

Appendices

Appendix I

School of Gandhian Thought and Development Studies Mahatma Gandhi University, Kottayam

A Study on Alternative Dispute Resolution Practices in Kerala with special Reference to Kottayam District

Interview Schedule –I (Panchayat Members)

I Profile of the Respondents

1. Name
2. Panchayat
3. Gender Male Female
4. Phone No.
5. Age Group 25– 35 36 – 45 46- 55 >55
6. Occupation
Legal Practitioner Full Time Party Worker
Teacher/Retd teacher
House Wife Kudumbasree leader Others
7. Educational Qualifications
< SSLC SSLC Pre- Degree Graduation
Above Graduation
8. Monthly income of the family
< 3000 3000- 6000 6000-9000 9000-12000
> 12000
9. Which ward do you represent?
General SC/ST Reserved SC/ST Women Reserved
Women Reserved

10. Are you a member of a political party
CPI (M) CONG CPI KC (M) BJP
Others Independent
11. Do you hold any leadership position in your party? Yes
No
12. If Yes, Specify
13. How long have you been a member of the Panchayat?
5 yrs 10 yrs 15yrs >15yrs
14. Do you currently hold any position in the Panchayat
President Vice President Standing Comm.
Chairperson
Member

II Panchayat Member's role in Dispute Resolution

15. Do people frequently approach you to solve their disputes
Always Sometimes Never
16. Do you intervene in local conflicts as a mediator
Yes No
17. If Yes , Specify
18. Does the Panchayati Raj Act stipulate conflict management
as a duty of the Panchayat members
Yes No
19. Do you believe in the dispute resolution role of panchayat
members
Of course Neutral not at all
20. Consider it as a duty?
Yes No

21. Do the conflicting parties seek your mediation after having tried other means?

Yes No

22. If Yes Specify

III Types of Conflicts

23. What types of conflicts are found in your Panchayat?

Boundary disputes Family disputes Disputes relating to commons Development issues Financial disputes Land Ownership Disputes between Neighbours Disputes relating to SHGs and Kudumbasrees Others

24. Among which class of people do you get requests for mediation

Lower Class Lower Middle Class Middle Class Upper Middle Class

25. In what type of conflicts do you intervene more

Boundary disputes Family disputes Disputes relating to commons Development issues Financial disputes Land Ownership Disputes between Neighbours Disputes relating to SHGs and Kudumbasrees Others

26. Do you notice any particular type of conflict among members of certain identifiable communities by caste/ religion/ place of residence/ profession?

Yes No (if yes, elaborate)

27. Which types of conflicts are most easily resolvable, from your experiences

- Boundary disputes Family disputes Disputes relating to commons Development issues
Financial disputes Land Ownership Disputes between Neighbours Disputes relating to SHGs and Kudumbasrees Others Not applicable

28. Which type of conflicts appeared to be the most intractable?

- Boundary disputes Family disputes Disputes relating to commons Development issues
Financial disputes Land Ownership Disputes between Neighbours Disputes relating to SHGs and Kudumbasrees Not Applicable

.....
29. Do you employ strategies aim at saving the face of either of the parties?

30. Do you know any organisation that provides dispute resolution services outside the court system

- Yes No

31. How far do you work with religious leaders for settling certain disputes (like priests, caste leaders etc.)

- Always Sometimes Never

32. Do you associate with the local police for dispute settlement in your area

- Always Sometimes Never

IV Intervention of the conflicts

33. When do you intervene in conflicts?

- Only when both parties approach One Party
approaches Third party approaches
Intervene voluntarily

34. If intervene voluntarily, under what circumstances?

35. When conflicting parties approach you, what will be your initial emotional response?

- Irritation Fear Receptive mind
Pretends patience even if I m busy

36. In what stage of a conflict do you intervene?

Prioritise

- Beginning stage In the course of the conflict
After it has become intense When all other options (like
law courts) have found unsuccessful

37. Do you get referral cases from,

- Court Police station RDO

.....

V Dispute Resolution Process

38. On which outcome of the conflict resolution process do you concentrate

Prioritise

- Settlement personal relations between the parties
both nothing

39. What means do you employ to know the facts involved in a conflict

Prioritise also

Talk with the disputants Yes/No

Conversation with the neighbours and other reliable persons

Yes/No

Other means

40. Are there occasions when conflicting parties refuse to continue with mediation mid-way through the process?

Yes No

41. If yes, specify

42. What type of strategies do you adopt during the mediation process to strike agreements?

43. Do you change your strategies when the disputants become stubborn?

44. Do you provide enough space for the conflicting parties to clarify their position?

45. Specify the intervention mechanism in realising the disputes?

Joint Sessions Meet the disputants separately

Both

46. How do the parties respond to your mediatory offer

Cooperate remain indifferent

47. List out the skills required for a mediator to hold joint sessions of the parties take place

48. Do you encourage face to face mediation by the parties
49. Do you use the representatives of the political parties or support persons as proxies in the mediation process.
50. List out the normal circumstances when the dispute resolution become difficult to achieve
51. Are there occasions when a conflict got aggravated due to your intervention
- Yes No
52. If Yes, narrate such case
53. Which site is usually selected for dispute resolution negotiations?
Prioritise it.
House of one of the parties House of a third party
Public location Your house Panchayat office
54. What criteria do you use for deciding on the location of site for negotiations
55. Do you encourage the parties to make written agreements as a part of conflict management process Yes No
56. If Yes, In what types of conflicts do you make the parties write agreements

57. Are agreements reached through some sort of pressure tactics (coercion) or through volition
58. Does the Panchayat summon the disputing parties by issuing notices
 Yes No
59. How do the parties respond when notices are issued to them
60. Has the Panchayat committee as a whole discussed any dispute?
61. Do you seek expert consultation when complicated dispute situation arise?
 Yes No
62. Is there any space for co-mediation or mediation by a panel?
63. What percentage of the disputes reaches the stage of settlement in your estimation?
 100 75- 100 50-75 25-50 1-25
64. In what percentage of the cases, the agreement still stands, in your estimation
 100 75- 100 50-75 25-50 1-25
65. Do you think that the disputants are on the whole satisfied with the process?

VI Women Members and Dispute Resolution

66. Do women members experience any difficulties in dispute management?
 Yes No
 If yes, Specify

67. Do women members seek the assistance of anybody in conflict management?

Yes No

If yes, Specify

68. Do women members have any advantage as far as conflict management is concerned

Yes No

69. If Yes, Specify

VII Capabilities and skills for Member as a Mediator

70. How do you ensure justice in your mediation?

71. Are you able to rise up above partisan considerations in conflict management?

Yes No

72. Which of the following qualities should a conflict intervener have

Impartiality/Neutrality Yes/No Patience

Yes/No

Sense of Justice and honesty Yes/No Acceptability

Yes/No

Capacity to negotiate Yes/No Legal Awareness

Yes/No

Pressure tactics Yes/No Threatening Yes/No

Preparedness to invest time Yes/No

Analysing capacity Yes/No

(to trace back history and impacts of disputes)

73. Do you share conflict resolution experiences with other members of the Panchayat?

VIII Training Need for Conflict Resolution

74. Have you read any manual relating to conflict management?

Yes No

75. Have you undergone any training in this area?

Yes No

76. What is your opinion about getting training in conflict resolution?

Highly Needed Needed Not Needed

77. What should be the nature of such training?

78. Are you interested in attending such a programme?

Very Much Favourable Not Favourable

IX Legal status to the Panchayat level conflict management

79. Do you favour the existing informal nature of dispute resolution process?

Very Much Favourable Not Favourable

80. What is your opinion about the idea of providing legal status to the conflict management of Panchayat members

81. Do you think that if more powers are given to Panchayat in mediation, more compliance will follow?

Yes No

82. What is your opinion about the developing of *conflict free Panchayats*

83. What preferred system of local dispute resolution do you suggest?

Panchayat level Court (an extension of existing judicial
system) Panchayat steering committee People's Court
(comprising of members, social workers, persons of known
integrity) Any other

X Socio-Political Capital and Dispute Resolution

84. As years go by, do you feel whether your ability to resolve disputes has increased?

Yes No

85. Do you have any experience in holding position in social/cultural/religious associations or institutions?

Yes No

86. If yes, How many associations?

87. Specify

88. Do you feel whether dispute resolution activities add to your political mileage? Yes No

89. Have you found involvement in dispute resolution to be of some advantage to you in your political career or in the better performance of your functions as a member?

Yes No

90. What lessons have you learnt on dispute resolution from your experience as a Panchayat member so far?

XI Case Study

91. Can you narrate a conflict that you managed most recently?

Appendix II

School of Gandhian Thought and Development Studies

Mahatma Gandhi University, Kottayam

**A Study on Alternative Dispute Resolution Practices of Kerala
with special reference to Kottayam District**

Interview Schedule – II

Panchayat

Ward

I Profile of the Respondents

1. Name
2. Sex : a) Male b) Female
3. Age Group a) 25 – 35 b) 36– 45 c) 46- 55 d) Above 55
4. Occupation
 - a) Govt. Servant b) Political Party Worker c) Pvt. Employee
 - d) Agricultural worker d) House Wife e) Others
5. Educational Qualifications
 - a) < SSLC b) SSLC c) Pre- Degree d) Graduation
 - e) Above Graduation
6. Monthly income of the family
 - a) < 3000 b) 3000- 6000 c) 6000-9000 d) 9000-12000
 - e) > 12000

II Attitude towards Alternative Dispute Resolution Strategies

7. What sort of interpersonal and inter-group conflict do you see and experience in your neighbourhood- list them in terms of their importance or frequency of occurrence.

8. How are those disputes resolved?
9. If you have a conflict with your neighbour, what do you do to sort it out?
 - a) Meet him directly
 - b) Meet one of his relatives
 - c) Identify a useful mediator
 - d) Court
 - e) No attempt to solve the dispute.
10. When you have conflict, do you tend to avoid it fearing its consequences or face it?
 - a) face it
 - b) tend to avoid it fearing its consequences
11. Do you think that going to court is an appropriate method of dispute settlement
 - a) Yes
 - b) No
 - c) No response
 - d) According to disputes concerned
12. Do you think that involving the local police in some disputes can help?
 - a) Yes
 - b) No
 - c) No response
 - d) to some extent
13. Do you think a Panchayat member is a useful person to rely on to sort out the dispute
 - a) Yes
 - b) No
 - c) No response
 - d) to some extent
14. Do you think that women members of Panchayat are equally skilled in dispute resolution?
15. Which types of conflict are most difficult to resolve?

Appendix III

Gram Panchayats in Kottayam District brought under the study

Kottayam Taluk

- 1) Thiruvvarppu
- 2) Meenadam
- 3) Vijayapuram
- 4) Kumaranalloor

Changanassery Taluk

- 5) Madappally
- 6) Kurichi
- 7) Thrikodithanam
- 8) Kangazha

Kanjirappally Taluk

- 9) Mundakkayam
- 10) Koruthode
- 11) Elikkulam
- 12) Manimala

Vaikom Taluk

- 13) Thalayazham
- 14) Kaduthuruthy
- 15) Udayanapuram
- 16) Mulakkulam

Meenachil Taluk

- 17) Melukavu
- 18) Poonjar Thekekara
- 19) Kadaplamattom
- 20) Uzhavur

Appendix IV

Government of India Ministry of Panchayati Raj

THE NYAYA PANCHAYATS BILL, 2009

ARRANGEMENT OF CLAUSES

CHAPTER I PRELIMINARY CLAUSES

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II NYAYA PANCHAYAT

3. Composition of a Nyaya Panchayat.
4. Qualification of Panchas.
5. Disqualification of Panchas.
6. Bar on hearing certain cases.
7. Resignation by a Panch.
8. Vacancy.

CHAPTER III NYAYA SAHAYAK AND CHOWKIDAR

9. Nyaya Sahayak.
10. Functions of Nyaya Sahayak.
11. Chowkidar

CHAPTER IV JURISDICTION, POWERS AND PROCEDURE OF NYAYA PANCHAYAT

12. Fundamental Duties of Nyaya Panchayat.
13. Jurisdiction of the Nyaya Panchayat.
14. Procedure and Powers of the Nyaya Panchayat
15. Fees or fines received by the Nyaya Panchayat
16. Fees for sittings
17. Civil Court not to have jurisdiction
18. Time limit for filing of complaints in criminal matters
19. Appearance in person or by representatives
20. Procedure to be followed in civil cases
21. Procedure to be followed in criminal cases

CHAPTER V
DISPUTE RESOLUTION

22. Nyaya Panchayat to attempt conciliation
23. Process of conciliation
24. Process for adjudication
25. Proceedings to be held in public
26. Language
27. Parties' agreement
28. Evidence and witnesses
29. Parties' opportunity to be heard
30. Parties' failure to appear
31. Settlement
32. Final decision
33. Compensation and maintenance
34. Penalty
35. Interest and costs
36. Appeals

CHAPTER VI
DISTRICT NYAYA PANCHAYAT APPELLATE AUTHORITY AND
OMBUDSMAN

37. Establishment of District Nyaya Panchayat Appellate Authority and Ombudsman
38. Composition and Functions of Panchayat Appellate Authority
39. Composition and Functions of Ombudsman.
40. Disqualifications of members of Panchayat Appellate Authority and Ombudsman
41. Procedure to be followed by Panchayat Appellate Authority and Ombudsman

CHAPTER VII
MISCELLANEOUS

42. Res judicata
43. Vexatious and frivolous claims
44. Lack of jurisdiction of Nyaya Panchayat
45. Concurrent jurisdiction
46. Reciprocity between Nyaya Panchayats
47. Transfer of case or suit to a Nyaya Panchayat by court of competent jurisdiction
48. Transfer of cases by and to the Nyaya Panchayat by the Presiding Authority

49. Inspection of the Nyaya Panchayat by the Presiding Authority and execution of orders of the Nyaya Panchayat.
50. Returns and reports
51. Power to make rules
52. Overriding effect to this Act over all other relevant laws
53. Nyaya Panchayat Pramukh, Panch, Nyaya Sahayak and Chowkidar to be public servants.
54. Protection of action taken in good faith
55. Power to remove difficulties

Provided that in the Scheduled Areas referred to in clause (1) of article 244 of the Constitution, it shall apply with such modifications and exceptions as have been provided in the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996):

Provided that the provisions of this Act shall not extend to the Tribal Areas referred to in clause (2) of article 244 of the Constitution:

Provided further that the provisions of this Act shall not extend to the States or areas specifically excluded from the purview of Part IX of the Constitution.

- (3) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint. Different dates may be appointed for different States and any reference to the commencement of this Act in any provision of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions

- (1) In this Act, unless the context otherwise requires:

- (a) “Business partner” shall include an association with any person or group of persons which may result in personal or pecuniary reward or satisfaction from any determination, decision, order of the Nyaya Panchayat;
- (b) “Complaint” for the purposes of Chapter VI of this Act, means a statement of allegation against a public servant or a Panchayat or Panchayats of misuse of any public office or misappropriation of funds or any deficiency in implementation of Central or State Government scheme or corruption or maladministration and includes any reference to any allegation in respect of which suo moto enquiry has been proposed or recommendation for enquiry has been made by the State Government or any authorized body;
- (c) “Chowkidar” means a Chowkidar appointed under sub-clause (1) of clause 11;

- (d) "District Nyaya Panchayat Appellate Authority" known as Panchayat Appellate Authority means a District level appellate authority established under sub-clause (1) of clause 37;
- (e) "Near relation" means a husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson, grand-daughter, maternal or paternal uncle or aunt, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law;
- (f) "Non- parties" include Non Governmental Organizations, Social Service Organizations and Community Based Organizations working towards securing justice for women, children and for weaker sections of society;
- (g) "Nyaya Manch" means a permanent public place as may be prescribed by the Nyaya Panchayat within the Nyaya Panchayat area notified for conducting proceedings of Nyaya Panchayat;
- (h) "Nyaya Panchayat" means a Nyaya Panchayat constituted under clause 3, and excludes any other Panchayat (by whatever name called) or mechanisms or traditional dispute resolution;
- (i) "Nyaya Panchayat area" means the territorial area of a Nyaya Panchayat as notified under sub-clause (1) of clause 3;
- (j) "Nyaya Panchayat Pramukh" means a Nyaya Panchayat Pramukh appointed under sub-clause (5) of clause 3;
- (k) "Nyaya Sahayak" means a Nyaya Sahyak appointed under sub-clause (1) of clause 9;
- (l) "Ombudsman" means any person or persons appointed under sub-clause (1) of clause 37;
- (m) "Panch" means a Panch of a Nyaya Panchayat elected under sub-clause (2) of clause 3;
- (n) "Presiding Authority" means the Panchayat Appellate Authority established by the State Government under sub-clause (1) of clause 37;

- (o) "Public Servant" for the purposes of sub-clause(2) of clause 13 and Chapter VI of this Act, means an employee or officer or an elected member of the Panchayat or Panchayats including its Chairperson or Deputy Chairperson and includes an employee or officer of any office or institution transferred to the Panchayat or Panchayats;
 - (p) "Selection Committee" means a committee established by the State Government under sub-clause (2) of clause 37;
 - (q) "State Government", in relation to a Union Territory, means the administrator thereof appointed under article 239 of the Constitution;
- (2) The words and expressions used and not defined in this Act but defined in article 243 of the Constitution shall have the meanings respectively assigned to them therein.

CHAPTER II

NYAYA PANCHAYAT

3. Composition of a Nyaya Panchayat

- (1) There shall be constituted a Nyaya Panchayat for every Village Panchayat area or a group of Village Panchayat areas depending on the population and area, as may be notified by the State Government.
- (2) Every Nyaya Panchayat shall consist of five Panchas who shall be elected by the voters enrolled in the voter's list of that Village Panchayat or group of Village Panchayats, in the manner to be prescribed by the State Government:

Provided that seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Nyaya Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that

Nyaya Panchayat as the population of the Scheduled Castes or, the Scheduled Tribes in the Nyaya Panchayat area bears to the total population of that area and such seats may be allotted by rotation, as prescribed by the State Government:

Provided that as nearly as may be, fifty percent of the total number of seats reserved for Scheduled Castes and the Scheduled Tribes shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes:

Provided that as nearly as may be, fifty percent of the total number of seats to be filled by direct election in every Nyaya Panchayat shall be reserved for women and such seats may be allotted by rotation, as prescribed by the State Government:

Provided that the legislature of a State may make provision for reservation of seats in the Nyaya Panchayat in favour of backward classes of citizens.

- (3) Every Nyaya Panchayat shall continue for five years from the date appointed for its first meeting and no longer and as far as practicable, elections to the Nyaya Panchayat shall be held along with the elections to the Village Panchayats concerned.

Provided that elections to constitute the Nyaya Panchayat shall be completed before the expiry of its duration specified.

Provided further that in case there are no persons contesting the elections for the post of Panchas, the Nyaya Panchayats shall be constituted in accordance with the rules prescribed by the State Government.

- (4) No Panch shall participate in any meetings or proceedings of a Panchayat at the Village, Intermediate or District level.
- (5) Every Panch shall hold the office of Nyaya Panchayat Pramukh for a period of one year, by rotation, on the basis of seniority by age. The eldest shall be elected in the first meeting of the Nyaya Panchayat as the first Nyaya Panchayat Pramukh.
- (6) Every dispute brought before the Nyaya Panchayat under the provisions of this Act, shall be heard and determined by a bench of the Nyaya Panchayat, consisting of the Nyaya Panchayat Pramukh and two Panchas selected from amongst the Panchas of the Nyaya Panchayat by rotation and two other persons not otherwise disqualified from being elected as a Panch from amongst a panel of names suggested by the parties to the dispute.

- (7) Offences against women and disputes relating to custody and maintenance of children and dependents including divorced spouses, brought before the Nyaya Panchayat under the provisions of this Act shall be heard and determined by a bench of the Nyaya Panchayat, consisting of the Nyaya Panchayat Pramukh and two elected women Panchas and two other persons not otherwise disqualified from being elected as a Panch from amongst a panel of names suggested by the parties to the dispute.

4. Qualifications of Panchas

Every person who is enrolled as voter in the Nyaya Panchayat area, shall, unless disqualified under this Act or any other law for the time being in force and who has attained 25 years of age shall be qualified to be elected as a Panch.

5. Disqualifications of Panchas

- (1) A person shall be disqualified from being elected and from being a Panch if,
- (a) he is so disqualified by or under any law for the time being in force for the purposes of election to the State Legislatures;
 - (b) he has been convicted of an offence and awarded imprisonment for a term exceeding six months;
 - (c) in an enquiry by the Presiding Authority he has been found at fault in the discharge of his duties by reason of misconduct, negligence or dereliction of duty or for refusing to perform any function expected of him in his capacity as a Panch or Nyaya Panchayat Pramukh:

Provided that no person shall be disqualified without being given a notice in writing of the cause and given sufficient time to present his case in person to the Presiding Authority:

Provided further that the Presiding Authority shall record reasons for his final decision.

- (2) A disqualified Panch shall be suspended immediately and shall not be eligible for re-election until the expiry of 5 years from the date of his disqualification.

- (3) The decision of the Presiding Authority on disqualification shall be final and binding.

6. Bar on hearing certain cases

- (1) No Panch shall be nominated to or participate in the proceedings of a Nyaya Panchayat bench or be involved in any manner with any proceeding before the Nyaya Panchayat where any party is either a near relation or a business partner.
- (2) Any decision of the Nyaya Panchayat in breach of the provisions of sub-clause (1) shall stand vitiated and a new bench shall be constituted to hear the matter afresh.
- (3) Notwithstanding anything contained in sub-clause (2), the parties to the dispute may accept any settlement for reasons to be fully recorded by the Nyaya Panchayat.

Government of India Ministry of Panchayati Raj

7. Resignation by a Panch

- (1) A Panch may resign from his office through a written notice, containing reasons for his resignation, addressed to the Nyaya Panchayat Pramukh.
- (2) A Nyaya Panchayat Pramukh may resign from his office through a written notice, containing reasons for his resignation, addressed to the Presiding Authority.
- (3) The notice of resignation shall take effect after the expiry of thirty days from the date thereof.
- (4) The Nyaya Panchayat Pramukh, or in the case of the resignation of the Nyaya Panchayat Pramukh, the Presiding Authority shall ensure that the resignation is not in any manner coerced or otherwise involuntarily rendered, before accepting the same

8. Vacancy

- (1) In the event of a vacancy arising by reason of a Panch's death, disqualification or resignation, an election shall be held within three months to fill in the vacancy so occurred, provided that at least one year remains in respect of the previous Panch's tenure.

- (2) Without prejudice to sub-clause (1), in cases where the tenure of any previous Panch is less than one year, a Panch from the adjoining Nyaya Panchayat may be co-opted to hold office for the length of the remaining term.
- (3) Vacancies arising in a reserved category shall be filled by persons belonging to the same category through elections.

CHAPTER III

NYAYA SAHAYAK AND CHOWKIDAR

9. Nyaya Sahayak

- (1) There shall be a Nyaya Sahayak in every Nyaya Panchayat to assist the Nyaya Panchayat in discharge of its duties.
- (2) Any person who has completed the age of 25 years, has the ability to read and write, is an enrolled voter of the Panchayat and who is ordinarily resident in the Nyaya Panchayat area shall be eligible for appointment as a Nyaya Sahayak in the Nyaya Panchayat.
- (3) The State Government may, by notification in the Official Gazette, make rules to provide for the appointment and other terms and conditions of employment of the Nyaya Sahayak.
- (4) Till such time the State Government appoints the Nyaya Sahayak, the Nyaya Panchayat shall appoint a person having the qualifications mentioned in sub-clause (2) as the Nyaya Sahayak in a manner as may be prescribed.

10. Functions of Nyaya Sahayak

- (1) The Nyaya Sahayak shall while performing his duties under the Act adhere and follow Part IV-A of the Constitution relating to Fundamental Duties.
- (2) The functions of the Nyaya Sahayak shall include:
 - i. maintenance of the records of the Nyaya Panchayat in proper order;
 - ii. placement of disputes before the Nyaya Panchayat;
 - iii. announcement of the dates of hearing, provision of copies of the records and undertaking of correspondence on

behalf of the Nyaya Panchayat, in accordance with the directives of the Nyaya Panchayat Pramukh;

- iv. recording of the proceedings of the Nyaya Panchayat, in such manner as the State Government may prescribe,
 - v. maintenance of records of all conciliations arrived at by the Nyaya Panchayat, with signatures of parties and the Panchas involved in dispute resolution;
 - vi. recording of compromises or settlements entered into before the Nyaya Panchayat and obtain signatures of parties and the Panchas involved as witnesses affirming the compromise or settlement;
 - vii. providing the Nyaya Panchayat, such legal or other information as may be required of him for dispute resolution; viii. to perform such other duties as may be legally enjoined upon him by the Nyaya Panchayat Pramukh from time-to time.
- (3) No Nyaya Sahayak shall represent or assist any of the parties to the dispute in any manner.

11. Chowkidar

- (1) There shall be a Chowkidar attached to every Nyaya Panchayat, appointed in a manner as may be prescribed by the State Government.
- (2) The functions of the Chowkidar shall include:
 - i. report to the Nyaya Panchayat Pramukh of any criminal offence committed;
 - ii. service of summons issued by the Nyaya Panchayat to any person to be examined;
 - iii. report to the appropriate authority of any violation of public peace and order;
 - iv. keep general watch on the area under the jurisdiction of Nyaya Panchayat;
 - v. to perform such other duties as may be legally enjoined upon him by the Nyaya Panchayat and the State Government from time-to time.

CHAPTER IV
JURISDICTION, POWERS AND PROCEDURE OF NYAYA
PANCHAYAT

12. Fundamental Duties of Nyaya Panchayats

- (1) All Panchas shall, on the assumption of office, affirm their faith and allegiance to the Constitution of India and in particular, shall adhere and follow Part IVA of the Constitution relating to Fundamental Duties.
- (2) It shall be the duty of the Panch to discharge the functions assigned under this law in a fair and judicious manner without fear or favour, affection or ill-will.
- (3) The Panch shall be vigilant in maintaining communal harmony and desist from taking any action which may directly or indirectly foment, provoke, promote, enhance, or sustain any disharmony.

13. Jurisdiction of the Nyaya Panchayat

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Code of Civil Procedures, 1908 (5 of 1908), the Provincial Small Cause Courts Act, 1887 (9 of 1887) or any other law for the time being in force and subject to the provisions of this Act, the Nyaya Panchayat shall have exclusive jurisdiction to hear and deal with cases, claims, issues, offences and proceedings arising within their geographical territory and shall have exclusive jurisdiction over the following civil and criminal matters.

(a) Civil jurisdiction: –

- (i) claims relating to recovery of debts and contractual monies not exceeding rupees twenty five thousand, and all proceedings arising with respect thereto, provided that the parties may agree in writing to waive the bar on the maximum value of a suit;
- (ii) disputes relating to property and physical boundaries, *except* those involving issues of law or title to land or any other right or interest in any immovable property or mortgages;

- (iii) all suits of partition, except where a complicated question of law is involved;
- (iv) claims for damages relating to grazing or trespass;
- (v) claims for recovery of movable property or cattle or for its value, including those where separate criminal proceedings have been instituted;
- (vi) claims for compensation for wrongfully taking or damaging movable property, including those where separate criminal proceedings have been instituted;
- (vii) disputes relating to custody and maintenance of children and dependants, including divorced spouses;
- (viii) any other matter covered by or falling under Schedule 11 of the Constitution;
- (ix) claims for rent of immovable property;
- (x) disputes relating to environmental pollution and public nuisance;
- (xi) settlement of consumer disputes and matters connected therewith, within the meaning and definition as provided under Section 2(1)(c) of the Consumer Protection Act, 1986 upto a limit of Rs. 1 Lakh and in the manner as prescribed under Sections 11,12, 13 and 14 of the Consumer Protection Act, 1986:

Provided that, unless otherwise provided in any law for the time being in force, the right to bring a claim in respect of any of the above instances should have accrued within three years prior to the claim being referred to the Nyaya Panchayat:

Provided further that, where the Nyaya Panchayat is of the view that, complicated question of law or title is involved, in a suit for partition the Nyaya Panchayat shall transfer such suit to the court of competent jurisdiction:

Provided further that the parties to a suit of the above description under clauses (ii) and (iii) may, by a written agreement, refer the suit to the Nyaya Panchayat for decision irrespective of the value of the suit and the bench shall, subject to such rules as may be

prescribed as to court-fees and other matters, have jurisdiction to hear and determine the said suit under this Act:

Provided further that the Nyaya Panchayat shall by a written agreement of the parties, have jurisdiction to hear and determine a suit of any description irrespective of the value of the suit subject to such rules as may be prescribed as to court-fees and other matters.

(b) Criminal Jurisdiction:-

- (i) compoundable offences (in which permission of court is not necessary) in terms of sub-section (1) of section 320 of the Code of Criminal Procedure, 1973, namely, sections 298, 323, 334, 341, 342, 352, 355, 358, 426, 427, 447, 448, 491, 497, 498, 500, 501, 502, 504, 506 and 508 of the Indian Penal Code, 1860.
- (ii) offences alleged to have been committed under sections 160, 172, 174, 175, 178 to 180, 269, 277, 279, 283, 285, 289, 290, 294, 323, 324, 334, 336, 341, 352, 357, 358, 374, 379, 403, 411, 426, 428, 430, 431, 447, 448, 504, 506, 509 and 510 of the Indian Penal Code, 1860 (No. XLV of 1860);
- (iii) offences under the Cattle Trespass Act, 1871, (No. 1 of 1871);
- (iv) offences under the Public Gambling Act, 1867 (No. III of 1867);
- (v) offences relating to treatment of women and children, including domestic violence, sexual harassment, humiliation and child labour under the relevant laws;
- (vi) any offence under this Act or any rule made hereunder;
- (vii) any other offence which the State Government may from time to time declare, by notification in the Official Gazette, as cognizable by a Nyaya Panchayat; and

(2) Additional jurisdiction:-

The Nyaya Panchayat shall investigate misuse of any public office or misappropriation of funds or any deficiency in implementation of Central or State Government scheme,

corruption or maladministration by any public servant, Panchayat or Panchayats in the Nyaya Panchayat area, on its own cognizance or upon information duly received by it, in the manner as prescribed by the State Government, record its observations thereon and refer it to the Ombudsman for making appropriate orders in the matter.

- (3) The Nyaya Panchayat shall have preventive jurisdiction in matters of public disharmony or causing communal tension.

14. Procedure and Powers of the Nyaya Panchayat

- (1) The Nyaya Panchayats shall follow persuasion, conciliation and mediation as means to resolve disputes.
- (2) Subject to the provisions of this Act and the rules made thereunder, the Nyaya Panchayat shall have powers to regulate its own procedure including the place at which it shall have its sittings. The Nyaya Panchayat shall not be bound by the procedure laid down by the Code of Criminal Procedure, 1973 (2 of 1974), or the Code of Civil Procedures, 1908 (5 of 1908), the Provincial Small Cause Courts Act, 1887 (9 of 1887) or any other law for the time being in force but shall be guided by the principles of natural justice.
- (3) If, either before or after the commencement of a proceeding, the Nyaya Panchayat Pramukh is precluded from attending such proceeding by reason of personal interest, ill-health or absence, then the Presiding Authority may appoint another Panch as the Nyaya Panchayat Pramukh for the duration of the original Nyaya Panchayat Pramukh's incapacity.
- (4) The Nyaya Panchayat shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of any person and examining him on oath:

Provided that no women shall be compelled to appear in person before the Nyaya Panchayat, and she may be examined on commission in the manner prescribed;

- (b) requiring the discovery and production of documents or other records;
 - (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examination of witnesses or documents;
 - (e) reviewing its decisions;
 - (f) dismissing an application in situations where the applicant does not appear at a due date, provided the Nyaya Panchayat Pramukh may dismiss for good reasons any proceeding for default or deciding it *ex parte*;
 - (g) any other matter which may be prescribed by the State Government.
- (5) Every proceeding before the Nyaya Panchayat shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and it shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
- (6) The Nyaya Panchayat shall not inflict a sentence of imprisonment whether substantively or in default of payment of fine.

15. Fees or fines received by the Nyaya Panchayat

All amounts realised through the imposition of any fees, fines or compensation which are due to the Nyaya Panchayat, shall be deposited into the Gram Panchayat Fund where the Nyaya Panchayat is situated, in the name of the appropriate Nyaya Panchayat and entered into the ledger maintained by the Nyaya Sahayak for this purpose; and which shall be used for defraying the costs of the functioning of the Nyaya Panchayat which may include sitting fees, remuneration to the Nyaya Sahayak and other expenses.

16. Fees for sittings

- (1) The Panchas shall be entitled to such daily sitting fee and other expenses incurred by them during the discharge of their duties, as may be prescribed by the State Government.

- (2) A Nyaya Sahayak shall be paid a remuneration as may be prescribed by the State Government.

17. Civil Court not to have jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which Nyaya Panchayat is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

18. Time limit for filing of complaints in criminal matters

Notwithstanding anything contained in this Act, Nyaya Panchayat shall not entertain any complaint relating to criminal matter under this Act after the expiry of the period of one year from the date when the cause of complaint arises:

Provided that the Nyaya Panchayat may, for reasons to be recorded in writing, allow the complaint within an extended period of up to one year.

19. Appearance in person or by representative

Parties to disputes before the Nyaya Panchayat shall appear in person unless, a valid reason having been given, personal appearance is exempted and the Nyaya Panchayat Pramukh gives permission for a near relative or friend to appear instead:

Provided that no legal practitioner shall be allowed to appear in any proceeding before the Nyaya Panchayat.

20. Procedure to be followed in civil cases

- (1) The claimant shall specify the full value of his claim and any other relief sought therein.
- (2) Under this Act, every claim, suit, proceedings or applications for monetary or other relief shall be submitted to the Nyaya Panchayat Pramukh within the jurisdiction of the Nyaya Panchayat, by the claimant under a written memorandum and accompanied by the payment of a fee amounting to minimum of twenty rupees and maximum of 1% (one per cent) of the total principal claim, the details of which shall be

entered into an official record kept by the Nyaya Sahayak in such manner as may be prescribed by the State Government.

21. Procedure to be followed in criminal cases

- (1) Any criminal offence referred to in this Act occurring within the geographical jurisdiction of a Nyaya Panchayat shall be notified to the Nyaya Panchayat Pramukh of the area by Chowkidar or any person witnessing or having knowledge of the offence having been committed or by the Police authorities as soon as it is practicable to do so.
- (2) In cases where the defendant is under arrest and in the custody of the police, the Nyaya Panchayat shall be kept informed by the Police.
- (3) The Nyaya Panchayat Pramukh shall have details of the offence entered into the Nyaya Panchayat record, together with details of the complainant, bare facts of the offence and any directions given to the accused or the police.

CHAPTER V

DISPUTE RESOLUTION

22. Nyaya Panchayat to attempt conciliation

The Nyaya Panchayat shall, upon receiving a complaint from a party, announce a date for conciliation proceedings in the matter and request parties concerned to be present at the Nyaya Manch or in exceptional cases at a mutually agreed public place at a suitable time.

23. Process of conciliation

- (1) It shall be the duty of the Nyaya Panchayat Pramukh to attempt an amicable settlement of dispute between the parties through conciliation.
- (2) If parties agree to conciliation proceedings, the Nyaya Panchayat Pramukh shall give an opportunity to each such party to choose a conciliator from amongst voters resident in the area of the Nyaya Panchayat to represent them in the conciliation process.
- (3) The Nyaya Panchayat Pramukh shall nominate two Panchas to participate in the conciliation process.

- (4) The persons so selected shall together hear parties to the dispute and any member of the public who volunteers to assist the Panchayat in attempting conciliation.

24. Process for adjudication

- (1) The Nyaya Panchayat may, on failure of conciliation or on the behest of the aggrieved party take up a dispute for adjudication.
- (2) On the fixed date for hearing, the Nyaya Panchayat shall hear the parties and if needed call for evidence in support of their claim.
- (3) The Nyaya Panchayat shall, based upon evidence, decide the matter within three hearings or a period of two months of taking up of the matter whichever is earlier.

25. Proceedings to be held in public

The Nyaya Panchayat shall hold all its proceedings in public at the Nyaya Manch and at a time convenient to the parties to dispute, interested persons and the Panchas:

Provided that in exceptional cases where the proceedings cannot be held at the Nyaya Manch, the proceedings shall be held at a place convenient to the parties to dispute, interested parties and the Panchas and the said change in place of holding the Nyaya Panchayat proceedings shall be publicized one week in advance:

Provided that the Nyaya Panchayat Pramukh may allow any person to speak or give clarification before the Nyaya Panchayat which may assist in adjudication of the dispute or the controversy.

26. Language

The language used in proceedings before the Nyaya Panchayat shall be that which is commonly understood in the Nyaya Panchayat area and, in particular, by the parties.

27. Parties' agreement

The parties to any suit, proceedings, or dispute may enter into a special written agreement to refer any dispute of a civil nature to a particular Nyaya Panchayat though falling outside its jurisdiction, provided that prior permission has been obtained in writing from the Presiding Authority:

Provided that the Presiding Authority shall not delay the decision beyond a reasonable time not exceeding 30 days:

Provided further that no such agreement shall be contrary to any of the provisions contained in Part III, Part IV and Part IV-A of the Constitution.

28. Evidence and witnesses

- (1) The Nyaya Panchayat shall ascertain all relevant facts of the case and may make any reasonable order with regard to the production of documents or other evidence, including the tender of oral evidence by witnesses it considers necessary for the resolution of the dispute before it.
- (2) The Nyaya Panchayat may permit a witness to tender a signed statement by way of evidence, or for evidence to be given at a location other than the venue of the hearing if he is unable to attend on the prescribed date by reason of ill-health or any other cause acceptable to the Nyaya Panchayat.

29. Parties' opportunity to be heard

- (1) Every party to a dispute shall be given full opportunity to be heard, as well as for the calling of any evidence that is reasonable for the full and proper presentation and consideration of his case.
- (2) Where the Nyaya Panchayat is of the view that any aspect of the case is being pursued with a view to delaying the final resolution of the dispute, or to gain time for benefits or for purposes of coercion, it may proceed to decide the matter and direct the party delaying the case to pay upto rupees two hundred as penalty.

30. Parties' failure to appear

- (1) Upon the Claimant's failure to appear at the hearing, despite sufficient notice to him of the time and venue, the Nyaya Panchayat may, unless sufficient reason is given by the claimant, dismiss the claim without further notice, with or without costs:

Provided that if the claimant before the Nyaya Panchayat is a woman or Scheduled Caste or Scheduled Tribe, the Nyaya Panchayat shall fully satisfy itself about the reasons for the

absence of the same before dismissing the claim without further notice, with or without costs.

- (2) If the Respondent fails to appear at any hearing of the proceeding despite a summons having been served upon him, the Nyaya Panchayat may, unless sufficient reason is given by the respondent, dispose of the claim on the basis of the documents and evidence before them:

Provided that the Nyaya Panchayat shall satisfy itself about the reason of absence before the complaint is decided *ex parte* if either of the parties is a woman or Scheduled Caste or Scheduled Tribe.

31. Settlement

- (1) On a claim being made, the Nyaya Panchayat may invite parties to engage in informal discussions with a view to arriving at a settlement.
- (2) Wherever a settlement has been arrived at to the dispute, whether in full or in part, the Nyaya Panchayat may, upon a request by either party, make a formal order recording the terms of the settlement.
- (3) Where the Nyaya Panchayat is unable to obtain a settlement or reconciliation between the parties, the Nyaya Panchayat Pramukh may proceed with the adjudication.

32. Final decision

- (1) A Nyaya Panchayat shall pronounce its final decision by way of an order recording the reasons therein, which shall be binding on the parties to the dispute:

Provided that clerical or arithmetical mistake in any order or errors arising therein from any accidental slip or omission may at any time be corrected by the Nyaya Panchayat either on its own motion or on the application of any of the parties:

- (2) In the event of a disagreement between the Panchas, the majority decision shall prevail.
- (3) The dissenting Panch's view shall be noted in the order and in the record of the Nyaya Panchayat.

33. Compensation and maintenance

- (1) In cases other than those for a simple recovery of monies under the provisions of this Act, the Nyaya Panchayat may order compensation or maintenance to a claimant of the amount which it considers just having regard to all the circumstances of the case, including the conduct of the respondent, provided that same shall not exceed rupees twenty five thousand.
- (2) In suits relating to maintenance, the Nyaya Panchayat may make orders for maintenance by monthly installments at such rate as the Nyaya Panchayat deems fit.

34. Penalty

Upon the defendant being found guilty of an offence, the Nyaya Panchayat may make a preventative order or an order requiring a fine to be paid that the corresponding section of the appropriate legislation has charged:

Provided further that in such cases payment by reasonable installments shall be acceptable.

35. Interest and costs

The Nyaya Panchayat may exercise its discretion to award interest and costs in addition to the principal amount of the claim, and counter-claim, if any, on the following basis –

- (i) Interest payable at the rate fixed as at the date of the final decision by the local branch of any nationalised bank; and
- (ii) Costs to include the amount of the suit fees and any out of pocket expenses paid by the successful party, or for travel etc.

36. Appeals

- (1) An appeal against any order or decision of a bench of the Nyaya Panchayat shall be preferred within the period of thirty days after the date of the passing of such order or decision to the full bench of the Nyaya Panchayat and shall be heard by it in the prescribed manner.

- (2) All five Panchas along with two other persons not otherwise disqualified from being elected as a Panch from amongst a panel of names suggested by the parties to the dispute shall form the quorum for the purpose of constituting a full bench for hearing an appeal under sub-clause (1):

Provided that no Panch shall participate in the proceedings of the full bench of the Nyaya Panchayat or be involved in any manner with any proceeding before the full bench where any party is either a near relation or a business partner.

- (3) An appeal against any order or decision of a full bench of the Nyaya Panchayat shall be preferred within a period of 30 days after the date of the passing of such order or decision to a Panchayat Appellate Authority established under sub-clause(1) of clause 37.
- (4) The order under challenge in appeal shall be not given effect to till the appeal is finally disposed of.
- (5) An appeal against the order of the Nyaya Panchayat on any consumer dispute shall be preferred to the State Commission, established under section 9 of the Consumer Protection Act, 1986, of that State whose jurisdiction extends to the Nyaya Panchayat.

CHAPTER VI

DISTRICT NYAYA PANCHAYAT APPELLATE AUTHORITY AND OMBUDSMAN

37. Establishment of District Nyaya Panchayat Appellate Authority and Ombudsman.

Provided that no order of imprisonment shall be made in the event of the defendant's failure to pay the fine:

- (1) There shall be established, for the purposes of this Act, a District Nyaya Panchayat Appellate Authority to be known as "Panchayat Appellate Authority" and an authority known as "Ombudsman" by the State Government, on the recommendation of the Selection Committee, in each district of the State by notification.

- (2) Every appointment under sub-clause (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following, namely:—
- (a) Judge of the High Court of the State nominated by the Chief Justice of the High Court -----
Chairperson
 - (b) Secretary, State Department of Personnel -----
Member
 - (c) Secretary, State Department of Law -----
Member
 - (d) Secretary, State Department of Tribal Affairs or
Social Welfare ----- Member
 - (e) Secretary, State Department of Panchayati Raj -----
Member Convenor

38. Composition and Functions of Panchayat Appellate Authority

- (1) Each Panchayat Appellate Authority shall consist of three members,—
- (a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;
 - (b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:—
 - (i) be not less than thirty-five years of age,
 - (ii) possess a bachelor's degree from a recognised university,
 - (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to law, public affairs or in administering democratic Local Self Government:
- (2) Every member of the Panchayat Appellate Authority shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years,

whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in sub-clause (1):

Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing qualifications mentioned in sub-clause(1) in relation to the category of the member who is required to be appointed.

Government of India Ministry of Panchayati Raj

- (3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the Panchayat Appellate Authority shall be such as may be prescribed by the State Government.
- (4) The Panchayat Appellate Authority shall perform the following functions:
 - (i) dispose of the appeals against any order or decision of a full bench of the Nyaya Panchayat;
 - (ii) enquire and pass decision on disqualification of Panchas or Nyaya Panchayat Pramukh;
 - (iii) ensure that resignation of the Nyaya Panchayat Pramukh is not coerced or otherwise involuntarily rendered before accepting the same;
 - (iv) appoint another Panch as the Nyaya Panchayat Pramukh, in case the Nyaya Panchayat Pramukh is precluded from attending the proceedings;
 - (v) permit the parties to enter into into a special written agreement to refer any dispute of a civil nature to a particular Nyaya Panchayat though falling outside its jurisdiction;
 - (vi) decided the question raised about the jurisdiction of Nyaya Panchayat;
 - (vii) transfer the case from one Nyaya Panchayat to another on its own or on the request of the Nyaya Panchayat;

- (viii) inspect, supervise and give directions to the Nyaya Panchayats in discharge of its adjudicatory functions;
 - (ix) to perform such other functions as may be assigned to it by the State Government from time-to time.
- (5) The Panchayat Appellate Authority shall, for disposal of the appeals, follow the procedure as may be prescribed by the State Government.
- (6) Every appeal against the orders of full bench of the Nyaya Panchayat shall be heard as expeditiously as possible and endeavour shall be made to decide the appeal within a period of 30 days from the date of receipt of appeal by either of the parties:
- Provided that no adjournment shall be ordinarily granted by the Panchayat Appellate Authority unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Panchayat Appellate Authority.
- (7) The Panchayat Appellate Authority may dispose of the appeal in the following manner, -
- (i) Award compensation or maintenance to the claimant in the amount which it considers just having regard to all the circumstances of the case.
 - (ii) A preventative order or an order requiring a fine to be paid under the corresponding section of the appropriate legislation has charged, provided that no order of imprisonment shall be made in the event of the defendant's failure to pay the fine.

39. Composition and Functions of Ombudsman

- (1) The State Government may appoint a person or persons as the Ombudsman, from among persons of eminent standing and impeccable integrity with at least twenty years of experience in public administration in accordance with the manner prescribed by the State Government.
- (2) No person who is a member of a political party shall be considered for appointment as Ombudsman.

- (3) Person or persons appointed as Ombudsman shall hold office for a term of 2years extendable by one year based on the performance appraisal to be made by the Selection Committee or till the incumbent attains the age of 65 years, whichever is earlier. There shall be no reappointment. A copy of the performance appraisal report shall be furnished to the State Government.

Provided that on unsatisfactory performance, the Ombudsman may be removed by the State Government on the recommendation of the Selection Committee.

- (4) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the Ombudsman shall be such as may be prescribed by the State Government.
- (5) The Ombudsman shall investigate and dispose of, according to the prescribed procedure:
- (i) any complaint filed before the Nyaya Panchayat on which findings are received from Nyaya Panchayat;
 - (ii) any allegation on a reference from State Government, or suo moto; regarding misuse of any public office or misappropriation of funds or any deficiency in implementation of Central or State Government scheme or corruption or maladministration by any public servant or Panchayat or Panchayats within the Nyaya Panchayat area.
- (6) The Ombudsman may consider and dispose of complaints on which findings are received from Nyaya Panchayat or suo moto or referred by the State Government in the following manner, -
- (i) Award compensation to a citizen in case of loss or grievance;
 - (ii) Order the recovery of loss caused to the Panchayat from the person responsible;
 - (iii) Order the supply of omission or rectification of defects due to inaction;

- (iv) Order the recovery of loss from the accused failing which, order realization through Revenue Recovery Proceedings;
 - (v) Order other necessary remedial measures considering the facts and circumstances of the case.
- (7) In any proceedings before the Ombudsman, if the facts reveal a case of illegal gratification, bribery or misappropriation and the Ombudsman is satisfied that the case is fit for further investigation by a criminal court, the same shall be referred by him to the authority competent to sanction criminal prosecution of the persons involved in the case. The competent authority on receipt on such case shall forward the case to appropriate authority for further action in accordance with law.
- (8) Where the Ombudsman finds that the procedure or practice regarding the administration of Panchayat gives room for complaint, it may give suggestions to the State Government or Panchayats relating to the measures for avoiding the recurrence of such complaint.

40. Disqualifications of members of Panchayat Appellate Authority and Ombudsman

A person shall be disqualified for appointment as a member and for continuing as a member, of the Panchayat Appellate Authority and Ombudsman if he—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government involves moral turpitude; or
- (b) is an un-discharged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

- (f) is or continues to be after appointment a member or office bearer of any political party;
- (g) is guilty of malfeasance, misfeasance or nonfeasance; or
- (h) has such other disqualifications as may be prescribed by the State Government;

41. Procedure to be followed by Panchayat Appellate Authority and Ombudsman

- (1) Where during the pendency of any proceeding before the Panchayat Appellate Authority or Ombudsman, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.
- (2) The Panchayat Appellate Authority and Ombudsman shall, for the purpose of any investigation or enquiry under this Act, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely: -
 - (a) summoning and enforcing the attendance of any witness and examining him on oath;
 - (b) requiring the discovery and production of any document or other records;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public records, or copy thereof from any court or office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) reviewing its decisions;
 - (g) recovery of sums due from the parties;
 - (h) dismissing a representation on default or deciding it ex parte; and
 - (i) any other matter which may be prescribed by the State Government.
- (3) Every proceeding before the Panchayat Appellate Authority and Ombudsman shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the

purposes of section 196 of the Indian Penal Code (45 of 1860), and the Panchayat Appellate Authority and Ombudsman shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

- (4) The Panchayat Appellate Authority and Ombudsman shall, subject to the provisions of this Act and the rules made there under, have power to regulate its own procedures, including fixing the time and place of sitting, that appears to be fair and proper. The proceedings before the District Authority and Ombudsman shall be summary in nature.
- (5) In any proceedings before the District Authority or Ombudsman, no legal practitioner will be permitted to represent any person, unless the Panchayat Appellate Authority or Ombudsman for reasons to be recorded in writing permits.
- (6) Any 'award' or 'order' passed by the Panchayat Appellate Authority or Ombudsman shall be final and binding on the parties. The award or order shall be in writing recording the reasons therein.
- (7) The Panchayat Appellate Authority and Ombudsman shall give an annual performance report to the State Government and the State Government shall lay it before the Legislative Assembly with an explanatory memorandum.

CHAPTER VII

MISCELLANEOUS

42. *Res judicata*

Where the subject-matter of a dispute between the same parties has previously been decided or disposed of in any manner, or is currently being processed, by a Nyaya Panchayat or court of competent jurisdiction, then no subsequent proceedings shall lie before another Nyaya Panchayat in respect of the same issue.

43. *Vexatious and frivolous claims*

If the Nyaya Panchayat is satisfied upon examination of the claimant and his evidence that the claim is vexatious, frivolous, false or made with a view to misleading the Nyaya Panchayat, it

may dismiss the claim with a fine not exceeding rupees five hundred.

44. Lack of jurisdiction of Nyaya Panchayat

- (1) Where a question has been raised about the jurisdiction of a Nyaya Panchayat, whether by the Panchas themselves or by one of the parties, the matter may be referred to the Presiding Authority.
- (2) The decision of the Presiding Authority on the appropriate Nyaya Panchayat to hear the case shall be final.

45. Concurrent jurisdiction

- (1) In the event that more than one Nyaya Panchayat is entitled to hear a case, whether civil or criminal, the Nyaya Panchayat first seized of the matter shall take precedence:

Provided that in cases of domestic violence or maintenance, the women shall have the right to choose the Nyaya Panchayat where the hearing shall be conducted.

46. Reciprocity between Nyaya Panchayats

Every Nyaya Panchayat shall take cognizance of and enforce orders of other Nyaya Panchayats brought to their attention for knowledge or action as if the subject matter pertains to its Nyaya Panchayat area.

47. Transfer of case or suit to a Nyaya Panchayat by court of competent jurisdiction

If at any stage of proceedings in a case or suit pending before a Magistrate or Munsif or a court of competent jurisdiction, it appears that the case or suit is one triable by a bench of the Nyaya Panchayat, the Chief/Additional/Sub-Divisional Judicial Magistrate, the Munsif or the court of competent jurisdiction, as the case may be, shall, at once transfer the case or suit to the Nyaya Panchayat having jurisdiction.

48. Transfer of cases by and to the Nyaya Panchayat by the Presiding Authority

The Presiding Authority on its own or on a request made by a Nyaya Panchayat may direct a case to be transferred from the jurisdiction of the applicant Nyaya Panchayat to any other Nyaya

Panchayat with prior intimation to the parties and such order shall be deemed to be operative for the Nyaya Panchayat to which the case is transferred.

49. Inspection of the Nyaya Panchayat by the Presiding Authority and execution of orders of the Nyaya Panchayat.

- (1) The Presiding Authority may inspect, supervise and give directions to the Nyaya Panchayat in the discharge of its adjudicatory functions.
- (2) If the Nyaya Panchayat is unable for any reason to execute a decree passed by it in any suit or case, the Executive Magistrate, so authorized, by District Magistrate shall be responsible for execution of the same.

50. Reports and Returns

- (1) The Nyaya Panchayat shall furnish returns and statements at such time and in such form and manner as may be prescribed by the State Government.
- (2) A copy of reports referred to in sub-clause (1) shall be laid, as soon as may be, before a Committee at the District level headed by the District Judge. The District Magistrate, Superintendent of Police and such other persons shall, as may be prescribed, be the members of the Committee. The Committee shall, as soon as may be, submit an overall review report to the State Government.

51. Power to make Rules

The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes and provisions of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this clause, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.

52. Overriding effect to this Act over all other relevant laws

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force in any State, or in any instrument having effect by virtue of any law other than this Act.

53. Nyaya Panchayat Pramukh, Panch, Nyaya Sahayak and Chowkidar to be Public Servants

The Nyaya Panchayat Pramukh, Panch, Nyaya Sahayak and Chowkidar of the Nyaya Panchayat shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

54. Protection of Action Taken in Good Faith

No suit, prosecution or other legal proceedings shall lie against the State Government, the Nyaya Panchayat or any Nyaya Panchayat Pramukh, Panch, Nyaya Sahayak or Chowkidar thereof for anything which is done in good faith or intended to be done under this Act or the rules made there under.

55. Power to Remove Difficulties

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary, for removing the difficulty:

Provided that no order shall be made under this clause after the expiry of the period of three years from the date of commencement of this Act.

- (2) Every order made under this clause, shall be laid, as soon as may be after it is made, before each House of Parliament.

Appendix V

CONSULTATION PAPER ON ADR AND MEDIATION RULES

Introduction

In the judgment of the Supreme Court of India in *Salem Bar Association vs. Union of India*, the Supreme Court has requested this committee to prepare draft model rules for Alternative Disputes Resolution (ADR) and also draft rules for mediation under section 89(2)(d) of the Code of Civil Procedure, 1908. Pursuant to the said judgment, we have prepared the following set of draft rules. They are in two parts – the first part consisting of the procedure to be followed by the parties and the Court in the matter of choosing the particular method of ADR. The second part consists of draft rules of mediation under section 89(2)(d) of the Code of Civil Procedure, 1908.

(Draft) Alternative Dispute Resolution and Mediation Rules, 2003

In exercise of the rule making power under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of section 89 of the said Code, the High Court of, is hereby issuing the following Rules:

Part I Alternative Dispute Resolution Rules Rule 1: Title:

These Rules in Part I shall be called the ‘Alternative Dispute Resolution Rules 2003’.

Rule 2: Procedure for directing parties to opt for alternative modes of settlement:

- (a) The Court shall, after recording admissions and denials at the first hearing of the suit under Rule 1 of Order X, and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, formulate the terms and settlement and give them to the parties for their observations under sub-section (1) of Section 89, to be furnished to the Court within fifteen days of the first hearing.

- (b) At the next hearing, which shall be not later than fifteen days of the first hearing, the Court shall reformulate the terms of a possible settlement and direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Rule 1A of Order X, in the manner stated hereunder,

Provided that the Court, in the exercise of such power, shall not refer any dispute to arbitration or to settlement through Lok Adalat or judicial settlement, under the Legal Services Authority Act, 1987, as envisaged under clauses (a) and (c) of sub-section (1) of sec. 89, without the written consent of all the parties to the suit.

Rule 3: Persons authorized to take decision for the Union of India, State Governments and others:

For the purpose of Rule 2, where one of the parties is the Union of India or the Government of a State or a Union Territory or a local authority or a Public Sector Undertaking or a statutory corporation or body or public authority, such parties shall be directed by the High Court to nominate a person or group of persons who will be authorized to take a final decision as the mode of Alternative Disputes Resolution it prefers to opt for and such decision shall be communicated to the concerned court within the period specified in these Rules by the said person or group of persons so authorized.

Rule 4: Court to give guidance to parties while giving direction to opt:

- (a) Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely:
- (i) that it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one of these modes of settlement rather than seek a trial on the disputes arising in the suit;

- (ii) that, where there is no relationship between the parties which requires to be preserved, it will be in the interests of the parties to seek reference of the matter to arbitration as envisaged in clause (a) of sub-section (1) of sec. 89.
- (iii) that, where there is a relationship between the parties which requires to be preserved, it will be in the interests of parties to seek reference of the matter to conciliation or mediation, as envisaged in clauses (b) or (d) of sub-section (1) of sec. 89.
Explanation: Disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved
- (iv) that, where parties are interested in a final settlement which may lead to a compromise, it will be in the interests of the parties to seek reference of the matter to judicial settlement including Lok Adalat as envisaged in clause (c) of sub-section (1) of section 89.
- (v) the difference between the different modes of settlement, namely, arbitration, conciliation, mediation and judicial settlement as explained below: 'Arbitration' means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1990), in so far as they refer to arbitration. 'Conciliation' means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they relate to conciliation, and in particular, in exercise of his powers under sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.

'Mediation' means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions

of the Mediation Rules in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties' own responsibility for making decisions which affect them.

'Settlement including Lok Adalat' means a final settlement by way of compromise before a Lok Adalat or before a suitable institution or person, which shall be deemed to be a settlement before a Lok Adalat by virtue of the Legal Services Authority Act, 1987 (39 of 1987).

Rule 5: Procedure for reference by the Court to the different modes of settlement:

- (a) Where all parties to the suit decide to exercise their option and to agree for settlement by arbitration, they shall apply to the Court, within fifteen days of the direction of the Court under clause (b) of Rule 2 and the Court shall, within fifteen days of the said application, refer the matter to arbitration and then the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act;
- (b) Where all the parties to the suit decide to exercise their option and to agree for settlement by the Lok Adalat, they shall apply to the Court, within fifteen days of the direction under clause (b) of Rule 2 and the Court shall, within fifteen days of the application, transfer the matter to the Lok Adalat under sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and then all the other provisions of that Act shall apply as if the proceedings were referred for settlement by Lok Adalat under the provisions of that Act;
- (c) Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the Court within fifteen days of the direction under clause (b) of Rule 2 and then the Court shall, within fifteen days of the application, transfer the matter to a suitable institution or person and such institution or person shall be deemed to be a

Lok Adalat and then all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the proceedings were referred for settlement under the provision of that Act;

- (d) Where all the parties are unable to opt or agree to refer the dispute to arbitration, or Lok Adalat, or the judicial settlement, within fifteen days of the direction of the Court under clause (b) of Rule 2, they shall consider if they could agree for reference to conciliation or mediation, within the same period.
- (e) (i) Where all the parties opt and agree for conciliation, they shall apply to the Court, within fifteen days of the direction under Rule 2 and the Court shall, within fifteen days of the application refer the matter to conciliation and then the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply, as if the proceeding were referred for settlement by way of conciliation under the provisions of that Act;
- (e) (ii) Where all the parties opt and agree for mediation, they shall apply to the Court, within fifteen days of the direction under Rule 2 and the Court shall, within fifteen days of the application, refer the matter to mediation and then the Mediation Rules, 2003 in Part II shall apply.
- (f) Where under clause (d), all the parties are not able to opt and agree for conciliation or mediation, one or more parties may apply to the Court within fifteen days of the direction under clause (b) of Rule 2, seeking settlement through conciliation or mediation, as the case may be, and in that event, the Court shall, within a further period of fifteen days issue notice to the other parties to respond to the application, and
 - (i) in case all the parties agree, the Court shall refer the matter to conciliation or mediation, as the case may be, as stated in clause (e);
 - (ii) in case all the parties do not agree and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties and that there is a relationship between the parties which has to be preserved, the Court shall

refer the matter to conciliation or mediation, as the case may be.

- (g) (i) Where none of the parties apply for reference either to arbitration, or Lok Adalat, or judicial settlement, or for conciliation or mediation, within fifteen days of the direction under clause (b) of Rule 2, the Court shall, within a further period of fifteen days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation. (ii) After hearing the parties or their representatives on the day so fixed, the Court shall, whether parties agree or not, and if there exist elements of the settlement which may be acceptable to the parties, refer the matter to: (A) conciliation, if the Court considers that the matter is fit for conciliation and then the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply, as if the proceedings referred for settlement by way of conciliation under the provisions of that Act; or (B) mediation, if the Court considers that the matter is fit for mediation and then the provisions of the Mediation Rules, 2003 in Part II shall apply.

Rule 6: Appearance before the Court upon failure of attempts to settle disputes by conciliation or judicial settlement or mediation:

- (1) Where a suit has been referred for settlement under one of the modes referred to in clause (b) to (d) of sub-section (2) of section 89 read with Rule 1A of Order X and clauses (b) to (g) of Rule 5 of these Rules and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back to the Court with a direction to the parties to appear before the Court on a specific date.
- (2) Upon the reference of the matter back to the Court, the Court shall proceed with the suit in accordance with law.

Rule 7: Training in alternative methods of resolution of disputes, and preparation of manual:

- (a) The High Court shall take steps to have training courses conducted in places where the High Court and the District Courts or Courts of equal status are located, by requesting

bodies recognized by the High Court or the Universities imparting legal education or retired Faculty Members or other persons who, according to the High Court are well-versed in the techniques of alternative methods of disputes and resolution, to conduct training courses for lawyers and judicial officers.

- (b)(i) The High Court shall nominate a committee of judges, faculty members including retired persons belonging to the above categories, senior members of the Bar, members of the Bar specially qualified in the techniques of alternative disputes resolution, for the purpose referred to in clause (a) and for the purpose of preparing a detailed manual of procedure for alternative dispute resolution to be used by the Courts in the State as well as by the arbitrators, members of the Lok Adalat, conciliators and mediators.
- (ii) The said manual shall describe the various methods of alternative dispute resolution, the manner in which any one of the said methods is to be opted for, the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of conciliators and mediators in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.
- (c) The High Court and the District Courts shall periodically conduct seminars and workshops on the subject of alternative dispute resolution procedures throughout the State or States over which the High Court has jurisdiction with a view to bring awareness of such procedures and to impart training to lawyers and judicial officers.
- (d) Persons who gain experience in the matter of alternative dispute resolution procedures, and in particular in regard to conciliation and mediation, shall be given preference for purposes of appointment in the matter of resolution of disputes by the said procedures.

Rule 8: Applicability to other proceedings:

The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the Family Courts Act (66 of 1984), while dealing with matrimonial, maintenance and child custody disputes.

PART II
(DRAFT) MEDIATION RULES

Rule 1: Title:

These Rules in Part II shall be called the Mediation Rules, 2003.

Rule 2: Appointment of mediator:

- (a) Parties to a suit may all agree on the name of the sole mediator for mediating between them.
- (b) Where, there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.
- (c) Where parties agree on a sole mediator under clause (a) or where parties nominate more than one mediator under clause (b), the mediator need not necessarily be from the panel of mediators referred to in Rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.
- (d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

Rule 3: Panel of mediators:

- (a) The High Court shall, for the purpose of appointing mediators between parties in suits filed on its original side, prepare a panel of mediators and publish the same on its Notice Board, within thirty days of the coming into force of these Rules, with copy to the Bar Association attached to the original side of the High Court.
- (b)(i) The Courts of the Principal District and Sessions Judge in each District or the Courts of the Principal Judge of the City Civil Court or Courts of equal status shall, for the purposes of appointing mediators to mediate between parties in suits filed on their original side, prepare a panel of mediators, within a period of sixty days of the commencement of these Rules, after obtaining the approval of the High Court to the names

included in the panel, and shall publish the same on their respective Notice Boards.

- (ii) Copies of the said panels referred to in clause (i) shall be forwarded to all the Courts of equivalent jurisdiction or Courts subordinate to the Courts referred to in sub-clause (i) and to the Bar associations attached to each of the Courts:
- (c) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.
- (d) The panel of names shall contain a detailed Annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.

Rule 4: Qualifications of persons to be empanelled under Rule 3:

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely:

- (a)(i) Retired Judges of the Supreme Court of India;
- (ii) Retired Judges of the High Courts;
- (iii) Retired District and Sessions Judges or retired Judges of the City Civil Court or Courts of equivalent status.
- (b) Legal practitioners with at least fifteen years standing at the Bar at the level of the Supreme Court or the High Court; or the District Courts or Courts of equivalent status.
- (c) Experts or other professionals with at least fifteen years standing; or retired senior bureaucrats or retired senior executives;
- (d) Institutions which are themselves experts in mediation and have been recognized as such by the High Court.

Rule 5: Disqualifications of persons:

The following persons shall be deemed to be disqualified for being empanelled as mediators:

- (i) any person who has been adjudged as insolvent or persons
- (a) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending, or

- (b) persons who have been convicted by a criminal court for any offence involving moral turpitude;
- (ii) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.
- (iii) any person who is interested or connected with the subject-matter of dispute or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- (iv) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings.
- (v) such other categories of persons as may be notified by the High Court.

Rule 6: Preference:

The Court shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

Rule 7: Duty of mediator to disclose certain facts:

- (a) When a person is approached in connection with his possible appointment as a mediator, he shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.
- (b) Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).

Rule 8: Cancellation of appointment:

Upon information furnished by the mediator under Rule 6 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a justifiable doubt

as to the mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator.

Rule 9: Removal or deletion from panel:

- (a) A person whose name is placed in the panel referred to in Rule 3 may be removed or his name be deleted from the said panel, by the Court which empanelled him, if:
 - (i) he resigns or withdraws his name from the panel for any reason;
 - (ii) he is declared insolvent by any Court or is declared of unsound mind;
 - (iii) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;
 - (iv) the Court which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deem fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel, provided that, before removing or deleting his name, under clause (iii) and
 - (iv) the Court shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

Rule 10: Procedure of mediation:

- (a) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- (b) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely:
 - (i) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present;
 - (ii) he shall hold the mediation at any convenient location agreeable to him and the parties, as he may determine;
 - (iii) he may conduct joint or separate meetings with the parties;

- (iv) each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties;
- (v) each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.
- (c) Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes

Rule 11: Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908:

The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, but shall be guided by principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

Rule 12: Non-attendance of parties at sessions or meetings on due dates:

- (a) The parties shall be present personally or through their counsel or power of attorney holders at the meetings or sessions notified by the mediator.
- (b) If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that a party is absenting himself before the mediator without sufficient reason, the Court may take action against the said party by imposition of costs or by taking action for contempt.
- (c) The parties not resident in India, may be represented by their counsel or power of attorney holders at the sessions or meetings.

Rule 13: Administrative assistance:

In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Rule 14: Offer of settlement by parties:

- (a) Any party to the suit may, 'without prejudice', offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.
- (b) Any party to the suit may make a, 'with prejudice' offer, to the other party at any stage of the proceedings, with notice to the mediator.

Rule 15: Role of mediator:

The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which effect them; he shall not impose any terms of settlement on the parties.

Rule 16: Parties alone responsible for taking decision:

The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

Rule 17: Representation of parties:

Parties may be present before the mediator personally or through their counsel or lawful power of attorney holders.

Rule 18: Time limit for completion of mediation:

On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo motu, or upon request by any of the parties, and upon

hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

Rule 19: Parties to act in good faith:

While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the disputes, if possible.

Rule 20: Confidentiality, disclosure and inadmissibility of information:

- (1) When a mediator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate, Provided that, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.
- (2) Receipt or perusal, or preparation of records, reports or other documents by the mediator, while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation.
- (3) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to:
 - (a) views expressed by a party in the course of the mediation proceedings;
 - (b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;
 - (c) proposals made or views expressed by the mediator;
 - (d) admission made by a party in the course of mediation proceedings;

- (e) the fact that a party had or had not indicated willingness to accept a proposal;
- (4) There shall be no stenographic or audio or video recording of the mediation proceedings.

Rule 21: Privacy:

Mediation sessions and meetings are private; only the concerned parties or their counsel or power of attorney holders can attend. Other persons may attend only with the permission of the parties and with the consent of the mediator.

Rule 22:Immunity:

No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

Rule 23: Communication between mediator and the Court:

- (a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in clauses (b) and (c) of this Rule.
- (b) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney.
- (c) Communication between the mediator and the Court shall be limited to communication by the mediator:
 - (i) with the Court about the failure of party to attend;
 - (ii) with the Court with the consent of the parties;
 - (iii) regarding his assessment that the case is not suited for settlement through mediation;
 - (iv) that the parties have settled the dispute or disputes.

Rule 24: Settlement Agreement:

- (1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsel have represented the parties, they shall attest the signature of their respective clients.
- (2) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.
- (3) Where no agreement is arrived at between the parties, before the time limit stated in Rule 22 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

Rule 25: Court to fix a date for recording settlement and passing decree:

- (1) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement.
- (2) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.
- (3) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement and shall include the terms of the said settlement in the judgment, while deciding the other issues.

Rule 26: Fee of mediator and costs:

- (1) At the time of referring the disputes to mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.
- (2) As far as possible, a consolidated sum may be fixed rather than for each session or meeting.

- (3) Where there are two mediators as in clause (b) of Rule 2, the Court shall fix the fee payable to the mediators which shall be shared equally by the two sets of parties.
- (4) The expense of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be born equally by the various contesting parties or as may be otherwise directed by the Court.
- (5) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.
- (6) The mediator may, before the commencement of mediation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation, as referred to in clause (3), including his fee. The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. The amount deposited towards costs shall be expended by the mediator by obtaining receipts and a statement of account shall be filed, by the mediator in the Court.
- (7) If any party or parties do not pay the amount referred to sub-rule (5), the Court shall, on the application of the mediator, or any party, issue appropriate directions to the concerned parties.
- (8) The expense of mediation including fee, if not paid by the parties, the Court shall, on the application of the mediator or parties, direct the concerned parties to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

Rule 27: Ethics to be followed by mediator:

The mediator shall:

- (1) follow and observe these Rules strictly and with due diligence;
- (2) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator;
- (3) uphold the integrity and fairness of the mediation process;

- (4) ensure that the parties involved in the mediation and fairly informed and have an adequate understanding of the procedural aspects of the process;
- (5) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- (6) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
- (7) avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- (8) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;
- (9) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- (10) recognize that mediation is based on principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;
- (11) maintain the reasonable expectations of the parties as to confidentiality;
- (12) refrain from promises or guarantees of results.

Rule 28: Transitory provisions:

Until a panel of arbitrators is prepared by the High Court and the District Court as stated in Rule 2, the Courts, referred to in Rule 2, may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to in Rule 2 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.

Appendix VI

MEDIATION AND CONCILIATION RULES, 2004

Rule 1 : Title.

These Rules shall be called the Mediation and Conciliation Rules, 2004.

Rule 2 : Appointment of mediator/conciliator.

(a) Parties to a suit or other proceeding may agree on the name of the sole mediator/conciliator for mediating between them.

(b) Where, there are two or more sets of parties and are unable to agree on a sole mediator/conciliator, the Court may ask each party to nominate the mediator/conciliator or may nominate/appoint the mediator/conciliator, as it deems fit.

(c) Where parties agree on a sole mediator/conciliator under clause (a) or where the mediator/conciliator is nominated/appointed by the court under clause (b), the mediator/conciliator need not necessarily be from the panel of mediators/conciliators referred to in Rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.

Rule 3 : Panel of mediators/conciliators.

(a) The High Court shall, for the purpose of appointing the mediator/conciliator between the parties in suits or proceedings, prepare a panel of the mediators/conciliators and put the same on the Notice Board within thirty days of coming into force of these Rules, with copy to the High Court Bar Association.

(b)

(i) The District & Sessions Judge shall, for the purpose of appointing the mediator/conciliator to mediate between the parties in the suits or proceedings prepare a panel of the mediators/conciliators within a period of thirty days of the commencement of these rules and shall submit the same to the High

Court for approval. On approval of the said panel by the High Court, with or without modification, which shall be done within thirty days of the submission of the panel by the District & Sessions Judge, the same shall be put on the Notice Board.

(ii) Copies of the said panel referred in clause (i) shall be forwarded to all the Subordinate Courts by the District & Sessions Judge and to the District Bar Associations.

(c) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

(d) The panel shall contain Annexure giving details of the qualifications of the mediators/conciliators and their professional or technical experience in different fields.

(e) The panel of mediators/conciliators appointed under Clause (a) and clause (b) (i) shall normally be for a period of three years from the date of appointment and further extension of the panel of mediators/conciliators or any mediator/conciliator shall be at the discretion of the High Court or the District & Sessions Judge with the prior approval of the High Court, as the case may be.

Rule 4 : Qualifications of persons to be empanelled under Rule 3.

The following persons may be enlisted in the panel of mediators/conciliators under Rule 3, namely

(a)

1. Retired Judges of the Supreme Court of India;
2. Retired Judges of the High Courts;
3. Retired District & Sessions Judges or retired Officers of Delhi Higher Judicial Service;
4. District & Sessions Judge or Officers of Delhi Higher Judicial Service.

(b) Legal practitioners with at least ten years standing at the Bar at the level of the Supreme Court or the High Court or the District Courts.

(c) Experts or other professionals with at least fifteen years standing.

- (d) Persons who are themselves experts in the mediation/conciliation.

Rule 5 : Disqualifications of persons.

The following persons shall be deemed to be disqualified for being empanelled as mediators/conciliators:

- (a) Any person who has been adjudged as insolvent or persons
 - (i) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending; or
 - (ii) persons who have been convicted by a criminal court for any offence involving moral turpitude.
- (b) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.
- (c) any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- (d) any legal practitioner who has or is appearing for any of the parties in the suit or in other proceedings(s).
- (e) such other categories of persons as may be notified by the High Court.

Rule 6: Addition to or deletion from panel.

The High Court or the District & Sessions Judge with prior approval of the High Court may in its/his discretion, from time to time, add or delete any person in the panel of mediators/conciliators.

Rule 7: Preference.

The Court shall, while nominating any person from the panel of mediators/conciliators referred to in Rule 3, consider his suitability for resolving the dispute(s) involved and shall give preference to those who have proven record of successful mediation/conciliation

or who have special qualification or experience in the mediation/conciliation.

Rule 8: Duty of mediator/conciliator to disclose certain facts.

- (a) When a person is approached in connection with his proposed appointment as mediator/conciliator, he shall disclose any circumstance likely to give rise to a reasonable doubt as to his independence or impartiality.
- (b) Every Mediator/conciliator shall from the time of his appointment and throughout continuance of the mediation/conciliation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in Clause (a).

Rule 9: Withdrawal of appointment.

Upon information furnished by the mediator/conciliator under Rule 8 or upon any other information received from the parties or other persons, if the Court, in which the suit or proceeding is pending, is satisfied, that the said information has raised a reasonable doubt as to the mediator/conciliator's independence or impartiality, it may withdraw the appointment and replace him by another mediator/conciliator.

Rule 10: Procedure of mediation/conciliation.

- (a) The parties may agree on the procedure to be followed by the mediator/conciliator in the conduct of the mediation/conciliation proceedings.
- (b) Where the parties do not agree on any particular procedure to be followed by the mediator/conciliator, the mediator/conciliator shall follow the procedure hereinafter mentioned, namely :
 - (i) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation/conciliation session, where all parties have to be present;
 - (ii) he shall hold the mediation/conciliation at the place prescribed by the High Court or the District & Sessions Judge or the place where the parties and the mediator/conciliator jointly agree;

- (iii) he may conduct joint or separate meetings with the parties;
 - (iv) each party shall, ten days before a session, provide to the mediator/conciliator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator/conciliator to understand the issue; such memoranda shall also be mutually exchanged between the parties. However, in suitable/appropriate cases, the period of ten days may be curtailed in the discretion of the mediator/conciliator;
 - (v) each party shall furnish to the mediator/conciliator such other Information as may be required by him in connection with the issues to be resolved.
- (c) Where there is more than one mediator/conciliator, the mediator/ conciliator nominated by each party may first confer with the party that nominated him and thereafter interact with the other mediator/conciliator, with a view to resolve the dispute(s).

Rule 11: Mediator/conciliator not bound by Indian Evidence Act, 1872 or Code of Civil Procedure, 1908.

The mediator/conciliator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute(s).

Rule 12 : Representation of parties.

The parties shall ordinarily be present personally or through constituted attorney at the sessions or meetings notified by the mediator/conciliator. However, they may be represented by the counsel with permission of the mediator/conciliator in such sessions or meetings.

The party not residing in India may be represented by the constituted attorney at the sessions or meetings. However, it may be represented by the counsel with permission of the mediator/conciliator in such sessions or meetings.

Rule 13: Consequences of non-attendance of parties at sessions or meetings on due dates.

If a party fails to attend a session or a meeting notified by the mediator/conciliator on account of deliberate or willful act, the other party or the mediator/conciliator can apply to the Court in which the suit or proceeding is pending, in that case Court may issue the appropriate directions having regard to the facts and circumstances of the case.

Rule 14 : Administrative assistance.

In order to facilitate the conduct of mediation/conciliation proceedings, the parties, or the mediator/conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Rule 15 : Offer of settlement by parties.

- (a) Any party to the suit may, 'without prejudice', offer a settlement to the other party at any stage of the proceedings, with notice to the mediator/conciliator.
- (b) Any party to the suit may make a, 'with prejudice' offer, to the other party at any stage of the proceedings, with notice to the mediator/conciliator.

Rule 16: Role of mediator/conciliator.

The mediator/conciliator shall attempt to facilitate voluntary resolution of the dispute(s) by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute(s), emphasizing that it is the responsibility of the parties to take decision which effect them; he shall not impose any terms of settlement on the parties.

Rule 17: Parties alone responsible for taking decision.

The parties shall be made to understand that the mediator/conciliator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator/conciliator give any assurance

that the mediation/conciliation will result in a settlement. The mediator/conciliator shall not impose any decision on the parties.

Rule 18: Time limit for completion of mediation/conciliation.

On the expiry of ninety days from the date fixed for the first appearance of the parties before the mediator/conciliator, the mediation/conciliation shall stand terminated, unless the Court, which referred the matter, either suo motu, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

Rule 19: Parties to act in good faith.

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute (s), if possible.

Rule 20: Confidentiality, disclosure and inadmissibility of information.

(a) When a mediator/conciliator receives factual information concerning the dispute(s) from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate.

Provided that, when a party gives information to the mediator/conciliator subject to a specific condition that it be kept confidential, the mediator/conciliator shall not disclose that information to the other party.

(b) Receipt or perusal, or preparation of records, reports or other documents by the mediator/conciliator, while serving in that capacity shall be confidential and the mediator/conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation/conciliation before any court of tribunal or any other authority or any person or group of persons.

(c) Parties shall maintain confidentiality in respect of events that transpired during the mediation/conciliation and shall not rely on or introduce the said information in other proceedings as to :

(i) views expressed by a party in the course of the mediation/conciliation proceedings;

(ii) documents obtained during the mediation/conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator/conciliator;

(iii) proposals made or views expressed by the mediator / conciliator.

(iv) admission made by a party in the course of mediation/conciliation proceedings;

(v) the fact that a party had or had not indicated willingness to accept a proposal;

(d) There shall be no audio or video recording of the mediation/conciliation proceedings.

(e) No statement of parties or the witnesses shall be recorded by the mediator/conciliator.

Rule 21: Privacy.

The Mediation/conciliation sessions or meetings would be conducted in privacy where the persons as mentioned in Rule 12 shall be entitled to represent parties. However, other persons may attend only with the permission of the parties and with the consent of the mediator/conciliator.

Rule 22 : Immunity.

No mediator/conciliator shall be held liable for anything bonafide done or omitted to be done by him during the mediation/conciliation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation/conciliation proceedings.

Rule 23 : Communication between mediator/conciliator and the Court.

(a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator/conciliator, there should be no

communication between the mediator/conciliator and the Court, except as stated in clauses (b) and (c) of this Rule.

(b) If any communication between the mediator/conciliator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or the constituted attorney or the counsel.

(c) Communication between the mediator/conciliator and the Court shall be limited to communication by the mediator/conciliator:

(i) with the Court about the failure of the party to attend;
(ii) with the Court about the consent of the parties;
(iii) regarding his assessment that the case is not suited for settlement through the mediation/conciliation; (iv) that the parties have settled the dispute(s).

Rule 24 : Settlement Agreement.

(a) Where an agreement is reached between the parties in regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the conciliator/mediator may obtain his signature also on the settlement agreement.

1. The agreement of the parties so signed shall be submitted to the mediator/conciliator who shall, with a covering letter signed by him, forward the same to the Court in which the suit or proceeding is pending.
2. Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the mediator/conciliator is of the view that no settlement is possible, he shall report the same to the Court in writing.

Rule 25: Court to fix a date for recording settlement and passing decree.

(a) On receipt of any settlement, the court shall fix a date of hearing normally within seven days but in any case not beyond a period of fourteen days. On such date of hearing, if the court is satisfied that the parties have settled their dispute(s), it shall pass a decree in accordance with terms thereof.

(b) If the settlement dispose of only certain issues arising in the suit or proceeding, on the basis of which any decree is passed as stated in Clause (a), the court shall proceed further to decide remaining issues.

Rule 26: Fee of mediator/conciliator and costs.

(a) At the time of referring the dispute(s) to the mediation/conciliation, the Court may, fix the fee of the mediator/conciliator.

(b) As far as possible, a consolidated sum may be fixed rather than for each session or meeting.

(c) Where there are two mediators/conciliators as in clause (b) of Rule 2, the Court shall fix the fee payable to the mediators/conciliators, which shall be shared equally by the two sets of parties.

(d) The expense of the mediation/conciliation including the fee of the mediator/conciliator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Court.

(e) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.

(f) The mediator/conciliator may, before the commencement of the mediation/conciliation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation/conciliation, as referred to in clause (d), including his fee. The remaining 60% shall be deposited with the mediator/conciliator, after the conclusion of the mediation/conciliation. The amount deposited towards costs shall be expended by the mediator/conciliator by obtaining receipts and a settlement of account shall be filed, by the mediator/conciliator in the Court.

(g) If any party or parties do not pay the amount referred to Clause (e), the Court shall, on the application of the mediator/conciliator, or any party, issue appropriate directions to the concerned parties.

(h) The expense of the mediation/conciliation including fee, if not paid by the parties, the Court shall, on the application of the mediator/conciliator or the parties, direct the concerned parties to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

Rule 27 : Ethics to be followed by mediator/conciliator.

The mediator/conciliator shall:

1. follow and observe these Rules strictly and with due diligence;
2. not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator/conciliator;
3. uphold the integrity and fairness of the mediation/conciliation process;

4. ensure that the parties involved in the mediation/conciliation and fairly informed and have an adequate understanding of the procedural aspects of the process;
5. satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
6. disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
7. avoid, while communicating with the parties, any impropriety or appearance of impropriety;
8. be faithful to the relationship of trust and confidentiality imposed in the office of mediator/conciliator;
9. conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
10. recognize that the mediation/conciliation is based on principles of self-determination by the parties and that the mediation/conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;
11. maintain the reasonable expectations of the parties as to confidentiality, refrain from promises or guarantees of results.

Rule 28 : Transitory provisions.

Until a panel of Mediators/Conciliators is prepared by the High Court and the District & Sessions Judge as stated in Rule 3, the Courts, may nominate a mediator/conciliator of their choice if the mediator/conciliator belongs to the various classes of persons referred to in Rule 4 and is duly qualified and is not disqualified, taking into account the suitability of the mediator/ conciliator for resolving the particular dispute(s).

BY ORDER OF THE COURT

Sd/-

(V.B. GUPTA)

REGISTRAR GENERAL

**(TO BE PUBLISHED IN PART IV OF DELHI GAZETTE EXTRAORDINARY)
HIGH COURT OF DELHI: NEW DELHI
NOTIFICATION**

No.158 /Rules/DHC

Dated :6th July, 2006

In exercise of the rule making power under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of Section 89 of the said Code and all other powers enabling it in this behalf, the High Court of Delhi hereby makes the following amendment in Rule 1 of the Mediation and Conciliation Rules, 2004, which were notified vide Notification No.171/Rules/Delhi High Court dated 11th August, 2005, in Delhi Gazette Extraordinary Part IV No.120 (N.C.T.D No.478) dated 11th August, 2005. In Rule 1 after title the following be added:-

“The Rules will apply to all mediation and conciliation connected with any suit or other proceeding pending in the High Court of Delhi or in any court subordinate to the High Court of Delhi. The mediation in respect of any suit or proceeding pending before the High Court of Delhi or any other Court or Tribunal may be referred to the Delhi High Court Mediation & Conciliation Centre or any other Mediation Centre set up by Legal Services Authorities. Upon such a reference being made to Delhi High Court Mediation & Conciliation Centre, the same will be governed by the Charter of the Delhi High Court Mediation & Conciliation Centre and to those mediation proceedings, the present Rules will apply mutatis mutandi.”

BY ORDER OF THE COURT

(A.K. PATHAK)

REGISTRAR GENERAL