Chapter VI

Legislative Framework
CHAPTER-VI

LEGISLATIVE FRAMEWORK

"There is one thing stronger than that of the armies of the world and that is an idea whose time has come"

Victor Hugo

The Alternative dispute resolution which provides for an additional forum in the resolution of disputes has become an indispensable tool in the modern times. The evolution of different alternative dispute resolution mechanisms has been spread over various legislative statutes.

There were the initial sporadic attempts to initiate settlement\compromise in various disputes pertaining to matrimonial matters, industrial disputes and negotiable instruments etc. Gradually comprehensive alternative dispute resolution regimes were evolved as in the case of Arbitration and Conciliation Act, 1996, Legal Services Authority Act, 1987 etc.

The range of disputes that may be subject to ADR regime is quite vast. In fact all kinds of disputes except a narrow set fall within the hugely expanding frontiers of ADR. Under Indian Law, the following types of differences cannot be settled by ADR mechanisms, and therefore, are mandatorily settled only through courts:-

- Matters of public rights
- Non compoundable offences
- Proceedings under the Foreign Exchange Management Act (FEMA) which are quasi-criminal in nature
- Validity of intellectual property rights granted by statutory authorities
- Taxation matters beyond the will of the parties
- Winding up under the Companies Act, 1956
- Disputes involving insolvency proceedings.

1 French Human Rights Activist
In the increasingly globalised world, India has entered into bilateral investment treaties with a number of countries including Australia, France, Japan, Korea, UK, Germany, Russian Federation, The Netherlands, Malaysia, and Denmark, Overseas Private Investment Corporation (OPIC) of US. Each agreement makes provision for settlement of disputes between an investor of one contracting party and an investor of the other contracting party through negotiation, conciliation and arbitration.

India is a party to the Convention establishing the Multilateral Investment Guarantee Agency (MIGA), which provides for settlement of disputes between State parties to the Convention and MIGA through negotiation, conciliation and arbitration.

The global trends and the domestic constraints make ADR an imperative feature of the justice dispensation mechanisms in the country. Various legislative enactments in India incorporate various forms of ADR as a means of settlement of disputes. Some of the prominent ones are:

(1) Legislative Framework For The Working Of Alternative Dispute Resolution

(a) Industrial Disputes Act, 1947

The first avenue where conciliation has been effectively introduced and recognized by law is in the field of labour law, namely Industrial Disputes Act, 1947. Conciliation has been statutorily recognized as an effective method of Dispute Resolution in relation to disputes between workers and the management. The provision in the Act makes it possible for disputing parties to settle disputes by negotiation and failing that through conciliation and arbitration through an officer of government, before resorting to litigation.²

The Act provides specifically both for conciliation and arbitration for the purpose of settlement of disputes. The duty for making the attempts for conciliation and arbitration is cast on conciliation officers appointed under Industrial Disputes Act.

² 222 Report of Law Commission
Board of Conciliation is also formed by the appropriate government under its provisions. Voluntary arbitration is also possible under the Act.

(b) Code of Civil Procedure, 1908

The Code of Civil Procedure, 1908 recognises the rights of the parties to enter into compromise and withdraw the suits on that basis. Under Order XXIII, parties may either abandon the claim or request the court to record the compromise between the parties. It makes a provision for making any decree on any lawful agreement or compromise between the parties during the pendency of the suit by which claim is satisfied or adjusted. The scheme of the provision is that if the court is satisfied that a

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3 Section 4. Conciliation officers:- (1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes. (2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

Section 5. Boards of Conciliation:- (1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute. (2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit. (3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party: Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party. (4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number: Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

4 Section 10A, Industrial Dispute Act, 1947
5 Rule 3
6 Order XXIII, Rule 3, Compromise of suit-
Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:] [Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.] [Explanation-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule;]
suit has been adjusted wholly or partly by a lawful agreement or compromise, the court shall pass a decree in accordance with it.

Another provision permits for execution of an agreement between the parties, in writing, to the effect that upon a decision on an agreed question of fact or law as stated by them, the result would follow as specified in the agreement.7

A duty is also cast on the part of a judicial officer to assist the parties to arrive at a mutual settlement.8 Further, it is the duty of the court to endeavour to assist the parties in arriving at the settlement in respect of the subject matter of the suit or proceeding concerning family disputes.9 The provisions of this Order applies to all proceedings relating to family, like guardianship, custody of minor, maintenance, wills, succession, etc. 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 amendments made to the CPC in 199910 and in 200211 seek to institutionalize ADR techniques in the Indian Judicial System. By the said amendments, a new Section12 has been introduced in the CPC, which provides that, in any dispute before it, if the court finds that there exists elements of a settlement which may be acceptable to the parties, then the court should formulate the terms of settlement and give them to

7 Order XIV Rule 6. Questions of fact or law may by agreement be stated in form of issues-
Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that upon the finding of the Court in the affirmative or the negative of such issue,-
(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject some liability specified in the agreement;
(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or
(c) One or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.
8 ORDER XXXII A Rule3.Duty of Court to make efforts for settlement:-
9 Order XXXII A, Rule 3 lays down the provisions relating to 'suit or proceeding relating to any other matter concerning the family'. It was felt that ordinary judicial procedure is not ideally suited to the sensitive area of personal relationships. Order 32A 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.
10 By Amendment Act 46 of 1999
11 By Amendment Act 22 of 2002
12 Section 89 (Amendment Act 1999)
the parties for their observations and after receiving the observation of the parties, the court may formulate the terms of a possible settlement and refer the same either for arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation.

Order XXVII,\(^1\) confers a duty on court in suit against the government or a public officer to assist in arriving at a settlement. In a suit where Government or public officer is a party it shall be the duty of the court to make an endeavour at first instance, where it is possible according to the nature of the case, to assist the parties in arriving at a settlement. If it appears to the court in any stage of the proceedings that there is a reasonable possibility of a settlement, the court may adjourn the proceedings to enable attempts to be made to effect settlement. The Court may also adjourn the proceeding if it thinks fit to enable attempt to be made to effect a settlement where there is a reasonable possibility of settlement.

According to Section 80\(^1\) no suit shall be instituted against government or public officer unless a notice has been delivered at the government office stating the cause of action, name, etc. The object of the section is to give the government the opportunity to consider its or his legal position and if possible to make amends or settle the claim out of court.\(^1\)

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13 Rule 5B- Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement

(1) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently 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 under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.

14 Sub-section 1

15 Raghunath Das v. UOI, AIR 1969 SC 674
(c) Matrimonial and Family Laws

For enforcement and adjudication of all matrimonial and other related disputes of any person in any religious community, the designated judicial forum or court where such a petition is to be lodged is prescribed in the respective enactments themselves. There is an organised system of designated civil and criminal judicial courts in every state in India that works under the overall jurisdiction of the respective HC in the state. It is in the hierarchy of these courts that the family and matrimonial cases are lodged and decided.

There is thus a massive legal system comprising nearly 15,000 courts across the country. It is imperative that the people of India reaffirm their faith in the justice dispensing mechanisms and have improved access to justice through formal and informal (ADR) systems.

There are several enactments that reflect upon the need to provide speedy & efficacious justice

- Arbitration under Arbitration and Conciliation Act, 1996
- Settlement under O. XXXII A of Code of Civil Procedure, 1908
- Establishment of Lok Adalats under Legal Service Authority Act, 1987 that looks at mediation, conciliation and informal settlement of disputes
- S.23(2) & 23(3) of Hindu Marriage Act, 1955
  S.34 (2) & 34(3) of Special Marriage Act, 1954
- Family Courts Act, 1984

It may be pertinent to point out that all proceedings under Hindu Marriage Act, 1955 and Special Marriage Act, 1954 in India are regulated by provisions contained in CPC. In suits relating to matrimonial and family affairs by an amendment in 1976,
Order XXXII A of CPC provides for mandatory settlement procedures in all such proceedings specifically\textsuperscript{16}

In \textit{Jagraj Singh v. Birpal Kaur},\textsuperscript{17} the legislative intent of attempting mandatory reconciliation procedure being manifest in S. 23 (2) HMA was emphasised. Also it was observed that the requirement of Order XXXII A CPC ought to be complied with.

\textbf{(i) Hindu Marriage Act, 1955}

A Hindu marriage is not contractual but sacrosanct; it is not easy to create such ties and is even more difficult to break them. In case of divorce proceedings, a judge should actively stimulate rapprochement proceedings. Reconciliation is a mutual dialogue to end differences. The approach of courts in matrimonial issues is much more constructive, affirmative and productive rather than abstract, theoretical or doctrinaire. Reconciliation is compulsory under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. But the other Indian matrimonial statutes do not provide for it.

Section 23(2) of the Act mandates the duty on the Court that before granting relief under this Act, the court shall in the first instance; make an endeavour to bring about reconciliation between the parties, where it is possible according to nature and circumstances of the case. For the purpose of reconciliation the court may adjourn the proceeding for a reasonable period and refer the matter to person nominated by

\textsuperscript{16} Order XXXII A CPC Suits relating to matters concerning the family.
\textsuperscript{17} JT 2007 (3) SC 389
court or parties with the direction to report to the court as to the result of the reconciliation, (section 23(3) of the Act).  

However the provisions of section 23(2) & (3) do not apply in petitions for relief based on the ground of change of religion(clause(ii) of section 13(1)), unsoundness of mind(clause(iii) of section 13(1)), leprosy(clause(iv) of section 13(1)), venereal disease(clause(v) of section 13(1)) renunciation of world(clause(vi) of section 13(1)) or presumption of death(clause(vii) of section 13(1)).

Supreme Court has reiterated that it is the duty of the court to make every endeavour to bring about reconciliation and it is mandatory. In a significant judgement of the Rajasthan High Court, it was observed that such efforts may be made from the start of the case or at any time before the court proceeds to grant relief.

(j) Special Marriage Act, 1954

The provisions of section 34 (2) and (3) of Special Marriage Act are pari materia to provisions contained in section 23 (2) and (3) of Hindu Marriage Act.

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18 Section 23: Decree in proceedings:- (2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties.

Provided that nothing contained in this section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause(ii), clause(iii), clause(iv), clause(vi) or clause(vii) of subsection(1) of section 13.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.

Section 9 of the Family Courts Act, 1984 lays down the duty of the family court to assist and persuade the parties, at first instance, in arriving at a settlement in respect of subject matter.

19 Jagraj Singh v. Birpal Kaur AIR 2007 SC 2083

20 Sakri v. Chhanwarlal, AIR 1975 Raj 134

21 Section 34. Duty of court in passing decrees(Act 68 of 1976):-

(2) Before proceeding to grant any relief under this Act it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in Cls.(c), (e), (f), (g) and (h) of sub-section (1) of Sec.27.

(3) For the purpose of aiding the Court in bringing about such reconciliation, the Court may, if the parties so desire or if the Court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days, and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court if the parties fail to name any person,
Even though marriage contracted under Special Marriage Act does not have the same sacramental sanctity as marriage solemnised under Hindu Marriage Act, the Indian Parliament in its wisdom has retained provisions for reconciliation of marriage in the same terms in Special Marriage Act as they exist in Hindu Marriage Act.

(k) The Family Courts Act, 1984

The Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith by adopting an approach radically different from that of ordinary court proceedings.\(^{22}\)

The endeavour of Family Courts Act is to adopt a friendly, conciliatory and informal dispute resolution ambience which would enable parties to amicably settle the differences without the shackles of the technical rules of law of procedure and evidence. It is an essentially a procedural statute. It did not override personal laws but only provided an alternative adjudicatory forum of ADR. A conscious effort was made to shift matrimonial and family disputes from district courts (civil) and magistrates’ courts (criminal) to special courts that had expertise in matrimonial and maintenance litigation. There was a ‘basic’ shift in emphasis from mainstream lawyers to counsellors to aid the parties to the dispute, especially to enhance women’s negotiating power, to reach mutually amicable solutions.

Section 5 of the Act provides enabling provision for the Government to require the Association of Social Welfare Organizations to help a family court to arrive at a settlement. Section 6 of the Act provides for the appointment of counsellors by State Government in consultation with the High Court, to effect settlements in family matters.\(^{23}\)

\(^{22}\) K.A.Abdul Jakes v. T.A.Sahida, (2003) 4 SCC 166

\(^{23}\) Section 6: Counsellors, officers and other employees of Family Courts. – (1) The State Government shall, in consultation with the High Court, determine the number and categories of counsellors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counsellors, officers and other employees as it may think fit.
Section 9 outlined the duty of family courts to assist and persuade the parties in arriving at a settlement in respect of the matter in dispute and to follow such procedure (subject to rules made by High Court) as it may deem fit.24

Section 13 underlined the restriction on the entry of lawyers to the family courts although the assistance of legal experts as amicus curiae is possible.25

In Romila Jaidev Shroff v. Jaidev Rajnikant Shroff,26 while transferring the matrimonial jurisdiction to family courts, the full bench of Bombay High Court held that litigation before family courts is a mixture of inquisitorial trial, participatory form of grievance redressal and adversarial trial. As the court is left to device its own practise, it can have a judicious mixture of all three and can proceed under any/all of them.

In Bini v. K. V. Sundaran,27 Kerala High Court significantly held that there may be an effort at reconciliation even on the ground of conversion to another religion under Family Courts Act, 1984, though it is not required under HMA, 1955.

Family courts although targeted to be functioning in every district of the country are as of yet making its mark only sparsely.28

(2) The terms and conditions of association of the counsellors and the terms and conditions of service of the officers and other employees, referred to in sub-section(1) shall be such as may be specified by rules made by the State Government.

24 Section 9: Duty of Family Court to make efforts for settlement-
(1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject- matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.
(2) If, in any suit or 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 attempts to be made to effect such a settlement.
(3) The power conferred by sub- section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.

25 Section 13: Right to legal representation. – Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right to be represented by a legal practitioner:
Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae.

26 11(2000) DMC 600 FB
27 AIR 2008 Kerala 84
The role of Counsellors (non-legal professionals) for assistance to the Presiding Officers is considered to be extremely important in the overall scheme of the Act. But several states did not even appoint them and judges or lawyers were instead entrusted with the task of counselling. In Rajasthan, for instance, in some courts counsellors function under Family Courts Act while in others they function under Lok Adalats under State Legal Service Authority. Services of conciliators are used only occasionally and in the limited context of Lok Adalats which may take place either weekly or periodically.

Wherever counsellors are active there is need for periodic training for them to evolve gender sensitive women oriented counselling techniques.\(^{29}\)

It is important to increase the effectiveness of family courts by improving upon all the factors above in order to stem the still continuing spate of contested matrimonial litigations even within this Act, so that its key mandate of non-adversarial litigation and conciliation for speedy settlement of disputes become a reality.

(1) Mediation in matrimonial and family matters

In a very recent case, *Aviral Bhatla v. Bhavana Bhatla*,\(^{30}\) the Supreme Court has upheld the settlement of a case through Delhi Mediation Centres appreciating the effective manner in which the mediation centre of the High Court of Delhi helped the parties to arrive at a settlement.

Litigation in respect of any matter concerning the family, whether divorce, maintenance, alimony or custody of children should not be viewed as success or failure of legal action but as a social therapeutic problem requiring special response. Matrimonial and Family disputes need to be tackled with a humanitarian approach and hence attempts should be made as far as possible to reconcile differences (where necessary with professional assistance) so as not to disrupt the family structure.

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28 The first family court in Delhi was inaugurated as recent as on 15\(^{th}\) May 2009 by Chief Justice of India, Justice K. G. Balakrishnan and it started functioning from July 2009. As reported in Indian Express, Delhi, 15\(^{th}\) May 2009.
29 Family Laws, Flavia Agnes*
30 2009 SCC (3) 448
(d) Code of Criminal Procedure, 1973

It provisions enable the accused as a matter of right to be represented by a pleader of his choice. Further, in case the accused does not have sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the state.

(i) Plea Bargaining

The criminal justice system is in a process of continuous evolution attempting to balance the rights of the accused to a fair trial and the society’s interest to punish the criminal. The concept of plea bargaining implies pre-trial negotiations between an accused usually represented by the defence counsel and the prosecution in order to reach an agreement in which the accused may plead guilty in return for certain concessions, reduced sentence, refraining from framing charges etc., by the prosecution. This practise has become popular in the criminal justice systems of countries like U.S., Britain, Canada, Germany, and Italy.

A new chapter XXIA on ‘Plea Bargaining’ has been introduced in the Criminal Procedure Code. It was introduced through the Criminal Law (Amendment) Act, 2005, which was passed by the Parliament in its winter session. This has certainly changed the face of the Indian Criminal Justice System. Some of the salient features of ‘Plea Bargaining’ are that it is applicable in respect of those offences for which punishment is up to a period of 7 years. Moreover it does not apply to cases where the offence committed is a socio-economic offence or where the offence is committed is committed against a woman or a child below the age of 14 years. An application

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31 Section 304. Legal aid to accused at State expense in certain cases:- (1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the court that the accused has not sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government make rule providing for-
(a) The mode of selecting pleaders for defence under sub-section (2);
(b) The facilities to be allowed to such pleaders by the courts;
(c) The fee payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other courts in the State as they apply in relation to trials before the Courts of Session.

32 265A. Application of the Chapter.- (1) This Chapter shall apply in respect of an accused against whom- (a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence
may be filed by an accused for plea bargaining in the court where his trial is pending. It must be a voluntary offer for the remedy and may include giving compensation to the victim as part of the mutually satisfactory disposition of the case. Certain guidelines for such mutual satisfactory disposition of the case are also mentioned in the section. The report of such a disposition must be submitted before

for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204, but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

33 265B. Application for plea bargaining.-
(1) A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under sub-section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where-

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed under sub-section (1).

34 265C. Guidelines for mutually satisfactory disposition.-In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 265B, the Court shall follow the following procedure, namely:-

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused may, if he so desires, participate in such meeting with his pleader, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:
the court. The disposal of the case shall take place in accordance with the section. The court shall thereafter give its judgement. Also once the court passes an order in the case of 'Plea Bargaining' no appeal shall lie to any court against that order. The power of the court, period of detention undergone by the accused to be set off against the sentence of imprisonment, savings as to the provisions, statements of

Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case.

265D. Report of the mutually satisfactory disposition to be submitted before the Court.-Where in a meeting under section 265C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265B has been filed in such case.

265E. Disposal of the case.-Where a satisfactory disposition of the case has been worked out under section 265D, the Court shall dispose of the case in the following manner, namely:-
(a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;
(b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;
(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;
(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

265F. Judgment of the Court.-The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

265G. Finality of the judgment.-The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under Articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

265H. Power of the Court in plea bargaining.-A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code.

265I. Period of detention undergone by the accused to be set off against the sentence of imprisonment.-The provisions of section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

265J. Savings.-The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation.-For the purposes of this Chapter, the expression "Public Prosecutor" has the meaning assigned to it under clause (u) of section 2 and includes an Assistant Public Prosecutor appointed under section 25.
accused not to be used, non-application of the chapter in certain circumstances, are some of the other dimensions of the particular provision relating to plea-bargaining.

The advantages of plea bargaining are immense in that it ensures that the guilty are punished without an ordeal of a time consuming and expensive judicial trial. It thus reduces the unpredictability of judicial trials, allowing the focus on trials relating to more serious offences and also reduces judicial arrears at the same time. It is in fact a win-win situation for all.

(ii) Compounding of Offences

Under the provisions of Criminal Procedure Code, there is a provision of compounding the offences. All offences are not compoundable. Offences which are compoundable are either compoundable between the parties themselves and there are certain offences which are compoundable with the permission of the Court. The

265K. Statements of accused not to be used.-Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.

265L. Non-application of the Chapter.-Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
effect of compounding is that once the offence is compounded, the results of acquittal follow. Compounding of offences is perceived better than plea bargaining as in plea bargaining, the accused is not acquitted but is convicted. Only the sentence is reduced.

(e) Court Fees Act, 1870

(Amendment by CPC (Amendment) Act 1999)

Section 16: Where the court refers the party to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Procedure, 1908 the plaintiff shall be entitled for a certificate from the court authorising him to receive back from the collector, the full amount of fee paid in respect of such plaint.

The Amendment to the Court Fees Act 1870 is consequential to the new section 89 in the CPC, 1908 incorporated by the Amendment Act 1999 so as to enable the party to claim refund of court fee if the matter in dispute is settled out of court.

(f) Negotiable Instruments Act, 1881

Section 138 of Negotiable Instruments Act provides for Penalties in case of dishonour of cheque for insufficiency, etc., of funds in the accounts. However, the offence is compoundable. Amendments to the Act were made by Amending Act in 2002. Dishonour of cheques is a regulatory offence created by the Amending Act to the Negotiable Instruments Act, to serve the public interest in ensuring the credibility of these instruments. The impact of the offence is usually confined to the private parties involved in the commercial transaction. The provision of the criminal remedy is by

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(8) The Composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

45 Section 147: Offences to be compoundable: (Act 55 of 2002) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974.) every offence punishable under this Act shall be compoundable

46 OBJECTS AND REASONS OF AMENDING ACT OF 2002

Keeping in view the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, inter alia, the following amendments in the Negotiable Instruments, Act, 1881, namely:-

(iv) To prescribe procedure for dispensing with preliminary evidence of the complainant

(v) To prescribe procedure for servicing of summons to the accused or witness by the Court through speed post or empanelled private couriers;

(vi) To provide summary trial of the cases under the Act with a view to speeding up disposal of cases;

(vii) To make the offences under the Act compoundable;
way of two years' imprisonment (punitive) or fine (compensatory) that may extend to
twice the amount of cheque or both. This had encouraged the institution of a large
number of cases that are relatable to section 138. As per the 213 Report of Law
Commission of India more that 38 lakh cheque bouncing cases were pending before
various courts in the country as of October 2008 – an unprecedented strain on the
Judicial System.

S. 47 can be used intelligently to hasten the disposal of cases at an early stage of litigation.
It is an enabling provision which provides for compounding of offences under the same act,
thereby serving as an exception to the general rule incorporated in Subsection (9) of S. 320
of Criminal Procedure Code, especially in view of non obstante clause.

The offence under section 138 has become compoundable. The parties are at liberty
to compound the offence at any stage. It can be compounded even while pendency
of appeal before appellate court or in SLP before SC. It has been held that
proceedings under section 138 being quasi criminal in nature, settlement arrived at
between parties should be respected by the courts.

There has been a tremendous scope for resolution of cheque bouncing cases through
Lok Adalats. Lok Adalats can decide cheque bouncing cases expeditiously and having
obtained an award from Lok Adalats, no party is permitted to resile from the same. It
attains finality as to the dispute between the parties finally and binds all.

(g) Consumer Protection Act, 1986

The Act provides effective, inexpensive, simple and speedy redressal of consumer
grievances, which the civil courts are not able to provide. The Act is an example of
ADR for the effective adjudication of consumer’s disputes. The Act provides for a
three tier fora – district forum, state commission and national commission – for
redressal of grievances of consumers. Individuals as well as consumer activists,
voluntary consumer organizations and other social action groups have approach to the various fora for resolution of their complaints.

(h) Notaries Act, 1952

Section 8 (hb) of the Act provides that one of the functions of notary is to act as arbitrator and conciliator if so required.\(^{52}\)

(i) Arbitration and Conciliation Act, 1996


The Act is of consolidating and amending nature and is not exhaustive. It goes much beyond the scope of its predecessor Arbitration Act, 1940. The 1996 Act has four significant parts. Part I provides for any arbitration conducted in India and enforcement of awards thereunder (whether domestic or international). Part II provides for enforcement of foreign awards (New-York Convention or Geneva Convention). Part III gives statutory recognition to Conciliation to make it a more meaningful mechanism of ADR. Part IV covers miscellaneous matters.

The 1996 Act contains two features that differ from the UNCITRAL Model Law. Firstly 1996 Act applies to both International and Domestic arbitrations unlike UNCITRAL Model Law designed to apply only to International arbitrations. Secondly, 1996 Act goes beyond the UNCITRAL Model Law in the area of minimizing judicial intervention.

It is u/s 34 of the Act, that a challenge to an award can be made thereby minimizing judicial interference during the course of proceedings. The 1996 Act has consciously eliminated error of law apparent on the face of the record as a ground of challenge to

52 Section 8. Functions of notary :— (1) A notary may do all or any of the following acts by virtue of his office, namely:— (hb) act as an arbitrator, mediator or conciliator, if so required; (Act 36 of 1999)

53 The Arbitration Act, 1940 had been described in the oft quoted passage from Guru Nanak Foundation v. Rattan Singh & Sons (1981) 4 SCC 634 as follows, “However, the vein which the proceedings under the Act are conducted and without an exception challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports dare ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary.”
an award. On the other hand, violation of public policy, a ground of challenge has been introduced in Section 34 of the Act. However, the seemingly innocuous ground has assumed manifest proportion of misuse as is evident in *ONGC v. Saw Pipes*\(^{54}\) that gave a far wider meaning to the concept of the public policy and held that if an award is patently illegal, by which it may imply a violation of any of the hundreds of statutes enforce in India, it would violate public policy of India. This expanded meaning of public policy may open flood gates of challenge to awards – a result of which would be to revert to the position that prevailed under Arbitration Act, 1940 where practically every award was challenged on ground of error of law apparent on the face of record. The opportunity may be exploited by lawyer to conjure up an objection on the ground lurking in some part of the award and bring it before the court that may end up in the long queue of cases (no priority given to arbitration cases) awaiting disposal.\(^{55}\)

Further, the statement of objects and reasons to the 1996 Act, nowhere mentioned that the purpose of enacting the new law replacing the earlier one is to provide swift and cheap disposal of disputes. Significantly, even though the 1940 Act had provided for a period of 4 months for disposal of matters referred to Arbitration, with power of the court to condone delay, no time limit has been fixed under 1996 Act for an Arbitral Tribunal to pronounce its award, an omission that has eroded the efficacy of this ADR mechanism.\(^{56}\)

A restriction of the 1996 Act was displayed in a prominent manner in *Bhatia International v. Bulk Trading*\(^{57}\) in which the Supreme Court very innovatively dealt with the problem in relation to the restrictive application of Part-II of the Act (only for enforcement of foreign awards governed by New York Convention or Geneva Convention). In the case, the Indian Court’s Jurisdiction was invoked by a party seeking interim measures of protection in relation to arbitration under the ICC Rules to be conducted in Paris. The provision for interim measures (Section 9) was to be found in Part-I alone (which applies only to domestic arbitration). Hence the court

\(^{54}\) (2003) 5 SCC 705


\(^{56}\) Ibid

\(^{57}\) (2002) 4 SCC 105
was faced with the situation that there was no *proprio vigour* legal provision under which it could grant interim measure of protection. Creatively interpreting the Act, the Supreme Court held that the general provisions of Part-I would also apply to offshore arbitrations, unless the parties expressly or impliedly exclude applicability of the same. Thus the Supreme Court extended the general provisions of Part-I to offshore arbitration as well.\(^{58}\)

It is interesting to note that the Law Commission of India in its 176\(^{th}\) Report suggested a number of amendments in the light of the experience of the 1996 Act. As a result, the Government of India introduced the Arbitration and Conciliation (Amendment) Bill, 2003 in Parliament for amending the 1996 Act that remains pending. It had several important provisions to augment, the existing framework of Arbitration in India. For instance, it provided for an outer time limit of a year to pass an award that could be extended by mutual consent of parties. There was also a provision for fast track arbitration to ensure speedier disposal of cases. The bill provided for a separate Arbitration Division in every High Court to deal with arbitration cases. Also, the ‘Justice Saraf Committee on Arbitration’ submitted a report based on a study of the recommendations of the 176\(^{th}\) Report of Law Commission and the Arbitration and Conciliation (Amendment) Bill, 2003, in January 2005. The outcome of both remains uncertain.

Arbitrations can be based on an arbitration agreement between parties or a statutory arbitration. Statutory arbitrations are arbitrations in respect of disputes arising on matters covered by certain Acts, which Acts stipulate arbitration as remedy for such disputes. There are about 24 such Central Acts including Indian Electricity Act, 2003, Indian Telegraph Act, 1885, Land Acquisition Act, 1894, Railways Act, 1890, Forward Contracts Regulation Act, 1956 etc. Similarly states may incorporate such arbitration clause in their State Acts too.

Arbitrations conducted in India are mostly ad-hoc. An empirical survey will reveal that a considerable extent of litigation in lower courts deals with challenges to awards

given by ad-hoc Arbitration Tribunals. A growing trend in ad-hoc arbitration is an extraordinary high fees of arbitrators consented to by the parties. An additional element of cost is the exorbitantly priced venues-five star hotels, resorts etc. that result in arbitration becoming an increasingly costly affair.

There is a move towards institutionalised arbitration. Federation of Indian Chamber of Commerce & Industry, Arbitration & Conciliation Tribunal (FACT), Indian Council of Arbitration (ICA), International Centre for Alternate Dispute Resolution (ICADR) are recognised institutions with a lot of credibility. ICC’s International Court of Arbitration & other International Arbitral Tribunals are also used extensively for the purpose.

There is no marked difference in arbitration practise from one industry to another in India except the construction industry and IT industry that are characterised by certain peculiarities as long term nature of relationship between parties and certain technical complexities.

In construction industry, in the standard forms adopted by government departments like Central Public Works Department (CPWD), Railways and Public Enterprises, although an arbitration clause may include within its purview all possible disputes relating to the transactions, there are exemption clauses that make the decision of an authority named in the agreement final and binding on the parties (to avoid costly delays). Also the concept of a Dispute Review Board (DRB) is quite common in the construction industry. It comprises of a panel of three experienced respected and impartial reviewers. It is organised before construction begins and meets periodically at the job site. The DRB process helps the parties (employer and contractor representatives) to solve problems before they escalate into major disputes. The proceedings of DRB can be brought as evidence before an arbitration tribunal and other judicial forums. However, since the decisions are made by the three experts who work as neutral persons and have thorough knowledge of the project under

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59 Inaugural address by Balakrishnan Justice K. G., Chief Justice of India, on International Conference on Institutional Arbitration in Infrastructure and Construction, New Delhi, October 16th, 2008
consideration therefore due acceptance is given to their decisions and almost no case goes up to arbitration.\textsuperscript{60}

In the sphere of IT industry it is seen that most disputes centre on contractual or intellectual property (IP) law issues. It is thus important to identify and train an expert pool of arbitrators for disputes connected with IT industry.

Fast track arbitration is an innovative arbitration practise which is a time bound exercise with stricter rules of procedure that do not allow any relaxation or extension of time and hence reduce the span of decision making resulting in greater cost effectiveness.\textsuperscript{61} It is even provided for within the 1996 Act.\textsuperscript{62} Fast track arbitration is particularly beneficial in a number of disputes requiring urgent decisions such as infringement of patents/trademark laws, construction disputes in time bound projects etc. The Indian Council of Arbitration (ICA) has pioneered the concept of fast track arbitration in India. Under the rules of ICA, The time requisite to settle disputes may be expedited between three to six months or any other time agreed upon by the parties.

It is an important characteristic of Arbitration that in a pending case before court if the parties agree to arbitration, than provisions of the statutory enactment (1996 Act) will apply and the case shall go outside the stream of the court. However resorting to conciliation or mediation with an intent to settle the dispute would not ipso facto take the case outside the judicial system and in case of failure of these ADR measures, the case will ultimately go to court. Thus resort to arbitration specially in pending cases has an immediate and affirmative impact in decongesting the courts and contributing to speedy an efficacious resolution of disputes.

Arbitration undoubtedly occupies a unique position amongst ADR mechanisms, especially for commercial disputes in India. It is firmly entrenched in the legal philosophy and provisions of law over the ages. The 1996 Act was enacted to achieve quick and cost effective dispute resolution. However, there are still certain inherent

\textsuperscript{60} O. P. Goel, "Role of Dispute Resolution Boards", ICA's \textit{Arbitration Quarterly}, ICA, p.14, (Vol. XL/No. 4, New Delhi, 2006). O. P. Goel is the former Director General in the Civil Public Works Department (Works).

\textsuperscript{61} Indu Malhotra, "Fast Track Arbitration", ICA's \textit{Arbitration Quarterly}, p.8, (ICA, Vol. XLI/No.1, 2006)

\textsuperscript{62} Section 11(2), Section 13(1), Section 13(4), Section 23(3), Section 24(1), Section 25 and Section 29 of Arbitration and Conciliation Act, 1996.
problems that have prohibited the working of a successful arbitration in India. For instance, although 1996 Act confers powers on arbitral tribunals to issue interim relief yet it does not have any power to secure implementation of its interim measures. Questions relating to neutrality of arbitrators and procedural flaws relating to proceedings have featured frequently as subject matter of litigation. There is thus need to rid the 1996 Act of its shortcomings and endow it with features that makes it an enduring and effective piece of legislation in the arena of arbitration.

(2) Legislative Framework for Lok Adalat

The emergence of Lok Adalat in our country as a participatory instrument of democratic dispute resolution in modern times has had a glorious history of many centuries. It was after independence that sustained efforts were made through diverse means to make ‘access to justice’ an actuality to the vast masses of people.

In Hussainara Khatoon v. State of Bihar, Maneka Gandhi v. Union of India, and M.H.Hoskot v. State of Maharashtra, the Supreme Court observed that it was not possible to reach the benefits of the legal process to the poor, to protect them against injustice and to secure to them their constitutional and statutory rights unless there was a nationwide legal service programme to provide free legal services to them. They impressed, upon the Government of India as also the state governments, an urgent necessity of introducing a dynamic and comprehensive legal service programme with a view to reaching justice to the common man. This is not only a mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the Constitutional Directive embodied in Article 39-A.

The immediate backgrounds to the emergence of the institution of Lok Adalat were three significant reports that strongly favoured the alternative system of dispute resolution. These were the Report of Gujarat Legal Aid Committee 1971, Report on

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63 AIR 1979 SC 1369
64 1978 (1) SCC 248
65 1978 (3) SCC 544
Procedural Justice 1973 by V.R. Krishna Iyer J., and Equal Justice and Social Justice Report 1977 by P.N. Bhagwati and V.R. Krishna Iyer JJ. A number of Legal aid camps were organised through NGOs and social action groups in the states of Tamil Nadu, Andhra Pradesh, Maharashtra and Rajasthan. An important impetus came with the CILAS. Initially, with the objective of providing free legal aid, the Committee for Implementation of Legal Aid Scheme (CILAS) under the chairmanship of Justice P.N. Bhagwati was set up in 1980. Later, CILAS initiated the Lok Adalat as part of its comprehensive legal aid programme. The first Lok Adalat was organised at Junagadh in Gujarat on 14th March 1982. Maharashtra commenced Lok Adalat in 1984 and subsequently the movement spread in Andhra Pradesh, Uttar Pradesh, Haryana and Delhi. The organisation of Lok Adalats increasingly became a popular mode of providing inexpensive and speedier justice.

However, there was a felt need to provide a statutory backing to the Lok Adalats, in order to address the deficiencies in the actual working of the Lok Adalats and to provide a legislative mechanism to make the alternative remedy legally effective. Thus, The Legal Services Authority Act, 1987 was enacted.

(a) Legal Services Authorities Act, 1987

Preamble

The Preamble66 to the Act clearly reflects two-fold objective viz. to provide an alternative to the existing mode of formal litigation for resolution of disputes that has resulted in a 'docket explosion' of cases and to strengthen the cause of 'access to justice'.

66 The statement of objects and reasons appended to the Bill when introduced in Parliament for legislation of the Act reads,-

"...... for some time now, Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of arbitration and settlement, between the parties of a large number of cases, expeditiously and in lesser cost. The institution of Lok Adalats is at present functioning as a voluntary and conciliatory agency without any statutory backing for its decisions. It has proved to be very popular in providing a speedier process of administration of justice. In view of its growing popularity, there has been a demand for providing a statutory backing to this institution and award given by Lok Adalats. It has been felt that such a statutory support would not only reduce the burden of arrears of work in regular courts, but would also take justice to the door step of the poor and needy and make justice quicker and less expensive.".
The Preamble of the Act reiterates that its basic objective is to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on basis of equal opportunity, to ensure that opportunities for securing justice is not denied to any citizen by reason of economic, or other disabilities.

Scope of the Act

The subject and the scope of the Act contained in the Preamble is threefold. Firstly, to provide free and competent legal services to the weaker sections of the society, secondly, to ensure that justice is not denied to them by reason of economic and other disabilities and thirdly, to organise Lok Adalats so as to promote justice on the basis of equal opportunity.

The Act provides alternative forum in the form of Lok Adalats for decision and disposal of cases by functioning within the schemes framed under the Act, so that the arrears of the work in regular courts may be reduced to considerable extent, and timely and inexpensive justice be made available to the needy parties and litigants.

This legislation is basically in furtherance of the object and the purpose mentioned in Article 39-A of the Constitution of India. The intention is to provide legal aid and as part of legal aid programme to spread legal literacy and legal awareness amongst weaker sections of the society. The geometric progression of cases evident in the mounting arrears before the ordinary hierarchy of courts are sought to be ended by way of mutual conciliation, arbitration and negotiation through forums as Lok Adalats.

Preamble - An act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

67 Board of Trustees of the Port Of Visakhapatnam v. Presiding Officer, District Legal Aid Services Authority, 2000 (5) ALD 682 AP
68 Commissioner, K. S. P. Instructions v. Nirupadi Viradhappa Shiva, AIR 2001 Karn, 504
The Act has been enforced in many states in India.\textsuperscript{70}

In \textit{Abdul Hassan v. Delhi Vidyut Board,}\textsuperscript{71} it was observed that the concept of Lok Adalats has been gathered from system of panchayats which has roots in the history and culture of this country. Also Legal Services Authorities Act is a legislative attempt to decongest the courts of heavy burden of cases and the courts has given legitimisation and recognition to this system. There are only 10.5 judges per million

\textsuperscript{70} Enforcement of the Act in various states: Chapter III of the Act has been enforced in different States on different dates as under:-

1. Andhra Pradesh on – 28-11-1995
3. Assam on – 31-7-1997
4. Bihar including territory of Jharkhand on – 24-9-1996
5. Goa on – 31-3-1997
6. Gujarat on – 7-4-1997
7. Haryana on – 3-4-1996
8. Karnataka on – 6-3-1997
10. Madhaya Pradesh including territory of Chhattisgarh on – 21-8-1996
11. Meghalaya on – 4-5-1998
12. Mizoram on – 22-8-1997
16. Punjab on – 4-3-1996
19. Tamil Nadu on – 6-3-1997
20. Tripura on – 23-4-1998
22. Union territory of Chandigarh on – 12-3-1998
23. Union territory of Dadar and Nagar Haveli on – 1-4-1998
24. Union territory of Daman and Diu on – 1-4-1998
25. Union territory of Lakshwadeep on – 16-4-1998
27. Uttar Pradesh including Territory of Uttaranchal on – 5-7-1996
28. West Bengal on – 1-7-1996

\textsuperscript{71} AIR 1999 Del 88
population and so the need to appoint Lok Adalats where expertise of the retired judges and judicial officers and other suitable persons could be utilised.

**Definition of Lok Adalat**

Section 2 (d) simply defines Lok Adalat. It is a special type of legal authority empowered to conciliate and enable the parties to reach a compromise and on the basis of such compromise arrived at, between the parties, to pass a compromise decree.

Permanent Lok Adalat is an additional nomenclature incorporated in Section 22-A by the Amendment Act of 2002. It is a Lok Adalat which is organised on a permanent basis to take cognizance of cases that belong to the category of public utility services.

**Structure, Composition and Function of Authorities/Committees**

The structural pattern of various Legal Services Authorities and the Committees and their respective compositions and function is enumerated below:-

- The Supreme Court Legal Services Committee
- The High Court Legal Services Committee
- The Taluk Legal Services Committee
- The National Legal Services Authority
- The State Legal Services Authority
- The District Legal Services Authority

The Act creates three legal service authorities and three legal service committees, constituting the organisational framework for providing legal aid including the holding of Lok Adalats. At the apex level is the National Legal Service Authority in the centre, constituted by the Central Government, having supervision over the State Legal Service Authority in the states, constituted by the State Government and the Supreme Court Legal Services Committee, itself constituted by the National Legal Service Authority. The State Legal Service Authority brings within its supervision the
District Legal Service Authority in the districts instituted by the State Government and the High Court Legal Services Committee set up by the State Legal Services Authority. The District Legal Services Authority works in tandem with the Taluk Legal Services Committee at the grass root level, established by the State Legal Service Authority.

The composition of members of the hierarchy of the authorities and the committees reflects the inclusion of the Chief Justice of the Supreme Court and the High Court in the apex bodies apart from retired or serving Judges of the Supreme Court and the High Court and other members possessing such experience and qualifications as may be prescribed by the nominating bodies.

Amongst the powers and functions of the various Authorities and Committees, it is significant to note that apart from providing legal aid, a singular binding function clearly discernible across the organisational set up is the encouraging and organising the settlement of disputes through Lok Adalats.

The Supreme Court Legal Service Committee Regulations, 1996 prescribes in detail the functions of the said Committee. The High Court Legal Service Regulations have been enacted for various states that prescribe the functions of the respective High Courts Legal Service Committees. For instance, Delhi Legal Service Authority Rules have been promulgated in 1996 that contain provisions also relating to functions and powers of the Delhi High Court Legal Service Committee.

**Organisation of Lok Adalats**

Sub-section (1) of the Section 19 provides for organisation of Lok Adalats. The **authorities** to organise the Lok Adalats under the Act are,-

- The Supreme Court Legal Services Committee;
- The High Court Legal Services Committee;
- The State Legal Services Authority;
- The District Legal Services Authority;
- The Taluk Legal Services Committee.
Sub-section (2) of Section 19 deals with the composition of Lok Adalat. Every Lok Adalat organised for an area shall consist of:

a) a sitting or retired Judicial Officer; and

b) other persons

as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee or, as the case may be, the Taluk Legal Services Committee, organizing such Lok Adalat.

Sub-sections (3) and (4) provide for experience and qualification of the persons other than the judicial officers who could be members of the Lok Adalat.

The qualifications and experience of these persons for Lok Adalat organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with Chief Justice of India and other than referred to in (3) shall be such as may be prescribed by the State Government in consultation with Chief Justice of High Court.

Rule 13 of the National Legal Services Authority Rules provide that a person shall not be qualified to be included as a Lok Adalat member unless he is:

a) A member of legal profession; or

b) A person of repute who is specially interested in the implementation of the Legal Services Scheme and programmes; or

c) An eminent social worker who is engaged in the upliftment of the weaker section of the people, including the Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour.

Sub-section (5) of the Section refers to the jurisdiction of Lok Adalat to determine and to arrive at a compromise or settlement between parties to a dispute in cases pending before any court or any matter which falls under the jurisdiction of courts but has not brought before them. However Lok Adalats shall not have jurisdiction in respect of a matter relating to an offence not compoundable under any law.
Kinds of cases dealt by Lok Adalat:

1) Mutation of land cases
2) Land acquisition disputes
3) Encroachment on forest lands
4) Motor accident claims
5) Family disputes
6) Compoundable criminal offences
7) Cases which are not Sub-judge
8) Cases for or against local bodies as Panchayats, Town Municipality, Electricity Board, etc.
9) Cases involving Commercial Banks,
10) Cases pending in Labour Courts and before workmen’s compensation commissioner.

**Scope of Jurisdiction of Lok Adalat**

Sub-sections (1) and (5) are the very material provisions which create and circumscribe the jurisdiction for Lok Adalat to deal with and dispose of a dispute by compromise or settlement between the parties to a dispute in respect of any matter falling within the jurisdiction of any civil, criminal or revenue court or any tribunal constituted under any law for the time being in force in the area for which the Lok Adalat is organised.

Further, by the proviso of section 19(5), an embargo is also created on exercise of this jurisdiction by the Lok Adalat in respect of any case or matter relating to an offence not compoundable under any law. The jurisdiction of a Lok Adalat is thus explicitly and clearly defined by sub-section (5) of section 19.73

In *Tirumalasetti Tulasi Bai v. State*,74 it was observed that the Lok Adalat cannot even grant anticipatory bail and also it does not have the jurisdiction in respect of non-compoundable offences; as was also held in *Sukhal v. State of UP*.75

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74 I (2003) DMC 740 (A. P.)
75 2002 Cr L J 1524
Also section 19 (5) of the Act confers power on Lok Adalat to deal and settle cases even at the pre-litigation stage; it is not necessary that the dispute must be first filed before a court.\textsuperscript{76}

Similarly in \textit{Board of Trustees of the Port of Visakhapatnam v. Presiding Officer, District legal Aid Services Authority,}\textsuperscript{77} it was noted that Lok Adalat has all the powers not only to take up the dispute pending before the court but also in pursuance of the applications filed before it during the proceedings.

A compromise is always bilateral and means mutual adjustment while a settlement is termination of legal proceedings by mutual consent. If no compromise or settlement is arrived at, no order can be passed by Lok Adalat.

\textbf{Cognizance of cases}

Cognizance of cases by Lok Adalat is provided under section 20 of the Act. Subsections (1) and (2) of section 20 prescribes the manner of reference of dispute to Lok Adalats and enumerates the circumstances in which the Lok Adalats could take cognizance of any case for compromise or settlement at its proceedings.

The court in relation to which the Lok Adalat is organised may send the reference in pending suits, if it is prima facie satisfied that there are chances of settlement and under sub-section (2) if the parties request the court to send the case to Lok Adalat for settlement, the court after giving a reasonable opportunity of being heard to the party, which has not applied for reference, the matter may be referred to Lok Adalat, as in the case of \textit{Punjab National Bank v. Laxmichand Rai}.\textsuperscript{78} It was also held that for taking cognizance of a case by Lok Adalat under clause (i) of sub-section (5) of section 19 there must be a reference by court.\textsuperscript{79} Thus, in such cases the Lok Adalat has no power to receive any suits or complaint directly.\textsuperscript{80}

\textsuperscript{76} AIR 2003 Ker 164
\textsuperscript{77} 2000 (5) ALD 682 (AP)
\textsuperscript{78} AIR 2000 MP 301
\textsuperscript{79} \textit{New India Assurance Co. Ltd. v. Boda Hari Singh}, 1998 (6) ALT 34
\textsuperscript{80} Supra note 64.
Compliance with the proviso to section 20 is condition precedent for reference by the civil court. The power of the Civil Court under section 20 to refer the matter to Lok Adalat is hedged by the proviso that no case shall be referred to Lok Adalat except after giving a reasonable opportunity of being heard to the parties.\textsuperscript{81}

Section 20(3) of the Act provides that where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the approach and procedure to be followed by the Lok Adalat in dealing with/or disposal of such case is prescribed in sub-section (4), which states that every Lok Adalat shall, while determining any reference before it under the Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.\textsuperscript{82}

It is mandatory for Lok Adalat to look into the question whether all parties to the suit are entering into settlement or compromise. It is the duty of Lok Adalat to see that all parties are present before it because if all are not present then no award can be made on the basis of any compromise or settlement entered into between some of the parties only to the suit.\textsuperscript{83}

Section 20(5) states that when Lok Adalat is not in a position to make any award, on the ground that no compromise or settlement could be arrived at between the parties, the record shall have to be returned by it to the concerned Court for disposal. Similarly sub-section (6) provides for return of the case to the concerned authority or committee.\textsuperscript{84}

A Court can suo-motu or at the request of even one of the parties, refer the case to the Lok Adalat- provided it is done after giving a hearing to all parties and it is satisfied that there are chances of settlement or that the case is a fit one to be taken cognizance of by the Lok Adalat.\textsuperscript{85}

\begin{itemize}
\item \textit{Commissioner K.S.P. Instructions v. Nirupadi Virbhadrapa Shiva}, AIR 2001 Karn 504
\item \textit{Punjab National Bank v. Laxmichand Rai}, AIR 2000 MP 301
\item \textit{Kishan Rao v. Bidar District Legal Services Authority}, AIR 2001 Karn 407
\item Supra Note 64.
\item \textit{Pusha Suresh Bhutada v. Subhash Bansilal Maheswari}, AIR 2002 Bom 126
\end{itemize}
Award of Lok Adalat

Section 21 of the Act declares every award of the Lok Adalat as deemed decree of a civil court or, as the case may be, an order of any other court. Section 21 (2) makes every award of a Lok Adalat final and binding on all the parties to the dispute and bars the remedy of appeal to any court against it. In *Board of Trustees of the Port of Visakhapatnam v. Presiding Officer, District Legal Aid Services Authority*, it was held that decisions of authorities under the Act are binding on parties as decree of civil court made on compromise.

Section 21 (2) of the Act bars any appeal to any court against the award. Decisions under the Act are binding on the parties just like compromise decrees or a decree of a civil court. Under Section 19(5) the Lok Adalat is vested with jurisdiction in respect of any cases pending before a court or any matter which is not before the court.

Lok Adalat is conducted under an independent enactment and once the award is made by a Lok Adalat the right of appeal shall be governed by the provisions of this act only. No appeal can be filed against the award under section 96(3) of C.P.C.

In *P.T. Thomas v. Thomas Job*, Supreme Court observed that the award of Lok Adalat is binding though it is not a result of contest on merits. It is equal and on par with a decree of compromise having same binding effect. It is final and permanent and as it is passed by the consent of the parties so neither an appeal lies against it.

Section 21(1) of the Act also provides that where a compromise or settlement has been arrived at, by the Lok Adalat in a case referred to it under section 20(1), the court-fee paid in such case be refunded in the manner provided under the Court-Fee Act, 1879.

By sub-section (1) of the section, for the purpose of its functioning under the Act, a Lok Adalat is conferred with the same powers as are vested in civil court under the Code of Civil Procedure, while trying a suit in respect of the matter provided thereunder.

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85 2000 (5) ALD 682 (AP)
86 Ibid
88 2005 Vol., 6 SCC 478
89 *Abdul Hassan v. Delhi Vidyut Board*, AIR 1999 Del 88
Sub-section (2) invests further power in the Lok Adalat to specify its own procedure for the determination of any dispute coming before it.

Sub-section (3) declares that all proceedings before the Lok Adalat shall be deemed to be judicial proceedings.

**Permanent Lok Adalat**

Chapter VI-A was inserted by Amending Act 37 of 2002 and it introduced the system of Permanent Lok Adalats. The system of Lok Adalat is mainly based on compromise or settlement between the parties. If the parties do not arrive at any compromise or settlement, the case is either returned to the court or on the parties are advised to seek remedy in a court of law. This was realised to be a major drawback in the existing scheme of organisation of the Lok Adalats under Chapter VI of the Act causing unnecessary delay in the dispensation of justice.

In his inaugural address at the 2nd Annual Meet of the State Legal Services Authorities, 1999 the then Chief Justice Dr. A.S.Anand observed: “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 material 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.”

Echoing the sentiments of Dr. Justice A. S. Anand, the High Court of Delhi gave a laudable judgement in the case of Abdul Hasan which is outlined as below:

**Abdul Hassan and NLSA v. Delhi Vidyut Board and others**\(^{90}\)

The petitioner filed a writ petition before Delhi High Court for restoration of electricity at his premises, which was disconnected by the DVB on account of non-payment of bill. The grievances of several citizens were considered together and it

\(^{90}\) AIR 1999 Del 88

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was seen that these grievances were not only confined to the DVB but also directed against the state agencies like DDA, MCD, MTNL, GIC and other bodies. Court notices were directed to be issued to NALSA and DLSA.

The court held in the order passed by Justice Anil Dev Singh giving directions for setting up of Permanent Lok Adalat. The observations of the judge are particularly relevant. Article 39A 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 39A is couched in mandatory terms. This is made more than clear by the use of twice occurring word ‘shall’ in Article 39A. 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 ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. It was in this context that the Parliament enacted the LSAA, 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 overburdened 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 ADR experiment must succeed otherwise the consequences for an overburdened court system would be disastrous. The system needs to inhale the life giving oxygen of justice.

If we closely scrutinise the contents of the decision of Delhi High Court, there has been an alarming situation of docket explosion and the ultimate remedy is the disposal of cases through the mechanism of Lok Adalat that needed further modification to improve its efficient functioning.

The Parliament thought of giving the Lok Adalat power to decide the cases on merits in case parties failed to arrive at any compromise or settlement. Many cases were considered not apt to go in the regular courts that could be settled at the pre-litigation stage itself which would result in reducing the workload of the regular courts to a great extent.

With these objectives in contemplation, The Legal Services Authorities Act, 1987 was amended by Act of 37 of 2002 and a new Chapter VI-A was inserted providing for
establishment of Permanent Lok Adalats for providing compulsory pre-litigation mechanism for conciliation and settlement of cases relating to public utility services.

PLA combines the conciliatory mode which certain features of arbitration to arrive at decisions under given circumstances in relation to public utility service. It may even decide a dispute unlike the ordinary Lok Adalat (Section 19) which only conciliates the dispute. There is absence of provision for appeal against the decision of PLA.

There is considerable criticism that a PLA may decide a case on merits even while being of the nature of a Lok Adalat and not being a court. Moreover, the exclusion of the appeal is also objected to by critics as a travesty of justice.

The institution of Lok Adalat including the PLAs has proved to be a reasonable success although the maladies may be debated and corrected to make it a more resounding success. (See Annexure II)

(b) Supporting Provisions to Strengthen the Concept of Lok Adalat

Insertion of section 89 by Code of Civil Procedure (Amendment) Act 1999 providing for settlement of disputes outside the court:

This provision introduces court annexed ADR wherein courts are now statutorily required to refer cases, having the potential of being resolved through ADR measures, for the same.

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92 Section 89. Settlement of disputes outside the Court:-(1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for-

(a) arbitration;
(b) conciliation;
(c) judicial settlement including settlement through Lok Adalat; or
(d) mediation.

(2) Where a dispute had been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 2 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.
The concept of employing ADR has undergone a sea change with the insertion of Section 89 in the Code of Civil Procedure Code, 1908.

While interpreting the intention of the Legislature behind enacting Section 89 of the Code of Civil Procedure Code, 1908 the Supreme Court in *Salem Advocate Bar Association (II) v. Union of India*93 has ruled that where it appears to the Court that there exists an element of a settlement which may be acceptable to the parties, they at the instance of the Court shall be made to apply their mind so as to opt for one or the other of the four ADR methods—i.e., arbitration, conciliation, judicial settlement including settlement through Lok Adalat, or mediation, mentioned in Section 89 of the Code and if the parties do not agree, the Court shall refer them to one or the other of the said modes.

The Supreme Court further ruled that when the parties come to a settlement upon a reference made by the Court for mediation and the parties want the same, there has to be some public record of the manner in which the suit is disposed off, and, therefore, the Court must first record the settlement and pass decree in terms thereof and, if necessary, proceed to execute it in accordance with law.

In a recent judgment94, the Supreme Court has in a very fine manner brought out the difference between arbitration/conciliation/mediation/Judicial Settlements and Lok Adalats especially in case of reference of disputes by courts u/s 89 CPC.

It may be said that alternative dispute resolution including Lok Adalats has now emerged as a visible and viable means for settlement of disputes outside the courts especially after the statutory recognition and the approval by the Supreme Court.

(3) Conclusion

It is quite evident that a comprehensive framework of ADR measures has finally emerged from efforts (at times sporadic, at times sustained) made at different points of time periods in the past. They cover virtually every dimension of human interaction. We have been able to establish an extensive legal, institutional and

93 *AIR 2005 SC 3353*
infrastructural basis for the successful working of ADR measures in India. The seed is sown. Now a determined and dedicated practice to the cause of nurturing ADR culture and making it a successful movement in our country has become an essential prerequisite to satisfactory resolution of disputes and ultimately to societal peace and harmony.