CHAPTER-4

LEGISLATIVE EFFORTS IN INDIA
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A. INTRODUCTION

"The first commandment to our legislative freedom fighters ought to be to bury these codes and the Evidence Act but re-create a simple, spacious, modern, and business management oriented code with scope for judicial initiative in doing justice to the people."

-Justice Krishna Iyer

1. Quest for Justice: An Ideal

In India the quest for justice has been an ideal, which the citizens have been aspiring for generations down the line. Justice is a constitutional mandate. About half a century of the Constitution at work has tossed up many issues relating to the working of the judiciary; the most important being court clogging and judicial delays.

2. Collapse of Judicial System

Particularly disturbing has been the chronic and recurrent theme of a near collapse of the judicial trial system, its delays and mounting costs. Here, the glorious uncertainties of the law frustrated the aspirations for an equal, predictable and affordable justice is also a question, which crops up often in the minds of the people. In India, provisions for promotion of ADR are given in different legislations that too here and there. Arbitration and Conciliation Act, 1996 and Legal Services Authorities Act, 1987 are milestones in ADR sphere. In this chapter researcher has attempted to present a picture of existing statutory framework in India concerning ADR.

B. NATIONAL STATUTORY FRAMEWORK

Alternative Dispute Resolution in India was founded on the Constitutional basis of Articles 14 and 21 which deal with Equality before Law and Right to life and personal liberty respectively. These Articles are enshrined under Part III of the Constitution of India which lists the Fundamental Rights of the citizens of India. ADR also tries to achieve the Directive Principle of State Policy relating to Equal justice and Free Legal Aid as laid down under Article 39-A of
the Constitution. The Acts which deal with Alternative Dispute Resolution are Arbitration and Conciliation Act, 1996 and the Legal Services Authorities Act, 1987. Section 89 of the Civil Procedure Code, 1908 makes it possible for Arbitration proceedings to take place in accordance with the Acts stated above.

(I) Constitution of India
The soul of good Government is justice to people. This requires the creation of an ultra-modern disseminating infrastructure and manpower; sympathetic and planned; need for new judicare technology and models; and remedy-oriented jurisprudence.

1. Constitutional Background of ADR
One can trace out the Constitutional Background of ADR. Every legal scholar knows that it is settled law that free legal aid to the indigent persons who can not defend themselves in a Court of law is a Constitutional mandate under Articles 39A and 21 of the Indian Constitution. The right to life is guaranteed by Article 21. The law has to help the poor who do not have means i.e. economic means, to fight their causes. Indian civilisation put at about 6000 years back, at the dawn of civilization (i.e. the age of Vedas), when habitation was growing at river banks, was devoid of urbanisation, where the Creator was presumed to be the head of humanity. With the dawn of industrialisation, man walking into orderly society, State and nation, dependence on law for orderly conduct gained momentum. Then came on the horizon the social dispute resolution mechanism. With Indian Courts piling up cases for millennium (in the place of indigenous system which was cheap and quick), alternative dispute systems had to be found. Thus this system took birth. Once the dispute was resolved, there was no further challenge.

The Constitutional Mandate Rescue Operation began with Justice V.R. Krishna Iyer and Justice P.N. Bhagawati’s Committees’ Report; weaker section thus became enabled to approach law courts, right from Munsif Courts to the Supreme Court. CILAS (Committee for the Implementation of Legal Aid Services) also came on to scene. Based on this States adopted (through State Legal Aid and Advice Boards) Lok Adalats

3. Justice K. Ramaswamy, while delivering his key note address at Law Ministers’ Hyderabad on Saturday, 25-11-1975.
2. **Part V-Special Proceedings (Arbitration)**

(a) **Section 89-Settlement of Disputes Outside the Court**

(1) Where it appears to the Court that there exist settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of 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 has been referred-

(a) for arbitration or conciliation, the Arbitration and Conciliation Act, 1996 (26 of 1996) apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;
(b) to Lok Adalat, the Court shall refer the same to the lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal 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 disputes were referred to a Lok Adalat under the provisions of that Act.
(d) for mediation, the Court shall effect a between the parties and shall follow such procedure as may be prescribed.12

(b) **Historical Perspectives**

To start with the Bengal Regulation 1 of 1772 provided for Resolution of dispute through arbitration. The succeeding Regulation i.e., Bengal Regulation 1781 contained a provision which is interesting to read:

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12. Inserted by Act No. 46 of 1999 (w.e.f. 30-12-1999).
"The judge do recommend and so far as he can without compulsion prevail upon the parties to submit to the arbitration of one person, to be mutually agreed upon by the parties ... No award of any arbitrator be set aside, except upon full proof, made by oath of two creditable witnesses that the arbitrators had been guilty of gross corruption or partially, in the course of which they had made their award."

The Civil Procedure Code Amendment Act, 1999 was passed by parliament on 20-12-1999. Though it has become a subject matter of controversy on various aspects, it has introduced two pivotal provisions regarding arbitration. They are section 89 and Rules 1A to 1C to Order X. These provisions make it incumbent upon the courts where it appears that there exists elements of settlements to call upon the parties at their option to agree for one or the other Alternative Methods of Dispute Resolution viz., Arbitration, Conciliation, Judicial Settlement including settlement through Lok Adalat or Mediation. As far as the arbitration as an alternative dispute resolution is concerned, to my mind it appears that the Bengal Regulation of 1781 is revived. It is really amazing that more than two centuries ago, foreign administrators had recognised arbitration as the alternative method of dispute resolution and our law makers have now become wiser. Better than never.

We have to now see whether the amendments have made any significant departure from the existing provisions in respect of arbitration and what their effect is. The courts were playing a passive role under the pre-existing provision of CPC and Arbitration Acts in referring the disputes for arbitration. Courts used to either refer disputes for arbitration or remove and appoint arbitrator in 3 situations.

1. Where there exists an arbitration agreement, but the parties for some reason or the other do not appoint arbitrator or the arbitrator failed or neglected to act.

2. Where despite existence of an arbitration agreement one of the parties files a civil suit or initiates similar proceedings in a civil court by-passing arbitration remedy.

3. Where during the pendency of suit both parties request the court to refer the dispute for arbitration.

In all these situations it is the parties who have to take the initiative and request the court to set the arbitral proceedings in motion. Now under the present amendments to CPC, the courts are assigned a catalyst role to persuade the parties to the suits to agree for alternative methods even in the absence of a pre-existing agreement in this regard. With the intervention of courts there are more and more possibilities of reference of disputes to ADR forums.
and Legal Aid Camps, Family Courts, Village Courts, Mediation Centres, Commercial arbitration, Women Centres, Consumer Protection Forums, etc which are but various facets of effective Alternative Dispute Resolution systems. Constitution of India is the grund-norm of this country; it contains provisions which indicate promotion of justice harmonious reconcilement of individual conduct with the general welfare of society. An act or conduct of a person is said to be just if it promotes the general well-being of the community. Therefore, the attainment of the common good as distinguished from the good of individuals is the essence of justice. Legal Justice is a part of social justice. As whenever the legal justice is denied the society gets disturbed. A legal system is part of state which maintains social harmony through dispute resolution. In a country, which aims to protect the socio-economic and cultural rights of citizens, it is extremely important to quickly dispose the cases in India, as the Courts alone cannot handle the huge backlog of cases. This can be effectively achieved by applying the mechanisms of Alternative Dispute Resolution.

2. **Article 21: Right to Speedy Trial**

The right to speedy trial has been interpreted to be a part of the right to life and personal liberty. Article 21 requires that a person can be deprived of his liberty only in accordance with procedure established by law which should be a just, fair and reasonable procedure. A procedure cannot be reasonable, fair or just unless it ensures a speedy trial for determination of the guilt of person deprived of his liberty. The concepts of ADR like Lok Adalats etc. ensures speedy trial.

3. **Article 39-A: Equal Justice and Free Legal Aid**

Article 39A obligates the State to secure that "the operation of the legal system which promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that"

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5. See P.N. Bhagawati on the need to create adequate and effective delivery system of justice in Chapter VI of "Social Justice - Equal Justice" p. 33.
6. Narender Kumar, “Constitution of India” pp.28, 250,
opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". Thus promotion of justice is most important function of a state and ADR mechanisms helps in it. Hence much legislation like Arbitration and Conciliation Act 1996; Section 89 CPC; Legal Services Authority Act 1987 have been passed to promote justice.

(II) The Code of Civil Procedure 1908

1. Order X-Examination of Parties by the Court

   Rule 1. Ascertainment whether allegations in pleadings are admitted or denied.-At first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in plaint or written statement (if any) of the opposite party, and as are not expressly or by the necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

1A. Direction of the Court to opt for any one mode of alternative dispute resolution,-After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.9

1B. Appearance before the conciliatory forum or authority.-Where a suit is referred under rule IA, the parties shall appear before such forum or authority for conciliation of the suit.10

1C. Appearance before the Court consequent to the failure of efforts of conciliation-Where a suit is referred under rule IA and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.11

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8 This Directive Principle was inserted by the Constitution 42nd Amendment Act, 1976.
9 Inserted by Act 46 of 1999, sec. 20 (w.e.f. 1-7-2002).
10 Ibid.
11 Ibid.
(c) **Analysis of Section 89**

Of all the alternative methods suggested in Sec.89 these amendments give a new thrust to the field of Arbitration as an ADR method. Among all the 4 methods of ADR, suggested Arbitration is the most efficacious one. The other methods have their own short comings. Take the case of conciliation. A conciliator can never make a binding decision. Sec.74 provides that a settlement agreement reached in the conciliation proceeding has the status and effect of arbitral award only in respect of agreed terms on the substance of the dispute. Neither the statements recorded nor concessions made during the course of conciliation proceedings can be used as evidence in arbitral or other proceedings. Inspite of these set-backs even if the parties agree for the conciliation proceedings on their failure to reach a settlement agreement they may opt for arbitration. Thus more often, the method of conciliation may be used by parties as a prelude to arbitration. As regard the other two methods viz., Judicial Settlement such as Lok Adalat and Mediation, it is difficult to resolve serious disputes through these methods. They are more useful to settle disputes such as payment of compensation under L.A. Act and M.V. Act which would not normally be subject matters of arbitral proceedings. Thus with the new amendments to the CPC, the arbitration field is sure to reach its zenith and occupy the centre stage in the resolution of disputes in the private law field. In future one will not surprised to see that the arbitration cases too out weight the civil suits in term of these numbers.  

The section has been introduced for the first time for settlement of disputes outside the Court. It is now made obligatory for the Court to refer dispute after issues are framed for settlement with the concurrence of the parties either by way of: (a) Arbitration, (b) Conciliation, (c) Judicial settlement including settlement through Lok Adalat, or (d) Mediation. Where the parties fail to get their disputes settled through any of the Alternative Dispute Resolution methods, the suit would come back to proceed further in the Court in which it was filed. The procedure to be followed in matters referred for different modes of settlement is spelt out in sub-section (2). Section 89(2)(d) empowers the Government and the High Courts to make rules to be followed in mediation proceedings for the purpose of bringing about compromise between the parties.  

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Notes on clauses of the CPC (Amendment) Bill, 1999 explained the purpose of the new provisions: “Clause 7 provides for the settlement of disputes outside the court. The provisions of clause 7 are based on the recommendations made by Law Commission of India and Malimath Committee. It was suggested by Law Commission of India that Court may require attendance of any party to the suit or proceedings to appear in person with a view to arriving at an amicable settlement of dispute between the parties and make an attempt to settle the dispute between the parties amicably. Malimath Committee recommended that it should be made obligatory for the court to refer the dispute, after issues are framed, for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat. It is only when the parties fail to get their disputes settled through any of the Alternate Dispute Resolution methods that the suit could proceed further.”

The Statement of Objects and Reasons appended to the Bill stated as follows:
“With a view to implement the 129th Report of the Law Commission of India and to make conciliation scheme effective, it is proposed to make it obligatory for the court to refer the dispute after the issues are framed for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat. It is only after the parties fail to get their disputes settled through any one of the alternate dispute resolution methods that the suit shall proceed further in the court in which it was filed.”

This is a special provision made for settlement of disputes outside the Courts. A litigant is free to seek settlement of his dispute on a reference made by the Court by resorting to any of the following methods: (a) Arbitration, (b) Conciliation, (c) Judicial settlement including settlement through Lok Adalat, or (d) Mediation. It seems the special provision has been introduced in order to help the litigant to settle his dispute outside the Court instead of going through the elaborate process in the court trial. This is a special procedure for settling the dispute outside the Courts by a simpler and quicker method. The decision alternative rendered by the forums shall have the same binding effect as if made by a civil court after an elaborate trial.

The litigants on the institution of the suit or proceeding may request the Court to refer the disputes and if the Court feels that there exists element of settlement which may be acceptable to the parties, it may refer them to any of the forums mentioned above at any stage of the proceedings.
(a) **Works Committee**

The Works Committee (Section 3) is an authority under the Act. The following are the duties of the Works Committee:

(i) to promote measures for securing and preserving amity and good relations between the employers and workmen;

(ii) to achieve the above object, it is their duty to comment upon matters of common interest or concern of employers and workmen;

(iii) to endeavour to compose any material difference of opinion in respect of matters of common interest or concern between employers and workmen.

The main purpose of creating Works Committee is to develop a sense of a partnership between the employer and his workmen. It is a body which aims to promote good-will and measures of common interest. This section is applicable only to such industrial establishment in which one hundred or more workmen are employed, or to an establishment in which a minimum of one hundred workmen have been employed on any day in the preceding twelve months. The word 'workmen' in this section is used in the same sense in which it appears in Section 2(s) of the Act. It means there must be one hundred workmen and not one hundred employees working in the establishment for many categories of employees are excluded from the definition of workmen. The Appropriate Government under Section 3(1) is authorised by general or special order, to require the employer to constitute in the prescribed manner a Works Committee. The Committee shall consist of, representatives of employers and workmen engaged in the establishment. The number of representatives of workmen on the Works Committee shall not be less than the number of representatives of the employer. The representatives of workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their Trade Union, if any, registered under the Indian Trade Union's Act, 1926. It was held in Kemp and Co. Ltd, v. Their Workmen (1955) 1 LLJ 48 that "The institution of the Works Committee has been provided in the rules framed under the Industrial Disputes Act in order to look after the welfare and interest of the workmen. They are normally concerned with the problems arising in the day-to-day working of the concern and, function of the Works Committee is to ascertain the grievances of the employees and to arrive at some agreement when the occasion so arises. It is for that reason said that the Works.

Committee airs the grievances of workmen and endeavours to seek amicable settlement”.

A rationalisation scheme was introduced in Jute Company. The Tribunal has held that the workmen were entitled to wages for the period of lock-out. It was contended before the Supreme Court in Northbrook Jute Co. Ltd. Case 30 that “The Works Committee, which was duly constituted under the Act, had approved the scheme of rationalization after due consideration. It was further pleaded that as the representatives of workmen on the Works Committee had accepted the scheme, so the workmen should be deemed to have agreed to it. The Supreme Court observed that the representatives of workmen on the Works Committee do not represent the workmen for all purposes but only for the purpose of the functions of the Works Committee. The Works Committee was not intended to supplant or supersede the Unions for the purpose of collective bargaining; they are not entitled to consider real or substantial changes in the conditions of service; their task is only to smooth away frictions that might arise between the workmen and the management in day-to-day work. The recommendations of the Works Committee, where the workmen are not fairly represented are of no value; the decision of the Works Committee carries great weight but is not conclusive. The decision of Works Committee can be challenged if it is not fairly constituted or the workmen are not fairly represented on it”.

The number of members constituting the Works Committee shall be fixed so as to afford representation to the various categories, groups and classes of workmen engaged in and to the sections, shops or department of establishment. But the total number shall not exceed twenty. 31 The representatives of the employer shall be nominated by the employer and as far as possible, shall be officials in direct touch with or associated with the working of the establishment. 32 The workmen's representative on the Committee shall be elected in two groups, namely: 33

(1) Those to be elected by the workmen of the establishment who are members of the registered Trade Union or Unions; and

(2) Those to be elected by the workmen of the establishment who are not members of the registered Trade Union.

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31 The Industrial Disputes (Central) Rules, 1971- Rule 39.
32 Id. Rule 40.
33 The Industrial Disputes (Central) Rules, 1957- Rule 42.
2. **Reconciliation**

Section 23(3), Hindu Marriage Act.-Section 23(3) of Hindu Marriage Act imposes a duty on the court to effect conciliation between parties.\(^\text{18}\) This is a duty on the court and it has to be discharged judicially. But merely because court did not do its duty, a decree in a matrimonial cause cannot be challenged or held in nullity.\(^\text{19}\) How this is to be discharged by the court comes out in clear relief from the following passage in the judgment in *Bejoy Case*:\(^\text{20}\) "We at once made it clear; direct we would not, for reconciliation is reconciliation, not coercion, far less judicial coercion. But an expression of regret would not even move Aloka (wife) a whit, because she was unable to rely upon her husband's words. So it was futile to proceed further and, much to our disappointment, our endeavour to bring about a reconciliation between the parties failed. For that we blame neither Aloka nor Bejoy. If Aloka is within her right to refuse to return to the matrimonial home, Bejoy is equally within his right not to go further than he has gone. We, therefore, enter into the merits of appeal with an open mind, and without the slightest prejudice to either, for the stance each takes during our attempt to effect reconciliation".

In *Chhotelal Case*\(^\text{21}\) the court said that "even where the estrangement between the parties to the marriage might seem to be acute, it is the duty of the court to make every endeavour to bring about the parties to reconciliation even if no conciliation can be brought about, but an endeavour has nonetheless to be made".\(^\text{22}\) In *Balwinder Kaur Case*\(^\text{23}\) it was again strongly reiterated by Supreme Court that "it is the duty of court to make every endeavour to bring about reconciliation. Even when a petition for divorce by mutual consent is made, it is mandatory on the part of the court to make attempts at reconciliation".\(^\text{24}\)

The efforts at reconciliation may be made right from the start of the case\(^\text{25}\) or at any time before

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Reconciliation proceedings are not applicable when petition for divorce or judicial separation is on the ground of conversion, insanity, leprosy, venereal disease, renunciation of world or presumption of death. In a recent pronouncement i.e. Sidharth Case it has been held that an order under section 24 granting maintenance pendente lite and litigation expenses can always be passed without taking steps for bringing out reconciliation under section 23(2) of Hindu Marriage Act 1955 for the timing to make efforts for conciliation is in the discretion of the court. The word “any relief” used in section 23(2) is directory in nature. Section 23(2) is not mandatory and does not operate in absolute terms. Any order passed without compliance under section 23(2) would be an irregularity and not an illegality.

(V) The Industrial Dispute Act 1947

1. Introduction

The main object of the Industrial Disputes Act is investigation and settlement of industrial disputes. With that object in view various authorities have been created by the Act. The adjudication of industrial disputes has at the first instance been kept out of the jurisdiction of the Municipal Courts so that efforts may be made for settlement of such disputes through some other agencies. The Works Committee, Conciliation Officer, Board of Conciliation and Courts of Inquiry endeavour to settle the difference before it may be adjudicated upon by the Labour Court or the Industrial Tribunal. They all aim at amicable settlement of the industrial dispute.

2. Authorities Under the Act

Chapter II provides various modes of settlement of disputes which may broadly be classified under three heads (1) conciliation; (2) adjudication; and (3) arbitration. Those authorities that make use of conciliation as the sole method of settlement of disputes are the: (1) Works Committee, (2) Conciliation Officer, and (3) Board of Conciliation. The Labour Court, Tribunal and National Tribunal are adjudicating authorities that decide any dispute referred under the Act. Section 10-A of the Act makes provision for voluntary reference of disputes to arbitration. Apart from the above, provision has also been made for the constitution of a Court of inquiry whose main function is to inquire into any matter appearing to be connected with or relevant to an industrial dispute.

(2) **Justice Malimath Committee Report**

Justice Malimath Committee in its Report recommended (Chapter VIII, page 112 and Chapter IX at pages 168, 170 and 171) that "If a law is enacted giving legal sanction to such machinery for resolution of disputes and resort thereto is made compulsory, much of the inflow of commercial litigation in regular civil courts gradually moving up hierarchically would be controlled and reduced."

This Committee agreeing with the Law Commission recommended that Conciliation Courts should be established all over the country with power, authority and jurisdiction to initiate conciliation proceedings in all types of cases at all levels and that the amendment suggested by the Law Commission should be carried out to enable the Scheme to function effectively. The conciliation procedure should also be made applicable to the Motor Accident Claims Tribunal.14

(d) **Permissibility of Court As An Arbitrator**

The Government or for that matter any party could not compel or obligate a Civil Court to arbitrate the matter between the parties on the strength of an agreement entered into between the parties. The fact that Government was one of the parties to the arbitration agreement made no difference. Courts are created or established by law in this country and function in accordance with the jurisdiction conferred on them by the enactments which confer a jurisdiction and function in accordance with the procedural law that regulates the proceedings of the Court.15

(e) **Section 89 of C.P.C. and Section 8 of Arbitration and Conciliation Act**

Section 89, C.P.C. cannot be resorted to, for interpreting Section 8 of the Arbitration and Conciliation Act as it stands on a different footing and it would be applicable even in cases where there is no arbitration agreement for referring the dispute for arbitration. Further, for that purpose, the Court has to apply its mind to the condition contemplated under Section 89, C.P.C. and even if application under section 8 of the Act is rejected, the Court is required to follow the procedure prescribed under the said Section.16

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14 Supra n. 2 at 395-397.
The Family Courts Act 1984

1. General

The Family Courts Act (Act No. 66 of 1984) is an Act 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. This Act contains VI Chapters dealt in 23 sections.

2. Chapter IV-Procedure (Section 9)

Section 9-Duty of Family Court to make efforts for settlement.

(1) In every suitor 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 driving 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 think 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.

It is the bounded duty of the Family Court for making an attempt for conciliation before proceeding with trial of the case.

Hindu Marriage Act 1955

1. Decree in Proceedings

Section 23(2) says 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 a reconciliation between the parties. Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii) i.e. conversion, clause (iii) i.e. unsound mind or mental disorder, clause (iv) i.e. leprosy, clause (v) i.e. communicable venereal disease, clause (vi) i.e. renounce the world by entering any religious disorder, or clause (vii) i.e. 7 years presumption of death, of sub-section (1) of Section 13. 17

17. This proviso was inserted by Act 68 of 1976, Section 16.
(b) Conciliation Officer
The Appropriate Government may by notification in the Official Gazette, appoint conciliation officers under Section 4. These officers are charged with the duty of mediating in and promoting the settlement of industrial disputes. The Appropriate Government may appoint one or more conciliation officers, as it thinks fit. 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. The appointment may be made either permanently or for a limited period. The jurisdiction, powers and other matters in respect of the conciliation officer shall be published in the Official Gazette.

(c) Boards of Conciliation
The provision for appointment of Boards of Conciliation is made under the Act under Section 5 to bring the two parties to a dispute to sit together and thrash their differences and to find out ways and means to settle them. Section 5 of the Act provides that the Appropriate Government may, by notification in the Official Gazette, constitute a Board of Conciliation. The object of appointing the Board is promotion of settlement of an industrial dispute. A Board shall consist of a Chairman and two or four other members, as the Appropriate Government thinks fit. 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. Any person appointed to represent a party shall be appointed on the recommendation of that party. If any party fails to make a recommendation within the prescribed time, the Appropriate Government shall appoint such persons as it thinks fit to represent that party. A Board, leaving the prescribed quorum may act even though tile Chairman, or any of its members is absent or there is any vacancy in its number. But, if the Appropriate Government notifies the Board that the services of 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. It is to be noted that the Chairman must be an "independent person" which means a person unconnected with the industrial dispute or with the industry affected by such dispute. Of course the Appropriate Government is vested with the discretion to appoint the Board of Conciliation, whenever there is an occasion for such appointment on the arising of industrial dispute. The Board as stated above is appointed with a view to promote the settlement of industrial dispute.
The appointment of the Conciliation Board together with the names of the persons constituting the Board shall be notified in the Official Gazette. If the Central Government proposes to appoint a Board, it shall send a notice to the parties asking them to nominate within reasonable time persons to represent them on the Board. The notice to the employer shall be sent to him personally or if the employer is an incorporated Company or a body Corporate, to the agent, manager, or other principal Officer of such company or body. The notice to the workmen shall be sent: (a) in the case of workmen who are members of a Trade Union, to the President or Secretary of the Trade Union; and (b) in the case of workmen who are not members of a Trade Union to any one of five representatives of the workmen who have attested the application made under Rule 3 and in this case a copy of the notice shall also be sent to the employer who shall display copies thereof on notice boards in a conspicuous manner at the main entrance to the premises of the establishment.

(d) Courts of Inquiry

If any matter is referred to a Court by the Appropriate Government— it shall inquire and make a report ordinarily within a period of six months from the commencement of inquiry. Section 6(1) points out that if "occasion arises" the Appropriate Government may constitute a Court of Inquiry under Section 6. The purpose of constitution of Court of Inquiry is to inquire into any matter appearing to be connected with or relevant to an industrial dispute. The constitution of the Court has to be notified in the Official Gazette. Thus it is clear that the proper occasion for appointment of a Court of Inquiry will be arising of an industrial dispute and necessary inquiry into any matter connected with or relevant to such dispute. The Court shall not inquire into the industrial dispute itself.

Section 6(2) says that a Court may consist of one independent person or such number of independent persons as the Appropriate Government thinks fit. Where a Court consists of two or more members, one of them shall be appointed as a Chairman. If the Court has the prescribed quorum it may act. The fact that the Chairman or any other member is absent or the existence of any vacancy in the Court shall not debar the Court from functioning provided the quorum exists. But if the Appropriate Government notifies the

34. Id. Rule 6.
Court that the services of the Chairman have ceased to be available the Court shall not act until a new Chairman has been appointed. The appointment of a Court together with the names of persons constituting it shall be notified in the Official Gazette. On a perusal of the relevant sections relating to the Court, especially Sections 22, 23 and 33 of the Act it may be seen that during the pendency of a proceeding before a Court of inquiry, the following rights remain unaffected, namely

(i) the right of a workman to go on strike;
(ii) the right of an employer to lock-out his business; and
(iii) the right of employer to dismiss or otherwise to punish the workmen in certain cases under Section 33.  

The idea of the Court is borrowed from English Law where the report of the Courts of Inquiry is given wide publicity, and is placed before the House of Parliament, with a view to prevent and rectify any rash and precipitate action such as strike or lockout by the disputants for fear of public condemnation.

3. Finality of Orders Constituting Boards (Section 9)

Section 9(2) of the Act aims to protect any settlement from being declared invalid simply on the ground that the conciliation proceeding had been continued beyond a period of fourteen days or less as fixed by the Government under Section 12(6) or that the proceedings before a Board are continued beyond a period of two months or less as fixed by the Government under Section 13(5) of the Act.

Section 9(3) of the Act provides that where the report of any settlement arrived at in the course of conciliation proceedings before a Board is signed by the Chairman and all other members of the Board, no such settlement shall be invalid by reason only of the casual or unforeseen absence of any of the members including the Chairman of the Board, during any stage of the proceedings. This sub-section applies only to conciliation proceedings before a Board of Conciliation.

35 Id. Rule 5.
36 For details please refer to Section 33 of Ind. Disp. Act, 1947.
4. Reference of Disputes to Boards, Courts or Tribunals (Chapter V)

(a) Reference of Disputes (Section 10)

Section 10(1) of the Act is in the nature of operative provision providing for reference of any matter relating to an industrial dispute or the dispute itself to various authorities created by the Act. A precondition for making any reference by the Appropriate Government under this section is in existence or apprehension of an industrial dispute. The reference should be by an order in writing. This sub-section provides that where the Appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time

(a) refer the dispute to a Board for promoting a settlement thereof or
(b) refer any matter appearing to be connected with or relevant to, the dispute to a court for inquiry; or
(c) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, to a Labour Court for adjudication provided the dispute relates to any matter specified in the second schedule; or
(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute (where it relates to any matter specified in the Second Schedule or Third Schedule), to a tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen the Appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) above.

Section 10(2) of the Act provides for compulsory reference of an industrial dispute by the Appropriate Government. The two conditions that make it obligatory for the Appropriate Government to make a reference are

(i) An application in the prescribed manner made by the parties to an industrial dispute, whether made jointly or separately;
(ii) Satisfaction of the Appropriate Government as to the fact that the persons applying represent the majority of each party.

If these two conditions are fulfilled then the industrial dispute may be referred to Board, Court, Labour Court, Tribunal or National Tribunal.
Section 10(3) of the Act provides that where an industrial dispute has been referred to Board, Labour Court, Tribunal or National Tribunal under Section 10 of the Act, the Appropriate Government may issue an order prohibiting the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of reference. In Sadhu Ram Case 38 the Conciliation Officer had reported to the government the fact of failure of conciliation proceeding. On this report the government referred the dispute to the Labour Court. The Supreme Court held that the Government was justified in thinking that there was an industrial dispute and, therefore, the reference to the Labour Court was within its powers.

Section 10(1) of the Act confers discretion on the Government to refer a dispute or not. But when conciliation proceedings have failed, the reasons for refusing to refer the dispute for adjudication must be recorded by the Government.

(b) Reference of Industrial Dispute
The act of making a reference of any dispute under sub-section (1) is an administrative act and neither judicial nor quasi-judicial. If the Appropriate Government decides that no reference is necessary, the Government cannot be compelled by issuing a writ to make a reference. The use of the word 'may' shows that the power is discretionary and not mandatory. If in any particular case, the Government acts arbitrarily or contrary to law in refusing to refer a dispute to the Tribunal or Labour Court, then such a refusal may be a right ground for petition under Article 226 of the Constitution. 39

(i) Sultan Singh Case
It was held in landmark judgement of Sultan Singh Case 40 that a conjoint reading of Section 10(1) and Section 12(5) of the Industrial Disputes Act, 1947 makes it clear that it would be open to the State Government to form an opinion whether a dispute exists or is apprehended and thereafter it may either make a reference or refuse. The decision is based on subjective satisfaction of the Government. Only the order of refusal to make a reference needs to be communicated and the order must record the reasons for refusing to make a reference. It is only an administrative order and not a quasi judicial order. There is no need to issue any notice to the employer nor to hear the employer before making a reference or refusing to make a reference.

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(ii) Scope of Reference under Section 10

The scope of reference under Section 10 has to be gathered from the circumstances preceding the Government order. Sections 10 and 10-A are the alternative remedies to settle an industrial dispute. Once the parties have chosen the remedy under Section 10-A, the Government cannot refer the same dispute for adjudication under Section 10. If any such reference is made, it is invalid.\(^{42}\)

(c) Constitutional Validity of Section 10

The validity of this section has been upheld by the Supreme Court holding Section 10 as intra-vires. Its validity in *D.C. and G. Mills Case*\(^{43}\) was sought to be challenged on fresh grounds, namely, that Section 10 violated Article 14 of the Constitution. It was held that:

"Where the Supreme Court has held that Section 10 is intra-vires and repelled the objection under Article 14 of the Constitution it would not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection. It is certainly easy to discover fresh ground of attack to sustain the same objection, but that cannot be permitted once the law has been laid down by the Supreme Court holding that Section 10 of the Act does not violate Article 14 of the Constitution."

5. Voluntary Reference (Section 10-A)

Section 10-A (Voluntary reference of disputes to arbitration) of the Act differs from Section 10 of the Act mainly in one respect. Section 10 of the Act provides for reference of an industrial dispute by the Government either on its own or on an application having been made to it by the parties to the dispute. The arbitrator under Section 10 is appointed by the Government making such reference. But Section 10-A of the Act authorises the parties to a dispute themselves to choose their own arbitrator, including a Labour Court, Tribunal or National Tribunal.

Section 10-A (1) provides that where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may refer the dispute to arbitration. Such reference by agreement may be made at any time before the dispute has been referred under Section 10 to a Labour Court, Tribunal or National Tribunal. The agreement, between the parties to an industrial dispute, to make a reference

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\(^{41}\) *Jaipur Udyog Ltd. v. C.W.K. Sangh*, AIR 1972 SC 1352.

\(^{42}\) *Vegoils (P) Ltd. v. The Workmen*, AIR 1972 SC 1942.

must be in writing. The reference shall be made to such person or persons (including the
presiding officer of a Labour Court, Tribunal or National Tribunal) as an arbitrator or
arbitrators as may be specified in the arbitration agreement.
Section 10-A (1-A) provides that where an arbitration agreement provides for reference of
the dispute to an even number of arbitrators, the agreement shall provide for the
appointment of another person as umpire who shall enter upon the reference, if the
arbitrators are equally divided in their opinion. The award of the umpire shall prevail and
shall be deemed to be an arbitration award for the purpose of this Act.
Section 10-A (2) provides that an arbitration agreement referred to in sub-section (1)
shall be in such form and shall be signed by the parties thereto in such manner as may
be prescribed.
Under Section 10-A (3) a copy of the arbitration agreement shall be forwarded to the
Appropriate Government and the conciliation officer, and the Appropriate Government
shall within one month from the date of the receipt of such copy publish the same in the
Official Gazette.
Sub-section (3-A) provides that where an industrial dispute has been referred to
arbitration and the Appropriate Government is satisfied that the persons making the
reference represent the majority of each party, the Appropriate Government may, within
one month from the date of the receipt of such copy, issue a notification in the
prescribed manner. When any such notification is issued the employers and workmen
who are not parties to the arbitration agreement but are concerned in the dispute, shall
be given an opportunity of presenting their case before the arbitrator or arbitrators.
Under Section 10-A (4) the arbitrator or arbitrators shall investigate the dispute and
submit to the Appropriate Government the arbitration award signed by the arbitrator or all
arbitrators as the case may be. Under sub-section (4-A) where an industrial dispute has
been referred to arbitration and a notification has been issued under sub-section (3-A), the
Appropriate Government may prohibit the continuance of any strike or lock-out in
connection with such dispute which may be in existence on the date of the reference.
The Appropriate Government shall do so by issuing an order. Sub-section (5) provides
that nothing in the Arbitration Act, 1940 shall apply to arbitration under this section. In
Management N.P.C. Corporation Case 44 the appellant was engaged in execution of certain

projects. There were three categories of workmen in these projects: (1) regular staff, (2) work charged staff, and (3) casual labour borne on muster roll. By a settlement, the question of pay scales of the muster roll workmen was decided and certain other question regarding other categories of workmen were referred to Industrial Tribunal. The Tribunal gave an award allowing 25 per cent increase in the wages of all labour including muster roll workmen and allowed project allowance. As regards the project allowance, the Tribunal took the view that mere fact that the work charged staff and the muster roll staff are appointed for a particular work and some of them happen to be local people should not stand in the way of their getting project allowance and those of these two classes of workmen who come from distant places should be given this allowance in the same way as the members of the regular staff. In appeal the Supreme Court held that “the question of pay scales of the muster roll workmen was decided as a result of the settlement and that was not one of the questions referred to the arbitrator. By the award they would be getting double benefit. Therefore, the award in so far as it granted 25 per cent wage increase to the muster roll workmen beyond its jurisdiction was invalid and was liable to be set aside”. The Supreme Court found no jurisdiction for interfering with the award relating to project allowance even though it may be difficult to work it in practice. An arbitrator functioning under Section 10-A of the Act is a Statutory Tribunal. Award of an arbitrator can be upset in case of an error of law apparent on its face. 45 In a case where the employer claims compensation for losses arising out of an illegal strike, the question whether compensation is to be awarded involves a question of law. An arbitrator appointed under Section 10-A can re-appraise the evidence led in the domestic inquiry and satisfy himself whether the evidence led by the employer established misconduct against the workman by virtue of the jurisdiction conferred by Section 11-A of the Act. It cannot be contended that the arbitrator has only the power to decide whether the conclusions reached by the enquiry officer were plausible one, deducible from the evidence led in the enquiry and not to appreciate the evidence itself and to reach the conclusion whether the misconduct alleged against the workman has been established or not. 46

45. Rohtas Industries v. Its Union AIR 1976 SC 425
46. Rajinder Kumar Kindra v. Delhi Administration (1984) II LLJ 517 SC.
It was held in Karnal L.K. Sanghatan Case \(^{47}\) that when a dispute is referred for arbitration under an agreement under Section 10-A, the requirement of publication of agreement under sub-section (3) of Section 10-A is mandatory before the arbitrator considers the merits of the dispute. Non-compliance of the requirement of publication would render the award invalid and unenforceable.

(VI) **The Arbitration and Conciliation Act, 1996**

1. **General**

Arbitration and Conciliation Act, 1996 was passed on the basis of the UNCITRAL Model Law on International Commercial Arbitration, 1985 and UNCITRAL Conciliation Rules, 1980. Its had been recommended by General Assembly of the United Nations that all countries should give due consideration to the said Model Law in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of the international commercial arbitration practices. It has also recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek on amicable settlement of that dispute by recourse to conciliation. These rules are believed to make a significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations. These objectives have been laid down in the Preamble to the Arbitration and Conciliation Act, 1996. \(^{48}\)

2. **Arbitration Provisions**

(a) **General**

Under the Chapter 1 of part I of Arbitration and Conciliation Act, 1996; "arbitration" means any arbitration whether or not administered by a permanent arbitral institution. This has been discussed in S.2 of the Act, along with other definitions, which are peculiar to the Act. Under the Act, written communication is delivered when it reaches the other party's place of business, habitual residence or mailing address. If such an address cannot be traced recorded attempt to find out and mail to the old address is sufficient (S.3). In the event that either of the parties knows of a provision from which either party derogate, or any part of the agreement has not been complied with, if no obligation is raised to such non-compliance, it is taken that the party has given up his right to object and that right will be waived. (S.4).

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\(^{48}\) www.indialawinfo.com/bareacts/arbc.html
The extent of Judicial Intervention and Administrative assistance is discussed in Ss. 5 & 6 of the Act.

(b) Arbitration Agreements
Chapter II of part I of the Act deals with Arbitration Agreements. Section 7 defines an arbitration agreement as "an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not." An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement and it shall be in writing. In case of a judicial application being filed for a dispute between parties who have agreed to arbitrate, the judicial authority may refer the case to arbitration if he feels and arbitration can take place even if the issue is pending before the judicial authority (S.8). The provisions regarding interim measures are made under S.9 of the Act.

(c) Arbitral Tribunal
Chapter III of part I of the Arbitration and Conciliation Act, 1996 contains provisions regarding the composition of an Arbitral Tribunal. The parties to an arbitration agreement are free to determine the number of arbitrators they want and any person, of any nationality may be appointed as the arbitrator. The parties are also free to decide on the procedure of arbitration. In case of a "three arbitrator approach" each party nominates an arbitrator and the two said nominees should nominate a third arbitrator. In case either of the parties fails to nominate an arbitrator or the two nominees do not appoint a third arbitrator in 30 days the Chief Justice or any other institution may on a request by either party appoint the arbitrator. Other provisions regarding the appointment of arbitrators have been discussed at length under S.11 of the Act.

Under this Act, an arbitrator may be challenged in case there are circumstances, which give rise to justifiable doubts regarding his independence or impartiality, or if he does not possess the qualifications agreed to by the parties (S.12). A party who has appointed the arbitrator may also challenge him. The parties may freely determine the procedure for arbitration, and in the event that they do not decide such procedure, the arbitral tribunal relating to the agreement will look into the challenge and pass an arbitral award. In case this award is also challenged, then the court will pass a decree (S.13). Sections 14 and 15 lay down provisions relating to failure or impossibility to act by the arbitrator and the termination of mandate and substitution of arbitrator respectively.
Chapter IV of the Arbitration and Conciliation Act, 1996 deals with the jurisdiction of arbitral tribunals. Section 16 clearly emphasizes that the arbitral tribunal may rule on its own jurisdiction even with regards to any objection raised on the validity of the arbitration agreement itself – the reason being that the arbitration clause, a part of the agreement is treated as an independent contract of its own. A decision by the arbitral tribunal that the contract itself is null and void does not render the arbitration clause as invalid. A plea that the arbitral tribunal does not have jurisdiction cannot be raised later than after submitting the statement of defence and this plea should be submitted as soon as the matter alleged to be beyond the scope of its authority is raised in the arbitral proceedings. Interim measures regarding the dispute may be taken at the request of a party unless otherwise agreed by the parties.

Chapter V deals with the basic conduct of an arbitral proceeding. Section 18 states that there should be equal treatment of parties and both parties must be given equal opportunity to present the case. Section 19 lays down that the arbitral tribunal is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The parties are free to determine the procedure to be followed by the arbitral tribunal in the course of proceedings. In the event that no such procedure is established by the parties, the tribunal may follow any procedure it deems fit. The power of the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence (S.19). The parties are free to agree upon the place of arbitration or, if not determined, the power lies with the tribunal. (S.20) Arbitration proceedings commence immediately after a dispute is submitted for arbitration, unless agreed upon otherwise.

(S.21) The language preference also lies with the parties, or the tribunal, which may use a language it thinks fit. All documents submitted and received should be in the language adopted in the proceedings or must be translated into it. (S.22)

Statements of claim and defence are dealt with under Section 23. (1)Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect these particulars, unless the parties have otherwise agreed as to the required elements of those statements. (2) The parties may submit with their statement all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit. (3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless
the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

Section 24 deals with hearing and written proceedings. It states that in the absence of a particular clause, the arbitral tribunal shall decide whether to carry on the proceedings orally or on the basis of documents and evidence. It also says that the parties should be given sufficient notice of any meeting and all documents submitted must be shown to the other party. Section 25 deals with the default of the party to claim or to respond or to appear for the oral hearings. In the case of the former, the proceedings are terminated by the arbitral tribunal whereas in the case of the latter two instances, the proceedings would continue with the document evidence on hand. The arbitral tribunal may appoint an expert to seek opinion, to collect information, and to produce a report backed up by relevant documents unless otherwise agreed by the parties. The parties may also examine the report, documents with the expert, again unless otherwise agreed to by the parties. This is dealt in Section 26.

The arbitral tribunal or the party with the approval of the arbitral tribunal may apply to the court for evidence. The court may order the evidences to be given directly to the arbitral tribunal or it may furnish details about processes in earlier cases of similar nature. Disregard to this order by personnel in absenting themselves to attend to the arbitral tribunal or for any other default in producing the relevant evidence, invites punishment and penalties. Section 27 elaborates on the summonses and commissions for the submission of witnesses and summonses for submission of documents.

Making of arbitral award and termination of proceedings are written in the chapter VI.

In this Section 28 speaks on the rules applicable to the substance of dispute. In other than the international commercial arbitration, the existing rules of arbitration prevalent at that time are taken into account. In international commercial arbitrations, the rules designated by the parties as applicable to the substance of dispute, the substantive law of the countries and not their conflicts; In the absence of any such specifications, the rules as circumstantially viable and if the parties so agree, decide ex aequo et bono or as amiable compositeur. In all cases, the terms of the contract and the trade usages form a ground for decision making by the arbitral tribunal. Emphasizing on the majority decision of the arbitral tribunal in case there are more than one in the tribunal, Section 29 spells that the presiding arbitrator would decide on the questions of procedure. Section 30 elaborates on the settlement, the conciliatory proceedings, the terms agreed on, and if requested by the party and if there is no objection by the arbitral tribunal, to
record and issue an award on the terms agreed as per Section 31. Section 31 lists the various aspects of, and the requirements for, the laying down of the terms of the award of settlement, the date and place specifications, the monetary details, the costs and expenses – everything pertaining to the arbitration award. Under Section 32 and 33, termination of proceedings and the corrections to the award (made within 30 days) respectively. The various instances under which the termination of proceedings occurs be it for having reached a consensus or withdrawal by either party or if the arbitral tribunal finds it unnecessary to proceed further for reasons substantiated by the tribunal. Once the award is issued and if there need be any corrections or amendment, and if within 30 days, it has been put forth to the arbitral tribunal, an amendment to the award could be given as stated in Section 33.

Chapter VII encompasses Section 34, which covers Recourse against Arbitral Award. Recourse to the court for setting aside the Arbitral award by an application can be made only if the party to the application furnishes proof of incapacity, lack of proper notice, not being present for the arbitral proceedings for valid reasons, and if the decisions made are beyond the scope of the submission to arbitration. Alternatively, if the court finds the subject-matter of the dispute is not capable of settlement by arbitration under the law, for the time being in force, or if the arbitral award is in conflict with the public policy of India.

Section 35 and 36 under Chapter VIII deal with Finality and Enforcement of arbitral awards. Section 35 makes it final and binding on the parties to adhere to the arbitral award and Section 36 gives the arbitral award the power under the code of Civil Procedure, 1908 and in the same manner as if it were a decree of court.

Chapter IX covers Section 37 on Appeals, the instances when appeals are allowed and it also states that it a noting under this section shall take away any right to appeal to the Supreme Court. Also, there is no second appeal provision.


(a) General

The proceedings relating to CONCILIATION are dealt under sections 61 to 81 of Arbitration and Conciliation Act, 1996. This Act is aimed at permitting Mediation conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes. This Act also provides that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal.
Section 61 says that conciliation shall apply to disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto. Unless any law excludes, these proceedings will apply to every such dispute while being conciliated. The parties may agree to follow any procedure for conciliation other than what is prescribed under the 1996 Act. If any law certain disputes are excluded from submission to conciliation, the third part will not apply.

According to Section 62, a party can take initiative and send invitation to conciliate under this part after identifying the dispute. Proceedings shall commence when the other party accepts the invitation. If the other party rejects, it stops there itself. If other party does not reply within 30 days it can be treated as rejection.

(b) **Conciliators**

(i) There will be only one conciliator, unless the parties agree to two or three. (ii) Where there are two or three conciliators, then as a rule, they ought to act jointly. (iii) Where there is only one conciliator, the parties may agree on his name. (iv) Where there are two conciliators, each party may appoint one conciliator. (v) 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. (vi) But in each of the above cases, the parties may enlist the assistance of a suitable institution or person. The above provisions are contained in section 63 and 64(1)

Section 64(2) and proviso of the new law lay down as follows. (a) Parties may enlist the assistance of a suitable institution or person regarding appointment of conciliator. The institution may be requested to recommend or to directly appoint the conciliator or conciliators. (b) In recommending such appointment, the institutions etc. shall have regard to the considerations likely to secure an "independent and impartial conciliator".

(c) In the case of a sole conciliator, the institution shall take into account the advisability of appointing a conciliator other than the one having the nationality of the parties.

**Stages:**

In sections 65 to 73 contains provisions spread over a number of sections as to the procedure of the conciliator. Their gist can be stated in short form. (a) The conciliator, when appointed, may request each party to submit a statement, setting out the general nature of the dispute and the points at issue. Copy is to be given to the other party. If necessary, the parties may be asked to submit further written statement and other evidence. (b) The conciliator shall assist the parties "in an independent and impartial manner", in their attempt to reach an amicable
settlement. See Section 67(1) of the new law. (c) The conciliator is to be guided by the principles of "objectivity, fairness and justice". He is to give consideration to the following matters: i) Rights and obligations of the parties; ii) Trade usages; and iii) Circumstances surrounding the dispute, including previous business practices between the parties. [Section 67(2)]. (d) He may, at any stage, propose a settlement, even orally, and without stating the reasons for the proposal. [Section 67(4)]. (e) He may invite the parties (for discussion) or communicate with them jointly or separately. [Section 68]. (f) Parties themselves must, in good faith, co-operate with the conciliator and supply the needed written material, provide evidence and attend meetings, [Section 71]. (g) If the conciliator finds that there exist "elements of a settlement, which may be acceptable to the parties", then he shall formulate the terms of a possible settlement and submit the same to the parties for their observation. (h) On receipt of the observations of the parties, the conciliator may re-formulate the terms of a possible settlement in the light of such observation. (i) 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. [See Sections 73 (1) and 73(2)].

(c) **Legal Effect of Settlement Agreement**

(a) The settlement agreement signed by the parties shall be final and binding on the parties. [See Section 73(1)].

(b) The agreement is to be authenticated by the conciliator. [See Section 73(4)].

(c) The settlement agreement has the same status and effect as if it were an arbitral award rendered by the arbitral tribunal on agreed terms. [See section 74 read with section 30]. The net result is that the settlement can be enforced as a decree of court by virtue of section 36.

Role of the Parties- Under section 72, a party may submit to the conciliator his own suggestions to the settlement of a dispute. He at his own initiative or on the conciliator's request may submit such suggestions.

(d) **Conciliator's Procedure**

The net result of section 66, Section 67 (2) and Section 67(3) can be stated as follows. (a) The conciliator is not bound by the Code of Civil Procedure or the Evidence Act. (b) The conciliator is to be guided by the principles of objectivity, fairness and justice. (c) Subject to the above, he may conduct the proceedings in such manner, as he considers appropriate, taking
into account. (i) The circumstances of the case; (ii) Wishes expressed by the parties; (iii) Need for speedy settlement.

(e) Disclosure and Confidentiality

(a) 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.

(b) Notwithstanding anything contained in any other law for the time being in force, the conciliator and a party shall keep confidential "all matters relating to the conciliation proceedings". This obligation extends also to the settlement agreement, except where disclosure is necessary for its implementation and enforcement. (Section 75).

(f) Admissions etc.

In any arbitral or judicial proceedings (whether relating to the conciliated dispute or otherwise), the party shall not rely on, or introduce as evidence

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

ii) Admissions made by the other party in the course of conciliation proceedings;

iii) Proposal made by the conciliator; and

iv) The fact that the other party had indicated his willingness to accept a settlement proposal (Section 81).

(g) Parallel Proceedings

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". (Section 77) (There is no mention of arbitral or judicial proceedings, which are already initiated).

(h) Conciliator Not to Act as Arbitrator

Unless otherwise agreed by the parties, the conciliator cannot act as arbitrator, representative or counsel in any arbitral or judicial proceedings in respect of the conciliated dispute. Nor can he be "presented" by any party as a witness in such proceedings. (Section 80).

Costs and Deposit: The new law also contains provisions on certain other miscellaneous matters, such as costs and deposit (Section 78 and 79). All said and done, it may be reasonably concluded that the working of the Arbitration and Conciliation Act, 1996 would bring about qualitative improvement in the arbitration practice in India.

49. Supra n.1 pp. 28-37.
Indian Contract Act

1. Void Agreements

There are some agreements which have been specifically declared as void by the Indian Contract Act. Even if such agreements satisfy the conditions of a valid contract, they are not enforceable. The agreements which have been declared void by the Act are as follows:
(i) Agreement of which the consideration or the object is not lawful. (Sections 23 and 24). (ii) Agreement without consideration. (Section 25). (iii) Agreement in restraint of marriage. (Section 26). (iv) Agreement in restraint of trade. (Section 27). (iv) Agreement in restraint of legal proceedings. (Section 28). (vi) Agreement which is ambiguous and uncertain. (Section 29). (vii) Agreement by way of wager. (Section 30).
(viii) Agreement to do an impossible act. (Section 56).

2. Agreement in Restraint of Legal Proceedings (sec. 28)

Sec. 28 has amended by the Indian Contract (Amendment) Act 1997 states that an agreement absolutely restraining a party from enforcing his rights through a court of law, or an agreement which places a limit as to the time within which a right can be is void. The section reads as under:

Section 28-Agreement in restraint of legal proceedings void.-

Every agreement,-

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights: or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent

Exception 1-Savings of contract to refer to arbitration dispute that may arise.- This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2.-Saving of contract to refer questions that have already arisen.- Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of
any law in force for the time being as to references to arbitration.

3. **Analysis of Section 28**

This section makes two kinds of agreements void:-

(a) Agreement, by one party is absolutely debarred from enforcing his rights through usual legal proceedings.

(b) Agreement, which places a time limit for enforcing a right through legal proceedings.

(a) **Agreement Absolutely Restraining Legal Proceedings**

If an agreement restricts a party thereto absolutely enforcing his contractual rights by bringing usual legal proceedings, the same is void. An agreement to oust the jurisdiction of a court is opposed to public policy and the same is void both in India and England. The agreement is void if restraint is an absolute one. In case the parties agree to a partial restriction on the right to go to the Court of law, such a contract is enforceable. Therefore, if two competent Courts can possibly deal with the subject-matter of litigation, it is open to the parties to a contract to agree that dispute in respect thereof should be adjudicated upon by one of the two competent courts, and not by the other.\(^\text{50}\) Such an agreement which restricts jurisdiction to only one of several competent courts is not against public policy and therefore not void under section 23.\(^\text{51}\)

In **Hakam Singh Case** \(^\text{52}\) a clause in the agreement between the parties provided that the "Court of law in the City of Bombay alone shall have jurisdiction to adjudicate thereon". The plaintiff filed a suit at Varanasi, but the same was dismissed in view of the above stated agreement. The Supreme Court held that the agreement was not opposed to public and it did not contravene section 28, and, therefore, the suit filed at Varanasi was rightly dismissed. The position would be different if the Bombay Court has no jurisdiction, but the parties say that Bombay Court alone can entertain the suit. Such an agreement is void, because the parties by an agreement cannot confer jurisdiction on a court which does not in fact exist.

In order that the agreement stipulating that a particular court alone has jurisdiction is enforceable; it is further necessary that the agreement should have been properly entered into.

In **United India Ins. Co. Ltd. Case** \(^\text{53}\) the consignment note contained printed words "subject to

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\(^{50}\) Ajmera Brothers v. Suraj Naresh Kumar Jain, A.I.R. 1968 Pat. 44.


\(^{52}\) Hakam Singh v. Gammon (India) Ltd AIR1971 S.C. 740.

\(^{53}\) India Ins. Co. Ltd. v. Associated Transport Corp. Ltd. AIR1988 Ker. 36.
Bombay jurisdiction alone". The note was signed only by the employee of the carrier. Apart from what was printed on the note, there was nothing else to suggest that there was meeting of minds the between the consignor and the carrier or an agreement between the parties to confer exclusive jurisdiction on the Bombay Court. It was held by the Kerala High Court that the printed words by themselves and without anything more were not sufficient to constitute an agreement to oust jurisdiction of all Courts other than the Court specified. Similar was also the decision of the A.P. High Court in C. Satyanarayana Case\textsuperscript{54} in this case the defendant wrote a letter to the plaintiff on the top of which was printed "Subject to Madras Jurisdiction". It was held that such words could become a part of the contract unless it was expressly agreed to by the plaintiff, and therefore, these words did not bind the parties to the contract as to the jurisdiction of the Court. Similarly, if an invoice contained the words "Subject to Shimoga jurisdiction" in a contract entered into through brokers, and the knowledge of the purchasers to this clause could not be proved, the clause not binding.\textsuperscript{55} Similar will also be the position if at the tit delivery of goods to a carrier, the Consignment Note excluding jurisdiction of one of the two courts, having concurrent jurisdiction in the matter, is not got signed from the consignor. In such a case the suit may be filed in any of the courts having the jurisdiction.\textsuperscript{56} If, however, the contract has been properly entered into, the same is binding. Thus, when the agreement contains a clause that the litigation, if any, will be subject to Bombay Courts only, it curtails the choice which a party has under the ordinary law by confining the right to a particular court only, and the same is not vitiated by section 28.\textsuperscript{57} In Dilip Kumar Ray Case\textsuperscript{58} the parties entered into a hire-purchase agreement in respect of sale of a Tata Estate Car. The agreement was executed at Madras. The parties agreed that all disputes or claims shall be settled at Bombay. No cause of action had arisen at Bhubaneshwar except showing some payment being made at Bhubaneshwar. It was held the plaintiff did not get the right to file a suit at Bhubaneshwar. The suit can, therefore, be held only at the place agreed to between the parties, i.e., Bombay. In Delhi Bottling Co. Ltd. Case\textsuperscript{59} it has been held that when two courts have jurisdiction parties

\textsuperscript{54} C. Satyanarayana v. K.L. Narasimham, AIR1968 A.P. 330
\textsuperscript{56} Road Transport Corp. v. Kirloskar Brothers Ltd., A.I.R. 1981 Bom. 21
\textsuperscript{58} Dilip Kumar Ray v. Tata Finance Ltd. A.I.R. 2002 Orissa 29.
\textsuperscript{59} Delhi Bottling Co. Ltd. v. Times Guaranty Financial Ltd. A.I.R. 200
are free to vest jurisdiction in one of those courts only. In this case there was a hire-purchase agreement in respect of supply of commercial vehicles. The agreement was executed in Bombay. An agreement in such a case by the parties that in of any dispute Bombay courts shall have exclusive jurisdiction agreement was held to be valid and not hit by section 28 a Contract Act.

(b) Agreement Limiting Time For A Legal Action
According to the Indian Limitation Act, 1963 there is limit for various actions. If an agreement between the parties stipulates a smaller time limit than prescribed under the Limitation Act, the agreement is void under section 28. Thus, agreement prohibits an action if brought after one year of the breach of contract, the same is void, because it takes away the n bring an action after one year, though the period of limitation for such an action prescribed in the Limitation Act is 3 years.

(i) Agreement Extinguishing the Rights on Expiry of a Specified Period
An agreement curtailing the period of limitation has been distinguished from an agreement resulting in the release or forfeiture of rights if an action is not brought within a certain period. Such clauses are generally there in insurance agreements.

In Baroda spinning and Weaving Co. Ltd. Case 60 a clause in a policy of fire insurance provided that if a claim was made and rejected and an action or suit is not commenced within three months after such, rejection, all benefits under the policy shall be forfeited. It was held that the agreement contained in the policy is valid and binding.

Justification for the forfeiture of claims by the lapse of time was explained by Kapur J. in General Insurance Co. Case 61 in the following words “I do not see how such a clause is void as contravening the Law of Limitation. It is open to any two parties to agree that the promisor would only, be liable if he is informed of the indemnification within the stipulated period, and there seems to be a great deal of sense in it particularly in the case of fire insurance or insurance against accident where the liability to the extent of damage caused, when the matters are fresh, can be measured with a certain amount of accuracy. Lapse of time in such cases may result in all kinds of claims which are not capable

of determination with any amount of exactitude and when memories of men may become rather hazy."

In such cases, the provision regarding limitation of time has been held not to offend the provisions of section 28 of the Indian Contract Act. The agreement in essence is one where the contract between the parties states that the right to indemnify in case of loss and the liability of the insurers in respect thereof would not become absolute unless the remedy is sought within a certain period mentioned in the insurance policy. The agreement does not curtail the time period for an action; it rather extinguishes the right because of the delay in bringing the action. Since the right itself is itself extinguished because of the delay, the question of enforcing the right thereafter does not arise.

In National Ins. Co. Ltd. Case 62 it has been held that an agreement which in effect seeks to curtail the period of limitation and prescribes shorter period than that prescribed by law be void as offending sec. 28 of the Contract Act. If, however, there is a clause in an agreement which provides the forfeiture or waiver of the right itself, the agreement will be void as it would not fall within the mischief of section 28 of the Act. In this case there was a clause in the insurance agreement that if the claim for loss or damage is not pressed within 12 months, the insurance company shall cease to be liable. The right claimant had been held to be extinguished and, therefore insurance company was not liable as the case was brought the expiry of 12 months of the loss or damage caused by strike.

(ii) Amendment Act, 1997

Section 28 of the Contract Act has been amended by the Contract (Amendment) Act, 1997. The new provision contained in section 28 (b) states that every agreement which extinguish rights of any party thereto, or discharges any party thereto, any liability under or in respect of any contract on the expiry of a specified period so as to restrict any party thereto from the rights, is void to that extent. In view of the above stated provision any agreement whereby the right of any party thereto is extinguished by not bringing action within a specified period, will also be void under section 28. Thus, even in contracts of insurance, etc. as stated above agreement which in effect curtails the period of limitation, will be void.

(c) Exceptions

(i) Contract to Refer Future Dispute to Arbitration

Exception 1 to section 28 allows an agreement to be between two or more persons by which, they are to refer any dispute which may arise between them in future to arbitration, and the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred. In such a case there absolute restraint on a party to go to the court of law. It may only stay the right of the plaintiff to go to the court until compensation to be awarded has been ascertained by arbitration. An agreement to refer dispute to an arbitration does not close the final door to a court of law. If it does so, it would be void; but it does so. The approach to the Court may not be by the straight but by the by-lanes or in other words, the approach may be a staggered one and that would not be a contravention of S.28. If the parties agree under a contract to refer their dispute for adjudication to the arbitration, the mere fact that the arbitrators are situated in foreign countries, will not be sufficient to nullify the arbitration agreements.

(b) Contract to Refer Existing Questions to Arbitration

Exception 2 to sec. 28 states that questions which have already arisen between the parties may be referred by them to arbitration by a contract in writing. Such an agreement is also valid.

(VIII) The Legal Services Authorities Act 1987

1. General

The Legal Services Authorities Act, 1987 is 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 organize LokAdalats to ensure that the operation of the legal system promotes justice on a basis of equal opportunity. The Legal Services Authorities Act, 1987 (No. 39 of 1987) has been amended by The Legal Services Authorities (Amendment) Act, 1994 (No. 59 of 1994) and [Legal Services Authorities (Amendment) Act, 2002 (No. 37 of 2002)]. It contains VII Chapters dealt in 30 Sections.

63. Coringa Oil Co. v. Koegler, I.L.R. (1876) 1 Cal. 466.
64. New Great Insurance Co. v. United Equipments and Stores (Pvt.) Ltd. AIR 1970 Cal. 221, at p. 224.
2. **Historical Background**

Constitutional 42nd Amendment Act of 1976, incorporated Article 39-A in the Constitution for providing free legal aid which Article reads as here under: "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities." In the light of the above said amendment, the Government of India had, by a resolution dated 26th September, 1980 constituted a Committee known as "Committee for Implementing Legal Aid Schemes" 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 of India and which committee evolved a model scheme for legal aid programmes applicable throughout the country and pursuant there to, several Legal Aid and Advice Boards were set up in all the States and Union Territories of India.

It may be noticed here that in the case of **Hussainara Khatun Case** 68, the Apex Court held that the right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held to be implicit in the guarantee of Article 21. This was a case wherein it was observed by Mr. Justice P.N. Bhagwati and Justice D.A. Desai that many under-trial prisoners in different jails in the State of Bihar had been in jail for period longer than the maximum terms for which they would have been sentenced, if convicted, and that their prolonged detention in jails was totally unjustified and in violation of their fundamental rights to personal liberty under Article 21 of the Constitution. While disclosing shocking state of affairs indicating enormous misery and sufferings caused to the poor and illiterate citizens resulting in totally unjustified deprivation of personal liberty, Justice P.N. Bhagwati, made the following observations in para 6 of the said judgement: "This unfortunate situation cries aloud for introduction of an adequate and comprehensive legal service programmes, but so far, these cries do not seem to have evoked any response. We do not think it is 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 is a nation-wide legal service programme to provide free legal services to them."

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It is also worth while to quote the following observations of Justice P.N. Bhagwati from para 9 of said judgement: “We would strongly recommend to the Government of India and the State Government that it is high time that a comprehensive legal service programme is introduced in the country. That is not only a mandate of equal justice implicit in Article 14 and to right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39A.”

Two years thereafter, in Khatri Case 69 Justice P.N. Bhagwati while referring to the Supreme Court's man in the aforesaid Hussainara Khatun's case, made the following comments, in para 4 of the said judgement “It is unfortunate that though this Court declared the right to legal aid as a fundamental right an accused person by a process of judicial construction of Article 21, most of the States in country have not taken note of this decision and provided free legal services to a person accused of an offence. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account ~ indigence, and whatever is necessary for this purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but the law does not permit any Government to deprive its citizens of constitutional rights on the plea of poverty.”

In 1986, in Sukdas Case 70 Justice P.N. Bhagwati, once again, while referring to the earlier decision of Hussainara Khatun's case and some other cases made the following observations in para 6 of the said judgement:

“Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advise in time, and their poverty magnifies the impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant; they cannot even help themselves. The Law ceases to be their protector because they do not know that they are entitled to the protection of the law and they

70 Sukdas v. Union Territory of Arunachal Pradesh AIR 1986 S.C. 991
can avail of the legal service programmes for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognised as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would be in these circumstances made a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service, legal aid would become merely a paper promise and it would fail of its purpose.”

It was in the above backdrop that the Parliament passed the Legal Services Authorities Act; 1987, but the provisions of the Act (except Chapter 111), were enforced with effect from 9-11-1995 by the Central Government vide Notification S.O. 893 (E) dated 9-11-1995. Chapter III, under the heading State Legal Services Authorities, was enforced subsequent thereto in different States vide different Notifications during the years 1995-98. Haryana State Legal Services Authority also thus came into existence vide Notification No. S.O.(E) dated 3-4-1996 of the Government of India, Ministry of Law, Justice and Company Affairs (Department of Legal Affairs).

3. Analysis of Legal Services Authorities Act; 1987

(a) The National Legal Services Authority

Section 3 says the Central Government shall constitute a body to be called the National Legal Services Authority to exercise the powers and perform the functions conferred or assigned to, the Central Authority under this Act.

(i) Composition of the Central Authority

It shall consist of (a) the Chief Justice of India who shall be the Patron-in-Chief; (b) a serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, shall be the Executive Chairman; and (c) such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, be nominated by that Government in consultation with the Ch' Justice of India. The Central Government shall, in consultation with the Chief Justice India, appoint a person to be the Member Secretary of the Central Authority, possessing such experience and qualifications as may be prescribed by that Government, to exercise such powers and perform such duties under the Executive Chairman of the Cent Authority as may be prescribed by that Government or as may be assigned to him the Executive Chairman of that Authority. The terms of office and other conditions relating thereto, of member and the Member Secretary of the Central Authority shall be such as
may be prescribed by the Central Government in consultation with the Chief Justice of India. The Central Authority may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions under this Act. The Officers and other employees of the Central Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India. The administrative expenses of the Central Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the Central Authority, shall be defrayed out of the Consolidated Fund of India. All orders and decisions of the Central Authority shall be, authenticated by the Member-Secretary or any other officer of the Central Authority duly authorised by the Executive Chairman of that Authority. No act or proceeding of the Central Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the Central Authority.

(ii) **Functions of the Central Authority**

Section 4 provides that the Central Authority shall perform all or any of the following functions, namely:

(a) lay down policies and principles for making legal services available under the provisions of this Act;

(b) frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;

(c) utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;

(d) take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;

(e) organise legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through LokAdalats;

(f) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;

(g) undertake and promote research in the field of legal services with special reference to the need for such services among the poor;
(h) to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;

(i) monitor and evaluate implementation of the legal aid programmes periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided u this Act;

(j) provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out the amounts placed at its disposal for the implementation of legal services schemes under the provisions of this Act;

(k) develop, in consultation with the Bar Council of India, programmes far clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions;

(l) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;

(m) make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and

(n) coordinate and monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social services institutions and other legal services organisations and give general directions for the proper implementation of the legal services programmes.

(iii) **Coordination Between Central Authority and Agencies**

Section 5 provides that in the discharge of its functions under this Act, the Central Authority shall work in Coordination wherever appropriate, act in coordination with other governmental and non-governmental with other agencies, agencies, universities and others engaged in the work of promoting the cause of legal services to the poor.

(b) **Supreme Court Legal Services Committee**

Section 3A says that the Central Authority shall constitute a committee to be called the Supreme Court Legal Services Committee for the purpose of exercising such powers and performing such functions as
may be determined by regulations made by the Central Authority.

The Committee shall consist of a sitting Judge of the Supreme Court who shall be the Chairman; and such number of other members possessing such experience and qualifications as may be prescribed by the Central Government, to be nominated by the Chief Justice of India. The Chief Justice of India shall appoint a person to be the Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the Central Government. The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the Central Authority. The Committee may appoint such number of officers and other employees as maybe prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions. The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(c) State Legal Services Authority

(i) Constitution of State Legal Services Authority

Section 6 provides that every State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under this Act.

A State Authority shall consist of -

(a) the Chief Justice of the High Court who shall be the Patron-in-Chief;

(b) a serving or retired Judge of the High Court to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and

(c) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member-Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

Provided that a person functioning as Secretary of a State Legal Aid and Advice Board
immediately before the date of constitution of the State Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this subsection, for a period not exceeding five years.

The terms of office and other conditions relating thereby, of members and the Member-Secretary of the State Authority shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court. The State Authority may appoint such number of officers and other employees as may be prescribed by the State Government, in consultation with the Chief Justice of the High Court, for the efficient discharge of its functions under this Act.

The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court. The administrative expenses of the State Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the State Authority shall be defrayed out of the Consolidated Fund of the State.

All orders and decisions of the State Authority shall be authenticated by the Member-Secretary or any other officer of the State Authority duly authorised by the Executive Chairman of the State Authority. No act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the State Authority.

(ii) Functions of the State Authority

Section 7 provides that (1) It shall be the duty of the State Authority to give effect to the policy and directions of the Central Authority. (2) Without prejudice to the generality of the functions referred to in subsection (1), the State Authority shall perform all or any of the following functions, namely:

(a) give legal service to persons who satisfy the criteria laid down under this Act;
(b) conduct Lok Adalats, including Lok Adalats for High Court cases;
(c) undertake preventive and strategic legal aid programmes; and
(d) perform such other functions as the State Authority may, in consultation with the Central Authority, fix by regulations.

(iii) Coordination between State Authority and Agencies

Section 8 says in the discharge of its functions the State Authority shall appropriately act in coordination with other governmental agencies, non-governmental voluntary social service institutions,
universities and other bodies engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority may give to it in writing.

(d) **High Court Legal Services Committee**

Section 8A provides that the State Authority shall constitute a Committee to be called the High Court Legal Services Committee for every High Court, for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the State Authority. The Committee shall consist of (a) a sitting Judge of the High Court who shall be the Chairman; and (b) such number of other members possessing such experience qualifications as may be determined by regulations made by the State Authority to be nominated by the Chief Justice of the High Court.

The Chief Justice of the High Court shall appoint a Secretary to Committee possessing such experience and qualifications as may be prescribed by the State Government. The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the State Authority. The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions. The officers and other employees of the Committee shall be entities such salary and allowances and shall be subject to such other conditions of service may be prescribed by the State Government in consultation with the Chief Justice of High Court.

(e) **District Legal Services Authority**

(i) **Constitution of District Legal Services Authority**

Section 9 provides that the State Government shall, in consultation with the Chief Justice of High Court, constitute a body to be called the District Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on, or assigned to, the District Authority under this Act.

A District Authority shall consist of -

the District Judge who shall be its Chairman; and (b) such number of other members, possessing such experience qualifications, as may be prescribed by the State Government be nominated by that Government in consultation with the Chief Justice of the High Court.

The State Authority shall, in consultation with the Chairman of the District Authority, appoint a
person belonging to the State Judicial Service not lower in r than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judi as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman.

The terms of office and other conditions relating thereto, of members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation with the Chief Justice of the High Court.

The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

The officers and other employees of the District Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

The administrative expenses of every District Authority, including the salaries, allowances and pensions payable to the Secretary, officers and other employee of the District Authority shall be defrayed out of the Consolidated Fund of the State.

All orders and decisions of the District Authority shall be authenticate by the Secretary or by any other officer of the District Authority duly authorised by the Chairman of that Authority.

No act or proceeding of a District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the District Authority.

(ii) Functions of District Authority

Section 10 says it shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority. Without prejudice to the generality of the functions referred to ,the District Authority may perform all or any of the following functions, namely:

(a) coordinate the activities of the Taluk Legal Services Committee and other legal services in the District;

(b) organise Lok Adalats within the District; and

(c) perform such other functions as the State Authority may fix by regulations.
(iii) Coordination Between District Authority Other Agencies

Section 11 says in the discharge of its functions under this act, the District Authority shall, wherever appropriate act in coordination with other governmental and non-governmental institutions, universities and others engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority or the State Authority may give to it in writing.

(f) Taluk Legal Services Committee

(i) Constitution of Taluk Legal Services Committee

Section 11A provides that the State Authority may constitute a Committee, to be called the Taluk Legal Services Committee, for each taluk or mandal or for group of taluks or mandals.

The Committee shall consist of -

(a) the "senior most judicial officer" operating within the jurisdiction of the Committee who shall be the ex-officio Chairman; and

(b) such number of other members, possessing such experience and qualifications, as may be prescribed by the State government, to be nominated by that Government in consultation with Chief Justice of the High Court.

The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions. The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court. The administrative expenses of the Committee shall be defrayed out of the District Legal Aid Fund by the District Authority.

(ii) Functions of Taluk Legal Services Committee

Section 11B provides that the Taluk Legal Services Committee may perform all or any of the following functions, namely:

(a) coordinate the activities of legal services in the taluk;

(b) organise Lok Adalats within the taluk; and
(c) perform such other functions as the District Authority may assign to it.

(g) **Lok Adalats**

Chapter VI dealt in Sections 19-22 talks about Lok Adalats.

(i) **Organisation of Lok Adalats**

Section 19 provides that every State Authority or District Authority or the Supreme Court Services Committee or every High Court Legal Services Committee or, as the case be, Taluk Legal Services Committee may organise Lok Adalats at such intervals - places and for exercising such jurisdiction and for such areas as it thinks fit. Every Lok Adalat organised for an area shall consist of such number of: (a) serving or retired judicial officers; and (b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

The experience and qualifications of other persons for Lok Adalats organised by the Supreme Court Legal Service Committee shall be such as maybe prescribed by the Central Government in consultation with the Chief Justice of India. The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of (i) any case pending before; or (ii) any matter which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organized provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

(ii) **Cognizance of Cases by Lok Adalats**

Section 20 provides where in case referred to in clause (i) of sub-section (5) of section 19.

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

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat.
Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties. Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination: Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity fair play and other legal principles. Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that LokAdalat shall advice the parties to seek remedy in a court. Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).

(iii) **Award of Lok Adalat**

Section 21 says every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner 7 of 1870. provided under the Court-fees Act, 1870. 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.

(iv) **Powers of Lok Adalat**

Section 22 says that the Lok Adalat "or Permanent Lok Adalat (Added by Legal Services
Authorities (Amendment) Act No. 37 of 2002 published in Gazette of In vide notification No. 40, dated 12-6-2002.) shall, for the purer holding any determination under this Act, 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 following matters, namely:

(a) the summoning and enforcing the attendance of any witness examining him on oath;
(b) the discovery and production of any document;
(c) the reception of evidence on affidavits;
(d) the requisitioning of any public record or document or copy of such record or document from any court or office; and
(e) such other matters as may be prescribed.

Without prejudice to the generality of the powers every Lok Adalat or Permanent Lok Adalat shall have the requisite power to specify its own procedure for the determination of any dispute coming before it. All proceedings before a Lok Adalat or Permanent Lok Adalat be deemed to be judicial proceedings within the meaning of sections 193, 219, 228 of the Indian Penal Code and every Lok Adalat shall be deemed to be a civil the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure 1973.

(h) Pre-Litigation Conciliation and Settlement

Chapter VIA (22A-22E) deals with Pre-Litigation Conciliation and Settlement.

(i) Definitions

Section 22A entails various definitions. It says in this Chapter and for the purpose of sections 22 and 23, unless the context otherwise requires; (a) "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (1) of section 22B ; (b) "public utility service" means any

(i) transport service for the carriage of passengers or goods by road or water ; or
(ii) postal, telegraph or telephone service ; or
(iii) supply of power, light or water to the public by any establishment or system of public conservancy or sanitation ; or service in hospital or dispensary ; or insurance service. and includes any service which the Central Government or the State Government, the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this chapter.
(ii) Establishment of Permanent Lok Adalats

Section 22B says notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one more public utility services and for such areas as may be specified in the notification. Every Permanent Lok Adalat established for an area notified under sub section (1) shall consist of (a) a person who is, or has been, a district judge or additional distil judge or has held judicial office higher in rank than that of a district judge, shall be the Chairman of the Permanent Lok Adalat; and (b) two other persons having adequate experience in public utility service to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority, appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (b) shall be such as may be prescribed by the Central Government.

(iii) Cognizance of Cases by Permanent Lok Adalat

Section 22C provides that any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute. Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law. Provided further that the Permanent Lok Adalat shall not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees. Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority. After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

Where an application is made to a Permanent Lok adalat under subsection (1), it (a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application; (b) may require any party to the application to file additional statement before it at any stage of the
conciliation proceedings;
(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it. When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned. Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence decide the dispute.

(iv) Procedure of Permanent Lok Adalat

Section 22D says that the Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

(v) Finality of Award

Section 22E provides that every award of the Permanent Lok Adalat under this Act made on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

Every award of the Permanent Lok Adalat under this Act shall be to be a decree of a civil court. The award made by the Permanent Lok Adalat under this Act shall a majority of the persons
constituting the Permanent Lok Adalat. Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding. The Permanent Lok Adalat may transmit any award made by it to a court having local jurisdiction and such civil court shall execute the order as if it decree made by that court.

C. REVIEW

In India the quest for justice has been an ideal, Justice is a constitutional mandate. But we find that existing legal framework w.r.t. ADR is not sufficient. There are various provisions here and there.

Constitution of India is the grund-norm of this country; it contains provisions which indicate promotion of justice. Our Constitution reflects this aspiration in the Preamble itself, which speaks about justice in all its forms: social, economic and political. The Preamble secures to all the citizens of India - Justice-Social, economic, and political. Legal Justice is a part of social justice. In a country, which aims to protect the socio-economic and cultural rights of citizens, it is extremely important to quickly dispose the cases in India, as the Courts alone cannot handle the huge backlog of cases. This can be effectively achieved by applying the mechanisms of Alternative Dispute Resolution.

Article 21 requires that a person can be deprived of his liberty only in accordance with procedure established by law which should be a just, fair and reasonable procedure. A procedure cannot be reasonable, fair or just unless it ensures a speedy trial for determination of the guilt of person deprived of his liberty. The concepts of ADR like Lok Adalats etc. ensure speedy trial.

Article 39A obligates the State to secure that "the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". Thus promotion of justice is most important function of a state and ADR mechanisms helps in it. Hence much legislation like Arbitration and Conciliation Act 1996; Section 89 CPC; Legal Services Authority Act 1987 have been passed to promote justice.

There are provisions in the Code of Civil Procedure, 1908 which ensures settlement of disputes outside the courts.
Order X Rule 1A says after recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in subsection (1) of section 89. Rule 1B provides where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit. Rule 1C says where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.

In Part V (Special Proceedings) Section 89 provides for Settlement of disputes outside the Court. It says where it appears to the Court that there exist settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of settlement and refer the same for- (a) arbitration; (b) conciliation; (c) judicial settlement including settlement through lok Adalat; or (d) mediation. The provisions of clause 7 of the CPC (Amendment) Bill, 1999 are based on the recommendations made by Law Commission of India and Malimath Committee. It was suggested by Law Commission of India that Court may require attendance of any party to the suit or proceedings to appear in person with a view to arriving at an amicable settlement of dispute between the parties and make an attempt to settle the dispute between the parties amicably. Malimath Committee recommended that it should be made obligatory for the court to refer the dispute, after issues are framed, for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat.

The Statement of Objects and Reasons appended to the Bill also supports the above view." With a view to implement the 129th Report of the Law Commission of India and to make conciliation scheme effective, it is proposed to make it obligatory for the court to refer the dispute after the issues are framed for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat."

Hindu Marriage Act 1955 provides under Section 23(2) that 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 a reconciliation between the parties. Reconciliation is ensured in Section 23(3), which imposes a duty on the court to effect a conciliation between parties.
In Balwinder Kaur Case \(^{71}\) it was again strongly reiterated by Supreme Court that "it is the duty of court to make every endeavour to bring about reconciliation. Even when a petition for divorce by mutual consent is made, it is mandatory on the part of the court to make attempts at reconciliation".

The Industrial Dispute Act 1947, the main object of which is investigation and settlement of industrial disputes. With that object in view various authorities have been created by the Act. The adjudication of industrial disputes has at the first instance been kept out of the jurisdiction of the Municipal Courts so that efforts may be made for settlement of such disputes through some other agencies. The Works Committee, Conciliation Officer, Board of Conciliation and Courts of Inquiry endeavour to settle the difference before it may be adjudicated upon by the Labour Court or the Industrial Tribunal. They all aim at amicable settlement of the industrial dispute.

Section 10(1) provides that where the Appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time

(a) refer the dispute to a Board for promoting a settlement thereof or

(b) refer any matter appearing to be connected with or relevant to, the dispute to a court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, to a Labour Court for adjudication provided the dispute relates to any matter specified in the second schedule; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute (where it relates to any matter specified in the Second Schedule or Third Schedule), to a tribunal for adjudication:

Section 10(2) of the Act provides for compulsory reference of an industrial dispute by the Appropriate Government.

Section 10(3) of the Act provides that where an industrial dispute has been referred to Board, Labour Court, Tribunal or National Tribunal under Section 10 of the Act, the Appropriate Government may issue an order prohibiting the continuance of any strike or

lock-out in connection with such dispute which may be in existence on the date of reference.
Section 10 of the Act provides for reference of an industrial dispute by the Government either on its own or on an application having been made to it by the parties to the dispute. The arbitrator under Section 10 is appointed by the Government making such reference. But Section 10-A of the Act authorises the parties to a dispute themselves to choose their own arbitrator, including a Labour Court, Tribunal or National Tribunal.
The present Arbitration and Conciliation Act 1996 is based on model law drafted by United Nations Commission on International Trade Laws (UNCITRAL), both on domestic arbitration as well as international commercial arbitration, to provide uniformity and certainty to both categories of cases. Certain matters which are not arbitrable are - Suits for divorce, or restitution of conjugal rights, Taxation, Non-payment of admitted liability Criminal matters. The Salient features of 1996 Act are summarized below:
Arbitration Agreement - The foundation of arbitration is the arbitration agreement between the parties to submit to arbitration all are certain disputes which have arisen or which may arise between them. Thus, the provision of arbitration can be made at the time of entering the contract itself, so that if any dispute arises in future, the dispute can be referred to arbitrator as per the agreement. It is also possible to refer a dispute to arbitration after the dispute has arisen. Arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. The agreement must be in writing and must be signed by both parties. The arbitration agreement can be by exchange of letters, document, telex, telegram etc. [section 7].
Court must refer the matter to arbitration in some cases - If a party approaches court despite the arbitration agreement, the other party can raise objection. However, such objection must be raised before submitting his first statement on the substance of dispute. Such objection must be accompanied by the original arbitration agreement or its certified copy. On such application the judicial authority shall refer the parties to arbitration. Since the word used is “shall”, it is mandatory for judicial authority to refer the matter to arbitration. [section 8]. However, once first statement to court is already made by the opposite party, the matter has to continue in the court. Once an application is made by other party for referring the matter to arbitration, the arbitrator can continue with arbitration and even make an arbitral award.
Appointment Of Arbitrator - The parties can agree on a procedure for appointing the arbitrator or arbitrators. If they are unable to agree, each party will appoint one arbitrator and the two
appointed arbitrators will appoint the third arbitrator who will act as a presiding arbitrator. [section 11(3)]. If one of the party does not appoint an arbitrator within 30 days, or if two appointed arbitrators do not appoint third arbitrator within 30 days, the party can request Chief Justice to appoint an arbitrator. [section 11(4)]. The Chief Justice can authorise any person or institution to appoint an arbitrator. [Some High Courts have authorised District Judge to appoint an arbitrator]. In case of international commercial dispute, the application for appointment of arbitrator has to be made to Chief Justice of India. In case of other domestic disputes, application has to be made to Chief Justice of High Court within whose jurisdiction the parties are situated. [section 11(12)]

Challenge to Appointment of Arbitrator - An arbitrator is expected to be independent and impartial. If there are some circumstances due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment. [section 12(1)]. Appointment of Arbitrator can be challenged only if (a) Circumstances exist that give rise to justifiable doubts as to his independence or impartiality (b) He does not possess the qualifications agreed to by the parties. [section 12(3)]. Appointment of arbitrator cannot be challenged on any other ground. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the proceedings can continue and the arbitrator can make the arbitral award. However, in such case, application for setting aside arbitral award can be made to Court. If the court agrees to the challenge, the arbitral award can be set aside. [section 13(6)]. Thus, even if the arbitrator does not accept the challenge to his appointment, the other party cannot stall further arbitration proceedings by rushing to court. The arbitration can continue and challenge can be made in Court only after arbitral award is made.

Conduct of Arbitral Proceedings - The Arbitral Tribunal should treat the parties equally and each party should be given full opportunity to present his case. [section 18]. The Arbitral Tribunal is not bound by Code of Civil Procedure, 1908 or Indian Evidence Act, 1872. [section 19(1)]. The parties to arbitration are free to agree on the procedure to be followed by the Arbitral Tribunal. If the parties do not agree to the procedure, the procedure will be as determined by the arbitral tribunal.

Law of Limitation Applicable - Limitation Act, 1963 is applicable. For this purpose, date on which the aggrieved party requests other party to refer the matter to arbitration shall be considered. If on that date, the claim is barred under Limitation Act, the arbitration cannot
continue. [section 43(2)]. If Arbitration award is set aside by Court, time spent in arbitration will be excluded for purpose of Limitation Act. [so that case in court or fresh arbitration can start].

Flexibility in Respect of Procedure, Place And Language - Arbitral Tribunal has full powers to decide the procedure to be followed, unless parties agree on the procedure to be followed. [section 19(3)]. The Tribunal also has powers to determine the admissibility, relevance, materiality and weight of any evidence. [section 19(4)]. Place of arbitration will be decided by mutual agreement. However if the parties do not agree to the place, the same will be decided by tribunal. [section 20]. Similarly, language to be used in arbitral proceedings can be mutually agreed. Otherwise, Arbitral Tribunal can decide. [section 22].

Submission Of Statement Of Claim And Defence - The claimant should submit statement of claims, points of issue and relief or remedy sought. The respondent shall state his defence in respect of these particulars. All relevant documents must be submitted. Such claim or defence can be amended or supplemented any time [section 23].

Hearings And Written Proceedings - After submission of documents and defence, unless the parties agree otherwise, the Arbitral Tribunal can decide whether there will be oral hearing or proceedings can be conducted on the basis of documents and other materials. However, if one of the parties requests, the hearing shall be oral. Sufficient advance notice of hearing should be given to both the parties. [section 24]. [Thus, unless one party requests, oral hearing is not compulsory].

Settlement During Arbitration - It is permissible for parties to arrive at mutual settlement even when arbitration is proceeding. In fact, even the Tribunal can make efforts to encourage mutual settlement. If parties settle the dispute by mutual agreement, the arbitration shall be terminated. However, if both parties and the Arbitral Tribunal agree, the settlement can be recorded in the form of an arbitral award on agreed terms. Such Arbitral Award shall have the same force as any other Arbitral Award. [section 30].

Arbitral Award - Decision of Arbitral Tribunal is termed as 'Arbitral Award'. Arbitrator can decide the dispute ex aequo et bono (In justice and in good faith) if both the parties expressly authorise him to do so. [section 28(2)]. The decision of Arbitral Tribunal will be by majority. The arbitral award shall be in writing and signed by the members of the tribunal. [section 29]. The award must be in writing and signed by the members of Arbitral Tribunal. [section 31(1)]. It must state the reasons for the award unless the parties have agreed that no reason for
the award is to be given. [section 31(3)]. The award should be dated and place where it is made should be mentioned. Copy of award should be given to each party. Tribunal can make interim award also. [section 31(6)].

Cost of Arbitration - Cost of arbitration means reasonable cost relating to fees and expenses of arbitrators and witnesses, legal fees and expenses, administration fees of the institution supervising the arbitration and other expenses in connection with arbitral proceedings. The tribunal can decide the cost and share of each party. [section 31(8)]. If the parties refuse to pay the costs, the Arbitral Tribunal may refuse to deliver its award. In such case, any party can approach Court. The Court will ask for deposit from the parties and on such deposit, the award will be delivered by the Tribunal. Then Court will decide the costs of arbitration and shall pay the same to Arbitrators. Balance, if any, will be refunded to the party. [section 39].

Intervention by Court - One of the major defects of earlier arbitration law was that the party could access court almost at every stage of arbitration - right from appointment of arbitrator to implementation of final award. Thus, the defending party could approach court at various stages and stall the proceedings. Now, approach to court has been drastically curtailed. In some cases, if an objection is raised by the party, the decision on that objection can be given by Arbitral Tribunal itself. After the decision, the arbitration proceedings are continued and the aggrieved party can approach Court only after Arbitral Award is made. Appeal to court is now only on restricted grounds. Of course, Tribunal cannot be given unlimited and uncontrolled powers and supervision of Courts cannot be totally eliminated.

Arbitration Act Has Over-Riding Effect - Section 5 of Act clarifies that notwithstanding anything contained in any other law for the time being in force, in matters governed by the Act, the judicial authority can intervene only as provided in this Act and not under any other Act.

Conciliation - Part III of the Act makes provision for conciliation proceedings. In conciliation proceedings, there is no agreement for arbitration. In fact, conciliation can be done even if there is arbitration agreement. The conciliator only brings parties together and tries to solve the dispute using his good offices. The conciliator has no authority to give any award. He only helps parties in arriving at a mutually accepted settlement. After such agreement they may draw and sign a written settlement agreement. It will be signed by the conciliator. However after the settlement agreement is signed by both the parties and the conciliator, it has the same
status and effect as if it is an arbitral award. Conciliation is the amicable settlement of disputes between the parties, with the help of a conciliator.

Offer For Conciliation - The conciliation proceedings can start when one of the parties makes a written request to other to conciliate, briefly identifying the dispute. The conciliation can start only if other party accepts in writing the invitation to conciliate. Unless there is written acceptance, conciliation cannot commence. If the other party does not reply within 30 days, the offer for conciliation can be treated as rejected. [Section 62] All matters of a civil nature or breach of contract or disputes of movable or immovable property can be referred to conciliation. However, matters of criminal nature, illegal transactions, matrimonial matters like divorce suit etc. cannot be referred to conciliation.

Enforcement of Foreign Awards - The foreign awards which can be enforced in India are as follows: - (a) New York convention award (made after 11th October, 1960) (b) Geneva convention award - made after 28th July, 1924, but before the concerned Government signed the New York convention. Since most of the countries have signed New York convention, normally, New York convention awards are enforceable in India. New York convention was drafted and kept in United Nations for signature of member countries on 21st December, 1958. Each country became party to the convention on the date on which it signed the convention.

Party which intends to enforce a foreign award has to produce the arbitral award and agreement of arbitration [original or its certified copy] to the district court having jurisdiction over the subject matter of the award. [Section 47]. The enforcement of award can be refused by court only in cases specified in section 48. Otherwise, the foreign award is enforceable through court as if it is a decree of the court. [Section 49]. If the court declines to enforce the arbitral award, appeal can be made to the court where appeal normally lies from the district court. However, no further appeal can be made (except appeal to Supreme Court) - (section 50). [Probably, the aggrieved party may be able to approach International Court of Justice, as the convention is an international convention, signed by many of the member countries]. One advantage of foreign award, according to foreign parties, is that Indian courts come into picture only at the time of implementation of award. The courts can refuse to implement the award only on limited grounds.

In Indian Contract Act there are some agreements which have been specifically declared as void by the Indian Contract Act. Even if such agreements satisfy the conditions of a valid contract, they are not enforceable. One of the agreements which has been declared void by
the Act Agreement in restraint of legal proceedings (sec. 28) Sec. 28 has amended by the Indian Contract (Amendment) Act 1997 states that an agreement absolutely restraining a party from enforcing his rights through a court of law, or an agreement which places a limit as to the time within which a right is void. Exception 1 says this section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred. Exception 2 provides that nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

The Legal Services Authorities Act, 1987 is 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 organize LokAdalats to ensure that the operation of the legal system promotes justice on a basis of equal opportunity. Constitutional 42nd Amendment Act of 1976 incorporated Article 39-A in the Constitution for providing free legal aid for any citizen by reason of economic or other disabilities. In the light of the above said amendment, the Government of India had, by a resolution dated 26th September, 1980 constituted a Committee known as 'Committee for Implementing Legal Aid Schemes' under the Chairmanship of Mr. Justice P.N. Bhagwati to monitor and implement legal aid programmes.

Under the 1987 Act at the top is National Legal Services Authority shortly known as Central Authority then at State level there is State Authority. The duty of the State Authority is to give effect to the policy and directions of the Central Authority. State Authority shall perform all or any of the following functions, namely: to give legal service to persons who satisfy the criteria laid down under this Act; to conduct Lok Adalats, including Lok Adalats for High Court cases; to undertake preventive and strategic legal aid programmes; and to perform such other functions as the State Authority may, in consultation with the Central Authority, fix by regulations. There is Taluk Legal Services Committee, for each taluk or mandal or for group of taluks or mandals. The functions of Taluk Legal Services Committee are coordinating the activities of legal services in the taluk; organise Lok Adalats within the taluk; and perform such other functions as the District Authority may direct. Section 19 provides that every State Authority or...
District Authority or the Supreme Court Services Committee or every High Court Legal Services Committee or, as the case be, Taluk Legal Services Committee may organise Lok Adalats at such intervals places and for exercising such jurisdiction and for such areas as it thinks fit. Section 21 says every award of the Lok Adalat shall be deemed to be a decree of a civil court. Chapter VIA (22A-22E) deal with Pre-Litigation Conciliation and Settlement. Section 22B says notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one more public utility services and for such areas as may be specified in the notification. “Public utility service” means any transport service for the carriage of passengers or goods by road or water; or postal, telegraph or telephone service; or supply of power, light or water to the public by any establishment or system of public conservancy or sanitation; or service in hospital or dispensary; or insurance service. and includes any service which the Central Government or the State Government, the case may be, may, in the public interest, by notification, declare to be a public utility service. Section 22C provides that any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law Provided further that the Permanent Lok Adalat shall not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

The researcher finds out that the legislative sensitivity towards providing a speedy and efficacious justice in India is mainly reflected in two enactments. The first one is the Arbitration and Conciliation Act, 1996 and the second one is the incorporation of section 89 in the traditional Civil Procedure Code (CPC). The adoption of the liberalised economic policy by India in 1991 has paved way for integration of Indian economy with global economy. This resulted in the enactment of the Arbitration and Conciliation Act, 1996 (new Act) by the legislature as India had to comply with well-accepted International norms. It superseded the obsolete and cumbersome Arbitration Act, 1940. The new Act has made radical and uplifting changes in the law of arbitration and has introduced new concepts like conciliation to curb delays and bring about speedier settlement of commercial disputes.