might regret and put right his behaviour.

\(^8\) Lok adalat is a mechanism for speedy settlement of disputes through conciliation and compromise.

He may not repeat the wrong. Second, the tension between the two parties may be minimized, so that their mutual relation might again get normalized. This alternative redressal forum always aims to remove the misunderstanding at the initial stage so that any minor dispute might not grow, out of proportion to reach a point of no returns.

Delhi High Court has given a landmark decision highlighting the significance of Lok Adalat movement in **Abdul Hasan and National Legal Services Authority v. Delhi Vidyut Board and others**\(^{10}\). His lordship Hon’ble Mr. Justice Anil Dev Singh observed, “Article 39 A of the Constitution of India provides for equal justice and free legal aid. It is, therefore clear that the State has been ordained to secure a legal system, which promotes justice on the basis of equal opportunity. The language of Article-39 A is couched in mandatory terms. This is made more than clear by the use of the twice-occurring word “shall” in Art-39 A. It is emphasized that the legal system should be able to deliver justice expeditiously on the basis of equal opportunity and provide free legal aid to secure that opportunities for securing justice are not denied to any citizens by reasons of economic or other disabilities. It was in this context that the parliament enacted the Legal Services Authorities Act 1987. The need of the hour is frantically beckoning for setting up Lok-Adalats on permanent and continuous basis. What we do today will shape our tomorrow. 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 dispensation of justice. The Lok Adalat and alternative dispute resolution experiment must succeed otherwise the consequence

\(^{10}\) AIR 1999 Delhi 88.
for an over burdened court system would be disastrous. The system needs to inhale the life giving oxygen of justice through the note.”

5.2.1 Emergence of Lok Adalats:

The Lok Adalat really originated from the failure of the established legal and judicial system to provide effective, fast and inexpensive justice with the litigant at the centre, particularly the huge arrears of cases which took extremely long time for disposal. In most of the cases, common people were waiting for justice - many a times simply for the conclusion of the case, not for justice. Again plethora of appeals, revisions, reviews, and the end product is either victory or defeat of one of the parties, but not satisfactory and just resolution of the dispute. The late Justice Thakkar could not bear the sight of waiting and begging workers, widows, landless labourers, Dalits or Adivasis cherishing hope for justice howsoever faint it could be. The first Lok Adalat was held with great preparation and remarkable simplicity. It was a great success and the idea picked up and led to a number of Lok Adalats with the help of a select and sensitized group of advocates and at different places. Lok Adalat perception and thinking is an original Indian contribution to the world jurisprudence. It has very deep and long roots not only in the recorded history but even in pre-historical era. It has been proved to be a very effective alternative to litigation. Lok Adalat is one of the fine and familiar forum which has been playing an important role in settlement of disputes. The system has received uploads from the parties involved in particular and the public and the legal functionaries, in general. The system of Lok Adalats is a success of democracy and is a most up-to-date and cheap method of providing justice.

Constitutional 42nd Amendment Act of 1976, incorporated Article 39-A in the Constitution of India for providing free legal aid. In the light of this amendment, the Government of India by a resolution dated September 26, 1980 constituted a committee known as ‘Committee for Implementing Legal Aid Scheme’ under the Chairmanship of Mr. Justice P. N. Bhagwati to monitor and implement legal aid programmes on a uniform basis in all the States and Union Territories throughout the country and pursuant thereto several Legal Aid and Advice Boards were set up in all the States and UTs of India. The constitution of the ‘Committee for the Implementation of Legal Aid Schemes’ (CILAS) in 1980 was a major step in institutionalizing legal aid. Legal Aid is not confined to representation before court but also includes Legal Literacy and mechanism for providing justice at pre-litigation stage also by giving advice, providing a forum for Conciliation and Mediation and also by approaching the authorities concerned.

One of the strategic legal aid programmes adopted by the Committee pertains to holding of Lok Adalats for settlement of disputes through conciliation. The Lok Adalats are an innovative form of voluntary efforts for amicable settlement of disputes between the parties. Camps of Lok Adalats were started initially in Gujarat in March, 1982. The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat and now it has been extended throughout the country. Initially, Lok Adalats functioned as a voluntary and conciliatory agency without any statutory backing for its decisions.\footnote{12 The Statement of Objects and Reasons of Legal Services Authorities Act, 1987.}
At Lok Adalats parties are given an opportunity to resolve the dispute amicably at the least cost. ‘Access to Justice’ means an ability to participate in the judicial process.¹³

5.2.2 Legal Machinery of the Lok Adalats under the Legal Services Authorities Act 1987:

The Indian Legislature made evolution by enacting the Legal Services Authorities Act, 1987. By the enactment of the Legal Services Authorities Act, 1987, which came into force from November 9, 1995, the institution of Lok Adalats received statutory status. The Legal Services Authorities Act, 1987 has been enacted by the Parliament to give effect to the constitutional mandate under Article 39-A for providing access to justice to all by providing suitable legal aid.

5.2.2.1 National Legal Services Authority and Other Authorities:

The Legal Services Authorities Act, 1987, displaced the ‘CILAS’ and introduced a hierarchy of judicial and administrative agencies. The Legal Services Authorities Act began to be enforced eight years later, under the directions of the Supreme Court. It led to the constitution of the National Legal Services Authority (NALSA) at the Centre with the Chief Justice of India as its patron in chief and a State Legal Services Authority in the States to give effect to its directions. District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The Central Authority (NALSA) has been vested with several duties to perform. Among others the Central Authority has the duty (1) to encourage the settlement of disputes by way of negotiations, arbitration and conciliation. (2) To lay down policies and principles for making legal services available in the conduct

of any case before the court, any authority or tribunal. (3) To frame most effective and economical schemes for the purpose.

Ever since the day when the activities of the erstwhile Committee for Implementation of Legal Aid (CILAS) were taken over by National Legal Services Authority (NALSA) in December 1995, NALSA has been endeavoring to implement the objectives of Legal Services Authorities Act, 1987. In addition to the court based legal aid to the categories of persons eligible for free legal services under Section 12 of the Act, NALSA has paid incremental attention to conduct Lok Adalats all over the country as a part of its drive for ADR and also the preventive and strategic legal aid through legal awareness camps. A large number of national and regional level conferences, conventions, workshops and training courses are also being conducted by NALSA throughout the country. Following schemes and measures have been envisaged and implemented by the Central Authority:\footnote{http://nalsa.gov.in}

(a) Establishing Permanent and Continuous Lok Adalats in all the Districts in the country for disposal of pending matters as well as disputes at pre-litigative stage;

(b) Establishing separate Permanent & Continuous Lok Adalats for Govt. Departments, Statutory Authorities and Public Sector Undertakings for disposal of pending cases as well as disputes at pre-litigative stage;

(c) Accreditation of NGOs for Legal Literacy and Legal Awareness campaign;

(d) Appointment of “Legal Aid Counsel” in all the Courts of Magistrates in the country;

(e) Disposal of cases through Lok Adalats on old pattern;
(f) Publicity to Legal Aid Schemes and programmes to make people aware about legal aid facilities;

(g) Emphasis on competent and quality legal services to the aided persons;

(h) Legal aid facilities in jails;

(i) Setting up of Counseling and Conciliation Centers in all the Districts in the country;

(j) Sensitization of Judicial Officers in regard to Legal Services Schemes and programmes.

Permanent and Continuous Lok Adalats are being established in all the Districts in the country. Permanent and Continuous Lok Adalats are primarily aimed at settling disputes at pre-litigative stage and more contentious pending matters in District courts in which the parties can be motivated only by repeated sittings to arrive at settlement. NALSA has been providing funds to State Legal Services Authorities for the implementation of the Legal Aid Schemes and Programmes. Separate Permanent and Continuous Lok Adalats in Govt. Departments are aimed at amicably settling pending cases as well as the matters at pre-litigative stage between Govt. Departments and general public so that the inflow of litigation to regular Courts is reduced. In many Govt. bodies these Lok Adalats have become functional. In Delhi Permanent Lok Adalats have been established in Delhi Vidyut Board, Delhi Development Authority, Municipal Corporation of Delhi, MTNL and General Insurance Corporation.

It is one of the functions of the State Legal Services Authorities to provide preventive and strategic legal aid. The preventive aspect contemplated is to adopt suitable strategies dissuading the people from getting into unnecessary disputes and
wasting their time, energy and money in unnecessary litigation. By doing so, peace is brought back in the society and the resources, both economic and manpower, can be channelised for useful, constructive and nation building process. Strategic Legal Aid also encompasses Alternative Dispute Resolution mechanisms. The ADR mechanisms of Lok Adalat or Mediation and Conciliation are all strategies to be implemented as a part of Legal Aid and Legal Services. The Ultimate objective is to prevent the dispute maturing into expensive, bitter, acrimonious and adversarial litigation. Yet another strategic intervention by legal aid and legal services is by way of creating legal awareness and thereby reducing the chances of coming into conflict with law.

5.2.2.2 Organization of Lok Adalats:

One of the aims for the enactment of this Act was to organize Lok Adalat to secure that the operation of legal system promotes justice on the basis of an equal opportunity. The Lok Adalats are organized throughout the country as part of Legal Aid programme, for the quicker disposal of cases. The Act gives statutory recognition to the resolution of disputes by compromise and settlement by the Lok Adalats. The concept has been gathered from system of Panchayats, which has roots in the history and culture of this Country. It has a native flavour known to the people. The provisions of the Act based on indigenous concept are meant to supplement the Court system. They will go a long way in resolving the disputes at almost no cost to the litigants and with minimum delay. At the same time, the Act is not meant to replace and supplant the Court system. The Act is a legislative attempt to decongest the Courts from heavy burden of cases. There is a need for decentralization of justice.
The Legal Services Authorities Act, 1987 has been enacted with view to provide legal aid to the needy and also to supplement justice delivery by methods of mediation and conciliation as ADR systems, both court annexed and court referred, apart from out of court or pre-litigative mediation and conciliation. Chapters VI and VIA of the Legal Services Authorities Act (sections 19-23) deal with Lok Adalats. One of the important aspects in establishing Lok Adalats is that it provides speedy and inexpensive justice at the very door steps of the people, who are in need of justice. This programme became very successful in India and it has aroused hope in the minds of the discouraged litigants. Under the Legal Services Authorities Act, 1987, following three types of authorities are constituted:

i) National Legal Services Authority or Central Authority\(^\text{15}\).

ii) State Legal Services Authority or State Authority\(^\text{16}\).

iii) District Legal Services Authority or District Authority\(^\text{17}\).

The Central authority constitutes a committee to be called Supreme Court Legal Services Committee\(^\text{18}\). The State Authority constitutes a committee to be called the High Court Legal Services Committee\(^\text{19}\) and the District Authority constitutes a committee to be called the Taluk Legal Services Committee\(^\text{20}\) for the purpose of exercising such powers and performing such functions as may be determined by the respective constituting authorities.

\(^{15}\) Legal Services Authorities Act, 1987, Section 3(1).

\(^{16}\) Id, Section 6(1).

\(^{17}\) Id, Section 9(1).

\(^{18}\) Id, Section 3A.

\(^{19}\) Id, Section 8A.

\(^{20}\) Id, Section 11A.
Lok Adalats are organized in an ad-hoc manner by every State Legal Services Authority or District Legal Services Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or Taluk Legal Services Committee at such intervals and places as it thinks fit.\textsuperscript{21} Usually they are organized temporarily for a single day either in the traditional court premises or in other public or private places. A Lok Adalat bench is to consist of serving or retired judicial officers and other persons. The number of members is to be determined by the organizing Authority.\textsuperscript{22} Generally, a Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee. If the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat. The procedural laws and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat. The qualification and experience of members drawn from other fields of life have to be prescribed, where the Lok Adalat is organized by the Supreme Court Legal Services Committee, by the Central Government in consultation with the Chief Justice of India.\textsuperscript{23} In other cases it has to be done by the state government in consultation with the Chief Justice of the High Courts.\textsuperscript{24}

The Lok Adalats have the jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any cases pending before any court or any matters which are at pre-litigative stage.\textsuperscript{25} The Lok Adalats have

\begin{itemize}
  \item \textsuperscript{21} Id, Section 19(1).
  \item \textsuperscript{22} Id, Section 19(2).
  \item \textsuperscript{23} Id, Section 19(3).
  \item \textsuperscript{24} Id, Section 19(4).
  \item \textsuperscript{25} Id, Section 19(5).
\end{itemize}
no jurisdiction in respect of any case or matter relating to an offence not compoundable under the law. The court refers the case to the Lok Adalat if both the parties agree or if one of the parties thereof makes an application to the court for referring the case to the Lok Adalat for settlement and the court is prima facie satisfied that there are chances of such settlement.\(^\text{26}\) The court can also refer a case suo motu, if the court thinks it an appropriate one.\(^\text{27}\) Provided no case shall be referred to the lok adalat under Sec.20(1) (i) (b) or Sec.20(1) (ii) by such court except after giving a reasonable opportunity of being heard to the parties. The Authority or Committee organizing the Lok Adalat can also refer a matter to the Lok Adalat for determination if it receives an application from any of the parties to pre-litigative matter.\(^\text{28}\). Its process is voluntary and works on the principle that both parties to the disputes are willing to sort out their disputes by amicable solutions. Through this mechanism, disputes can be settled in a simpler, quicker and cost-effective way at all the three stages i.e. pre-litigation, pending-litigation and post-litigation.

### 5.2.3 Jurisdiction of Lok Adalats:

Lok Adalats can take cognizance of matters involving not only those persons who are entitled to avail free legal services but of all other persons also, be they women, men or children and even institutions. The focus in Lok Adalats is on compromise. Lok Adalats largely at one point of time remained a court annexed process, essentially working towards cutting short pending litigation. They continue to discharge this function but have gone a step further. They have taken in their fold the disputes ripe

\(^{26}\) Id, Section 20 (1) (i).
\(^{27}\) Id, Section 20 (1) (ii).
\(^{28}\) Id, Section 20 (2).
to ultimately land up in court. This is what is described as Lok Adalats for pre-litigation disputes.

At the foremost civil, revenue and criminal disputes, which were compoundable, were taken up by the Lok Adalats. After the success of Lok Adalats in bringing about settlement of such disputes, motor accidents compensation claims cases where the injured or the dependants of the person deceased in the accident have applied for compensation are also being taken up by the Lok Adalats. This forum was made available for settlement of Motor Third Party claims under the initiative of former Chief Justice of India, Shri. P. N. Bhagwati. Lok Adalat now is playing sole role in solving disputes and settling MACT (Motor Accident Claims Tribunal) cases. The increase in cases of 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/Conciliatory forums should be utilized to optimum level. This is the expeditious method to settle large number of MACT claims. It has become a Dispute Management Institution. It is an informal system of dispute resolution. This has resulted in settlement of a large number of cases long pending before the Motor Accident Claims Tribunals, which would have otherwise taken years for adjudication. Undue delay in settlement of Motor Accident Compensation claims in most of the cases defeats the very core of the purpose. It is in this area that Lok Adalat is rendering very useful service to the needy. It is not purely the question of payment; the time and expense factor and saving the victim families from harassment involved in execution and appeal proceedings are of considerable importance.
Land Acquisition cases where the applications have been made to the government claiming compensation, cases for or against local bodies such as Town Municipality, the Panchayat, the Electricity Board and the like, cases involving commercial banks, matrimonial or maintenance cases, criminal cases which are compoundable as per law, cases pending in the Labour Courts, cases before Workmen’s Compensation Commissioner, cases pertaining to consumer grievances are settled by the Lok Adalats. Any cases pending in the High Court or any other court that can be compromised as per law can be settled by the Lok Adalat. Apart from this, even disputes that have not been brought on the records of courts can be settled amicably by the Lok Adalat.

In addition, Lok Adalats are now taking up cases involving mutation of lands, matrimonial and family disputes and bank loan cases etc. But the Lok Adalats have no jurisdiction in respect of any cases or matters relating to any offences, which are not compoundable under the provisions of any law. Cases relating to economic offences are kept out of its purview. Cases under Prevention of Food Adulteration Act, NDPS Act, the cases relating to atrocities against the women and the members of Schedule Castes and Schedule Tribes are not to be ordinarily taken for special reasons. These types of cases are to be taken only after approval of the executive chairman of the respective commissions.

The Lok Adalats have the widest possible jurisdiction in the sense that it can deal with any matter, whatever be its legal character and in whatever court or tribunal it might be pending including the highest, if only the parties wish to avail of its services. A variety of disputes are capable of resolution though Lok Adalats, however they are
particularly effective in the settlement of financial claims. Nationalized banks frequently use Lok Adalats to recover debts from their defaulting borrowers.

Quarterly Lok Adalats are held on the fixed date at every place where judicial courts are situated. In order to give impetus to the effective functioning of Lok Adalats in the Courts at District as well as Sub-Divisional level, Punjab Legal Services Authority has introduced the system of holding monthly Lok Adalat in each court inspite of quarterly Lok Adalats. Similarly, Labour Courts also hold Lok Adalat on the last working Friday of month.29

Besides, permanent and continuous Lok Adalats also have been established at each District Headquarter. Sittings of these Lok Adalats are held on every working Saturday. Continuous Lok Adalat is a concept of recent origin. It may sound akin to a Permanent Lok Adalat but it is not. While Permanent Lok Adalats take care of only the disputes which arise at a pre-litigation stage, the Continuous Lok Adalats are meant to resolve all disputes of civil nature and compoundable criminal cases. There has been a realization in the course of time that a Dispute Resolution may not be a one day long affair. It may take several sittings to settle a dispute. This form of Lok Adalat had been subject to criticism by some by saying that a Lok Adalat of such nature hardly has sufficient time to make a wholehearted effort for the settlement of the dispute. Therefore, even the disputes which have some element of settlement go unsettled. The concept of Continuous Lok Adalats offers a distinct advantage of engaging the parties over a period of time and undertakes all the methods for helping them to reach a settlement. The

necessity to constitute such forum arose specially to handle the Matrimonial Disputes, Commercial Disputes and disputes which are of a bit complicated nature.

The Legal Services Authorities also organize some special Lok Adalats at various places in the States from time to time. These special Lok Adalats are held for the cases of matrimonial disputes, cases under Section 138 of Negotiable Instruments Act, Traffic Challans, Labour Court cases, Bank Loan cases including Co-operative Bank Loan cases, cases of disputes between farmers and commission agents and compoundable criminal offences etc.

5.2.4 Functioning of Lok Adalats:

Where a reference has been made to a Lok Adalat, it becomes charged with the responsibility of proceeding to dispose of the case and arrive at a compromise or settlement between the parties. It has to do it with utmost expedition. In this respect, the Lok Adalat has to proceed taking guidance from principles of justice, equity, fair play and other legal principles.  \(^{30}\)

Lok Adalats have no adjudicatory or judicial functions. Their functions are mainly relating to the conciliation. Lok Adalats are judicial bodies set up for the purpose of facilitating peaceful resolution of disputes between the litigating parties. They have the powers of an ordinary civil court, like summoning witnesses and enforcing their attendance and examining them on oath; discovery and production of any documents; the reception of evidence on affidavits etc. The Lok Adalat can call for any public documents from any public office or courts.  \(^{31}\) The Lok Adalats have been given the power to specify

\(^{30}\) Supra Note 15, Section 20 (4).

\(^{31}\) Id, Section 22(1).
their procedure for determination of disputes coming before them.\textsuperscript{32} Lok Adalat is adversarial inasmuch as the primary focus is on right/wrong and compensation, although there is a secondary element of collaboration that is involved in the limited negotiations that take place. Communications are directed to the Lok Adalat judge, with very limited, if any, direct communication between parties. Due to the time constraints of Lok Adalat and the judge’s role as an authority figure, there can be, at times, an element of coercion or perceived pressure to settle. The parties keep the right to agree or disagree to a settlement proposed by panelists. However, in practice, Lok Adalat judges/panelists exert considerable influence over the decision to settle. Lok Adalat is essentially an evaluation process in which a panel of neutral lawyers, judges, and prominent citizens proposes a settlement after hearing the facts and claims involved a dispute. Limited negotiations may take place during Lok Adalat. There is rarely any direct communication between the parties or any extensive give and take regarding their settlement offers.\textsuperscript{33}

A bench comprising Justice R.V. Raveendran and Justice D.K. Jain said, “Thousands of Lok Adalats are held all over the country every year. Many members of Lok Adalats are not judicially trained. There is no fixed procedure for the Lok Adalats and each Adalat adopts its own procedure. Different formats are used by different Lok Adalats when they settle the matters and make awards.”\textsuperscript{34} The Supreme Court of India in this case directed the National Legal Services Authority to formulate uniform guidelines

\textsuperscript{32} Id, Section 22 (2).
for effective functioning of Lok Adalats. Accordingly, the National Legal Services Authority (Lok Adalat) Regulations, 2009 were made and notified in the Gazette of India on 20th October, 2009. This has brought a uniform pattern for organizing and conducting of Lok Adalats in the country.

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 good conscience. When the Legal Services Authorities 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 and 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.

Lok Adalats have twofold purposes to fulfill first of all, to grant justice and the other, to do so in a speedy and economical process. Thus, Lok Adalats are allowed to follow a rationalized procedure. It is a recognized opinion of law that technical strictness has to bend before substantive justice. However, at the same time, those technical safeguards that are meant to ensure a fair trial cannot be done away with in the name of suitability. The duty of the Lok Adalats is to achieve a “balancing act” between the opposing requirements of technical safeguards and expediency.
5.2.4.1 Consent of the Parties:

The most significant feature to be considered while deciding the cases at the Lok Adalat is the consent of both the parties. It can not be made obligatory on any party that the matter has to be decided by 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.

The apex court took a strong exception of an award passed by a Lok Adalat in Kerala. On May 25, 2007, it had asked the appellants B.P. Moideen Sevamandir and Anr to vacate certain buildings on or before July 31, 2007 and further directed that on such surrender, another portion shall belong to the appellants. Such an award could have been made by the Lok Adalat only where there was a final settlement between the parties, said apex court allowing the appeals.

Settlement at the Lok Adalat is by mutual understanding. A Lok Adalat determines a reference on the basis of a compromise or settlement 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. And if no award is made on the ground that no compromise or settlement could be arrived at between the parties in pre-litigative matters, the Lok Adalat shall advice the parties to seek remedy in

35 Id.
36 Supra Note 15, Section 20 (5).
a court. 37 The court, to which the matter goes back, has to dispose it off taking it from the stage which it had reached at the time when it was referred to the Lok Adalat.38

In his inaugural address at the second annual meet of the State Legal Services Authorities, 1999, the then Hon'ble Chief Justice Dr A.S. Anand discussing his views stated, “There will be no harm if Legal Services Authorities Act is suitably amended to provide that in case, in a matter before it, the Judges of the Lok Adalats are satisfied that one of the parties is unreasonably opposing a reasonable settlement and has no valid defence whatsoever against the claim of the opposite party, they may pass an award on the basis of the materials before them without the consent of one or more parties. It may also be provided that against such awards, there would be one appeal to the court to which the appeal would have gone if the matter had been decided by a court. This course, I think, would give relief to a very large number of litigants coming to Lok Adalats at pre-litigative stage as well as in pending matters.”39

5.2.5 Finality of the Award:

The order of the Lok Adalat is like any court orders, but the parties cannot appeal against such orders. If a compromise is reached and an award is made, it is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 because it is a judgement by consent. In Punjab National Bank v. Lakshmichand Rai40, an appeal was filed under S. 96 of the Code of Civil Procedure against the award made by a Lok

37 Id, Section 20 (6).
38 Id, Section 20 (7).
39 http://www.legalserviceindia.com/articles/lok_a.htm
40 AIR 2000 M.P. 301.
Adalat. The question before the court was whether such an appeal is maintainable. So in this case it was iterated that “an appeal would not lie under the provisions of Section 96 C.P.C. Lok Adalat is conducted under an independent enactment and once the award is made by Lok Adalat the right of appeal shall be governed by the Legal Services Authority Act.” It has been specifically mentioned in S. 21(2) that no appeal shall lie against an order of a Lok Adalat.

Several cases have come up before the Court where there has been denial of a “reasonable opportunity of being heard”. In **Kishan Rao v. Bidar District Legal Services Authority**\(^{41}\), the question raised was whether the Lok Adalat could pass a decree when all the parties had not appeared before the Lok Adalat nor had notice been issued to them. The Karnataka High Court interpreted Section 20(3) of the Legal Services Authorities Act to hold that all the parties to the suit must be present if the compromise was to be a valid one. Thus the impugned decree was struck down as being a nullity by reason of violation of natural justice.

A party can challenge the award of the Lok Adalat by writ petition in case of any grave illegality. The likelihood of fraud, misrepresentation, force etc. while arriving at the consent or compromise cannot be ruled out. There is yet again a chance that one of the parties may not be in a situation to be aware of the nature of the legality of the proceedings and an award has been passed due to the utter carelessness of the judge.

The probability of such happening cannot be ruled out. In **Mansukhlal Vithaldas Chauhan v. State of Gujarat**\(^{42}\), it was held that the duty of the Court is to confine itself to the question of legality. Its concern should be, (i) whether the decision-

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\(^{41}\) AIR 2001 Kant. 407.

\(^{42}\) 1997 Cri.L.J. SC 4059.
making authority exceeded its powers? (ii) committed an error of law; (iii) committed a breach of the rules of natural justice; (iv) reached a decision which no reasonable Tribunal would have reached; or (v) abused its powers. In this case the Lok Adalat exceeded its powers, committed an error of law, committed breach of the rules of natural justice and abused its powers. Even if this Court were to strictly confine itself to the question of legality, the impugned order cannot still be tolerated as it suffers from all the foibles that justify interference under Article 226 of the Constitution.

5.2.6 Critical Analysis of Lok Adalat:

The system of Lok Adalat is not without limitations. Conflicting views have been expressed on the advisability of the institution of Lok Adalats. They are meant to supplement the judicial process and not to supplant it. It is being said that when conciliation becomes the norm, people’s attitude to resort to court will change.

The major defect of the mechanism of Lok Adalat is that it cannot take a decision, if one of the parties, is not willing for a settlement, though the case involves an element of settlement. The unbending attitude shown by one among the parties will render the entire process fruitless. Even if all the members of the Lok Adalat are of the opinion that the case is a fit one for settlement, under the present set-up, they cannot take a decision unless all the parties consent.

“We have come across Lok Adalats passing orders, issuing directions and even, granting declaratory relief, which are purely in the realm of courts or specified tribunals, that too when there is no settlement. As an award of a Lok Adalat is an executable decree, it is necessary for the Lok Adalats to have a uniform procedure, prescribed registers and standardized formats of awards and permanent record of the
awards, to avoid misuse or abuse of the ADR process.” observed the court. Justice Raveendran writing the verdict for the bench said, “Although the members of Lok Adalats have been doing a commendable job, sometime they tend to act as judges, forgetting that while functioning as members of Lok Adalats, they are only statutory conciliators and have no judicial role. Any overbearing attitude on their part, or any attempt by them to pressurize or coerce parties to settle matters before the Lok Adalat (by implying that if the litigant does not agree for settlement before the Lok Adalat, his case will be prejudiced when heard in court), will bring disrepute to Lok Adalats as an alternative dispute resolution process (ADR process) and will also tend to bring down the trust and confidence of the public in the judiciary.”

The goal of the Lok Adalat is to affect a compromise but in mass scale disposal of cases in Lok Adalats, it is difficult to expect that compromise settlements of mutual benefits would be searched for. In some cases natural justice has been surrendered in the name of expediency.

The case of Manju Gupta vs. National Insurance Company,\(^43\) exhibits the sad state of compromises and settlements in Lok Adalats denying the fair minimum claims of the petitioners. In this case, Manju Gupta of 3 years old lost her two legs in the motor accident. A claim petition was filed for Rs. 2.21 Lakhs. During the pendency of the dispute the Lok Adalat was held at that place. The father of the claimant settled the case at Lok Adalat for Rs. 30,000/- and the insurance company immediately paid the money and filed the settlement petition at Motor Vehicle Accidents Claims Tribunal. This issue was reported in the local news paper. The High Court of Allahabad took suo-moto note of

\(^{43}\) 1994 ACJ 1036.
the issue and directed the Tribunal to send the records to the High Court. The High Court awarded Rs. 1, 10,000/- as compensation. It was observed that in the name of the speedy resolution of the disputes the fair interests of the parties can not be sacrificed. More importantly when the petitioners are minors, insane and disabled, the court has to give proper importance in deciding the claims.

A similar fact situation arose in Moni Mathai v. Federal Bank Ltd. and Recovery Officer, Debts Recovery Tribunal44. The award of the Lok Adalat was given without issuing a notice of hearing to the petitioners; the compromise deed on the basis of which the award was given was not signed by the petitioners and this was a clear violation of the Kerala Regulations. The High Court of Kerala struck down the award with the observation that, “The Lok Adalats are also bound to follow the principles of natural justice, equity, fair play and other legal principles…. The Lok Adalats shall also not forget that their duty is not to dispose of cases somehow but settle cases amicably.”

5.2.7 Permanent Lok Adalats:

The courts established by the National Legal Services Authority or State Legal Services Authority, for the speedy disposal of disputes pertaining to Public Utility Services and not yet recorded in any court of law, by way of compromise, are called Permanent Lok Adalats. The Permanent Lok Adalats are conciliation-cum-arbitration tribunals to settle disputes between selected public utility service and individuals.

In order to get over the major drawback in the existing scheme of organisation of Lok Adalats under Chapter VI of the Legal Services Authorities Act, 1987, in which if the parties do not arrive at any compromise or settlement, the unsettled

44 AIR 2003 Ker. 164.
case is either returned to the Court of law or the parties are advised to seek remedy in a
court of law, which causes unnecessary delay in dispensation of justice. In 2002,
Parliament brought about certain amendments to the Legal Services Authorities Act,
1987. Chapter VI A was introduced in the Legal Services Authorities Act, 1987, by Act
No.37/2002 with effect from 11.06.2002 providing for a Permanent Lok Adalat to deal
with pre-litigation conciliation and settlement of disputes relating to Public Utility
Services, as defined u/sec.22 A of the Legal Services Authorities Act, 1987, which would
result in reducing the work load of the regular courts to a great extent. “Public utility
service” has been defined to include transport service for the carriage of passengers or
goods by air, road or water; postal, telegraph or telephone service; supply of power, light
or water to the public by any establishment; system of public conservancy or sanitation;
service in hospital or dispensary or insurance service and includes any service which the
Central Government or the state Government, as the case may be, may, in the public
interest, by notification, declare to be a public utility service.

Section 22B envisages establishment of ‘Permanent Lok Adalat’ (PLA) at
different places for considering the cases in respect of Public Utility Services. If there is
a dispute with respect to Public Utility Services, as per Section 22C any party to such a
dispute can, before bringing it to a court of law for adjudication, make an application to
PLA for the settlement of that dispute. The Chairman and the members of the Permanent
Lok Adalat guide the parties to the dispute to amicably resolve the dispute. The party
making such application need not be a party who raises a claim against a public utility
service. If a claim is made by one against a public utility service, the establishment
carrying out the public utility service can also raise that dispute before PLA to resolve it.
The only limitation is that PLA shall not have jurisdiction to consider a dispute relating to an offence not compoundable under any law or any matter where the value of the property in dispute exceeds Rs 10 lakhs. But the Central Government can, by an appropriate notification, increase this limit. Once an application has been made to PLA by one party, no party to that application shall invoke the jurisdiction of any court in the same dispute.

PLA has to be established by the National Legal Services Authority or the State Legal Services Authorities. It shall have three members; the Chairman, who is or has been a District Judge or an Additional District Judge or has held a judicial office higher in rank than that of a District Judge and two other members having adequate experience in public utility service. Such persons shall be appointed by the State or the Central Authority, as the case may be, upon nomination by the respective Governments. But at the same time, such nomination shall be on the recommendation of the Central or the State Authority. Section 22C (3) provides that when an application is filed raising a dispute, the parties shall be directed to file written statements with appropriate proof, including documents and other evidence. Copies of documents produced and statements made by the parties shall be given to each other. Thereafter PLA shall conduct conciliation proceedings between the parties to bring about an amicable settlement to the dispute. It is the primary duty of PLA as per Section 22C (4). While conducting such conciliation proceedings, it is incumbent on the members of PLA to assist the parties to reach an amicable settlement. If the parties to the dispute compromise the dispute is adjudicated as per the conditions of the compromise.

45 Supra Note 15, Section 22B.
The parties are also obliged to cooperate in good faith with PLA. If PLA is of the opinion that “there exist elements of settlement in such proceedings, which may be acceptable to the parties”, it shall formulate the terms of possible settlement, communicate its observations to the parties and if the parties agree, the settlement shall be signed and an award shall be passed in terms of such settlement and copies of the award shall be furnished to the parties.\textsuperscript{46} It is also provided in sub-section (8) that in cases where there exist elements of settlement, but the parties fail to reach at an agreement, the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute on merits. In doing so the Permanent Lok Adalat shall be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice without being bound by the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872. For the purpose of holding any determination the Permanent Lok Adalat shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of summoning and enforcing of attendance and examining of witnesses, discovery or production of documents, reception of evidence on affidavits, requisitioning of public records and documents and such other matter as the Government may prescribe. PLA can specify its own procedure for deciding the dispute coming before it and the proceedings shall be deemed to be judicial proceedings. The award of PLA, whether made on merit or on settlement shall be final and binding on parties and be deemed to be a decree of a civil court. It shall be executed as if it is a decree of a civil court having jurisdiction in respect of the dispute involved. But the award cannot be called in question in any “original suit, application or

\textsuperscript{46} Id, Section 22C (7).
execution proceedings”. This, in effect, is the scheme of the amendment establishing a Permanent Lok Adalat. As the procedure adopted here is very simple, the disputes get adjudged very quickly.

5.2.7.1 Critical Analysis of the Permanent Lok Adalat:

There is criticism regarding the constitution and working of the permanent lok Adalats. It is said that their may be political consideration in the appointment of the members of the PLA. This criticism is not fair. Because, though the respective governments nominate the members, this nomination is on the recommendations of the Legal Services Authority concerned.\(^\text{47}\) The Chairman of the PLA will be a person who is or has been a district judge or additional district judge or has held office higher in rank than that of a district judge.\(^\text{48}\)

The other criticism is regarding the functioning of PLA as it is given the power to decide a dispute when the parties do not agree for a settlement. When a Permanent Lok Adalat, in the conciliation proceedings, is of the opinion that there exist elements of settlement which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give such terms to the parties concerned for their observations. In case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the PLA shall pass an award in terms thereof.\(^\text{49}\) But if they fail to reach at an agreement, PLA shall decide the dispute.\(^\text{50}\) It means PLA is not given the power to decide every dispute coming before it. Only those

\(^{47}\) Id, Section 22B (2) (b).

\(^{48}\) Id, Section 22B (2) (a).

\(^{49}\) Id, Section 22C (7).

\(^{50}\) Id, Section 22B (8).
disputes where there exist elements of settlement can be decided by the Permanent Lok Adalat.

The decision or the opinion of the Permanent Lok Adalat as to whether there exist elements of settlement is a matter which can be subjected to judicial review under Article 226 of the Constitution of India. The ordinary Lok Adalat adopts only a conciliatory method and does not decide a dispute. Therefore it is expressly provided under section 21(2) of the Legal Services Authorities Act, 1987 that 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. Under the civil procedure law also no appeal shall lie from a decree passed on consent of the parties. It is not stated anywhere in the Act that an award of a PLA shall not be called in question in any appeal, as is stated in case of the award of an ordinary Lok Adalat in Section 21(2) of the Act. An appeal shall lie from an award of the PLA if the award is given by it on merits. Section 96(1) CPC can be relied on to establish that an appeal is not excluded. The award of PLA has all the characteristics of a civil court decree and it is deemed as a decree of a civil court. Section 96(1) of the Code of Civil Procedure, 1908 provides, “Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court.”

This will, certainly, prove to be very effective, litigant-friendly and less-expensive mechanism to resolve certain serious disputes. As Public Utility Service is rendered mainly by corporate bodies, this virtually will be a forum for ordinary men and women to ventilate their grievances against such corporate bodies. These Permanent Lok
Adalats can decide disputes relating to deficiency of service, claims for compensation, recovery of money etc. pertaining to all utility services. In the changing economic scenario of the country where insurance, communication and other services are thrown open to corporate giants, it is all the more necessary to provide for cost-effective and delay-free tools for resolution of disputes. PLA is a conciliatory mode with certain features of arbitration to arrive at decisions under given circumstances.

5.2.8 Parivarik Mahila Lok Adalat:

The disputes which could be settled or compromised in a Lok Adalat include disputes regarding marriage and other family matters. The family disputes, especially disputes in respect of marriage require quick disposal for providing redressal to the women who are suffering from injustice and are subject to torture and violence in their marital life.

Considering the troubles of women to whom justice was denied due to long pendency of the proceedings before the court, the National Commission for Women evolved the concept of Parivarik Mahila Lok Adalat (PMLA) which supplements the efforts of the District Legal Service Authority (DLSA) for redressal and speedy disposal of the matters pending in various courts related to marriage and family affairs. The objectives of the PMLA are to provide speedy and cost free dispensation of justice to women, to generate awareness among the public regarding conciliatory mode of dispute settlement, to gear up the process of organizing the Lok Adalats, to encourage the public
to settle their disputes outside the formal set-up and to empower public especially women to participate in justice delivery mechanism.51

Marital disputes and other family disputes may be settled or compromised in the PMLA. Apart from pending cases, the dispute can also be resolved at the prelitigation stage and the parties can avail themselves of the opportunity to resolve their disputes without aid of any lawyer. PMLA is the alternative forum where redressal will be available to the destitute wives or other family members within the shortest span of time. The PMLA functions on the model of the Lok Adalat. The National Commission for Women provides financial assistance to NGOs or State Women Commissions or State Legal Service Authority to organize the Parivarik Mahila Lok Adalat.

5.2.8.1 Organization of PMLA:

The NGOs may approach the DLSA or District Judge and collect information about pending cases of family disputes within the district. The DLSA selects women related cases which are admissible in the Lok Adalat and makes relevant files/case papers available to the NGOs. It is expected that minimum 60 cases shall be taken up for handling in PMLA. NGOs should take written permission from DLSA to do the counseling in selected cases. The NGOs, through their Counsellors should approach the parties and start counseling prior to the date of the PMLA to bring them to a compromise or settlement.

The NGOs will organise PMLA on the specified date on which the cases will be brought up for settlement. If necessary, the NGOs may approach the DLSA to summon the parties. The settlement should be noted down on paper in each case and the

signatures of both the parties must be obtained on the document which will be presented before PMLA for its legal authentication. At least 40% of the cases received from DLSA must be disposed of on the date of PMLA. The NGOs should approach the District Judge to appoint a Presiding Officer, for the PMLA, who should be a Judge and two or more members who can be judges, advocates or social activists. The venue of the PMLA should be a suitable central place convenient to the panelists as well as the parties and preferably premises other than a Court Room.

NGOs should ensure the presence of compromising parties on the date of PMLA. The panel will authenticate the settlement on the date of PMLA. Court decree will be issued as per the settlement and will be legally binding on both the parties. The settled cases will be withdrawn from the dealing courts. NGOs should invite media publicity. NGOs shall not charge any fee from the parties.

The following type of matters can be brought before the PMLA:

i) All civil cases.

ii) Matrimonial disputes including divorce, maintenance of wife, parents, children etc.

iii) Compoundable Criminal cases.

iv) Disputes related to Labour Laws.

v) Motor Accident Claims.

vi) Bigamy.

5.2.8.2 Role of Counseling:

An important aspect of PMLA is to give patient hearing to the parties in an informal manner. Counseling plays a crucial role in settling a case. The Counsellors are
required to assist the PMLA in the delivery of justice. They play positive and constructive role in the settlement of disputes. In the process the Counsellors have to win the confidence of both the parties. Normally the suffering parties open up before the Counsellors to sort out their disputes and even other problems. Though it is a time taking process, it is an important tool to bring the parties to an amicable settlement and resolve the disputes. The Counsellors should be qualified and have experience to promote the settlement of disputes between the parties through conciliation and counseling. Counsellors should also have good skill of making report of settlement as Presiding Officer relies on their report.

5.2.8.3 Financial Assistance:

The Commission provides financial assistance limited to Rs. 30,000/- (Rupees Thirty thousand only) to NGOs to organise the PMLA. The item-wise ceiling for incurring expenditure is given below:

a) Printing of Banners, Posters and Handbills Rs. 5,000/-

b) Photography Rs. 1,000/-

c) Tea/Working Lunch Rs. 800/- (Hospitality should be as per GOI norms of Rs. 5/- per person for Tea and Rs. 50/- per Person for Working Lunch).

d) Vehicle charges (not more than 15 days) Rs. 6,000/-

e) Honorarium to Counsellors Rs. 7,500/-

f) TA/DA to NGOs etc Rs. 3,000/-

g) Refreshment etc prior to holding PMLA Rs. 4,000/- (Hospitality should be as per GOI norms of Rs. 5/- per person for Tea and Rs. 50/- per person for Working Lunch)
h) Miscellaneous Rs. 2,700/- For the North- Eastern States the financial assistance
shall be of amount not exceeding Rs. 40,000/-.

5.2.8.4 Organizations Eligible for Assistance:

Any voluntary organization registered under the Societies Registration
Act, 1860 or State Women Commission or DLSA jointly with NGOs/Educational
Institutions can apply in the prescribed Format with the following documents for
financial assistance to hold PMLA:

i) Certified copy of Registration.

ii) Certified copy of Memorandum & Articles of Association with latest composition
    of the Boards.

iii) Certified copy of Audited Statement of Accounts for the last three years.

iv) Annual Report for the last 3 years (Requirement of documents at (i) to (iv) is
dispensed with in the case of State Commission for Women and Government
bodies).

v) Documents giving details of past experiences of Counseling and Women related
    programmes.

vi) Written permission from the District Judge/DLSA with the list of cases.

vii) The tentative date/month for organizing the PMLA (in consultation with the
    District Judge/ DLSA).

viii) The details of assistance received or likely to be available from other sources
    including DLSA, Local Authorities, Voluntary Organizations and other
    Institutions.
5.2.9 Achievements of the Lok Adalats in India:

In every respect the scheme of Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost. They get faster and inexpensive remedy with legal status. The table below shows the number of Lok Adalats held in all the States till 30th November 2011 from its inception, number of MACT (Motor Accidents Claims Tribunal) cases settled, number of total cases settled and compensation awarded in MACT cases:

Table 1:

<table>
<thead>
<tr>
<th>State/Union Territory</th>
<th>Lok Adalats held</th>
<th>MACT Cases Settled</th>
<th>Cases Settled (incl. MACT Cases)</th>
<th>Compensation awarded in MACT Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>1,59,110</td>
<td>1,12,169</td>
<td>14,31,481</td>
<td>9,93,71,01,396</td>
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<tr>
<td>Arunachal Pradesh</td>
<td>481</td>
<td>549</td>
<td>4,925</td>
<td>3,01,37,176</td>
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<td>Assam</td>
<td>3,976</td>
<td>22,869</td>
<td>2,47,406</td>
<td>1,26,75,88,835</td>
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<tr>
<td>Bihar</td>
<td>20,550</td>
<td>1,20,135</td>
<td>8,25,871</td>
<td>93,89,46,619</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>9,365</td>
<td>8,329</td>
<td>81,072</td>
<td>75,92,40,532</td>
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<tr>
<td>Goa</td>
<td>658</td>
<td>5,206</td>
<td>8,004</td>
<td>30,60,91,648</td>
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<td>Gujarat</td>
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<td>1,82,344</td>
<td>68,64,186</td>
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<td>11,65,674</td>
<td>3,28,90,16,583</td>
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<td>5,614</td>
<td>5,414</td>
<td>93,014</td>
<td>42,29,08,879</td>
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<td>8,527</td>
<td>1,19,594</td>
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<td>18,166</td>
<td>3,487</td>
<td>1,47,598</td>
<td>48,91,16,740</td>
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<td>Karnataka</td>
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<td>1,32,589</td>
<td>12,98,306</td>
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<td>Kerala</td>
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<td>2,85,533</td>
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<td>32,375</td>
<td>82,614</td>
<td>11,73,676</td>
<td>9,61,55,45,572</td>
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<td>5,72,21,500</td>
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<td>1,049</td>
<td>1,648</td>
<td>10,90,98,322</td>
</tr>
<tr>
<td>State</td>
<td>Orissa</td>
<td>Punjab</td>
<td>Rajasthan</td>
<td>Sikkim</td>
</tr>
<tr>
<td>-----------------------</td>
<td>--------</td>
<td>------------</td>
<td>-----------</td>
<td>----------</td>
</tr>
<tr>
<td></td>
<td>12,099</td>
<td>18,964</td>
<td>1,12,633</td>
<td>1,068</td>
</tr>
<tr>
<td></td>
<td>44,128</td>
<td>16,889</td>
<td>5,98,919</td>
<td>160</td>
</tr>
<tr>
<td></td>
<td>40,67,482</td>
<td>9,99,956</td>
<td>23,65,331</td>
<td>4,008</td>
</tr>
<tr>
<td></td>
<td>3,00,27,92,997</td>
<td>1,47,22,83,274</td>
<td>5,37,38,36,690</td>
<td>91,01,000</td>
</tr>
<tr>
<td></td>
<td>97,88,17,20,428</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Lok Adalats have been a very success in disposing of cases speedily and without incurring much. The difference between the work done by Lok Adalats and the regular courts becomes much more marked if one takes into account the number of cases settled at various Lok Adalats and compares them to the corresponding figures for those decided by regular courts. The statistics themselves tell the success story of the institution. Till 30.11.2011 since its inception, total 9, 81,418 (near about 10 lakhs) Lok Adalats have been held in all the States, UTs and by the Supreme Court Legal Services Committee. In these Lok Adalats 3, 42, 61,536 (more than 342 lakhs) cases were settled including 19, 38,495 (about 19 Lakhs) MACT cases. In the MACT Cases settled Rs.

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52 As information received from NALSA by e-mail on 28.2.2012.
97,88,17,20,428 (more than 97 thousand millions) has been awarded as compensation. If we compare this data with the cases disposed of by the regular courts the picture becomes clear.

5.2.10 Achievements of Lok Adalats in Punjab:

The efforts of the Punjab Legal Services Authority (PLSA) in resolving disputes through innovative methods have not gone unnoticed. The Union government has asked to all the states to follow Punjab’s example in successful usage of Alternate Dispute Redressal (ADR) mechanism to deal high number of consumer cases ⁵³.

The initiative to involve the Lok Adalats in resolving consumer cases, Labour related cases and cases of disputes between farmers and commission agents was taken up by PLSA(Punjab Legal Services Authority) on the request of Dr. B.C. Gupta, Senior IAS officer. Even the International Labour Organization (ILO) has appreciated the Punjab experience in Alternate Dispute Redressal of Labour dispute cases. At an ILO conference in Manesar (Haryana) in 2005 representatives of eight countries decided to study the Punjab experience in detail and then to suggest their respective governments to implement the same. The ILO has also sought details from the Punjab Government on the mechanism, adopted by the Lok Adalats in settling Labour disputes out of court and that too in a matter of hours. ⁵⁴

Table 2 shows the number of cases settled and disposed of in Permanent Lok Adalats (Public Utility Services) in the State of Punjab since the inception. ⁵⁵

---

Table 2:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Total No. of Cases Disposed off in Permanent Lok Adalats</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-2006</td>
<td>45</td>
</tr>
<tr>
<td>2006-2007</td>
<td>2,541</td>
</tr>
<tr>
<td>2007-2008</td>
<td>8,619</td>
</tr>
<tr>
<td>2008-2009</td>
<td>20,035</td>
</tr>
<tr>
<td>2009-2010</td>
<td>20,854</td>
</tr>
<tr>
<td>2010-2011</td>
<td>23,672</td>
</tr>
<tr>
<td>Total</td>
<td>75,766</td>
</tr>
</tbody>
</table>

The Table 3 and 4 below provide the information regarding number of Lok Adalats held, cases settled and compensation paid by the Punjab Legal Aid Board and Punjab Legal services Authority in the state of Punjab. Table 3 shows the data before the establishment of the Punjab Legal Services Authority, when the lok adalats were held by Punjab Legal Aid Board. Table 4 shows the data of Lok Adalats held by Punjab Legal Services Authority.

Table 3: since the inception of Punjab Legal Aid Board

<table>
<thead>
<tr>
<th>Financial year</th>
<th>Number of Lok Adalats held</th>
<th>Number of cases taken up</th>
<th>Number of cases settled</th>
<th>Compensation Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-1991</td>
<td>5</td>
<td>4194</td>
<td>2178</td>
<td>4,16,01,882/-</td>
</tr>
<tr>
<td>1991-1992</td>
<td>24</td>
<td>7051</td>
<td>5833</td>
<td>2,02,81,125/-</td>
</tr>
<tr>
<td>1992-1993</td>
<td>41</td>
<td>11945</td>
<td>10429</td>
<td>3,62,38,620/-</td>
</tr>
<tr>
<td>1993-1994</td>
<td>62</td>
<td>18148</td>
<td>14279</td>
<td>6,57,98,337/-</td>
</tr>
<tr>
<td>1994-1995</td>
<td>34</td>
<td>14328</td>
<td>12447</td>
<td>19,64,37,672/-</td>
</tr>
<tr>
<td>1995-1996</td>
<td>19</td>
<td>2814</td>
<td>2188</td>
<td>1,19,94,512/-</td>
</tr>
<tr>
<td>1996-1997</td>
<td>127</td>
<td>11364</td>
<td>7893</td>
<td>8,71,54,980/-</td>
</tr>
<tr>
<td>1997-1998</td>
<td>205</td>
<td>20852</td>
<td>8621</td>
<td>24,66,91,352/-</td>
</tr>
</tbody>
</table>
Table 4: Since the inception of Punjab Legal Services Authority

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Legal Aid Beneficiaries</th>
<th>SC/ST In custody</th>
<th>Women/Child</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998-1999</td>
<td>357</td>
<td>22300</td>
<td>11674</td>
<td>23,48,65,014/-</td>
</tr>
<tr>
<td>1999-2000</td>
<td>494</td>
<td>26358</td>
<td>12890</td>
<td>398,90,66,94/-</td>
</tr>
<tr>
<td>2000-2001</td>
<td>512</td>
<td>68609</td>
<td>36786</td>
<td>81,6049,631/-</td>
</tr>
<tr>
<td>2001-2002</td>
<td>468</td>
<td>81339</td>
<td>38187</td>
<td>1,34,27,91,519/-</td>
</tr>
<tr>
<td>2002-2003</td>
<td>396</td>
<td>49182</td>
<td>22156</td>
<td>82,29,96,780/-</td>
</tr>
<tr>
<td>2003-2004</td>
<td>430</td>
<td>81883</td>
<td>51248</td>
<td>81,86,02,445/-</td>
</tr>
<tr>
<td>2004-2005</td>
<td>474</td>
<td>30745</td>
<td>16181</td>
<td>75,20,96,369/-</td>
</tr>
<tr>
<td>2005-2006</td>
<td>444</td>
<td>143861</td>
<td>76573</td>
<td>230,06,60,863/-</td>
</tr>
<tr>
<td>2006-2007</td>
<td>524</td>
<td>76824</td>
<td>53231</td>
<td>211,88,16,655/-</td>
</tr>
<tr>
<td>2007-2008</td>
<td>565</td>
<td>112079</td>
<td>63820</td>
<td>197,45,43,320/-</td>
</tr>
<tr>
<td>2008-2009</td>
<td>473</td>
<td>504625</td>
<td>410375</td>
<td>609,21,75,259/-</td>
</tr>
<tr>
<td>2009-2010</td>
<td>508</td>
<td>57379</td>
<td>35890</td>
<td>199,75,77,728/-</td>
</tr>
<tr>
<td>2010-2011</td>
<td>472</td>
<td>64169</td>
<td>44258</td>
<td>260,47,74,123/-</td>
</tr>
<tr>
<td><strong>Total of 3 +4</strong></td>
<td><strong>6634</strong></td>
<td><strong>1410049</strong></td>
<td><strong>937137</strong></td>
<td><strong>2298,10,54,880/-</strong></td>
</tr>
</tbody>
</table>

Below tables give the year wise figures regarding number of beneficiaries under Legal Aid Schemes with break up of different categories. Table 5 shows the number of beneficiaries from schemes initiated by Legal Aid Board in Punjab. Table 6 shows the number of beneficiaries from Punjab Legal Services Authority.

Table 5: Since the inception of Legal Aid Board:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Legal Aid Beneficiaries</th>
<th>SC/ST In custody</th>
<th>Women/Child</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-1991</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1991-1992</td>
<td>2717</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1992-1993</td>
<td>2707</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1993-1994</td>
<td>4369</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1994-1995</td>
<td>2926</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1995-1996</td>
<td>2906</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1996-1997</td>
<td>2850</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
Table 6: Since the inception of Punjab Legal Services Authority:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Legal Aid Beneficiaries</th>
<th>SC/ST</th>
<th>In custody</th>
<th>Women</th>
<th>Child</th>
<th>Backward Class</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998-1999</td>
<td>2285</td>
<td>362</td>
<td>408</td>
<td>105</td>
<td>8</td>
<td>8</td>
<td>1394</td>
</tr>
<tr>
<td>1999-2000</td>
<td>2327</td>
<td>401</td>
<td>567</td>
<td>187</td>
<td>9</td>
<td>79</td>
<td>1084</td>
</tr>
<tr>
<td>2000-2001</td>
<td>2381</td>
<td>297</td>
<td>951</td>
<td>216</td>
<td>14</td>
<td>0</td>
<td>903</td>
</tr>
<tr>
<td>2001-2002</td>
<td>2345</td>
<td>251</td>
<td>1240</td>
<td>243</td>
<td>32</td>
<td>15</td>
<td>564</td>
</tr>
<tr>
<td>2002-2003</td>
<td>3159</td>
<td>393</td>
<td>1751</td>
<td>365</td>
<td>7</td>
<td>0</td>
<td>643</td>
</tr>
<tr>
<td>2003-2004</td>
<td>3440</td>
<td>429</td>
<td>1667</td>
<td>435</td>
<td>4</td>
<td>0</td>
<td>905</td>
</tr>
<tr>
<td>2004-2005</td>
<td>3607</td>
<td>509</td>
<td>1958</td>
<td>525</td>
<td>18</td>
<td>0</td>
<td>597</td>
</tr>
<tr>
<td>2005-2006</td>
<td>4123</td>
<td>471</td>
<td>2427</td>
<td>590</td>
<td>18</td>
<td>16</td>
<td>601</td>
</tr>
<tr>
<td>2006-2007</td>
<td>41 81</td>
<td>434</td>
<td>2566</td>
<td>542</td>
<td>34</td>
<td>28</td>
<td>577</td>
</tr>
<tr>
<td>2007-2008</td>
<td>3430</td>
<td>295+4</td>
<td>2158</td>
<td>493</td>
<td>34</td>
<td>23</td>
<td>423</td>
</tr>
<tr>
<td>2008-2009</td>
<td>3681</td>
<td>240+2</td>
<td>2514</td>
<td>491</td>
<td>27</td>
<td>9</td>
<td>398</td>
</tr>
<tr>
<td>2009-2010</td>
<td>3712</td>
<td>174</td>
<td>2477</td>
<td>592</td>
<td>15</td>
<td>4</td>
<td>450</td>
</tr>
<tr>
<td>2010-2011</td>
<td>3773</td>
<td>172</td>
<td>2542</td>
<td>548</td>
<td>29</td>
<td>18</td>
<td>464</td>
</tr>
<tr>
<td>Total</td>
<td><strong>43089</strong></td>
<td><strong>4551</strong></td>
<td><strong>23317</strong></td>
<td><strong>5373</strong></td>
<td><strong>249</strong></td>
<td><strong>200</strong></td>
<td><strong>9399</strong></td>
</tr>
</tbody>
</table>

Total No. of Beneficiaries under Legal Aid Schemes (5+6) = 64,267

The below Tables give the information regarding holding of seminars and Legal Literacy Camps in Punjab. Table 7 gives the information of number of seminars organized by Punjab Legal Aid Board. Table 8 gives information of number of seminars organized and number of beneficiaries from Punjab Legal Services authority.
Table 7: Since the inception of Punjab Legal Aid Board

<table>
<thead>
<tr>
<th>Financial Year.</th>
<th>Number of seminars organized.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-1991</td>
<td>-</td>
</tr>
<tr>
<td>1991-1992</td>
<td>47</td>
</tr>
<tr>
<td>1992-1993</td>
<td>65</td>
</tr>
<tr>
<td>1993-1994</td>
<td>112</td>
</tr>
<tr>
<td>1994-1995</td>
<td>101</td>
</tr>
<tr>
<td>1995-1996</td>
<td>260</td>
</tr>
<tr>
<td>1996-1997</td>
<td>154</td>
</tr>
<tr>
<td>1997-1998</td>
<td>124</td>
</tr>
<tr>
<td>TOTAL</td>
<td>863</td>
</tr>
</tbody>
</table>

Table 8: Since the inception of Punjab Legal Services Authority

<table>
<thead>
<tr>
<th>Financial Year.</th>
<th>Number of seminars organized.</th>
<th>Number of Beneficiaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998-1999</td>
<td>91</td>
<td>14029</td>
</tr>
<tr>
<td>1999-2000</td>
<td>75</td>
<td>12200</td>
</tr>
<tr>
<td>2000-2001</td>
<td>97</td>
<td>32655</td>
</tr>
<tr>
<td>2001-2002</td>
<td>83</td>
<td>35390</td>
</tr>
<tr>
<td>2002-2003</td>
<td>102</td>
<td>31508</td>
</tr>
<tr>
<td>2003-2004</td>
<td>124</td>
<td>24006</td>
</tr>
<tr>
<td>2004-2005</td>
<td>325</td>
<td>60182</td>
</tr>
<tr>
<td>2005-2006</td>
<td>468</td>
<td>111058</td>
</tr>
<tr>
<td>2006-2007</td>
<td>335</td>
<td>94870</td>
</tr>
<tr>
<td>2007-2008</td>
<td>351</td>
<td>84487</td>
</tr>
<tr>
<td>2008-2009</td>
<td>342</td>
<td>48632</td>
</tr>
<tr>
<td>2009-2010</td>
<td>426</td>
<td>62175</td>
</tr>
<tr>
<td>2010-2011</td>
<td>402</td>
<td>56203</td>
</tr>
<tr>
<td>Total</td>
<td>3294</td>
<td>678597</td>
</tr>
</tbody>
</table>

Total No. of Seminars/ Legal Literacy Camps organized (7+8) = 4157
Table 9 shows the number of cases settled and disposed off in Counselling Centres being run by Assistant District Attorney (Legal Services) in the State of Punjab.

Table 9:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Cases received</th>
<th>Cases disposed off.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998-1999</td>
<td>61</td>
<td>32</td>
</tr>
<tr>
<td>1999-2000</td>
<td>75</td>
<td>38</td>
</tr>
<tr>
<td>2000-2001</td>
<td>41</td>
<td>34</td>
</tr>
<tr>
<td>2001-2002</td>
<td>34</td>
<td>9</td>
</tr>
<tr>
<td>2002-2003</td>
<td>149</td>
<td>58</td>
</tr>
<tr>
<td>2003-2004</td>
<td>381</td>
<td>100</td>
</tr>
<tr>
<td>2004-2005</td>
<td>557</td>
<td>148</td>
</tr>
<tr>
<td>2005-2006</td>
<td>507</td>
<td>221</td>
</tr>
<tr>
<td>2006-2007</td>
<td>318</td>
<td>102</td>
</tr>
<tr>
<td>2007-2008</td>
<td>270</td>
<td>203</td>
</tr>
<tr>
<td>2008-2009</td>
<td>256</td>
<td>166</td>
</tr>
<tr>
<td>2009-2010</td>
<td>180</td>
<td>113</td>
</tr>
<tr>
<td>2010-2011</td>
<td>128</td>
<td>92</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2972</strong></td>
<td><strong>1328</strong></td>
</tr>
</tbody>
</table>

Table 10 shows the number of cases taken up and disposed of in legal aid clinics by giving Legal Advice situated at Amritsar and Jalandhar and in villages of Bathinda, Rupnagar, Mansa, Sangrur and Patiala.

Table 10:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases received</th>
<th>No. of cases disposed off</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-08</td>
<td>564</td>
<td>564</td>
</tr>
<tr>
<td>2008-09</td>
<td>962</td>
<td>962</td>
</tr>
<tr>
<td>2009-10</td>
<td>937</td>
<td>937</td>
</tr>
<tr>
<td>2010-11</td>
<td>848</td>
<td>848</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3311</strong></td>
<td><strong>3311</strong></td>
</tr>
</tbody>
</table>
5.2.11 **Advantages of Lok Adalats:**

The benefits of the lok adalats can be discussed as under:

a) Decisions of Lok Adalats are quick, inexpensive and free from legal hassles.

b) Settlement through Lok Adalat has the same force as it is originally decided by a civil court. Award of the Lok Adalats is final and no appeal shall lie against such award.

c) Disputes come to an end for ever. The decision of the Lok Adalat is binding on the parties to the dispute. No appeal lies against the order of the Lok Adalat whereas in the regular law courts there is always a scope to appeal to the higher forum on the decision of the trial court, which causes delay in the settlement of the dispute finally. The reason being that in a regular court, decision is that of the court but in Lok Adalat it is mutual settlement and hence no case for appeal will arise.

d) There is no court fee and even if the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat.

e) In case the award is not honoured by a party concerned, it can be executed through a court of law.

f) There is no strict application of the procedural laws and the Evidence Act while assessing the merits of the claim by the Lok Adalat. The parties to the disputes though represented by their advocate can interact with the Lok Adalat judge directly and explain their stand in the dispute and the reasons therefore, which is not possible in a regular court of law.
g) Disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat.

The concept of Lok Adalat is no longer an experiment in India, but it is an effective and efficient, pioneering and palliative alternative mode of dispute settlement which is accepted as a viable economic, efficient, informal, expeditious form of resolution of disputes. It is hybrid or admixture of mediation, negotiation, arbitration and participation. The true basis of settlement of disputes by the Lok Adalat is the principle of mutual consent, voluntary acceptance of conciliation with the help of counselors and conciliation. It is a participative, capable and prospective alternative dispute resolution mechanism. It revolves round the principle of creating awareness amongst the disputants to the effect that their welfare and interest, really, lies in arriving, at amicable, immediate, consensual and peaceful settlement of the disputes.\(^56\)

These Lok Adalats are becoming popular day-by-day and a number of disputes between public and statutory authorities have started getting settled at pre-litigative stage itself saving the parties from unnecessary expense and litigation inconvenience. One of the biggest advantages of pre-litigation is that it not only quells the litigation in its infancy and saves huge costs of prosecuting litigation in Courts but it also provides for greater scope of negotiation for the parties to settle their disputes as at this point of time parties generally do not have a hardened stand as to their legal rights. They are prepared to negotiate on the basis of their respective interest rather than on their rights.

5.3 Negotiation:

From the Stone Age to the 21st Century, history has moved forward through exchanging, bartering, and buying and selling services and products. Negotiation is the simplest means for redressal of disputes. In this mode the parties begin their talk without interference of any third person. The aim of negotiation is the settlement of disputes by exchange of views and issues concerning the parties. Negotiation is a verbal process where two or more parties seek to reach an agreement over a problem between them, in which they seek, as far as possible, to preserve their interests.

5.3.1 Definition of Negotiation:

Goldberg, Sander, and Rogers in ‘Dispute Resolution: Negotiation, Mediation, and Other Processes’ define negotiation as “communication for the purpose of persuasion.” Negotiation is a process in which parties to a dispute discuss possible outcomes directly with each other. Parties exchange proposals and demands, make arguments, and continue the discussion until a solution is reached, or an impasse declared. “Negotiation is a process whereby parties to a dispute hold discussions or dealings about a matter with a view to reconciling differences and establishing areas of agreement, settlement or compromise.”

58 Stephen B. Goldberg, Frank E.A. Sander and Nancy H. Rogers, Dispute Resolution: Negotiation, Mediation, and Other Processes( 2003), Aspen Law & Business, USA
Negotiation has been defined as ‘the process we use to satisfy our needs when someone else controls what we want’.\(^\text{60}\) The author says that negotiation normally occurs because one has something the other wants and is willing to bargain to get it. The Pepperdine University of USA has developed an explanatory definition for negotiation. “Negotiation is a communication process used to put deals together or resolve conflicts. It is a voluntary, non-binding process in which the parties control the outcome as well as the procedures by which they will make an agreement. Because most parties place very few limitations on the negotiation process, it allows for a wide range of possible solutions maximizing the possibility of joint gains.”\(^\text{61}\)

### 5.3.2 Concept of Negotiation:

Generally negotiation is taken as a battle of positions between two parties, where the outcome is either win or lose. Loser has the feeling that he has not got good deal. The methodology of negotiation has long been associated with aggressively adversarial tactics. This competitive, attacking, often ego-driven style, known as the adversarial style, is characterized by hard-bargaining, aggressive techniques.\(^\text{62}\) This method of negotiation does not improve relationships either commercial or personal. Rather it creates an atmosphere of distrust. If there is understanding and element of patience between the parties this mode of redressal of dispute is the simplest and most economical. Purpose of the negotiation is to resolve disputes and to create an agreement which is for mutual advantage. Parties have full opportunity for presentation of case in


\(^\text{62}\) Supra Note 1.
this mode of redressal. This method is the oldest method and generally precedes all other forms of dispute resolution. The parties to the dispute negotiate between themselves to resolve the dispute and when that fails, resort to other forms of dispute resolution including taking the matter to the court. The stand in negotiation may be either way. It may be rights based or interest based. Roger Fisher and William Ury\textsuperscript{63} suggest a win-win approach to negotiations that leaves all parties satisfied. Fisher and Ury explain that a good agreement is one which is wise and efficient, and which improves the parties’ relationship. Wise agreements satisfy the parties’ interests and are fair and lasting. The authors’ goal is to develop a method for reaching good agreements. Negotiations often take the form of positional bargaining. In positional bargaining, each part opens with their position on an issue. The parties then bargain from their separate opening positions to agree on one position. Positional bargaining does not tend to produce good agreements. It is an inefficient means of reaching agreements and the agreements tend to neglect the parties’ interests. It encourages stubbornness and so tends to harm the parties’ relationship. Principled negotiation provides a better way of reaching good agreements.

Public conflicts and ineffective means for dealing with them lead to wasted resources, social instability, reduced investment, chronic underdevelopment, and loss of life. CMG\textsuperscript{64} believes that good negotiation, joint problem-solving, facilitation, and


\textsuperscript{64} CMG (Conflict Management Group) is an international nonprofit organization, which was founded in 1984 by Harvard Law School Professor Roger Fisher in USA. It is engaged in the training of negotiators, consulting, diagnostic research, process design, conflict analysis, facilitation, consensus-building, and mediation. CMG also facilitates the building of institutions for the prevention and ongoing management of conflicts.
dispute management skills can help those with differing interests, values, and cultures cope more effectively with their differences.\textsuperscript{65}

Negotiation is primarily a common mean of securing one’s expectations from others. It is a form of communication designed to reach an agreement when two or more parties have certain interests that are shared and certain others that are opposed.\textsuperscript{66} It depicts the process as one in which two people try to take advantage of each other.

5.3.3 Principles of Negotiation:

In negotiations there are three approaches to resolving the dispute, each with a different orientation and focus – interest-based, rights-based, and power-based and they can result in different outcomes.\textsuperscript{67} Interest based approach shifts the focus of the discussion from positions to interests. Because there are many interests underlying any position, a discussion based on interests opens up a range of possibilities and creative options, whereas positions very often cannot be reconciled and may therefore lead to a dead end. The dialogue on interest should be transparent, in order for the parties to arrive at an agreement that will satisfy the needs and interests of the


\textsuperscript{67} Ury, W.; Brett, J.; and Goldberg, S., Getting Dispute Resolved, Harvard University, PON, 1993. The Harvard Program on Negotiation (PON) is a university consortium dedicated to developing the theory and practice of negotiation and dispute resolution. As a community of scholars and practitioners, PON serves a unique role in the world negotiation community. Founded in 1983 as a special research project at Harvard Law School, PON includes faculty, students, and staff from Harvard University, Massachusetts Institute of Technology and Tufts University. Harvard currently offers 12 week courses on negotiation and mediation for participants from all disciplines and professions as well as weekend seminars taught by their professors.
While interest-based negotiations have the potential of leading to the best outcomes, the parties may not adopt it and therefore negotiations are often “rights-based” or “power-based”. When negotiations between parties fail, the parties may then attempt to resort to what they consider to be their rights. This means appealing to the court (local, national, or international) and will result in a legal process in which the law is the dominant feature. Resorting to threat or even violence as a way of communication for the purpose of persuasion is called power-based negotiation. Rights-based and power-based approaches are used at times when parties cannot or are not willing to resolve their issues through interest-based negotiation.

In the win-lose scenario, each party is solely interested in his/her own needs, desires and concerns. The adversarial negotiator’s typical approach involves making high demands, stretching facts, attempts to outmaneuver the opponent, intimidation, and an unwillingness to make concessions. Some lawyers advocate this style, professing its effectiveness in increasing their clients’ gains and avoiding exploitation. Competition and opposing interests lead to a requirement by the parties to divide the assets or resources under dispute. They lead to “dividing the pie” or “claiming value,” in other words a “zero-sum game.” Several alternatives to the adversarial approach have developed in the field of negotiation, many of which appear to be developing toward a more remedial result for all parties involved. Among these


approaches are the cooperative, integrative bargaining and collaborative lawyering approach. When negotiations are based on common interests, cooperation, and joint problem solving, this is called the “integrative or collaborative model” this can lead to seeking opportunities for “increasing the pie” (which is also called “creating value”).

Cooperative negotiation can be described as an exploration searching for a mutually acceptable resolution. The cooperative negotiator “communicates to establish a common ground, emphasizes shared values and objectives, and demonstrates a genuine interest in the other side.” A cooperative negotiator generally presents realistic and reasonable opening demands, offers concessions equal to or greater than those offered by the other side, readily shares information, asks many questions to ascertain the other side’s needs, interests, and concerns (through open questioning and active listening), and makes fair, objective statements of facts.

While the cooperative style lends itself to a less confrontational process, it is vulnerable to exploitation. If matched against an adversarial negotiator, the cooperative party will openly share information, including the weaker aspects of their position. The adversarial opponent will accept this information, offer nothing in return, and use that information against the cooperative party. When presented with a cooperative opponent, an adversarial negotiator will often “increase their demands and expectations about what they will be able to obtain.”

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70 Supra Note 68.
In negotiation social skill are more useful, this can not be denied. A negotiator may take hard position or soft position. In soft position instead of seeing the other side as adversary, they prefer to see them as friends. Rather than emphasizing a goal of victory, they emphasize the necessity of reaching agreement. Pursuing a soft and friendly form of positional bargaining makes you vulnerable to someone who plays a hard game of positional bargaining. In positional bargaining, a hard game dominates a soft one. If the hard bargainer insists on concessions and makes threats while the soft bargainer yields in order to avoid confrontation and insists on agreement, the negotiating game is biased in favour of the hard player. The parties will produce an agreement, although it may not be a wise one. It will certainly be more favourable to the hard positional bargainer than to the soft one.72

The answer to the question of whether to use soft positional bargaining or hard is “neither”. At the Harvard Project on Negotiation an alternative to positional bargaining has been developed, to produce wise outcomes efficiently and amicably. This method is called ‘Principled Negotiation’ or ‘Negotiation on the Merits’. The reason to negotiate is, to produce something better than the results that you can obtain without negotiation.73 The negotiation is not a process of giving in to one another but rather a more holistic approach at deeply understanding one another's interests. The goal is to reach an agreement that is acceptable to all parties, to which they remain committed and which they indeed implement.

72 Supra Note 66, pp. 7-8.
73 Id, p. 10.
5.3.4  Basic Elements of Principled Negotiation:

Generally people engage in positional bargaining. Each side takes a position, argues for it and makes concessions for it to reach a compromise. A negotiation should produce a wise agreement which meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account.”

This is the essence of interest-based negotiations which is based on the following four elements:

1. People- Separate the people from the problem.
2. Interests- Focus on interests, not positions.
3. Options- Generate a variety of possibilities, before deciding what to do.
4. Criteria- Insist that the result be based on some objective standard.

5.3.4.1 Separate the people from the problem:

Emotions typically become entangled with the objective merits of the problem. Before working on the substantive problem the ‘people should be disentangled from it and dealt with separately’. Issues should be decided without personal rancor on their merits and not influenced by who is involved, positively or negatively. Fisher and Ury’s first principle is to separate the people from the issues. People tend to become personally involved with the issues and with their side’s positions. And so they will tend to take responses to those issues and positions as personal attacks. Separating the people

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75 Id, pp. 10-11.
76 Id, p. 11.
from the issues allows the parties to address the issues without damaging their relationship. It also helps them to get a clearer view of the substantive problem.\footnote{Tanya Glaser, Book Summary of Getting to Yes: Negotiating Agreement without Giving In by Roger Fisher and William Ury, http://www.beyondintractability.org/booksummary/10204/ site visited on 23.07.2011.}

The authors identify three basic sorts of people problems. First are differences on perception among the parties. Since most conflicts are based in differing interpretations of the facts, it is crucial for both sides to understand the other's viewpoint. The parties should try to put themselves in the other's place. The parties should not simply assume that their worst fears will become the actions of the other party. Nor should one side blame the other for the problem. Each side should try to make proposals which would be appealing to the other side. The more that the parties are involved in the process; the more likely they are to be involved in and to support the outcome.

Emotions are a second source of people problems. Negotiation can be a frustrating process. People often react with fear or anger when they feel that their interests are threatened. The first step in dealing with emotions is to acknowledge them and to try to understand their source. The parties must acknowledge the fact that certain emotions are present, even when they don't see those feelings as reasonable. Dismissing another's feelings as unreasonable is likely to provoke an even more intense emotional response. The parties must allow the other side to express their emotions. They must not react emotionally to emotional outbursts. Symbolic gestures such as apologies or an expression of sympathy can help to defuse strong emotions.\footnote{Ibid.}
Communication is the third main source of people problems. Negotiators may not be speaking to each other, but may simply be grandstanding for their respective constituencies. The parties may not be listening to each other, but may instead be planning their own responses. Even when the parties are speaking to each other and are listening, misunderstandings may occur. To combat these problems, the parties should employ active listening. The listeners should give the speaker their full attention, occasionally summarizing the speaker's points to confirm their understanding. It is important to remember that understanding the other's case does not mean agreeing with it. Speakers should direct their speech toward the other parties and keep focused on what they are trying to communicate. Each side should avoid blaming or attacking the other, and should speak about themselves. Generally the best way to deal with people problems is to prevent them from arising. People problems are less likely to come up if the parties have a good relationship, and think of each other as partners in negotiation rather than as adversaries.

5.3.4.2 Focus on interests, not positions:

The second point is designed to overcome the drawback of focusing on people's stated positions when the object of a negotiation is to satisfy their underlying interests. A negotiating position often obscures what you really want. Compromising between positions is not likely to produce an agreement which will effectively take care of the human needs that led people to adopt those positions. Interests are needs (food, shelter, security, and so on), desires, aspirations, fears, hopes, and concerns.

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80 Supra Note 74, p. 11.
Positions are what we want and demand. The interests are the reasons behind the position. In negotiating on the basis of interests, parties will need to:

- distinguish between positions and interests.
- move from positions to interests.
- list all the interests according to priority.
- think of positions as only one of many solutions to the problem.

Good agreements focus on the parties’ interests, rather than their positions. As Fisher and Ury explain, “Your position is something you have decided upon. Your interests are what caused you to so decide.”81 Defining a problem in terms of positions means that at least one party will “lose” the dispute. When a problem is defined in terms of the parties’ underlying interests it is often possible to find a solution which satisfies both parties’ interests.

The first step is to identify the parties’ interests regarding the issue at hand. This can be done by asking why they hold the positions they do, and by considering why they don’t hold some other possible position. Each party usually has a number of different interests underlying their positions. And interests may differ somewhat among the individual members of each side. However, all people will share certain basic interests or needs, such as the need for security and economic well-being. Once the parties have identified their interests, they must discuss them together. If a party wants the other side to take their interests into account, that party must explain their interests clearly. The other side will be more motivated to take those interests into account if the first party shows that they are paying attention to the other side’s interests. Discussions

81 Id, p. 42.
should look forward to the desired solution, rather than focusing on past events. Parties should keep a clear focus on their interests, but remain open to different proposals and positions.82

5.3.4.3 Generate Options:

The third point responds to the difficulty of designing optional solutions while under pressure. Trying to decide in the presence of an adversary narrows your vision. Having a lot at stake inhibits creativity. So does searching for one right solution. You can offset those constraints by setting aside a designed time within which to think up a wide range of possible solutions that advance shared interests and creatively reconcile differing interests. Hence the third basic point is- before trying to reach agreement, invent options for mutual gain.83

Fisher and Ury identify four obstacles to generating creative options for solving a problem. Parties may decide prematurely on an option and so fail to consider alternatives. The parties may be intent on narrowing their options to find the single answer. The parties may define the problem in win-lose terms, assuming that the only options are for one side to win and the other to lose. Or a party may decide that it is up to the other side to come up with a solution to the problem.

The authors also suggest four techniques for overcoming these obstacles and generating creative options. First it is important to separate the invention process from the evaluation stage. The parties should come together in an informal atmosphere

82 Supra Note 78.
83 Supra Note 74, p. 11.
and brainstorm for all possible solutions to the problem. Wild and creative proposals are encouraged. Brainstorming sessions can be made more creative and productive by encouraging the parties to shift between four types of thinking: stating the problem, analyzing the problem, considering general approaches, and considering specific actions. Parties may suggest partial solutions to the problem. Only after a variety of proposals have been made should the group turn to evaluating the ideas. Evaluation should start with the most promising proposals. The parties may also refine and improve proposals at this point.

Participants can avoid falling into a win-lose mentality by focusing on shared interests. When the parties’ interests differ, they should seek options in which those differences can be made compatible or even complementary. The key to reconciling different interests is to “look for items that are of low cost to you and high benefit to them, and vice versa.” Each side should try to make proposals that are appealing to the other side, and that the other side would find easy to agree to. To do this it is important to identify the decision makers and target proposals directly toward them. Proposals are easier to agree to when they seem legitimate, or when they are supported by precedent. Threats are usually less effective at motivating agreement than are beneficial offers.

5.3.4.4 Criteria:

Where interests are directly opposed, a negotiator may be able to obtain a favourable result simply by being stubborn. That method tends to reward intransigence and produce arbitrary results. However, you can counter such a negotiator by insisting that his single say-so is not enough and that the agreement must reflect some fair

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84 Supra Note 74, p. 79.
standard independent of the naked will of either side. This does not mean insisting that the terms be based on the standard you select, but only that some fair standard such as market value, expert opinion, custom or law determine the outcome. By discussing such criteria rather than what the parties are willing or unwilling to do, neither party need give into the other; both can defer to a fair solution. Hence the fourth basic point: Insist on using objective criteria.\footnote{id, p. 11}

When interests are directly opposed, the parties should use objective criteria to resolve their differences. Allowing such differences to spark a battle of wills will destroy relationships, is inefficient, and is not likely to produce wise agreements. Decisions based on reasonable standards, makes it easier for the parties to agree and preserve their good relationship.

The first step is to develop objective criteria. Usually there are a number of different criteria which could be used. The parties must agree which criteria is best for their situation. Criteria should be both legitimate and practical. Scientific findings, professional standards, or legal precedent are possible sources of objective criteria. One way to test for objectivity is to ask if both sides would agree to be bound by those standards. Rather than agreeing in substantive criteria, the parties may create a fair procedure for resolving their dispute. For example, children may fairly divide a piece of cake by having one child cut it, and the other choose their piece.\footnote{supra note 78.}

There are three points to keep in mind when using objective criteria. First each issue should be approached as a shared search for objective criteria. Ask for the

\footnote{id, p. 11.}
\footnote{supra note 78.}
reasoning behind the other party’s suggestions. Using the other parties’ reasoning to support your own position can be a powerful way to negotiate. Second, each party must keep an open mind. They must be reasonable, and be willing to reconsider their positions when there is reason to. Third, while they should be reasonable, negotiators must never give in to pressure, threats, or bribes. When the other party stubbornly refuses to be reasonable, the first party may shift the discussion from a search for substantive criteria to a search for procedural criteria.

Each side should come to understand the interests of the other. Both can then jointly generate options that are mutually advantageous and seek agreement on objective standards for resolving opposed interests. In contrast to positional bargaining, the principled negotiation method of focusing on basic interests, mutually satisfying options and fair standards typically results in a wise agreement.

5.3.5 Procedure of Negotiation:

Negotiation may be competitive or co-operative. There are two options for bargainers to choose—either to compete or cooperate. The competitive bargaining may be required to avoid exploitation, while the method of cooperation is needed to maintain relationship. If the bargainer considers avoidance of exploitation as the most important priority, he may begin with the competitive attitude. If he considers the relationship is essential to build long-term contacts and business along with peace, the cooperative attitude alone is preferred.\(^87\) Negotiation based on “rights” or “power” fall under the “adversarial, distributive, or competitive model,” where the parties try to get the best deal for themselves at a cost to the others. A gain for one side means a loss for the other.

Living in a society in which competition is part of the daily experience, we tend to think of competition as the only way to reach our goals. Competition is almost always at the expense of someone else. In the “conventional way,” a negotiation is “zero-sum game” – whatever one side wins the other side loses. Both of the parties assume that it would be best to ensure that they end the negotiation at the positive side of the equation. While cooperative negotiation has the potential of leading to the best outcomes. It is useful for parties to negotiate over a number of issues or resources, since they can try to create value and maximize benefits by trade offs between them. This is because the order of priority among these issues for one party may differ from that of the other and provide an opportunity for exchanges. Therefore, the parties find ways to increase gains through creativity, originality, and linkage between issues to enlarge the overall pie, thereby creating value.88

Negotiation is a non-binding procedure involving direct interaction of the disputing parties wherein a party approaches the other with the offer of a negotiated settlement based on an objective assessment of each other’s position. A trade off of other interest not involved in the dispute is not uncommon in a negotiated settlement. Objectivity and willingness to arrive at a negotiated settlement on the part of both the parties are essential characteristics of negotiation. Negotiation is a process that has no fixed rules but follows a conventional pattern. It is the most commonly used method of resolving conflicts. It is a voluntary non-binding process in which parties control the outcome as well as procedures.

5.3.6 Alternatives to the Negotiated Agreement:

Alternatives are those measures that one can avail outside the negotiations, alone or with a third partner, but without the party with whom one negotiates. The alternative that yields the best outcome for you is called the BATNA. The BATNA is the “best alternative to a negotiated agreement.” If any of your alternatives without negotiation is better than the deal on the negotiating table, you will obviously go to the best alternative. If however the deal on the table is better than your BATNA, you accept the offer. It is important to make sure that the alternatives are indeed realistic and try to improve your BATNA, because the BATNA influences the way in which you carry out the negotiations. Having a BATNA provides a party with the ability to negotiate effectively and provide the answers to the following:

- What are the alternatives if this negotiation reaches a dead end?
- Does the party have an alternative at all if the negotiations fail?
- Which agreement does the party consider the one which is at least as good as its BATNA?

Any negotiation should aim to protect one against an agreement one should reject. Often people at the time of negotiating fix their bottom line beforehand. This is an attempt to protect them against a poor agreement. The bottom line is what the party expects as the worst acceptable thing. Negotiators decide in advance of actual negotiations to reject any proposal below that line. Fisher and Ury argue against using bottom lines. Because the bottom line figure is decided upon in advance of discussions, the figure may be arbitrary or unrealistic. Having already committed one to a rigid bottom line also restrains creativity in generating options.
One should prepare a BATNA prior to the negotiation. If you don’t know what that alternative is, what its burdens are and how much it costs, you are not prepared to negotiate, not prepared to know whether the offer on the table is better or worse or to know to walk away from the offer on the table. The better is your BATNA; the greater is your power.

You must also know your WATNA. The WATNA is “worst alternative to a negotiated agreement”. If the offer is worse than your WATNA, you reject it. So these determinations frame the range of what you take and reject. You will be equipped with more powerful negotiating tool if you know your adversaries’ BATNA and WATNA and thereby the frame of what they will take and reject.89

During a negotiation, it would be wise not to take anything personally. If you leave personalities out of it, you will be able to see opportunities more objectively. Either we’re going to solve this by realistic negotiation or there will be blood on the border. If you come to a negotiation table saying you have the final truth, that you know nothing but the truth and that is final, you will get nothing. Let us move from the era of confrontation to the era of negotiation. Negotiation in the classic diplomatic sense assumes parties more anxious to agree than to disagree. The most difficult thing in any negotiation, almost, is making sure that you strip it of the emotion and deal with the facts. Negotiation is a dialogue intended to resolve disputes, to produce an agreement upon courses of action, to bargain for individual or collective advantage or to craft outcomes to satisfy various interests. It is the primary method of alternative dispute resolution. A

basic fact about negotiation, which could well be easily forgotten, is that one is dealing not with abstract representatives of the ‘other side’, but with human beings. It is therefore unsurprising that human phenomena like power and trust should have a significant influence in the process.\textsuperscript{90}

Most negotiations are conducted by bargaining over positions and can result in either deadlock or an agreement, which is perceived by one of the parties to have been imposed simply through superior strength of the other. There may be a significant power-imbalance between the parties to the dispute. In such a case, a different dispute resolution process may be better. Instead of being based on positions, bargaining should focus on the underlying interests that motivate parties to take these positions. In this manner, creative solutions can be developed that meet, at least in part, the underlying interests of each of the parties, thus permitting a principled and mutually advantageous resolution of the conflict.\textsuperscript{91} Trust is important to effective negotiation. Trust can be defined as “an expression of confidence in another person…that you will not be put at risk, harmed or injured by [his/her] actions.” In certain situations, the presence of trust is indispensable for parties to negotiate at all. Trust-building per se can be an objective of negotiation. Trust also enables parties to develop and preserve their relationship.


5.3.7 **Advantages:**

It is less complicated, inexpensive and speedy method of dispute resolution. Negotiation is the simplest means for redressal of disputes as the parties themselves know their cases best. In this mode the parties begin their talk without interference of any third person. The process is not binding; although both sides can agree to make a negotiated agreement into a legally-binding contract. The ‘Negotiation’ 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. Finally, the mode of ADR through Negotiation provides flexible procedure; strict procedure of law is not applicable. If there is understanding and element of patience between the parties this mode of redressal of dispute is the simplest and most economical.

5.3.8 **Limitations of Negotiation:**

The Negotiation works only when:

a) the parties are willing to cooperate and communicate to meet their goals.

b) the parties can mutually benefit or avoid harm by influencing each other.

c) the parties know that they have time constraints.

d) the parties realize that any other procedure will not produce desired outcome.

e) the parties can identify on what issues require to be sorted out.

f) the parties also agree that their interests are not incompatible to each other.

g) the parties knew that it is preferable to participate in private cooperative process rather than go through severe external constraints like loss of reputation, excessive cost, and possibility of adversarial decision.
Negotiation is a way of life for the majority of the people. Whether one is at work, at home or simply going out, he wants to participate in the decisions that affect him. Nowadays, hardly anyone gets through the day without a single negotiation, yet, few of us are armed with the effective, powerful negotiating skills that prevent stubborn haggling and ensure mutual problem-solving.\(^9^2\) The aim of negotiation is the settlement of disputes by exchange of views and issues concerning the parties. There is an ample opportunity for presentation of case in this mode of redressal. It works especially well if the opposite party is a single person rather than a company, organization or business.

### 5.4 Mediation:

Mediation, a form of alternative dispute resolution (ADR) is a way of resolving disputes between two parties. Mediation is a facilitated and structured negotiation presided over by a facilitator with the skill, training and experience necessary to help the parties reach a resolution of their dispute. A Mediator uses special negotiation and communication techniques to help the parties to come to a settlement. A third party is involved in order to structure the meetings and come to a final settlement based on the facts given through the discussions. Third-party intervention is used when a negotiation reaches a deadlock. It is used to restore belief in the possibility of a beneficial resolution for the parties, future dialogue, and restored relationships, while leaving the control over the decisions with the parties.

A neutral third party, the mediator assists the parties to agree on their own solutions to the disputes. The third party in some cases help in evaluation of issues,

explore interests, concerns and options of parties. The mediator has to deal effectively with emotional and hidden factors and assist the parties towards resolution of disputes. It is a process that is confidential, non-binding and devised to assist the parties in structuring a mutually acceptable resolution to whatever dispute has prompted the mediation. In litigation, the courts impose binding decisions on the disputing parties in a determinative process operating at the level of legal rights and obligations. A Mediator does not decide what is fair or right, nor renders any opinion on the merits or chances of success if the case is litigated. A mediator acts as a medium to bring the two disputing parties together by defining issues and limiting obstacles to communication and settlement. Mediation does not create binding agreements unless the parties consent to it and the Mediator has no say in the outcome.

5.4.1 Concept of Mediation:

Mediation is more than mere compromise. The focus in mediation is no problem solving exercise, but searching a solution that satisfies everyone’s interest. It is an exercise for looking for joint gains in a collaborative manner for helping all the parties to dispute to meet their needs. It gives the parties the freedom to suggest options for settlement. Mediation involves communication and commitment to settle. Mediation is a voluntary process where the parties retain decision-making rights all through and are only bound when they enter into a written agreement concluding the mediation.

Rules of evidence do not apply to the conduct of a mediation proceeding. Parties are at liberty to place whatever information that they consider relevant. Information which cannot legally be received in evidence in a Court of law may yet be relevant to a practical resolution of the issues between parties. Hence, all such
information can be received. Parties to mediation can be represented by legal advisors but they are invited to directly participate by speaking in the course of mediation. A direct interface with the mediator is encouraged. Mediation is a process which is structured but, which at the same time does not involve the rigidity inherent in conventional litigation settings. The mediator conducts the proceedings in an informal manner bearing in mind the fundamental principle that his role is neither to advise nor to adjudicate. The process leaves control of the settlement in the hands of the disputants and it is oriented to produce solutions that accommodate the fundamental needs of each side.

In his famous book ‘The Mediation Process: Practical Strategies for Resolving Conflict’, Christopher W. Moore tells what mediation is, in the following words, “Mediation is essentially a negotiation that includes a third party who is knowledgeable in effective negotiation procedures and can help people in conflict to coordinate their activities and to be more effective in their bargaining. Mediation is an extension of the negotiation process in that it involves extending the bargaining into a new format and using a mediator who contributes new variables and dynamics to the interaction of the disputants.”

Mediation involves a determination of interests – the interests of the parties. A concept frequently not found in the litigator’s lexicon, interests are the needs, wants, and desires that are of importance to the parties – the answer to the question “what

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93 Cited by Justice M.M. Kumar, Judge, Punjab and Haryana High Court, Chandigarh, in a paper entitled ‘Relevance of Mediation to Justice Delivery in India’ presented in the National Conference on Mediation, organised by the Mediation & Conciliation Project Committee, Supreme Court of India, held on July 10, 2010 at New Delhi, http://highcourtchd.gov.in/right_menu/events/events/NCMediationNewDelhi.pdf (site visited on 21.02.2012)
is this dispute really all about for you?” To get there, mediation provides a forum for principled negotiations. These negotiations may at times become frustrating and troubling, but with the mediator’s help the parties keep moving forward. Principled negotiations stimulate exploration of settlement alternatives and an opportunity to evaluate those alternatives, weighing them against the likely outcome of going to trial and viewing proposals through the lenses of reality. Mediation - compared to litigation, trial and appeal – is a veritable bullet train to certainty and finality. If the dispute settles at the mediation, it settles on a basis acceptable to the parties; the specter of trial is removed; and, the threat of being tied up on appeal is eliminated.94

Mediation is no panacea, no magic solution to overcome the institutional challenges of national court systems. Similar to other alternative dispute resolution techniques, however, it does offer a cluster of features that differ from the formal judicial systems of Europe that have had global influence over the primary ways in which legal conflicts are resolved. In this regard, mediation both builds and diversifies the capacity for resolving conflicts in society. With many qualifications and exceptions, European-style courts (both common law, Anglo-Saxon, and their continental European, civil law counterparts) are state institutions, conducting public, formal proceedings, that presuppose literacy, posture the parties in a conflictual, legal position-based, backward-looking, fact finding processes that result in binary, win-lose remedies, subsequently enforced through social control over the losing party. In contrast, mediation (and other clusters of consensual dispute resolution techniques, except for arbitration) is private, informal, oral, more collaborative, facilitative, future-looking, interest-based processes.

94 Supra Note 87.
that bring parties to a calibrated, multi-dimensional, win-win remedy that is more durable because of the parties consent in the outcome.95

Because of these basic contrasting features, for many non-European legal cultures, mediation bears a comforting alternative and similarity to traditional forms of dispute resolution that predate colonial influence. Reformers have grown increasingly interested in reviving or extending traditional forms of dispute resolution (such as the process of sulha in the Middle East or methods used by the traditional panchayats in India) and integrating them into the formal litigation system.96 For giving statutory recognition to ADR including mediation, the Law Commission in its 129th Report made recommendation for making it obligatory for the Court to refer the dispute to ADR including mediation for settlement. The court may refer the case when the pleadings have been filed and after the issues are framed.

5.4.2 Types of Mediation:

There are three types of mediation. First is ‘Court Annexed Mediation’, second is ‘Court Referred Mediation’ and the third is ‘Private Mediation’. Section 89 of the Code of Civil Procedure, 1908 has introduced the concept of ‘Court annexed mediation’ and ‘Court referred mediation’. Under this section the court is under a duty to identify cases where amicable settlement of disputes is possible. This applies to cases which are filed in the court or are pending in the court. The court refers such cases to mediation according to Alternative Disputes Resolution Rules, 2003. In court annexed mediation, the mediation services are provided by the court as a part and parcel of the

96 Ibid.
same judicial system as against court referred mediation, wherein the court merely refers
the matter to a mediator. In case of court annexed mediation Civil Procedure Mediation
Rules, 2003 which are framed by the Jagannadha Rao Committee, are applicable. These
Rules provide a framework for the appointment of a mediator, their qualifications and
disqualification, the conduct of the mediation process, and a code of ethics to be followed
by the mediator in order to arrive at a fair and unbiased settlement.

In court referred mediation, the parties are free to appoint their mediator
and to agree on the procedure to be adopted. If the disputing parties want to resolve their
dispute by mediation privately, without any reference of the court that is private
mediation. In private mediation qualified mediators offer their services on a private, fee
for service basis, to members of the public, to members of the commercial sector and also
to the governmental sector to resolve disputes through mediation. Private mediation is
used in connection with disputes pending in court and pre-litigation disputes.\textsuperscript{97} In these
cases the parties to a dispute decide that mediation would be appropriate and select a
mediator from among the many private providers who have gone into the business of
offering these services. In fact, it is now probably the most popular form of alternative
dispute resolution used by litigants in civil cases in the United States.\textsuperscript{98} In U.S. mediation
arises in one of two circumstances. The first is through court-ordered or court-annexed
mediation. Such courts maintain a panel of approved mediators who offer their services
to litigants, at either the court’s direction or the litigant’s request. The second
circumstance in which mediation arises is private mediation.

\begin{footnotesize}
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\textsuperscript{97} & http://bombayhighcourt.nic.in/site/mediation/mediation_concept_and_articles/concept_and_process.pdf
\textsuperscript{98} & Supra Note 91.
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5.4.3 The Civil Procedure Mediation Rules, 2003:

Taking into consideration the recognition and helpfulness of alternative disputes redressal mechanisms as well as upon the recommendations of the Malimath Committee, Section 89 was inserted into the Code of Civil Procedure, 1908 by section 7 of the Code of Civil Procedure (Amendment) Act 1999. This amendment was challenged in the Supreme Court through a writ petition by Salem Advocates Bar Association in Salem Bar Association, T.N. v Union of India.99 In this case the judiciary took the initiative in legitimizing the concept of ADR as well as clarifying the role of judiciary in settling the disputes through alternative dispute resolution mechanisms to provide speedy justice. The Supreme Court while holding the amendment intra-virus observed, “Sub-section 2 of section 89 refers to different Acts in relation to arbitration, conciliation or settlement through Lok Adalat, but with regard to mediation section 89(2) (d) provides that the parties shall follow the procedure as may be prescribed. Section 89(2) (d), therefore contemplates appropriate rules being framed with regard to mediation.”100 The court suggested constituting a Committee to clarify the apprehensions which may exist in the mind of the litigating public or lawyers. For this purpose a Committee under the chairmanship of Justice Jagannadha Rao, the Chairman of Law Commission of India and former Judge, Supreme Court of India comprising senior advocates K. Parasaran, C.S.Vaidyanahan, Arun Mohan and advocate K.V. Vishwanathan was constituted to

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ensure that the amendment become effective within a short span of time and the committee was also considered to devise a model case management formula as well as rules and regulations to be followed while taking recourse to the ADR referred to in section 89 of the Civil Procedure Code, 1908. The Committee circulated a draft consultation paper with rules on mediation, conciliation and case management and finally submitted a set of rules for approval. All these efforts were aimed at securing the valuable right to speedy trial, as guaranteed under Article 21 of the Constitution of India to the litigants.

The matter was again considered by the Supreme Court in Salem Advocates Bar Association in Salem Bar Association, T.N. v Union of India (2005)\textsuperscript{101}. The Committee submitted its Report in three parts. Report 2 contained the consideration of various points raised in connection with draft rules for ADR and mediation as visualized by Section 89 of the Code of Civil Procedure, 1908 read with Order X Rule 1A, 1B and 1C which also contain model rules. The Supreme Court adopted the model rules framed by the Committee in this case.

These Rules provide a framework for the appointment of a mediator, their qualifications and disqualification, the conduct of the mediation process, and a code of ethics to be followed by the mediator in order to arrive at a fair and unbiased settlement.

5.4.3.1 Appointment and Removal of Mediator:

Rule 2 deals with the appointment of mediators. Parties to a suit may all agree on the name of the sole mediator. Where there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator. It is also given

\textsuperscript{101} (2005) 6 SCC 344.
that the mediator need not necessarily be from the panel of mediators referred to in Rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5. Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator. According to Rule 3 the High Court shall, for the purpose of appointing mediators prepare a panel of mediators and publish the same on its Notice Board. The Courts of the Principal District and Sessions Judge in each District or the Courts of the Principal Judge of the City Civil Court or Courts of equal status shall, for the purposes of appointing mediators prepare a panel of mediators after obtaining the approval of the High Court to the names included in the panel. The consent of the persons whose names are included in the panel shall be obtained before empanelling them. The panel of names shall contain a detailed Annexure giving detail of the qualifications of the mediators and their professional or technical experience in different fields.

Rule 4 provides for the qualifications of persons to be empanelled under Rule 3. Retired Judges of the Supreme Court, High Courts, District and Sessions Judges or retired Judges of the City Civil Court or Courts of equivalent status are eligible to be empanelled. Legal practitioners with at least fifteen years standing at the Bar at the level of the Supreme Court or the High Court or the District Courts or Courts of equivalent status may be empanelled. Experts or other professionals with at least fifteen years standing, retired senior bureaucrats, retired senior executives or institutions which are themselves experts in mediation and have been recognized as such by the High Court are eligible to be empanelled by the courts.
Rule 5 provides that a person who has been adjudged as insolvent or is declared of unsound mind, a person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending or a person who has been convicted by a criminal court for any offence involving moral turpitude or any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment are disqualified to become mediators. Any person who is interested or connected with the subject-matter of dispute or is related to any one of the parties or to those, who represent them, unless such objection is waived by all the parties in writing, any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings or such other categories of persons as may be notified by the High Court are also disqualified to become mediators.

Rule 7 stipulates to give preference to experienced and specialized persons while selecting any person from the panel of mediators. The mediator has the duty to disclose any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality from the time of his appointment and throughout the continuance of the mediation proceedings, without delay.\(^\text{102}\) If the Court has a justifiable doubt as to the mediator’s independence or impartiality, it shall cancel the appointment by a reasoned order, after giving a hearing to the mediator and replace him by another mediator.\(^\text{103}\) In certain circumstances provided under Rule 10 the court may delete or remove the name of any mediator from the said panel. The court shall pass a reasoned order after hearing the mediator whose name is proposed to be deleted or removed.

\(^{102}\) Civil Procedure Mediation Rules, 2003, Rule 8.

\(^{103}\) Id, Rule 9.
5.4.3.2 Procedure of Mediation:

A usual mediation involves several stages. One of the advantages of mediation is its flexibility. A mediation session can be designed in any way that the parties believe would be most useful to the resolution of their dispute. These stages are neither rigid nor inflexible and can be adjusted to achieve the desired result. The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings. Failing any such agreement the mediator shall follow the procedure prescribed by the Mediation Rules.\(^{104}\) The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, but shall be guided by principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute. There are some standard places set out in the rules where mediation can be conducted. Apart from this the parties can agree upon any place subject the approval of the court.\(^{105}\)

The mediator shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present. He may conduct joint or separate meetings with the parties. Each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved and its position in respect to those issues and all information reasonably required for the mediator to understand the issue. Such memoranda shall also be mutually exchanged between the parties. If the mediator is of the opinion that he should look into any original document the court may permit him to do so before such officer of the court and on such date or time as the court may fix. Each

\(^{100}\) Id, Rule 11(b).

\(^{105}\) Id, Rule 6.
party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.

Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes. The parties shall be present personally or through their counsel or power of attorney holders at the meetings or sessions notified by the mediator. If any party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that a party is absenting himself before the mediator without sufficient reason, the Court may take action against the said party by imposition of costs or by taking action for contempt. The non resident parties may be represented by their counsel or power of attorney holders at the sessions or meetings.

Rule 14 provides for the administrative assistance for the mediators. In order to facilitate the conduct of mediation proceedings, the parties or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person. Rule 18 provides that the mediation shall stand terminated on the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator. Unless the Court, which referred the matter, either suo motu, or upon request by any of the parties and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

106 Id, Rule 11(c).
107 Id, Rule 13.
When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of that information to the other party, if permitted in writing by the first party. When a party gives information to the mediator subject to a specific condition, that it be kept confidential, the mediator shall not disclose that information to the other party, nor shall the mediator voluntarily divulge any information regarding the documents or what is conveyed to him orally as to what transpired during the mediation.\textsuperscript{108}

Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally while serving in that capacity shall be confidential and the mediator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation.\textsuperscript{109}

Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to the views expressed by a party in the course of the mediation proceedings; documents obtained during the mediation which were expressly required to be treated as confidential; proposals made or views expressed by the mediator; admission made by a party in the course of mediation proceedings; the fact that a party had or had not indicated willingness to accept a proposal and there shall be no stenographic or audio or video recording of the mediation proceedings.\textsuperscript{110} This provision is for the purpose of maintaining confidentiality of the procedure. As per Rule 21 mediation sessions and meetings are private, only the concerned parties or their counsel

\textsuperscript{108} Id, Rules 20(1) and 20(2).
\textsuperscript{109} Id, Rules 20(3).
\textsuperscript{110} Id, Rules 20(4) and 20(5).
or power of attorney holders can attend. Other persons may attend only with the permission of the parties and with the consent of the mediator. Rule 22 provides immunity to the mediator during the time of proceedings.

In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except where it is necessary it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney. It shall be limited to the communication about the failure of party to attend; regarding his assessment that the case is not suited for settlement through mediation; or that the parties have settled the dispute or disputes. This communication will be with the consent of the parties.

Mediator uses appropriate techniques and skills to open and develop dialogue between disputants, aiming to help the parties reach an agreement on the disputed matter. As a facilitator, the mediator has to understand the underlying issues between the parties. In order to do so, the mediator has to open up communication between the parties and between the parties and himself. The mediator has to enable the parties to understand their own interests and to understand the interests of the disputing party. The mediator must enable parties to distinguish between their positions and interests. In the process of dialogue before him the mediator enables parties to appreciate and evaluate their own interests and those of each other. At the same time, as he facilitates communication between the parties, the mediator must take care that he is not the judge of the case. The effort of the mediator is to ensure that through the mediation discourse parties arrive at a solution which is in their best interest. Mediators are skilled
to discover the interests underlying each party’s position and the process itself is helpful to that exploration, mediation is an ideal forum to use the negotiation philosophy.

5.4.3.3 Role of the Mediator:

The mediator has many roles to play. He helps the parties to think in new and innovative ways, to avoid the drawbacks of adopting unbending positions instead of looking after their interests, to smooth discussions when there is bitterness between the parties that renders the discussions unsuccessful and in general to guide the process away from negative outcomes and possible breakdown towards joint gains. Mediation means the process by which a mediator appointed by parties or by the Court, as the case may be, attempts to facilitate voluntary resolution of the dispute by the parties by the application of the provisions of the Civil Procedure Mediation Rules 2003 and in particular, facilitates discussion between parties directly or by communicating with each other through the mediator, by assists parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties’ own responsibility for making decisions which affect them.¹¹¹

The spirit of mediation lies in the role of the mediator as a facilitator. The mediator is not an adjudicator. Mediation is negotiation carried out with the assistance of a third party. The mediator, in contrast to the arbitrator or judge, has no power to impose an outcome on disputing parties.¹¹² The role of the mediator is to create an environment in which parties before him are facilitated towards resolving the dispute in a purely


voluntary settlement or agreement. The mediator is a neutral. The neutrality of the mediator is similar to the neutrality of a judge but the role of the mediator is completely different from that of a judge. The mediator does not either deliver judgment or dictate to the parties the terms of the agreement. As a neutral, the function of the mediator is to enable the parties to arrive at a mutual and voluntary agreement. This, the mediator can achieve if he understands and perceives the nature of his function correctly. The involvement of a mediator modifies the dynamics of negotiations. The mediator attempts to encourage exchange of information, provide new information, and help the parties to understand each others’ views. Each single dispute may require a different arrangement of beginning steps.

The mediator does not merely host the parties and encourage them to continue negotiating in a neutral, welcoming environment; the mediator plays a more active role. The mediator not only facilitates but also designs the process, and assists and helps the parties to get to the root of their conflict, to understand their interests, and reach a resolution agreed by all concerned. Mediators should not use coercive, authoritative and threatening techniques that are used by untrained mediators. Some judges use authoritative influence in judicial settlements, but they need to fully understand the process. Mediation is an extremely flexible process. It can work in disputes before they are taken to Court, to disputes pending in Courts and even after a Court verdict has been given. The mediator can be a retired judge or a lawyer or a person who is respected in the community.

113 Supra Note 68.
5.4.3.4 Settlement Agreement:

While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the disputes, if possible. The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties. Any party to the suit may, ‘without prejudice’, offer a settlement to the other party at any stage of the proceedings, with notice to the mediator. Any party to the suit may make a, ‘with prejudice’ offer, to the other party at any stage of the proceedings, with notice to the mediator.

A settlement reached at a pre-litigation stage is a contract, which is binding and enforceable between the parties under the provisions of the Code of Civil Procedure, 1908. Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsels have represented the parties, they shall attest the signature of their respective clients. The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending. Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.
Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement and the Court shall record the settlement, if it is not collusive. The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit. If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement and if issues are severable from the other issues and a decree could be passed to the extent of the settlement covered by those issues, the court may pass a decree straightaway in accordance with the settlement on those issues without waiting for a decision of the court on the other issues which are not settled. If the issues are not severable, the court shall wait for a decision of the court on the issues which are not settled.\textsuperscript{114}

5.4.3.5 Ethics to be followed by Mediator:

Rule 27 speaks about the ethics to be followed by the mediator. The mediator shall:

i) follow and observe these Rules strictly and with due diligence;

ii) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator;

iii) uphold the integrity and fairness of the mediation process;

iv) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;

\textsuperscript{114} Supra Note 102, Rules 25.
v) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;

vi) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias; avoid, while communicating with the parties, any impropriety or appearance of impropriety;

vii) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;

viii) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;

ix) recognize that mediation is based on principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;

x) maintain the reasonable expectations of the parties as to confidentiality;

xi) refrain from promises or guarantees of results.

5.4.4 Suitability of Mediation:

Mediation is a dispute resolution technique particularly appropriate for circumstances where the parties to the dispute have had or expect to have, a continuing relationship. It is also, however, well suited to disputes that do not involve such relationships. Rule 4(a)(iii) of the Alternative Dispute Resolution Rules, 2003 also directs the courts to draw the attention of the parties to the relevant factors which will have to be taken into account before they exercise their option as to the particular mode of settlement that where there is a relationship between the parties which requires to be preserved, it will be in the interests of parties to seek reference of the matter to
conciliation or mediation, as envisaged in clauses (b) or (d) of sub-section (1) of sec. 89 of the Code of Civil Procedure, 1908. Disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved. Mediation is not to be used in the cases where a principle of law needs to be established, where there is imbalance of power between the parties, where deliberate bad faith is involved. Where the case relates to public safety matters, civil rights matters or public interest mediation is not the suitable mode.

5.5 Conciliation:

Conciliation means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they relate to conciliation and in particular, in exercise of his powers under sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.\textsuperscript{115} Conciliation in commercial disputes was first statutorily recognised in India under the Arbitration and Conciliation Act, 1996.

UNCITRAL Model Law on arbitration and Rules on Conciliation were both made in the perspective of growing international trade and commercial relations against the environment of liberalization, privatization and globalization. UNCITRAL Rules on Conciliation of 1980 adopted by the General Assembly of the United Nations stated that the General Assembly recognized “the value of conciliation as a method of amicably settling disputes arising in the context of international commercial relations”

\textsuperscript{115} Rule 4 (v), Alternative Dispute Resolution Rules, 2003.
and that adoption of uniform conciliation rules by “countries with different legal, social and economic systems would significantly contribute to the development of harmonious international economic relations.”

5.5.1 Concept of Conciliation:

Conciliation is one of the non binding procedures where an impartial third party, known as the conciliator, assists the parties to a dispute in reaching a mutually agreed settlement of the dispute. A conciliator does not give a decision, but his main function is to induce the parties themselves to come to settlement. A conciliator does not engage in any formal hearing though he may informally consult the parties separately or together. In the case of conciliation, the final result depends on the will of the parties. Therefore, at the end of the proceedings, emotional harmony between the parties may not suffer much, in the case of conciliation. Conciliation can be independent as well as court-annexed. The Code of Civil Procedure, 1908, allows courts to facilitate the resolution of disputes through conciliation in specific matters such as litigation by or against Government officials and family court matters such as adoption, succession and divorce.

Two things gave the force to recognizing conciliation as a useful alternative for dispute resolution. In 1984, faced with the problem of mounting arrears in subordinate courts, the Himachal Pradesh High Court evolved a project for disposal of pending cases by conciliation, insisting on pre-trial conciliation in fresh cases. The experience was in the nature of the Michigan Mediation and Mediation tried in Canada in a few pending litigation though not on the scale practiced in Himachal Pradesh. The Law Commission of India in their 77th and 131st Reports, the Conference of Chief Ministers and Chief Justices in their resolution of December, 1993 and the Calcutta Resolution of
the Law Ministers and Law Secretaries Meeting in 1994 commended other States to follow the Himachal Project. Secondly, conciliation got statutory recognition by the Arbitration and Conciliation Act, 1996. Based on UNCITRAL Conciliation Rules this has the advantage of universal familiarity and can be used for settlement of domestic disputes as well as international commercial disputes.116

5.5.2 Conciliation under the Arbitration and Conciliation Act, 1996:

The Arbitration and Conciliation Act, 1996 has laid down in the provisions of Chapter III a basic framework for the conduct of conciliation proceedings. Elaborate provisions have been made for conciliation of disputes arising out of legal relationship whether contractual or not and to all proceedings relating thereto. It provides for commencement of conciliation proceedings, appointment of conciliators and the assistance of a suitable institution for the purpose of recommending the names of the conciliators or even appointment of the conciliators by such an institution and submission of statements to the conciliator.

There is no requirement of prior agreement for conciliation. A party initiating conciliation can under S.62 of the Act of 1996 send to the other party a written invitation to conciliate briefly identifying the subject of the dispute. Conciliation commences when the other party accepts in writing this invitation. If it does not accept it, then there will be no conciliation. Section 62 deals with reference to ‘Conciliation’ by agreement of parties but Sec. 89 of the Code of Civil Procedure, 1908 permits the Court

to refer a dispute for conciliation even where parties do not consent, provided the Court thinks that the case is one fit for conciliation. This makes no difference as to the meaning of ‘conciliation’ under sec. 89, because once a reference is made to a conciliator, the 1996 Act would apply.

5.5.2.1 Appointment of Conciliators:

There will be only one conciliator, unless the parties agree to two or more persons to be conciliators. Where there are two or three conciliators, then as a rule they ought to act jointly.117 Where there is only one conciliator the parties may agree on his name. Where there are two conciliators each party may appoint one conciliator. 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.118 The parties may procure the assistance of a suitable institution or person. The institution may be requested to recommend or to directly appoint the conciliator or conciliators. In recommending such appointment, the institutions shall have due regard to the considerations like, to secure an independent and impartial conciliator. In the case of a sole conciliator, the appointing institution shall take into account the advisability of appointing a conciliator other than the one having the nationality of the parties in international agreements.119

5.5.2.2 Conciliation Procedure:

The conciliator may call upon the parties to submit to him a brief written statement identifying the nature of disputes and the points at issue. Whatever material is sent to him has to be sent to the other party also. On receiving the written statement, the

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117 The Arbitration and Conciliation Act, 1996, Section 63.
118 Id, Section 64(1).
119 Id, Sec. 64(2).
other party shall send a detailed reply, clearly stating the points on which it agrees or disagrees, supported by documentary evidence. A copy of such communication shall be sent to the opposite party also.\textsuperscript{120} On going through the written statement sent by the parties, the conciliator may call upon each party to submit to him further additional information as he may deem appropriate. Under section 66 of the Arbitration and Conciliation Act, 1996 the Conciliator is not bound by the strict procedure adopted by the Court under Code of Civil Procedure, 1908 or the Evidence Act, 1872. The very purpose of the conciliation proceedings would be defeated if the proceedings were to be governed by the strict rules of procedure prescribed in these enactments. When the parties have decided to have some matter resolved without taking recourse to the courts, then the parties should have the matter decided without observing the rigid rules of procedure and evidence which govern the court procedures. Under section 67 of the Act the Conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. The conciliator must give due consideration, among other things, to the rights and obligations of the parties, usages of trade concerned, circumstances surrounding the dispute and the previous business practices between the parties. Once the conciliator is possessed of all the details he may conduct the proceedings in such a manner as he considers appropriate. The parties may express their wishes including any request by a party that the conciliator hear oral statements. Since no hard and fast rules govern the conduct of conciliation proceedings, various proposals can be made by the conciliator for settlement of the dispute. The Conciliator is to be guided by the principles of objectivity, fairness and justice. Instead of doing all the work himself,

\textsuperscript{120} Id, Sections 65(1) and 65(2).
the conciliator may arrange for administrative assistance by a suitable institution or person for the smooth conduct of proceedings.

Section 69 states that the conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet with the parties together or with each of them separately. If the parties have not stipulated the place at which the conciliation meeting shall be held, the conciliator, having regard to the circumstances of the case, determine the same. It is incumbent on the parties to extend full co-operation, so that the very purpose for which the conciliator has been appointed is achieved without any avoidable delay. The parties shall make available, as and when desired by the conciliator, any written material which is in their possession or any evidence, which shall assist the conciliator in arriving at an amicable settlement of the disputes. The parties shall attend meetings on the dates fixed by the conciliator.\textsuperscript{121}

5.5.2.3 Settlement Agreement:

While the conciliator has the power under section 67(4) of the Act, to make proposals for due consideration by the parties at any stage of the conciliation proceedings, the parties are also authorized under section 72 of the Act to make, at their own initiative or at the initiative of the conciliator, such suggestions which could lead to the settlement of the controversy between the parties. The process is purely voluntary and can be terminated even at the behest of one party who desires not to conciliate.

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 possible settlement and submit the same to the parties for their observation. On receipt of the observations of the parties...

\textsuperscript{121} Id, Section 71.
parties, the conciliator may re-formulate the terms of a possible settlement in the light of such observation. 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. 122

The settlement agreement signed by the parties shall be final and binding on the parties and persons claiming under them. 123 The agreement is to be authenticated by the Conciliator and he shall furnish a copy thereof to each of the parties. The settlement agreement has the same status and effect as if it were arbitral award rendered by the arbitral tribunal on agreed terms. The settlement reached by the parties to the dispute can be enforced as a decree of court. A settlement agreement is not binding on the parties if it is not signed by the parties.

5.5.2.4 Principles in Conciliation:

Under section 70 of the Act 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 the parties shall keep confidential all matters relating to the conciliation proceedings. This obligation extends also to the settlement agreement, except where disclosure is necessary for its implementation and enforcement. 124

122 Id, Section 73.
124 Supra Note 117, Section 75.
In any arbitral or judicial proceedings (whether relating to the conciliated dispute or otherwise), the parties shall not rely on or introduce as evidence-

i) views expressed or suggestions made by the other party for a possible settlement;

ii) admission made by the other party in the course of conciliation procedure;

iii) proposal made by the conciliator; and

iv) the fact that the other party had indicated his willingness to accept a settlement proposal.

Under section 73 of the Act, during the pendency of conciliation proceedings, a party is debarred from initiating arbitral or judicial proceedings on the same dispute, except such proceedings as are necessary for preserving his rights. There is no mention of arbitral or judicial proceedings which are already initiated. By implication, there is no bar for continuing any judicial or arbitral proceedings which were initiated already pending settlement in the conciliation proceedings.

Unless otherwise agreed by the parties, the conciliator cannot act as Arbitrator representative or counsel in any arbitral or judicial proceedings in respect of conciliated dispute. Nor can he be presented by any party as a witness in such proceedings.125

5.5.3 Advantages of Mediation and Conciliation:

One of the advantages of mediation and conciliation is its flexibility. A mediation session can be designed in any way that the parties believe would be most useful to the resolution of their dispute. Mediation as a technique for resolving disputes first began in the area of family law, almost certainly because the nature of the emotions

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125 Id, Section 80.
involved often led to serious problems with positional bargaining and because the parties like it or not, were often forced to have a continuing relationship because of children. Litigative remedies which parties apply for in a conventional judicial set up may often result in the rupturing of a relationship. Declarative or injunctive remedies and remedies by way of damages that Courts provide for in a judicial setting may in certain cases lead to a cessation of relationships. Mediation has the potential to prevent this by enabling the mediator to allow parties to identify the immediate dispute between them in the wider background of an overall business, professional or personal relationship and to resolve their problems by tailoring solutions that would protect their long term interests.

It has the potential to provide an expeditious, economical and private resolution of the problems that have arisen between the parties. The process emphasizes the participatory role of parties. The resolution of the dispute depends upon the parties themselves. Ultimately, each party knows best its needs and interests. Mediation and conciliation enable each party to give expression to its perceptions and viewpoints in a confidential and private surrounding. Every party is facilitated by a mediator to appreciate the view of the disputing party to the problem at hand. Parties can explore all the facets of the relationship between them. Some of them cannot be dealt with in a conventional Court setting where reception of evidence is governed by strict rules. In matters relating to business and personal relationships, confidentiality is an important value for disputing parties.

The scheduling of mediation and conciliation can typically be arranged to suit the convenience of the parties so as to facilitate an early completion. The entire process of mediation is in that sense not adversarial in nature. The outcome of the
mediation is not a win for one party and a loss for the other. Both parties agree in the course of the mediation to a solution which is mutually beneficial. Agreements which are entered into in the course of mediation are acceptable and stand the greatest chance of being implemented because the outcome of mediation is not imposed by a third party adjudicator but represents a solution which has been voluntarily agreed to by mutual agreement. The law protects the sanctity of negotiated settlements and recognizes their enforceability in India by placing them at par with an arbitral award on agreed terms. Such an award is enforceable as if it were a decree of a Court. Mediated outcomes are less likely to be evaded by parties because they represent an assessment by parties of what is in their best interest. Parties who enter into mediation or conciliation do not forfeit any legal rights or remedies. If the mediation process does not result in settlement, each side can continue to enforce their rights through appropriate court or tribunal procedures. However, if a settlement has been reached through mediation or conciliation, legal rights and obligations are affected.

5.6 Conciliation under Industrial Disputes Act, 1947:

The Industrial Disputes Act, 1947 is the earliest contemporary legislation to directly promote mediation and conciliation as a means of resolving disputes. The Statement of Objects and Reasons says that it is intended to prevent and not only to settle, industrial disputes. Industrial disputes involving service conditions, wages, job security, etc. in the public sector are extensively settled by conciliation. Section 4 of the Act provides for appointment for conciliation officers and Section 5 for constitution of Boards of Conciliation. The conciliation officers are appointed by the Government.

Section 4 of the Industrial Disputes Act, 1947 confers power upon the Government to appoint Conciliation Officers by notification in the official gazette, for a specified area or for one or more specified industries for the purpose of mediating in and promoting settlement of industrial disputes. The Board of conciliation is to consist of an independent Chairman and two or four member representing the parties in equal number.

Section 12 of the Industrial Disputes Act, 1947 prescribes the duties of Conciliation Officers. If the employer and the workmen fail to arrive at a settlement through negotiations, the Conciliation Officer may intervene as a mediator, endeavour to reconcile the differences of opinion and help the labour and management in achieving a successful settlement. Intervention by the Conciliation Officer is mandatory in case an industrial dispute has arisen in a public utility service and a notice of strike or lockout has been served under section 22 of the Industrial Disputes Act, 1947.

Conciliation officers establish contact with the parties to gather the necessary information and thereafter convene joint meetings of the parties. The Conciliation Officer investigates the disputes and all matters affecting the merits and the right settlement thereof without delay. He may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. The parties may also use the presence of the officer to make the final agreement binding, provided the same is properly documented and signed in the presence of the officer. 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 sends a report to the Government together with a memorandum of the settlement signed by the parties to the dispute. If no such settlement is arrived at, the conciliation officer, as soon as practicable after the close
of the investigation, sends to the Government a full report setting forth the steps taken by them 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, a settlement could not be arrived at. A settlement arrived at in the course of conciliation proceedings are binding on all the parties to the industrial dispute.\textsuperscript{127}

Negotiation is one of the principal means of settling labour disputes. However, due to lack of trust between the employers and workmen or their trade unions or inter-rivalry of the trade unions and the employers being in a commanding position, many a time negotiations fail. On the attitude of the parties National Commission on Labour observed that conciliation is looked upon very often by the parties as merely hurdle to be crossed for reaching the next stage of adjudication by a court or tribunal. The representatives sent by the parties to appear before him are generally officers who do not have the power to take decisions or make commitments. They merely carry the suggestion to the concerned authorities on either side. This reduces the spirit of a conciliator.

5.7 Mediation and Conciliation of Family Disputes:

A large part of the cases relating to family disputes involve emotions. In traditional family law practice, lawyers represent their clients by negotiating issues or litigating the cases in court. Court trials are adversarial and the outcomes are decided by judges, rather than by the parties. The litigation model of resolving family disputes can be harmful to children of the family and frequently lessens the parties’ willingness to

\textsuperscript{127} http://labour.ap.gov.in/conciliation.jsp.
cooperate. In response to the shortcomings of adversarial litigation, family disputes must be resolved through alternative dispute resolution, where the best interest of the parties is the guiding factor. In these processes neutral facilitators assist their clients to develop mutually agreeable resolutions to their disputes. ADR is a time-tested method of tactfully resolving differences between parties before they lead to extended, expensive public litigation and trial.

There have been amendments in the procedural laws of India to incorporate these methods so that people get justice in a speedy manner and there is lesser conflict in the society.

5.7.1 Order XXXIIA:

Order 32 A\textsuperscript{128} of Civil Procedure Code, 1908 lays down the provisions relating to “suits relating to matters concerning the family”. This order seeks to highlight the need for adopting a different approach where matters concerning the family are at issue, including the need for effort to bring about amicable settlement. The provisions of the Order are as under:

R.1. Application of the Order:

1) The provisions of this Order shall apply to suits or proceedings relating to matters concerning the family.

2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:

\textsuperscript{128} Inserted by Section 80 of Act No. 104 of 1976 (w.e.f. 1-2-1977)
(a) a suit or proceeding for matrimonial relief, including a suit or proceeding for declaration as to the validity of a marriage or as to the matrimonial status of any person;

(b) a suit or proceeding for a declaration as to legitimacy of any person;

(c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;

(d) a suit or proceeding for maintenance;

(e) a suit or proceeding as to the validity or effect of an adoption;

(f) a suit or proceeding, instituted by a member of the family relating to wills, intestacy and succession;

(g) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law.

(3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

R.2. Proceedings to be held in camera:

In every suit or proceeding to which this Order applies, the proceeding may be held in camera if the Court so desires and shall be so held if either party so desires.

R.3. Duty of Court to make efforts for settlement:

(1) In every suit or proceeding to which this Order applies, an endeavour 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 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 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 not in derogation of, any other power of the Court to adjourn the proceedings.

R.4. Assistance of welfare expert:

In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by rule 3 or this Order.

R.5. Duty to inquire into facts:

In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.

R.6. “Family”-meaning, for the purposes of this Order, each of the following shall be treated as constituting a family, namely:

(a) (i) a man and his wife living together,

(ii) any child or children being issue of theirs; or of such man or such wife,

(iii) any child or children being maintained by such man and wife;

(b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;
(c) a woman not having a husband or not living together with her husband any child or children being issue of hers, and any child or children being maintained by her;

(d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and

(e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.

Explanation-For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of “family” in any personal law or in any other law for the time being in force.

Rule 3 imposes a duty on the Court to make an effort of settlement by way of providing assistance where it is possible to do so. The Court may also adjourn the proceeding under Rule 4 if it thinks fit to enable attempt to be made to effect a settlement where there is a reasonable possibility of settlement. In discharge of this duty Court may take assistance of welfare expert who is engaged in promoting the welfare of the family.

Rule 4 of the Alternative Dispute Resolution and Mediation Rules, 2003, lays down that the Court has to give guidance to parties (when parties are opting for any mode of ADR ) by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement. Rule 4(iii) suggests that where there is a relationships between the parties which requires to be preserved, it will be in the interests of the parties to seek reference of the matter to conciliation or mediation, as envisaged in clauses (b) or (d) of sub-section (1) of Sec.89. The Rule also says that disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship
between the parties has to be preserved. According to Rule 8, the provisions of these Rules may be applied to proceedings before the Courts, including Family courts constituted under the Family Courts Act (66 of 1984), while dealing with matrimonial and child custody disputes.

The Supreme Court interpreted 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 in the case *Jagraj Singh v. Bir Pal Kaur*[^129^]. The court held, “A court is expected, nay, bound, to make all attempts and sub-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.

[^129^]: JT 2007 (3) SC389.
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.

Deciding on the importance of making an attempt at reconciliation at the first instance, a Division Bench of the Calcutta High Court in Shiv Kumar Gupta v Lakshmi Devi Gupta\textsuperscript{130} 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 Baljinder Kaur v Hardeep Singh\textsuperscript{131} and held that on a reading of Section 23(2) of the Act and on the perusal of the judgment in Baljinder 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 Love Kumar v. Sunita Puri\textsuperscript{132} 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.

In a very recent case Aviral Bhatla v Bhavana Bhatla\textsuperscript{133}, the Supreme Court has upheld the settlement of the case through the Delhi mediation centre,  

\textsuperscript{130} 2005 (1) HLR 483.  
\textsuperscript{131} AIR 1998 SC 764.  
\textsuperscript{132} AIR 1997 P&H 189.  
\textsuperscript{133} 2009 SCC (3) 448.
appreciating the effective manner in which the mediation centre of the Delhi High Court helped the parties to arrive at a settlement.

Conciliator or mediator is able to give time to understand the cause of dispute and try to effect conciliation between the parties. In such agency the aim of the proceeding is not to decide the case but to settle the dispute as far as possible. It is ideally suited for settling sensitive or complex issues that are best not aired in a public forum.

5.7.2 Conciliation under Family Courts Act, 1984:

Disputes concerning the family matters require a special approach. The Law Commission in its 54th Report considered, ‘whether the traditional judicial machinery is an ideal system for the resolution of such disputes; but so long as its remains the only machinery available for the purpose, it should be so moulded as to enable and encourage the judge, to perform more satisfactorily the duty of adjudicating on these new types of disputes. This basic consideration has encouraged us in recommending the insertion of a set of new provisions to deal with litigation involving matters concerning the family.’

Despite the introduction of new Order\textsuperscript{135} in the Code of Civil Procedure, 1908 the courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. Hence a great need was felt, in the public interest, to establish family courts for speedy settlement of family disputes. Ordinary procedure is not suited to deal with such matters. These matters should be left to be dealt with by alternative methods of resolution. In the administration of justice, in disputes relating to the family, one has to keep in mind the human relationships with which one is dealing. The objective of family counseling as a method of achieving the

\textsuperscript{135} Order 32-A of the Civil Procedure Code, 1908.
ultimate object of preservation of the family is to be kept in the forefront. The Law Commission of India in its Reports recommended for the constitution of family courts to deal with suits relating to matters concerning the family. The Commission observed that litigation concerning or involving affairs of the family requires a special approach in view of the serious emotional aspects involved. The rules of procedure to be followed by such courts be much simpler and radically different from the rigid ruled of procedure and evidence. It felt that for this sensitive area of personal relationship, our ordinary judicial procedure is not ideally suited. It observed that the conventional procedure dominated by the adversary system may not be appropriate for disputes concerning the family. Many social work organizations, women associations and individuals have advocated from time to time for establishment of a forum where the stress would be on conciliation for peaceful settlement of family disputes. In view of the recommendations of different Law Commissions the Parliament has enacted the Family Courts Act, 1984 which aims at establishing family courts with a view to:

i) Protect and preserve the institution of marriage.

ii) Promote the welfare of children.

iii) Promote the settlement of disputes by conciliation and counseling.

iv) Secure speedy justice.

5.7.2.1 Establishment of Family Courts:

Section 3 Family Court Act, 1984 empowers the state government to establish family courts for those towns and cities whose population exceeds one million. The state government has been authorized to establish family courts in others areas of the

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The main purpose behind setting up these Courts was to take the cases dealing with family matters away from the frightening atmosphere of regular courts and ensure that a friendly environment is set up to deal with matters such as marriage, divorce, alimony, child custody etc.

The Family Court is required to make an effort in the first instance 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. Order 32-A of the Code of Civil Procedure is applicable to the proceedings before the family courts.

5.7.2.2 Appointment of Judges:

The State Government may, with the concurrence of the High Court, appoint one or more persons to be the Judge or Judges of a Family Court. The criteria for appointment of a Family Court Judge are the same as those for appointment of a District Judge requiring seven years experience in judicial office or seven years’ practice as an advocate. The Central Government, with the concurrence of the Chief Justice of India, is empowered to prescribe some more qualifications. The power of the Central Government is limited to making rules on qualifications of judges of family courts.

While appointing judges, Section 4(4) provides that, every endeavour shall be made to ensure that persons committed to the need, to protect and preserve the institution of marriage and to promote the welfare of the children and qualified by reason of their expertise and experience to promote the settlement of disputes by conciliation and counseling are selected and that women will be given preference for the appointment as judges of the family courts.
5.7.2.3 Association of social welfare agencies:

Section 5 enables the State Government to provide for the association, with the family courts of institutions or organisations engaged in social welfare or persons professionally engaged in promoting the welfare or the family, persons working in the field of social welfare and any other person whose association with a family court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act. Family courts shall be equipped with counsellors and psychologists who ensure that the disputes are handled by experts who will take care of, that in these matters human and psychological issues are also to be dealt with along with the basic legal issues. The role of the counsellors is not limited to counselling but extends to reconciliation and mutual settlement wherever deemed practicable. The State Governments are also required to determine the number and categories of counsellors, officers etc. to assist the Family Courts.137

5.7.2.4 Jurisdiction of Family Courts:

A family court exercises all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings dealt by it; and be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.138 Family Courts also have jurisdiction exercisable by a Magistrate of the 1st class relating to an order for maintenance of wife, children and parents under the Code of Criminal

137 The Family Courts Act, 1984, Section 6.
138 Id, Section 7.
Procedure. According to Explanation to Sub-section (1) of section 7 the family courts are empowered to deal with the following matters:

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

There is controversy as to what matters should come within the jurisdiction of the court. One opinion is that only family matters such as marriage, matrimonial disputes, maintenance, settlement of spousal property and guardianship and custody of child’s person and property should come within the jurisdiction of the court. The other opinion is that the para-familial matters such as domestic violence and other offences of criminal nature should also come within the jurisdiction of the family court.
Parliament is in favour of the former view.\textsuperscript{139} No matter under the Dowry Prohibition Act, 1961 or under Indian Penal Code, 1860 can be tried by the family courts but the family courts will exercise a jurisdiction under section 125 of the Code of Criminal Procedure, 1973.

However, by Section 7(2) (b) of the Family Courts Act, the competent legislature can expand the jurisdiction of the Family Courts Act and confer on it power to deal with controversies not enumerated in Explanations to Section 7(1). Provision has also been made to exclude jurisdiction of other courts in respect of matters for which the family court has been conferred jurisdiction.\textsuperscript{140} Wherever family courts are established, civil courts have been debarred from entertaining a matrimonial suit and proceedings pending in the civil courts concerning matrimonial matters are to be transferred to family courts even if it is at the execution stage.\textsuperscript{141}

5.7.2.5 Procedure of Family Courts:

In the family courts the procedure is less formal. Family courts shall make efforts, where it is possible to do so consistent with the nature and circumstances of the case, to see that the parties are assisted and persuaded to come to a settlement 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.\textsuperscript{142} If, in any suit or proceeding, at any stage, it 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

\textsuperscript{140} Supra Note 137.
\textsuperscript{141} Mayadhar Malik v. Laxmi Malik, AIR 1999 Orissa 81.
\textsuperscript{142} Supra Note 137, Section 9(1).
attempts to be made to effect such a settlement.\textsuperscript{143} Family Court is empowered to secure the services of a medical expert or such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family, for the purposes of assisting the Family Court in discharging the functions imposed by this Act.\textsuperscript{144} This ensures that the matter is solved by an agreement between both the parties and reduces the chances of any further conflict. The aim is to give priority to mutual agreement over the usual process of adjudication. The parties are first referred to conciliation and only when the conciliation proceedings fail to resolve the issue successfully, the matter is taken up for trial by the Court.

Though the provisions of Code of Civil Procedure, 1908 and Criminal Procedure Code, 1973 are applicable but the family courts are empowered to evolve their own rules of procedure to arrive at a settlement.\textsuperscript{145} Hence these are not bound by the rules under the procedure Codes. Special emphasis is put on settling the disputes by mediation and conciliation. The proceedings may be held in camera if the family court or if either party so desires.\textsuperscript{146} Under Section 21 of the Act, the High Courts have been vested with the power to make rules for the procedure to be followed by the Family Courts in arriving at settlements and other matters. The State Governments under section 23 of the Act have been empowered to specify after consultation with their respective High Courts, rules regarding working of the Family Courts and other procedural matters.

\textsuperscript{143} Id, Section 9(2).
\textsuperscript{144} Id, Section 12.
\textsuperscript{145} Id, Section 10.
\textsuperscript{146} Id, Section 11.
Section 13 provides that the party before a Family Court shall not be entitled as of right to be represented by a legal practitioner. The parties to the proceedings have to appear themselves and put forward their case. However, the court may, in the interest of justice, provide assistance of a legal expert as amicus curiae. This Section does not completely bar or prohibit the party to be represented by a legal practitioner. In a complicated case interpretation of legal provisions may require assistance from lawyers. For this purpose the courts have been given power to seek assistance of a legal expert. This is left to the sole discretion of the court to provide legal assistance. A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, df1872.147

It shall not be necessary to record the evidence of witnesses at length, but the Judge, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what the witness deposes and such memorandum shall be signed by the witness and the Judge and shall form part of the record.148 The evidence of any person where such evidence is of a formal character may be given by affidavit. The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.149

147 Id, Section 14.
148 Id, Section 15.
149 Id, Section 16.
5.7.2.6 Judgement of Family Courts:

Judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.\(^{150}\) A decree or an order other than an order under Chapter IX of the Code of Criminal Procedure, 1973, passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 for the execution of decrees and orders.\(^{151}\) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 shall be executed in the manner prescribed for the execution of such order by that Code.\(^{152}\) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court, to which it is sent for execution.\(^{153}\) An appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties. Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court. An appeal shall be heard by a Bench consisting of two or more Judges.\(^{154}\)

In every city and town where population exceeds one million the state government is to establish family courts. The state government is authorized to establish family courts in others areas of the state as well. But the family courts have not been

\(^{150}\) Id, Section 17.

\(^{151}\) Id, Section 18(1).

\(^{152}\) Id, Section 18(2).

\(^{153}\) Id, Section 18(3).

\(^{154}\) Id, Section 19(6).
established in all such cities. The Family Courts Act, 1984 has been enforced by many States, but in many States it has not yet been given effect to. The Central Government has not been given any explicit power in the Family Courts Act, 1984 to get the Act enforced. Nor any time limit for setting up of family courts has been indicated in the Act. Though the State governments are being periodically reminded to further the setting up of family courts, it has been left to the discretion of the concerned State Governments.

Former Chief Justice of India, Sh. K.G Balakrishanan in a two days International Conference of Jurists at Panchkula, had called upon the States of Punjab and Haryana to set up family courts in all districts in the coming six months. He said that these courts would require senior judicial officers as the job involved experience, maturity and innovation.\textsuperscript{155} Two family courts in Ludhiana and Amritsar districts have been established in Punjab. Punjab government has given approval to establish 14 more family courts in the state.\textsuperscript{156}

The Committee on Status of Women held a tour to some States such as Maharashtra, Bihar, Orissa, Kolkata, Chattisgarh and Madhya Pradesh and visited some of the Family Courts. In interaction with Judges, Counsellors, Advocates, NGOs and the State Government officials regarding functioning of the Family Courts some facts came to the notice of the Committee.\textsuperscript{157} It noticed that:

i) The Family Courts were few in number and the existing Courts lacked facilities, infrastructure and support system for effective functioning.

\textsuperscript{155} The Tribune, March 14, 2010, p. 1.
\textsuperscript{157} http://164.100.24.208/ls/committeeR/Empowerment/5th/Report.htm.
ii) There was shortage of judges and supporting staff.

iii) There were very few women judges in the Family Courts.

iv) The number of Counsellors in the Family Courts was inadequate and there was no uniformity in regard to remuneration being paid to the Counsellors and method of their appointment.

v) Lawyers were invariably appearing in the Family Courts in a routine manner with some Courts having Chambers for them whereas Counsellors were not given premises and had no rooms to sit and talk to clients.

vi) In most of the States no Rules had been framed regarding functioning of the Family Courts.

vii) As cases are not properly processed before being placed before the court, they keep pending for one reason or the other.

Showing concern over the poor functioning of the Family Courts the Chairperson of the National Commission for Women said in her presentation, “The existing courts lack infrastructure facilities, proper facilities, and support systems for proper functioning. There is a shortage of judges and supporting staff, and very few women judges are appointed. I am informed that there are only 18 women judges in the family courts in India. Skilled counsellors are either not available or are engaged on a very small fees as much as hundred rupees a day. There is no uniformity with regard to their remuneration or the method of appointment. Consequently they feel demoralized and have no interest in giving quality time or attention to these cases.”

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5.7.3 Conciliation under Hindu Marriage Act, 1955 and Special Marriage Act, 1955:

It was felt that ordinary judicial procedure is not preferably suitable to the sensitive area of personal relationships. Litigations involving affairs of the family require special approach in view of the serious emotional aspects concerned. In these circumstances, the objective of family counseling as a method of achieving the object of preservation of family should be kept in forefront. While granting an application for entertaining any petition for dissolution of a marriage by a decree of divorce, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of reconciliation between the parties before the expiration of the said one year.\(^{159}\) Even for a peaceful separation, conciliation, as a precondition for mutual consent divorce application, is a sensible problem solving approach. Section 23(2) of the Hindu Marriage Act 1955 and Section 34(2) of the Special Marriage Act 1954 also cast a primary duty on the court to make efforts for reconciliation between the parties. No other Indian matrimonial statute provides for it and there is no statutory directive to attempt settlement in other cases.

Before proceeding to grant any relief under the Hindu Marriage Act, it is 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 endeavour to bring about reconciliation between the parties.\(^ {160}\) However it would not apply where the grounds are, change of religion, or any venereal disease, leprosy, unsoundness of mind, renunciation of worldly affairs, or death of the spouse. Section 23 (3) makes a provision empowering the court on the request of parties or if the court thinks it just and proper to

\(^{159}\) The Hindu Marriage Act, 1955, Section 14(2).

\(^{160}\) Id. Section 23 (2).
adjourn the proceedings for a reasonable period not exceeding 15 days to bring about reconciliation. Hindu Marriage is a sacrament and not a contract. Even if divorce is sought by mutual consent, it is the duty of the court to attempt reconciliation in the first instance. Hindu law advocates reconciliation before dissolving a Hindu marriage.

However in *Naveen Kohli v. Neelu Kohli* it was held that the once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The Court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, divorce should not be withheld.

The provisions of Sections 34 (2) and 34 (3) of the Special Marriage Act, 1954 are similar as to the provisions contained in Sections 23 (2) and 23 (3) of the Hindu Marriage Act. Though the marriage contracted under the Special Marriage Act does not have the same sacramental sanctity as marriage solemnized under the Hindu Marriage Act, the mandatory duty on the court to attempt reconciliation is in similar terms. The provisions of settlement are same as in the Family Courts Act, 1984. Under sections 5 and 6 of the Family Courts Act, the State Government has the power to make rules for the association of social welfare agencies and counselors, whose association with a family court would enable it to exercise its jurisdiction more effectively in accordance with the purpose of the Act. The procedure of resolving disputes under the Family Courts Act is somewhat which may be called the court annexed mediation. But the Hindu Marriage Act and the Special Marriage Act does not provide for the method, how the conciliation is to

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be provided to the parties coming to the court. After the recommendation of Law Commission of India,\textsuperscript{162} Order 32-A was incorporated in the Civil Procedure Code in 1976 which seeks to highlight the need for adopting a different approach where matters concerning the family are at issue, including the need for efforts to bring about an amicable settlement.

5.8 Difference among Negotiation, Mediation and Conciliation:

Negotiation is self analysis between the parties to resolve their dispute. In this mode the parties begin their talk without interference of any third person. The aim of negotiation is the settlement of disputes by exchange of views and issues concerning the parties. There is a sufficient opportunity for presentation of case in this mode of redressal. Negotiation is a discussion intended to resolve disputes, to create an agreement upon line of action, to deal for individual or collective advantage, or to create outcomes to suit diverse interests. It is the primary method of alternative dispute resolution. In mediation and conciliation there is a third neutral person who helps both the parties to come to settlement. There is difference of degree of interference the third person can do in both the cases.

In common man’s vocabulary there may not be major difference between the terms ‘mediation’ and ‘conciliation’. However, there is substantial literature to suggest that there is indeed a difference between the two. Statutes passed by the Indian Parliament treat them different. Section 30 of the Arbitration and Conciliation Act, 1996 provides that an arbitral tribunal may try to have the dispute settled by use of ‘mediation’ or ‘conciliation’. Sub-section (1) of section 30 permits the arbitral tribunal to “use

\textsuperscript{162} Supra Note 134.
mediation, conciliation or other procedures”, for the purpose of reaching settlement. The Civil Procedure Code (Amendment) Act, 1999 which introduced sec. 89, also considers ‘conciliation’ and ‘mediation’ as different concepts.

In Part III of the Arbitration and Conciliation Act, 1996 (sections 61 to 81) which deals with ‘Conciliation’ there is no definition of ‘conciliation’. Nor is there any definition of ‘conciliation’ or ‘mediation’ in sec. 89 of the Code of Civil Procedure, 1908 as amended by 1999 Amendment Act. In order to understand the meaning of the two terms reference may be made to the functions performed by both. Under section 67(4) of the Arbitration and Conciliation Act, 1996 the conciliator may, at any stage of the conciliation proceeding, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons. Sec. 73 states that the conciliator can formulate terms of a possible settlement if he feels there exist elements of a settlement. He is also entitled to ‘reformulate the terms’ after receiving the observations of the parties.

The primary role of a conciliator under Indian law is that he shall assist the parties in an independent and impartial manner. Additionally, he shall at any stage of the process ‘make proposals for a settlement of the dispute’. The most relevant of all of his duties is that he shall ‘formulate’ and then if required ‘reformulate’ the terms of settlement. Conciliation’ is a procedure like mediation but the third party, the conciliator, takes a more interventionist role in bringing the two parties together and in suggesting possible solutions to help achieve a settlement. This is indeed the UNCITRAL concept. However, mediation is widely regarded as a ‘facilitative’ process, as contrasted with the proactive role played by the conciliator. Mediation is a way of settling disputes by a third
party who helps both sides to come to an agreement, which each considers acceptable. Mediation can be ‘evaluative’ or ‘facilitative’. ‘The position in UK is quite express in holding that conciliation is a process in which the Conciliator plays a ‘pro-active role’ to bring about a settlement and mediator is ‘a more passive process’.

It may also be important to note that post-1970’s the very usage of the word ‘conciliation’ has been widely replaced by the word ‘mediation’ in the USA. In fact in the USA the mediator is always assumed to perform the trademark pro-active role that was reserved for the conciliator under the Indian, British or the UNCITRAL Model. This makes USA perhaps the only country where the two terms are used interchangeably. Therefore, as the above has established it is only in the USA that the terms are used interchangeably. In almost all the countries including the exhaustive list of India, UK, Australia, Japan and even the UNCITRAL Model Law, there does exist a fundamental difference in the nature of the two terms ‘conciliation’ and ‘mediation’. Indeed, the difference incorporated into the term ‘conciliation’ used in section 89 of the CPC is valid and in consonance with the general international practice.\(^{163}\) In USA, conciliation is similar to Mediation. However, in India, Mediation is different from Conciliation and is a completely informal type of ADR mechanism.

5.9 Selecting a Suitable ADR Procedure:

It would be best for the legal system if the several methods of dispute resolution could win equal standing, both in practice and professional training. Justice will be better served by a holistic approach which recognizes that there are legal

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problems of various kinds, for which different methods of resolution are appropriate and effective. The emphasis ought not to be on competition between such methods, but on a unified system encompassing a sufficiently varied range of processes and enabling the identification and application of the most efficacious and appropriate one. This may even involve combining elements from more than one method, or use of another where one has failed or only succeeded partially.

The cases where the parties want to save financial resources and at the same time want a quick resolution their dispute all the ADR techniques are better than the litigation or arbitration. If the parties want quick settlement of their dispute Lok Adalat can be taken resort to than any other method. In Lok Adalats cases are settled generally in one sitting in a matter of hours. But the Lok Adalat proceedings are held in public, in the presence of all persons assembled to attempt to settle their cases. Lok Adalat usually takes place on court premises where numerous cases are submitted to Lok Adalat. If the parties want privacy and confidentiality in regard to trade secrets, intellectual property or parties want to preserve reputation or public image negotiation, mediation or conciliation should be opted for. Mediation takes place in a private conference room. It is private in the sense that the public is not invited. Only the parties, their advocates or other representatives, or other people accompanying them are present.

Due to time constraints and the nature of the process, Lok Adalat judges rarely engage in an extensive discussion of a claim like the precise nature of the claim, the factual background and damages and possible settlement terms. Lok Adalats can, however, deal only with cases where the settlement process is not long. But cases

164 Supra Note 33.
involving commercial disputes, property disputes, partition disputes, matrimonial disputes and the like, it is obvious, cannot disposed of the same day by applying a multiplier formula as in accident cases. These are more serious cases where parties have to be brought to the negotiating table and the conciliator/mediator has to have separate as well as joint sessions with the parties in a good number of sittings. These may extend to six or even ten such sessions. A lot of facts may have to be ascertained, documents may have to be called for, matters of equity may have to be taken into account and what is more, a lot of effort is to be made to make the rival parties cool down their tempers.

In a Lok Adalat, in motor accident cases, the rivals are either the State or the Insurance companies and there is absent the emotional part that is invariably involved during negotiation in other types of cases. This is because there is no such long standing rivalry or enmity in Lok Adalat cases. It is, therefore, essential that in more serious cases, parties must be persuaded, even be persuasively compelled, to talk to each other through a conciliation or mediation process so that they may first cool down, come to reason and start thinking of settling their disputes. Once that is done, then conciliation or mediation is held and settlement reached. Commercial and other disputes which require creative solutions are rarely referable to Lok Adalat.

In the disputes where the parties do not desire to be actively and directly involved in the discussions, do not desire confidentiality or want to appoint their own mediator Lok Adalat will be the desirable option. If the parties are not in the position of negotiating the things directly with the other party Lok Adalat can be opted for. If the parties want to have the freedom to choose their mediator or want to be actively and directly involved in the negotiation process mediation or conciliation can be opted for. If
the parties have on-going relationships that they want to preserve, like family relationships, social relationships, business relationships negotiation may be the first choice or mediation/conciliation may be resorted to. In complex, multi-party disputes Lok Adalats can not work well.

All negotiation, mediation conciliation and Lok Adalat provide different benefits. These all can co-exist as part of an integrated approach to reduce the court backlog and expenses associated with trial. These dispute resolution processes can be part of an inclusive approach to improve access to justice. A careful examination of the parties’ needs and the nature of a dispute can afford a basis for selecting a suitable dispute resolution procedure in a particular case.

5.10 Court Annexed Mediation in India:

Under Section 4 of the Legal Services Authorities Act, 1987 NALSA is bound to promote all forms of dispute settlement mechanisms. Accordingly, NALSA has taken steps for the setting up of Mediation Centres in all States. Hon’ble Mr. Justice R.C. Lahoti, the then Chief Justice, Supreme Court of India constituted a Mediation and Conciliation Project Committee on 9th May 2005 under the chairmanship of Hon’ble Mr. Justice N. Santosh Hegde. The Mediation and Conciliation Project Committee of the Supreme Court of India (MCPC) conducts training programmes on mediation for lawyers and judicial officers, in furtherance of the newly added Section 89 of the Code of Civil Procedure. 165

The MCPC has prepared a training Manual and a uniform training curriculum to standardize and regulate the Mediation training methodology throughout

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India. Apart from the 40 hours training programs on “Techniques on Mediation”, MCPC conducts Awareness programs, Training programs for referral judges, Training for Trainers, and Orientation courses in Mediation. Successful Mediators are awarded the Certificate of Accreditation. MCPC is in the process of implementing uniform Mediation Rules applicable throughout India.

The Mediation and Conciliation Project Committee (MCPC) of the Supreme Court of India is responsible for laying down policies, conducting training and maintaining quality control for the ADR technique of mediation envisaged under Section 89 Code of Civil Procedure 1908. NALSA is responsible for the overall control of the mechanism adopted by MCPC and also for its funding. State Legal Services Authorities are entrusted with the establishment of Mediation Centers in districts. The MCPC has its own National Plan of Action. Since MCPC is set up as a Committee constituted by the Hon’ble Supreme Court of India, polices laid down by it are to be adopted and implemented by the State Legal Services Authorities also.

First court annexed mediation centre was established in India in Tamil Nadu, after that a similar court annexed centre was established in the Delhi High Court. A pilot project on mediation was initiated in Delhi in the month of August, 2005. The first batch of senior Additional District Judges was 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 were trained as mediators during the month of September and November, 2005. A permanent mediation centre with all modern facilities was established at Tis Hazari court complex 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. Besides these two more centres at Rohini Courts and Dwarka Courts were made working in Delhi from February 2009 and February 2010 respectively. A large number of cases are referred to Mediation Centres. The settlement rate at these centres being about 70% is very encouraging considering that judicial mediation is entirely a new concept in our country. Delhi Mediation Centres settled 42,915 cases including 10,520 connected cases till 31.3.2012. Mediation is now looked upon as the best Alternative Dispute Resolution Mechanism in India, providing easy, quick, cheap and effective justice to litigants.

Mediation, likewise, is being used by the Bangalore courts, and elsewhere in India, to resolve civil lawsuits on a broad scale. Disputes that are being referred to mediation include complex and long-standing property disputes, marital disputes, and commercial disputes. In a recent Bangalore mediation, a complex property dispute filed in the 1960’s was settled completely by all interested parties after only 4 hours of mediation. Mediation had made great strides all over the country, said Justice H.L. Gokhale, Chief Justice, Madras High Court and Patron-in-Chief of the Tamil Nadu Mediation and Conciliation Centre. Praising the State for leading the mediation and conciliation process, he said some of the States were lagging behind.

5.11 Court Annexed Mediation in Punjab and Haryana:

Taking a lead from the success of the Mediation centres at Delhi, the Punjab & Haryana High Court started a Mediation Centre in the High Court as well as in

167 Supra Note 33.
the District Courts at Chandigarh wherein senior counsels have been devoting their time and energy as impartial Mediators. In an effort to institutionalize Alternative Dispute Resolution and explore possibilities of settlements of disputes by parties themselves, the Punjab & Haryana High Court launched Mediation and Conciliation Centres, called “Sampoorna Samadhan Kendras” in 17 District Courts in the States of Punjab and Haryana.\(^{169}\) 9 Mediation and Conciliation Centres in Haryana and 8 in Punjab became functional on 8th November 2008. In Punjab, existing mediation centres are at Jalandhar, Amritsar, Hoshiarpur, Patiala, Ludhiana, Sangrur, Ferozepur and Moga. The mediators from Moga claimed that they have got highest success rate of around 30 per cent in amicably settling the cases referred to them.\(^{170}\) Mediation Centres set up at Faridabad, Gurgaon, Hissar, Jind, Karnal, Kurukshetra, Rewari, Rohtak and Sonipat are functioning from 8.11.2008. Centre at Narnaul started functioning on 7.2.2009. At first the mediation at the district level was entrusted to the Judges only. It was generally felt that over burdened Judges cannot be expected to conduct mediation that too either on Friday afternoon or on Saturday. According to the data available from eight Mediation Centres set up in the State of Punjab they had settled only 465 cases from November 2008 to April 2010, whereas in ten Mediation Centres set up in the State of Haryana, the total number of cases settled in the same period was 1176. The data were not quite encouraging.

Taking some remedial measures, a decision was taken to acquire human resource by attracting Advocates from the Bar. The process which has been followed is

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\(^{170}\) The Tribune, 5th December 2011.
that through the District Judges applications from the advocates for undergoing training were invited and on the recommendation made by the learned District Judges the names of the interested counsel with clean antecedents were cleared. Thereafter, Mediation training was imparted to about 108 advocates from all the 18 Centres of Punjab and Haryana over a period of five days in May 2010. There may be a significant advantage of mediation by advocates.¹⁷¹

A mediation and conciliation centre at Fatehabad district courts in Haryana was inaugurated on Dec. 2, 2011. The ninth mediation and conciliation centre was inaugurated at the district judicial complex at Bathinda in the state of Punjab on December 4, 2011.

Respective judges refer the cases to mediation and conciliation centres where the mediators counsel the two parties by suggesting a mid-way best suited to both the parties. The role of a mediator is that of a counsellor. The mediator then sends his or her recommendation to the court. He is not empowered to pronounce a judgement. The respective court then finalises all the decisions as suggested by the mediator after consulting both the parties. The Punjab & Haryana High Court started a Mediation Centre in the High Court as well as in the District Courts at Chandigarh wherein senior counsels have been devoting their time and energy as impartial Mediators. Similar is the story in other States of India.

5.12 Benefits of Non Adjudicatory Methods of Alternative Dispute Resolution:

The biggest benefit of non-adjudicatory methods of dispute resolution over the adjudicatory method is that the parties themselves control the outcome of the settlement. If the parties have not entered into an agreement, they are not bound by the final outcome. In negotiation there is no need of appointing any third party, the disputing parties themselves have opportunity to reach an agreement. After settlement they can continue to work together. Negotiation 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. Negotiation provides flexible procedure; strict procedure of law is not applicable. It is the option of the parties to decide their fate. There are more chances of obeying the settlements because the parties themselves are responsible for the outcome.

In mediation and conciliation the parties may select a neutral third person of their choice, who himself will be interested in the continuation of relation of the parties. In matters where counseling is required before going for settlement mediation or conciliation serves the purpose. Research indicates that family mediation is effective in achieving higher levels of satisfaction and compliance with the agreements reached and in limiting the adverse impact of the conflict.\(^\text{172}\) Mediation/conciliation is ideally suited to polycentric disputes and conflicts between those with a continuing relationship, since it minimizes intrusion, emphasizes cooperation, involves self-determined criteria of resolution, and provides a model of interaction for future disputes.\(^\text{173}\)

\(^{172}\) J. Pearson and N. Thoennes, “The Benefits Outweigh the Costs,” Family Advocate (1982),

Conciliation are more practical than any other method of ADR. Because in negotiation settlement is totally dependent on the willingness, initiative and efficiency of the parties or their representatives and arbitration is similar to adjudicatory process in the courts though free from the rules of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

These methods have the benefits of privacy, informality, timeliness, inexpensiveness and effectiveness. Preparation for mediation is far easier and simpler than is required to prepare for arbitration or litigation. If there is a full settlement or if certain items are settled and an agreement is written, that agreement is enforceable in court, if necessary and there are no appeals after that. In arbitration or litigation once the award or decision is given, the second course of litigation starts. These methods impose fewer costs than litigation, a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute. These are faster than the conventional adversarial system of dispensing justice. Many mediations may last for not more than two or three sessions. It is flexible as there is no set formula of complicated procedure and leads to an imaginative, creative, cost efficient, convenient and lasting solution of a dispute bringing parties closer avoiding hostility and maintaining relationship. In most cases, the mediator is well-versed in the issues that are in dispute and can assist the parties in the reality of their opinions and positions.

5.13 To Sum Up:

Courts are state institutions, which conduct public, formal proceedings that presuppose literacy, put the parties in a conflictual, legal position-based, backward-
looking fact finding processes. In contrast, negotiation, mediation and conciliation as dispute resolution techniques, are private, informal, more mutual, facilitative, future-looking, interest-based processes that bring parties to a regulated, multi-dimensional, win-win remedy that is more durable because of the parties’ consent in the result. These alternatives are similar to traditional forms of dispute resolution that were used by the traditional Panchayats in India. These are needed to be incorporated into the formal litigation system.

Considering the backlog of cases in our courts and the fact that there exist a huge number of vacancies in the courts at various levels, Lok Adalats have emerged as the answer to the mounting backlog of cases. It is needless to say that in the present scenario, the alternative dispute resolution system of which Lok Adalat movement is one component has assumed great importance. Sometimes it appears that in Lok Adalats the justice has fallen victim to the desire for the speedy resolution. Instead of trying genuine compromise, in some cases Lok Adalats try to force an adjudicatory decision upon unwilling litigants. The right to fair hearing, which is one of the basic principles of natural justice, is denied to the people. Many sitting and retired judges while participating in Lok Adalats as members, tend to conduct the Lok Adalats like courts, by hearing parties and by imposing their views as to what is just and equitable on the parties. Sometimes they get carried away and proceed to pass order on merits even though there is no consensus or settlement. Such acts instead of fostering alternative dispute resolution through Lok Adalats will drive the litigants away from the Lok Adalats. However, this concept is very popular and is gaining historical momentum. Experience has shown that it has become viable, efficacious and expeditious ADR system.
Mediation has become a very important and viable alternative to adjudication and arbitration in the legal system to settle labour disputes, family, business and commercial disputes. In some countries and states we find laws of mandatory mediation, as a way to encourage the parties to the dispute to use the mediation process as a preferred way to resolve disputes. Mediation works when people want to settle a case. It may also be helpful when the court wants a case settled and the parties are willing to try. But it is wrong to approach mediation from a mandated posture, where people feel like they are held prisoner for a minimum number of hours, or where anyone threatens to tell a judge. People are entitled to value a case any way they want to.

The point is that the roots and symptoms of conflict differ from case to case. The treatment must be suitable for each case instead of herding all of them through a civil procedure code system. Quite like the treatment of a medical problem, proper assessment and identification and appropriate recommendation from the range of conflict resolution methods is needed. Like language, law and its courts must reflect the volkgeist - the spirit of the people - not because this is always just and righteous, but because it is closer to the law of life.174

Viewing various statutes it can be gathered that the Government of India supports the use of ADR. These methods are successful in the Lok Adalats. After the establishment of the Mediation and Conciliation Centres in the District Courts these methods have proved to be very helpful in the settlement of a large number of cases. But there is not much interest or acceptance of these methods independent of that. Though there is extensive legal framework governing ADR and there is a strong tradition of

174 Supra Note 11.
domestic mediation and conciliation in India, the concept is not as successful as it is in other developed countries.