"Your help is enough to destroy me. Sky need not to bother for my destruction"
CH-2: ALTERNATIVE SETTLEMENT MECHANISM

1. INTRODUCTION:

The lexicon Webster Dictionary defines alternative as a choice between two things, so that if one is taken the other must be left; a possibility of one of two things so that if one thing is false the other must be true.

The Yale Law Journal defines it as "an alternative" or alternative course of action is one among two or more possibilities, the doing of which will exclude doing any of the others, i.e. one can do one alternative or another, until a choice is made, however, one has alternatives, i.e. has more than one option.

In dispute settlements where a person has the option to go to the court or get the matter resolved by negotiation or any other means it is alternative to the court.

2. HISTORICAL DEVELOPMENT AND ALTERNATIVES:

India is a place where history is witness of several invasions and the settlement of different tribes and clans having the values of their own. From
early known history\(^2\) of India and down to the 20\(^{th}\) century; Persians (558 BC), Yavanas (522 BC), Macedonians (327 BC), Hunas, Mohd. Bin Qasim (712 AD), Mehmood Ghaznavi (1000-1027), Shahbuddin Ghori (1192), Timur (1398), Baber (1526), Portuguese, Dutch, Nadir Shah (1739), Britishers (1757), Ahmad Shah Abdali (1761), and others attacked India. A large number of their army-men and nobles settled over this territory with their separate culture. Apart from this, there is a long list of persons who founded their own religions. Manu and others (Hinduism), Mahavir Swamy (Jainism), Gautam Budha (Buddhism), Kabir (Kabir Panthi), Akbar (Din-I-Illahi) and Guru Nanak (Sikhism) which is followed in India. Thus in this way this country has a composite of culture. The rulers tried to harmonise the law in such a way that the subjects may not feel aggrieved. The persons also mixed up with the existing culture but not to the extent of leaving their own. They maintained their identity. Consequently there was alternative remedy. Even today the village folk play an important role in this matter.

In ancient India the *Sabha* or village people assembly of the *vedic* age probably functioned as a popular court. The *Arthashastra* polity was a highly centralized one but it left a number of cases to be decided by unofficial courts. Disputes about the boundaries were to be settled by the elderly persons\(^3\). Cases concerning the affairs of temples, Brahmanas, ascetics, women, minor, old and handicappers were also to be decided by *Dharamshastra* or unofficial jurists. In the later period, this *Sabha*, as Dr. P. Saran Sharma is also of the opinion, was transplanted into *Darbar*. These

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1 The Lexicon Webster Dictionary 5th ed.
2 History and Culture of Indian people,( Bombay: Bhartiya Vidya Bhawan, 1990), P-39
3 *Arthashastra*, III/20
Sabhas were 1st mentioned in *Yajnavalkya Smirti. Yajna valkya* and *Narada Smirtis*, mentioned four types of popular courts, *Kul, Sreni, Puja* and *Gun*. Vijnaneswar described them as agencies of adjudication of other than the official one. The *Kul* court was informal body of family elders or alternatively it may have been a court, taking cognizance of quarrels arising in family units of ten, twenty or forty villages. When the effort at family arbitration failed, the matter was taken to the *Sreni* court. The term *Sreni* was used to denote the courts of guilds, a prominent feature of the commercial life in ancient India from 500 B.C. *Sreni* had their own executive committee of four or five members and settled the disputes among their members. These guild courts continued to function till 18th century in Maharashtra.

The *Puja* courts consisted of members belonging to different caste and professions but staying in the same village or town. The *Gram Vidhan* court of the *Arthshastra* would also be the forerunner of the *Puja* court. *Puja* court later known as *Gola* court in Maharashtra. In Karnataka, it was known as *Dharmshastra* during the 17th century A.D.

There was no limit to the jurisdiction of the popular court in civil matters. They could not, however, try criminal cases of a serious nature. Minor offences including accidental homicides etc. could, however be disposed off by them. There were hardly any rigid and complex procedural laws dealing with the disputes in these courts. Their decisions and judgements were based on commonsense. The fact that the *panchas* came from the very village had a salutory effect upon the litigations. They gave less importance to legal technicalities and laid much stress upon the amicable settlement of disputes.

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5 Ibid, p13
These popular courts or village panchayats or guild courts were appreciated because they encouraged the principle of self-government, reduced the burden of the central administration and helped the cause of justice.

In medieval period we come across several cases of kings like Shivaji, Rajaram and Shahu refusing to entertain any case at the 1st instance though pressed to do so. Muslim rulers also, like Ibrahim Lodi and Adil Shah of Bijapur used to do the same, even when one of the parties was of Muslim community and complained that there was a prejudice against him on that score6. Thus it was considered policy of the Governments that those popular village courts should flourish. The Governments refused to entertain any suit except in appeal against their decisions and it also gave effect to their decrees.

The local courts, as dispute resolution institutions, continued functioning with minor variations, till the advent of Muslim rule in India. During the Muslim rule, the Royal courts existed in administrative centres but they did not produce a unified national legal system of the kind that developed in the West. The law made by the Muslim rulers did not penetrate into the villages. Throughout the Muslim rule, there was no direct judicial administrative system at the village level where most of the population lived. The disputes in villages and even in cities were not settled by Royal courts but the Adalats of the caste within which the disputes arose or the guilds and associations of traders and artisans. These tribunals were empowered to adjudicate in accordance with the custom or usage of the locality, caste trade or family. The law administered by the Panchayats or people's court was usually caste and tribal usage and the customary law of the land. However Muslim

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Ibid p.14

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rulers traditionally enjoyed and occasionally exercised a general power of supervision over popular courts.\(^7\)

The procedure followed by the people's courts was quite simple, systematic and primitive. There was no regular administration of justice, no certain means of filing a suit and fixed rule of proceeding after it had been filed. There was no hard and fast rule meant for administering justice for the subjects as a whole. Qazis were concerned more with the matters arising in the cities and towns and adjoining areas. Hindus were generally governed by their customs and the provision of Shastras, when a public trial of the accused person was deemed necessary. The Amil\(^8\) could order the people's court to be assembled. Many factors were taken into consideration for arriving at the truth after setting every item of the evidence adduced. Civil and Criminal disputes were decided by caste men or village elders and popular courts\(^9\) (in the form of caste\(^10\) or guild court) or by religious heads.

It may also be noted that there were many factors to the survival of popular courts. Some Royal courts were not within the easy reach of the people. They had the power to decide local disputes and acted as an effective instrument for administration of justice\(^11\). The people were also satisfied by the decisions of the popular courts and relieved the government to a very great extent of its judicial functions. The speedy decisions of cases and the absence of long and untreated legal proceedings were admired by the rulers. These people's courts, particularly the village court survived for a long time and

\(^8\) Amil means an official appointed by the government.
\(^10\) Ibid. 14th Law Commission Report Page 27.
\(^11\) Ibid.
existed even at the time of the commencement of the British rule in India. The whole edifice of 'Lok Adalat' that had been in vogue since ancient times crumbled under the British foreign yoke. During British rule, commencing from 1861 the judicial administration of the village by the agencies of Central
Government; extension of jurisdiction of modern civil and criminal courts with their adversary system of adjudication which was unknown and new to the village population; increase in the means of communication; progress of English education; new land revenue system; police organisation; migration of people from village to towns; growing spirit of individualism and certain other new developments, caused the decay of village panchayat system. But, again the alternatives, in independent India, is needed\textsuperscript{12} due to the following reasons.

3. CAUSES OF ALTERNATIVE REMEDY

3(1). ADVERSARY SYSTEM REACTIVE MOBILIZATION:

India has adversary system. It is the jurisprudential, says the Black's dictionary of law, network of laws, rules and procedures characterized by opposing parties who contend against each other for a result favourable to themselves. In such system, the judge acts as an independent magistrate rather

\textsuperscript{12} Bhargav, pp. 12-15.
than prosecutor\textsuperscript{13}. This system no doubt is a result of developed human society but it suffers from certain defects. It comes in the soft form for the rescue of the poor beings. Wherever the litigation is between 'haves' and 'have nots', the latter will suffer and the former will have undue advantage. That is why Justice Krishna lyyer says-

"From this angle, affirmative procedural action, a departure from "adversarism", becomes an obligation where public justice and the whole truth become the major concern of the judge."

The Indian legal system follows the common law model of reactive mobilization of the law instead of proactive one\textsuperscript{14}. The reactive mobilization is that system where the subjects are to initiate the legal proceeding. But in proactive mobilization, the state is to start the legal proceeding of its own. The action which affects the established norms that may be either person or property in broader sense must be coupled with the state's proactive mobilization. The masses who are financially weak and unaware of the law, will be at loss for non availability of proper legal aid. The idea of leisses fair has gone and the idea of welfare state has emerged. Fortunately the Indian constitution makes provision for a socialistic pattern of society\textsuperscript{15}.

So the laws that attack certain segments of the social structure have to be amended or abolished. It will be quite appropriate if it is said that radical agenda for change in the judicial system must be drawn up by a judicial

\textsuperscript{13} Black's, Dictionary of Law, 5\textsuperscript{th} edition.

\textsuperscript{14} Helen B. Kim Says "Our courts are based on an adversarial system that relies upon knowledgeable parties on both sides of the controversy to form, develop and present all relevant facts and legal arguments to the courts. The parties are not only assured the opportunity, but also bear the burden of doing so. Consequently our adversarial system may work unfairly... " (The Yale law Journal, vol.96: 1641, 1987, p.1644).

\textsuperscript{15} Preamble to the Constitution of India (amended up to date)
planning commission and a five year plan formulated with creative imagination geared to better performance, independence, modern management, introduction of high technology and fundamental reform in the adversary process and control over judicial process\textsuperscript{16}. However the Quza system which is followed by Imarate Sharia does not follow the above systems. The Qazi is not depended upon the litigants like judges of Indian Judiciary.

3(2). TIME TAKING PROCESS: 

It is said that justice delayed is justice denied. The Indian legal system is a bundle of delaying tactics. It would not be out of place if Cappeletti is quoted-

"Our judicial system has been aptly described as follows:

"Admirable though it may be, (it) is at once slow and costly. It is a finished product of great beauty but entails an immense sacrifice of time, money and talent\textsuperscript{17}".

The Indian legal system is considered as delaying system which is a fact. The delay is the result of several lackness of the legislative, executive, court itself and the bar. The legislature has failed to provide the limitation of time in litigation. The national and gazetted holidays also serve as hindrance in deciding the matters in time. There are holidays, which are in addition to the summer vacation of 45 days and winter vacation of 8 days.

3(2)i. THE EXECUTIVE CAUSED DELAYS:

The executive also plays a vital role in the delaying process in the Indian legal system. The appointment of the judges are made by the executive.

\textsuperscript{16} Justice V.R Krishna Iyer 'Justice at Cross Roads', P 118.

\textsuperscript{17} Ibid 145.
As per Shah Committee report from 1965 to 70 there were 799 days' delay in the appointment of the judges. The corresponding figure is-

for Bombay High Court- 454 1/2 days;
for Patna High Court- 694 days
for Delhi High Court- 450 days
for Punjab and Haryana High Court- 459 days
for Calcutta High Court- 390 1/2 days.

Whatever may be the cause of delay but the work suffers. Some commentators have said that it is due to misunderstanding between the executive and the chief justice, upon whose recommendation the appointment is made.

The 58th report of law commission says that all the persons having interest in this administration of justice are well aware with the burden of arrears. It says that the increasing number of judges is not enough but quality is needed as there in manipulation in the appointment

3(2)ii. MISMANAGEMENT OF COURT WORK:

The mismanagement of the court is one of the main causes of delay in deciding the cases and causing arrears. The Shah Committee points out that the courts to accumulate failed to give-

(i) proper notification to the cases which are ready;
(ii) provide priority for old cases as 1st come 1st serve basis, and
(iii) file together cases containing substantially similar points of law contributing to delay and arrears in the High Courts. The committee

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18 Ibid.
reports-

"We have been told that in the office of the High Courts manipulations, where cases could be held up from being disposed off are being made with the result that older cases which could be disposed off are held up and add to the backlog".

Judicial work load is increasing day by day. The appeal review and revisional jurisdiction increases the work load on Courts to a great extent. Another factor of work load and delay is the frequent use of the writs given under Articles 226. The 14th Law Commission Report has pointed out that the High Court have granted the interim relief too frequent. The Shah Committee report also comments over this problem and says that there is no clear guideline of the use of writ jurisdiction. The bench structure is also an important factor in delaying process.

Too much fluctuation in the bench structure disables the Court from availing specialist interest of individual justices in certain fields of law which might, if heeded facilitate expeditious handling of cases. Obviously, special aptitudes of judges should be borne in mind while forming the benches.

As per Shah Committee report the courts rosters are so arrange that a bench of judges breaks up three times in the course of a day. This is responsible for cases remaining half heard and that is to be taken as and when the bench is available, and if a fairly long period elapses as it does many times, the case has to be argued again from its inception.

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22 Shah Committee on High Courts Arrears, P. 83 (commenting upon this P. Chandrashekhar Rao in " the Arbitration and Conciliation Act 1996; A Commentary" p.53 Says the first part of arbitration Act 1996 restricts the courts to intervene in arbitral process.' This is to be particularly
The Law Commission in its 14th report says that cases are not disposed in time. Several adjournments are made. The witnesses as well as the parties face the problem, as they have to attend the case unheard.

3(2)iii. DELAY DUE TO BAR:

There is a concept that lawyer is a court officer who helps the court in the administration of justice. This concept now a days, seems obscure. The lawyers ordinarily engage themselves in more than one cases to be heard at the same time. Consequently the cases are passed unheard. Engagement in many cases make the lawyers to come without preparation it is now common phenomenon to read the case for the first time in the court in the way of argumentation. The court’s control over the lawyers is almost nil. The lawyers make lengthy arguments. The judgements are read verbatim from inception to final order.

The reorientation of the court management by chief justice is defied instead of cooperation from the bar. When the chief justice Satish Chandra of the Allahabad High Court initiated certain steps to manage more expeditions administration of justice, the Bar Association described those as measures to "massacre justice" and proceeded on strike lasting for about thirteen days in May 1980. The chief justice initiated several reforms, which threatened major aspects of the livelihood of lawyers. The rotation of benches was so determined that the pick their own bench at will was abolished. To combat the menace of stay orders, which took three to eight years for ultimate disposal,

welcomed having regard to the prevailing tendency of taking frequent recourse to courts as a delaying tactic."

24 Baxi : p.54.
the chief justice and his colleagues together bunched a large number of matters and began disposing them all through one decision involving similar or same legal contentions in numerous matters. Specialist benches were constituted; these also led expedition in disposal. This had the result that litigation designed to secure a stay order, protecting the interests of clients for fairly long periods of time, became less attractive. Criminal revision application which used to take three years began to be disposed of about three months, this result was achieved by the simple device of not allowing, save for exceptional reasons, lawyers to call for records from district courts which invariably took (and was often made to make) long time. The system of "Friday" adjournments inveterate in the Allahabad Bar was virtually rendered extinct by external anti-adjournment drives by the chief justice. Friday adjournments were freely available on production of illness slips the elongated weekend was used to solicit and attend to clients in the interior halls of the Uttar Pradesh.

The lawyers strike, extending even to the 1st two days of the vacation, could best be understood as their resistance to uprooting the traditions of Allahabad Bar by boldly assertive chief justice, unmindful of public relations with the 'leaders' of the Bar. But the unprincipled and even malicious propaganda accompanying the lawyer's protests, involving attacks (covert and overt) on the dignity and personality of the chief justice and brother justices must indeed have caused some demoralization among the bench. Interestingly apart from the media support (in the columns of The Hindustan Times) the confrontation received no attention from the All India Bar or even the judiciary and others who otherwise reiterate the virtues of

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25 Ibid.
streamlining judicial administration, avoiding arrests and of the survival of the people's confidence in the judicial system.

The civil justice committee (The Ramkin Committee) noted that there is a tendency in India to over prove essential allegations and there is further tendency to prove and over prove unessential allegations. Even more surprising is the cross examination which frequently extends over a period which is more than six times as long as is necessary to produce useful results.

The hearing of the cases are adjourned contrary to the rule of C.P.C.\textsuperscript{26} under Order xvii rule (2) (a) which says about day to day hearing. Even the amendment of 1976 against the adjournments has little effects upon the practice. The engagement of the lawyers and illness is not to be considered as a ground of adjournment. But all such type of load reducing rules are yet to come in the practice.

\textbf{3(3). REVENUE COLLECTING AGENCY:}

It is amazing that our welfare state provides the hospitals for free treatment to the persons who are physically afflicted, enacted the laws to provide the non polluted environment, started streams, canals for irrigation, provided lacs of wells, tube-wells, hand pumps, water-tanks, for proper arrangement of water. But where the persons for whom the above facilities are provided are aggrieved in the matter of their fundamental or other legal rights, are barred to make approach to the courts except on the payment of a heavy fee. The states of U.P & Bihar earned amount from courts fee from 1952-1955, reducing the expenses of the Courts\textsuperscript{27}.

\textsuperscript{26} Civil Procedure Code 1898.
\textsuperscript{27} For Detail Please see 14\textsuperscript{th} Law Commission Report, p.487-510.
Our legal system is developed by the colonial lords for their subjects. They didn't bother even taxing for providing the help to the wronged. After independence the system has retained the colonial system of imposition of court fee.

The 14<sup>th</sup> Report of the Law Commission shows that the amount taken by the litigants is not only enough to meet out the court's expenses but it is appropriated in the general revenue of the State. The imposition of the fee was condemned by Lord McCauley. He termed the preamble to the Bengal Regulation which imposed the court fees as "the most eminently absurd preamble that was ever drawn" he says, that the imposition of court fee neither makes the pleadings clearer nor the law plainer, nor the corrupt judge purer, nor the stupid judge wiser. It will, no doubt, drive away dishonest plaintiffs who cannot pay the fee. But it will also drive away the honest plaintiffs who are in the same situation<sup>28</sup>.

The fourteenth report of the Law Commission also appreciates the Macauley's observation. The fifty-fourth report of the Law Commission also showed its concern regarding court fee. The Krishna Iyer Committee<sup>29</sup> also observes:

"Some thing must be done, we venture to state to arrest the escalating vice of burdensome scales of court fee. That the state should not sell justice is an obvious proposition but the high rate of court fee now levied leaves no valid alibi is also obvious." The 14<sup>th</sup> report of Law Commission, the

<sup>28</sup>Ibid, also Baxi p. 54.
<sup>29</sup>Krishna Iyer Committee on Legal Aid.
practice of 2% in the Socialists Countries, and the small standard taking fee prevalent in many western countries make the Indian position indispensable and perilously near unconstitutional. If legal system is not to be undemocratically expensive, there is a strong case for reducing court fees and instituting suitors fund to meet the cost directed to be paid by a party because he is the loser but in the circumstances can not bear the burden^30^.

Krishna Iyer also writes in his book that perestroika of judicial reform, the provision for suitors fund, reduction and elimination of court fees and simplifying the rules regarding the preliminary stages in a litigation to facilitate easy take off, is necessary.

3(4). OLD AND OUTDATED LEGAL SYSTEM:

Justice Hegde^31^ in the off quoted aphoristic statement admonished that law is one generation behind public opinion and judges were two generations behind^32^.

The court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fullness of experience be found to serve another generation badly and which discards the old rule when it finds that another rule of law represents what should be according to the

^30^ Baxi p. 55  
^31^ Jennyson Ayuner's Field Says, "Mastering the Lawless Science of our Law,  
That code less myriad of precedent,  
That wilderness of single instances  
Through which a few, by will or fortune led,  
May beat a path way out of wealth and fame. " (learning the Law p. 67)  
^32^ Iyer p.117
established and settled judgement of society\textsuperscript{33}. But here the judges have got no new rule to replace the old one.

Law is what law does, so too justice. That is why even in America Roscoe Pound and later chief justice Burger wrote that "in the final third of the century, we are still trying to operate courts with fundamentally the same method, the same procedures and the same machinery (which) were not good enough in 1906. In the super market age, we are trying to operate the courts with cracker barrel corner grocer methods and equipment's vintage 1900\textsuperscript{34}". The law commission in its 14\textsuperscript{th} Report says that our present system of judicial administration is not in accordance with the genius of our country\textsuperscript{35}.

3(5). JUDICIARY IS NOT FREE:

In principle, the independence of judiciary is verbally accepted as valid but its violation is pathologically pervasive\textsuperscript{36}. The Judiciary is not free in India. The power of dismissal, punitive transfer works a command over the judges. The thinking of post retired happening makes the judges partial. The financial dependence of the lower courts makes them bound before the executive. Krishna Iyer says, "Survival after tenurial death is a speel of the elderly brethren. Survival after tenurial death is a speel of the executive with its vast reservoir of patronage, uses to purpose and the robed brotheren. Save the robust, succumb." Moreover, the judiciary as an institution, itself subjected to attack or is hijacked criticized, misrepresented, debunked, budgetarily

\textsuperscript{33} Ibid p. 148.
\textsuperscript{34} Ibid p. 121.
\textsuperscript{35} 14\textsuperscript{th} Law Commission Report p. 31.
\textsuperscript{36} Iyer p. 60.
humbled and in many innovative ways made to feel that it is in their interests to toe the line. Constitutional guarantees are muscled or menaced by parliamentary plurality and executive authority. Having neither the purse nor the sword, the judiciary yields unless the national bar and the mobilized expression of popular opinion within and without the country come to its aid unless the non-governmental organisations rouse international conscience against high handed aggression on the independence of the judiciary, and the legal fraternity battles for judge power, the war for free justice and liberty would be lost. It is not wise to advocate that judges are above the law. But a sort of new autonomy coupled with social accountability is the need of hour so that the executive and legislative pressure may not be there.

3(6). DEMAND OF CHANGE IN THE EXISTING SYSTEM:

There is demand of change in the legal system of India. In the words of Krishna Iyer, "the crisis in the judiciary cannot be tied over unless the country reassesses the whole process of justice, justices and justicing with democratic openness and constructive audit for change pre-stroika and glasnost are the panacea." Of course, this is a theme which needs elaboration on its own terms and not just a passing reference in the context of the work load of the judicial institutions. But it is hoped that even such a passing reference would illustrate that the crisis in the Indian legal system can not be handled just by tankering with outer peripheries of the justice system. The problem raised by arrears are problems whose scope transcends the court system also presents substantial opportunities for its reconstruction.

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Ibid. p. 61
Ibid., p.136
Baxi, p.83
There should be change in the Indian legal system, panchayati justice, parameters and problems, grass-roots justice without hierarchical emasculation by higher courts. There is need of non-judicial alternatives and popular participation.\(^{40}\)

One clear basis of differentiation is the presence of state power and authority (which is not omnipresent, witness for example the vissitudes of the "State action" doctrine in American constitutional law). This gives us two main types of legal system in any society. Those organized under the auspices of the state and those organized under the auspices of social groups other than the state. The state legal system, itself is a large bundle of hundreds of state legal system, simplified and abstracted provides a kind of reference group for the conceptualization of non-state legal system (NSLS). The NSLS in the society would have higher demographic presence than the SLS. It is possible at least to say that NSLS display the substantial variations in origins, development, structure, process, efficiency and viability.\(^{41}\)

Thus it is for vital importance of the proper functioning of the courts to the country. In the social welfare, land and tribunals, which administer them, will have a constantly growing role to play. So a serious endeavour is must to ensure the discharge of those functions efficiently, without harassing the witnesses. The parties should be provided cheap and speedy justice the least expenditure of their time.

For this purpose a N.G.O namely Imarate Sharia has started a non state legal system which is delivering justice with very less cost and time.\(^{42}\) It

\(^{40}\) Iyer, p. 125
\(^{41}\) Baxi, p.331
\(^{42}\) See chapter-7 infra for detail study
say that it's system is based on Islamic principle of justice, where justice is not sold.

4. CONSTITUTIONAL MANDATE FOR ALTERNATIVES:

The Constitution of India talks about legal aid Art. 39A says, "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice, are not denied to any citizen by reason of economic or other disabilities." 

Article 40 of the Indian constitution also talks about self-governance of the village panchayat so as to make that a unit of self governance. It may be considered as hint to provide alternatives of the self governing unit itself. But that doesn't cover the entire need except the litigations between fellow villagers. The legal aids committees, founded in different states and various rules guiding for the same, but it was felt that legal aid alone cannot provide justice. Prabha Bhargav says -

'It is (the Lok Adalat) born out of a belief that even if state supported programme of legal aid were able to provide legal assistance to every indigent client (which of course, is wishful thinking) that is not going to solve the problems of the poor, who do not have the staying power which litigation

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43 The Constitution of India, inserted by 44th Amendment Act.
inevitably involves nor can they expect equal justice in all stages of the complicated and technical procedures of the law. So the legal services Authorities Act, 1987 in its last two chapters has provided for the Lok Adalat and its details. The statement of objects and reasons of the Act has been described as under.

1. 'Article 39A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity and shall in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

2. With the object of providing free legal aid, Government had by a Resolution dated the 26th September 1980 appointed the 'Committee for Implementing Legal Aid Scheme' (CILAS) under the chairmanship of Mr. Justice P.N. Bhagawati (as he then was) to monitor and implement legal aid programmes on a uniform basis in all the States and Union territories. CILAS evolved a model scheme for legal aid programme applicable throughout the country by which several legal Aid & Advice Boards have been set up in the States and Union territories: CILAS is founded wholly by grants from the Central Government. The Government is accordingly concerned with the programme of legal aid as it is the implementation of a constitutional mandate. But on a review of the working of the CILAS, certain deficiencies have come to the fore. It is therefore felt that it will be desirable to constitute statutory

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45 The Constitution of India Art. 14, 15, 19, 22, 29, 30, 31A, 32B, 31C, 41, 43, 46 and part XVI and union list entries 77 and 78, concurrent list entry 2, 13, 20, 23, 24, 26 and state list entry 3, Cr. Sec. 204 (C.P.C. order XXXIV, XLIV).
legal service authorities at the National, State and District levels so as to provide for the effective monitoring of legalized programmes. The Act provides for the composition of such authorities and for their funding by means of grant from the Central Government and the State Governments. Power has also been given to the National Committee and the State Committees to supervise the effective implementation of legal aid schemes.

3. For some time now Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of arbitration and settlement between the parties, of a large number of cases expeditiously and with lessor costs. The institution of Lok Adalats is at present functioning as a voluntary and conciliatory agency with a statutory backing for its decisions. It has proved to be very popular in providing for a speedier system of administration of justice. In view of its growing popularity, there had been a demand for providing a statutory backing to this institution and the award given by Lok Adalats. It was felt that such a statutory support would not only reduce the burden of arrears of work in regular courts, but would also take justice to the doorsteps of the poor and the needy and make justice quicker and less expensive. \(^{46}\)

The Act got the constitutional mandate. The Gazette of India has referred this Act as the fulfillment of the direction contained in Art. 39A. \(^{47}\)

The Apex Court has also observed in *Associated Cement Coy Ltd.* \(^{48}\) that under our constitution, the judicial functions and powers of the state are primarily conferred in the ordinary courts. All disputes between

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\(^{48}\) AIR - 1965 S.C.1595.
citizens, and citizens and state are normally entrusted for adjudication to the hierarchy of courts recognized by the constitution. The state as a sovereign authority delegates its judicial functions and powers mainly to the courts established by the constitution but that does not affect the competence of the state, by appropriate measures, to transfer a part of its judicial powers and functions to Tribunals for adjudication upon special matters and disputes. Again the Supreme Court has held that the constitution of service tribunals may save the courts from the avalanche of writ petitions and appeals in service matters. These tribunals might be able to produce solutions who are not tied down to strict rules of evidence.

Thus the continuance of the alternative system and laws passed by the Parliament is the open evidence of the constitutional validity of the alternative remedies. Moreover the High Courts and the Apex Court in a catena of cases have recognised the validity of the alternative remedies. Last but not least, the insertion of Arts. 323a and 323b of newly inserted part XV A to the Constitution validates the alternatives.

5. PRACTICAL VIEW OF ALTERNATIVE:


\footnote{AIR 1980 S.C 2056.}

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the petitions which have been filed directly, by-passing the A.M.U. Act's\textsuperscript{50} alternatives, to the Allahabad High Court\textsuperscript{51}.

6. ARBITRATION AND CONCILIATION AS AN ALTERNATIVE:

The arbitration, as an alternative remedy for settlement of disputes is accepted all over the world. Arbitration, is 'a process for the decision of a conflict by persons other than government judicial officers\textsuperscript{52}. As per Black law dictionary\textsuperscript{53}," An arrangement for taking and abiding by the judgment of selected persons in some disputed matter, instead of carrying it to established tribunals of justice and is intended to avoid the formalities the delay, the expense and vexation of ordinary litigation\textsuperscript{54}. The Arbitration and Conciliation Act is passed in the year 1996. The preamble of the said act reads as under "AND WHEREAS" the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations?"

"AND WHEREAS it is expedient to make law respecting arbitration and conciliation taking into account the aforesaid Model Law and Rules".

\textsuperscript{50} Act XL of 1920.
\textsuperscript{53} Black's Dictionary Referring the Wauragam Mills incorporated textile workers union of America.
\textsuperscript{54} Black Dictionary as.
Thus the object of the Act is clear from its preamble that it is enacted for the fair and efficient settlement of dispute, and also for 'respecting arbitration'. The Arbitration and Conciliation Act of India says-

"Not with standing anything contained in any other law for the time being in-force in matters governed by this part, no judicial authority shall intervene except where so provided in this Part."

7. INTERNATIONAL VIEW ON ALTERNATIVES SETTLEMENT OF DISPUTES:

Under the French law, arbitration clauses must be in writing. But the arbitrator need not be actually appointed by the arbitration clause. The clause must either appoint an arbitrator or provide for the manner. By Article 1458 of the French Civil Procedure Code under which when ever a dispute is submitted to an Arbitral Tribunal under an arbitration agreement, the civil court must decline jurisdiction, unless the arbitration agreement is found to be void. Parties can resort to arbitration even if a suit is pending. The time limit of award is fix months but the parties may agree to extend it under Article 1456 of Civil Procedure. Here in India also the cases may be referred to alternative remedies i.e. Lok Adalats even those are pending in the Civil Courts. The legal Services Authorities Act 1985 contains this provision. In U.K. the arbitration act 1979 permits the judicial intervention in arbitral process but that is in stringent conditions and judicial review cannot be sought as a matter of right.

55 Act NO 26 of 1996. S.5. However the H.C under Article 226 of the constitution of India and the Supreme Court under Article 32 can intervene in the Arbitral process. The above section is in accordance with the UNCITRAL Model Law on Internation Commercial Arbitration which says

"In matters governed by this law, no court shall intervene except where so provided in this law."
In U.S the Supreme Court has held in *Mitsubishi Motors Corporation V. Soler Chryster-Plymouth Inc.* that an issue of United States Antitrust Law could be validly submitted to arbitration. Although the Antitrust Law deals with the things which includes cancellation of distributorship, change in distribution system, including breach of contract, molesting customers of competitor, use of lease etc.

Thus the Law, which is adopted by Republic of India due to its advantages and has been given the immunity from the intervention of the court, is very popular. In this regard various successful attempts have been made to devise the international procedure for arbitration. The most important of them are:

UNCITRAL,
The Indian Council of Arbitration,
The ICC Court of Arbitration,
The London Court of International Arbitration,
American arbitration,
The International Center for Settlement of Investment Disputes,
Arbitration in the socialist countries.

The United Nations Commissions on International Trade Law (UNCITRAL) is associated with United Nations Organisation. It does not provide arbitration facilities but has sponsored several measures which have made a notable contribution to the unification of the law of international arbitration.

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57 S.M. Onyar 'MRTP Law & Practice (Nagpur: Wadhawa And Co., 91) 2nd ed. p. 262-264.
58 Arbitration & Conciliation Act 1996.
7(1). UNCITRAL ARBITRATION:

United Nations Commission on International Trade Law (UNCITRAL) is associated with United Nations Organisations. It does not provide arbitration facilities but has sponsored several measures which have made a notable contribution to the unification of the law of international arbitration.

The UNCITRAL Arbitration Rules were adopted by UNCITRAL in 1976 and their use was recommended by the General Assembly of the United Nations on December 15, 1976. They have become very popular. They are almost indispensable in ad hoc arbitration's and many arbitral institutions, which have adopted their own rules, allow the parties to use the UNCITRAL Rules in preference or refer to them in order to fill any gaps in their own rules.

The UNCITRAL Arbitration Rules do not have the force of law in any country. They may be adopted by the contracting parties. The following model clause is recommended for their adoption:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or loss thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

The main characteristic of the UNCITRAL Arbitration Rules is that no arbitration shall fail on the ground that the parties did not agree on an arbitrator or for any other reason, the UNCITRAL rules contains a lot of loopholes. The right to challenge the opposite party about the arbitrator & the loopholes. The right to challenge the opposite party about the arbitrator & the

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59 Schmithafl 'International Trade' p.674.
provision to change the arbitrator may cause delay. The arbitrators may also be fearful due to this. So it needs change. It does not provide the time limit also for the Arbitration Award.

In India the history of arbitration is very old\textsuperscript{60}. Several enactments have been made in this regard\textsuperscript{61}. But the new Act has been passed in 1996\textsuperscript{62}. Which is based upon the UN.CITRAL Model Law of Arbitration. There were several Chambers of Commerce e.g. Bengal Chamber of Commerce, Bengal National Chamber of Commerce, Bombay Chamber of Commerce & Madras Chamber of Commerce. Which were having their own rules. But the new rules have come into force as the Indian Council of Arbitration has after amendment, adopted the Rules of Arbitration on 1\textsuperscript{st} March 1988. The Council recommends to all parties desirous of making reference to arbitration by the Indian Council of Arbitration, the use of the following arbitration clause in writing in their contracts.

Any dispute relating to the consideration, meaning scope, operation or effect of this contract or the validity or the breach thereof shall be settled by Arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties.

The Rule consists of 80 rules. There is no choice of cities to the parties. The Arbitrators are also to be chosen from the list prepared by council. The council may allow the venue of arbitration in a foreign country if the parties or at least one of the contracting parties is a foreign national. But Indian

\textsuperscript{60} For detail See Supra pages. 40-45
\textsuperscript{61} The Indian Arbitration Act 1899, The Indian Arbitration Act 1940 also see Dayal's Arbitration p.1
residents are not allowed to avail this facility. Their case will be decided in the Indian cities. The Council has authority to change the Roll and list of Arbitrators (either by adding or by repealing) at any time. There should not be any restriction as the UN-CITRAL model does not restrict the place. So the parties may be allowed to choose any place of their choice. However taking into consideration the financial position of Indians it is reasonable. But the provision may be added that where both the parties are agreed to have a foreign country as venue, they are free of place of Arbitration.

7(2). THE ICC COURT OF ARBITRATION:

The ICC Court of Arbitration is the most important institution for the arbitral settlement of international trade disputes. It is widely used and enjoys the confidence and respect of businessman all over the world and is also frequently resorted to in East-West trade.

The ICC Court of Arbitration is not a governmental institution but is created by the International Chamber of Commerce. It has its seat at the headquarters of the ICC in Paris. The present Rules of the ICC Court of Arbitration have been in force since June 1, 1975, they were amended with effect from January 1, 1988.

In principle the court meets once a month and draws up its own internal regulations.

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64 The 1975 Rules were contained in ICC Brochure No. 291 which was superseded by Brochure 447. This Brochure contains the Rules in force as from January 1, 1989. Also see p.e. Rao 'Arbitration & Conciliation p 427-437.
65 Article-1.
If the parties fail due to dead lock or by any reason to appoint their arbitrator within thirty days, the court will appoint its own arbitrator. The defendant is to reply within 30 days of receipt of documents. In exceptional cases the defendant can request for extension of time. Where there is no agreement to refer the cases to ICC & within 30 days the defendant does not reply, the court shall inform to the claimant that the proceeding cannot proceed. But where there is mention in agreement clause about ICC the court will decide the matter according to its rules and that is binding upon the parties. Where the rules of ICC are silent the agreement clause's rule will be applied otherwise the municipal rules will apply where the arbitration is being made. The arbitrators are to give the award within 6 months. However the Court will verify the award before its publication. The Court is entitled to make modifications in the award.

The rule of ICC looks better than UNICTRAL Rules and Indian Council of Arbitration. Unlike ICA it does not bind the parties to choose the Indian cities or any particular country on its own discretion. It is also better than LCIA rules and American Arbitration as they have no such wider acceptance as ICC.

7(3). THE LONDON COURT OF INTERNATIONAL ARBITRATION:

The London Court of International Arbitration is a tripartite organization, sponsored by the London Chamber of Commerce, the London City Corporation, and the Chartered Institute of Arbitrators, and is administered by the latter. Its seat is at the International Arbitration Centre in

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66 Article-2.
67 Article-21.
London. The Rules of the London Court of International Arbitration are known as the LCIA Rules.

The court recommends the adoption of the following arbitration clause:

Any dispute arising out of or in connection with the contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause.

The Court has prepared several panels of arbitrators which contain the names of many prominent international personalities. A scale of arbitration fees is provided which are within moderate limits.

A number of trade associations provide their own machinery for international commercial arbitration. Their standard contracts normally embody an arbitration clause providing for arbitration under the rules of the association in question. This arbitration is not so popularly accepted as UNICTRAL and ICC. Since most of the countries have their own Arbitration rules, the regional arbitration courts become less important at international level.

7(4). AMERICAN ARBITRATION:

In the United States, most commercial arbitration's are governed by the United States Arbitration Act, which applies to all transactions in interstate or foreign commerce or Admiralty and which acquire local laws on the subject. The Act referred to is the United States Arbitration Act, 1925, as

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amended. In addition there exists the Uniform Arbitration Act which, sometimes with variations, on May 1, 1984 was adopted by 46 American jurisdictions.

The major United States arbitration institution is the American Arbitration (AAA) which has its seat in New York. It has published various sets of arbitration rules. In international trade transaction the Commercial Arbitration Rules, supplemented by the supplementary procedure for International Commercial Arbitration, are relevant. The AAA recommends the inclusion of the following arbitration clause into the parties agreement:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by Arbitration Rules of the American Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The commercial Arbitration Rules provide that the AAA shall establish a national panel of arbitrators. The Rules further adopt the so-called list procedure if the parties have not appointed an arbitrator and have not agreed on another method of appointment; under this procedure the AAA submits simultaneously to each party an identical list of persons chosen from the panel and the parties may cross off names to which they object or indicate the order of preference; the AAA then invites the person approved on both

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70 Adopted by the National Conference of the commissioners on Uniform State Laws in 1955 and amended in 1956.
71 Address: 140 West 51st Street, New York, N.Y. 10012.
72 As amended and in effect from April 1, 1985.
73 AAA Commercial Arbitration Rules, Art. 5.
lists according to the order of preference to act as arbitrator. Each arbitrator is required before the first hearing to take an oath of office.

The AAA has also published separate rules and procedure for cases under the UNCITRAL Arbitration Rules, if the parties prefer arbitration under these Rules.

7(5). THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES:

An attempt has been made to the protection of foreign investors from the procedural angle by providing machinery for the settlement of international investment disputes. This approach has been successful. In 1965 a convention on the settlement of Investment Disputes between States and Nationals of others states was concluded in Washington. This convention has become effective, on June 30, 1988, it had been ratified by 89 countries, including the United States, the United Kingdom, France and West Germany. The United Kingdom gave effect to it by the International Investment Disputes act as amended.

The convention, which was sponsored by the International Bank for Reconstruction and Development, provides for the formation of an International Centre for Settlement of Investment Disputes (ICSID) at the principal office of the Bank in Washington. The ICSID makes available facilities to which contracting states and foreign investors who are nationals of other contracting states have access on a voluntary basis for the settlement of

\[ \text{Ibid Art, 13} \]
\[ \text{Ibid Art, 27} \]
\[ \text{The convention entered into force on October 14, 1966.} \]
\[ \text{The convention entered into force for the U.K. on January 18, 1967.} \]
investment disputes between them in accordance with rules laid down in the
Convention. The method of settlement might be conciliation followed by
arbitration in case the conciliation effort fails. The initiative for such
proceedings might come from a state as well as from an investor. The ICSID
itself does not act as conciliator or arbitrator but maintains panels of specially
qualified persons from which conciliators or arbitrators can be selected by the
parties, and provides the necessary facilities for the conduct of the
proceedings. Once a state and a foreign investor have agreed to use the
facilities of the ICSID, they are required to carry out their agreement, to give
due consideration to the recommendations of a conciliator and to comply with
an arbitral award. In addition, all contracting States, whether parties to the
dispute or not, are required to recognize arbitral awards rendered in accordance
with the convention as binding and to enforce the pecuniary obligations
imposed thereby.

The convention establishing the Multilateral Investment Guarantee
Agency (MIGA) to which the United Kingdom has given effect by the
Multilateral Investment Guarantee Agency Act 1988, provides an arbitration
procedure for certain disputes; it further provides that, if the arbitration
tribunal is not constituted within 60 days, the arbitrator or the president of the
arbitration tribunal shall be appointed, at the joint request of the parties, by the
Secretary General of ICSID.79

The ICSID has published four sets of Rules, viz. the Administrative
and Financial Regulations, the Institution Rules, the Arbitration Rules and the

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78 The address of the ICSID is: 1818 H Street, N.W., Washington, D.C. 204, U.S.A.
79 Convention, Annex II, Art. 4(b). The Convention is reproduced as schedule to the Multilateral
Conciliation Rules. They, together with the convention, are published in a
document entitled "ICSID Basic Documents".  

The adoption of UN.CITRAL model rules has lessen the importance
of Arbitration Courts. Now nearly each country has Arbitration Court and
Rules. So the parties bargain and come at conclusion to refer their matter to the
nearest Arbitration Court. For Arabian & African Countries this is not so
important.

7(6). EUROPEAN ARBITRATION:

A European Convention on International Commercial Arbitration
was signed on April 21, 1961 in Geneva and came into force on January 7,
1964. The Convention was sponsored by the UN Economic Commission for
Europe. The Convention sponsored, has been ratified or adhered to by
various countries.

Other provisions of the convention, which should be mentioned are
that foreign nationals may be designated as arbitrators, that the arbitrators shall
act as amiable compositors one who can bring together eliminating difference
if the parties so decide and if they may do so under the law applicable to the
arbitration, and that "legal persons of public law", such as foreign trade

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80 Published in January 1985 (the pamphlet contains the documents as revised on September
26, 1984). The pamphlet also contains a flyleaf setting out the Schedule of Costs, as in January
1985.

81 The Convention was complemented by the Agreement relating to the Application of the
European Convention on International commercial Arbitration signed in Paris on December 17,
1962. There exist also Arbitration Rules for certain categories of Perishable Agriculture
products of July 1979, sponsored by the UN Economic Commission for Europe
(ECE/AGRI/43).

82 Austria, Bulgaria, Byelorussian S.S.R., Czechoslovakia, Cuba, France, Germany (Federal),
corporations of the countries of state-planned economy, have the right to conclude valid arbitration agreements.

7(7). ARBITRATION IN THE SOCIALIST COUNTRIES:

In the socialist countries arbitration tribunals are constituted for dealing with commercial disputes between the indigenous foreign trade organisations and business enterprises of other countries, with which they enter into export and import transactions. In former Soviet Union two international arbitration tribunals exist, both constituted at the USSR chamber of Commerce and Industry in Moscow, viz. the Arbitration court and the Maritime Arbitration Court which had jurisdiction over claims arising from contracts of carriage of goods by sea, bills of lading, charter parties, marine insurance policies and further, speaking generally, over claims which in England would fall within the province of Admiralty jurisdiction. Similar arbitration tribunals exist in Poland, Czechoslovakia, East Germany, Romania, Hungary, Yugoslavia and China. In their negotiations with business enterprises of the

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84 There exists a maritime arbitration tribunal for Poland, East Germany and Czechoslovakia; its seat is in Odynia (Poland) and its jurisdiction is similar to that of the USSR Maritime Arbitration Court.
85 Thomas W. Hoya, East-West Trade Com. Law, American Soviet Trade (1984) pp. 324-325. In addition the following States have signed the Convention: Belgium, Denmark, Finland, Spain, Turkey. The United Kingdom has neither signed nor ratified the Convention. The Convention attempts to overcome difficulties in the constitution of arbitral tribunals and in arbitration procedure, particularly in trading relations between countries of different economic order. The Convention provides that the parties to an arbitration agreement shall be free to submit their dispute to a permanent arbitral institution or to an ad hoc constituted tribunal. It further contains rules for the arrangement of arbitration if the parties cannot agree on the co-operation with another in making the necessary arrangements for the arbitrations. In particular, a special Committee is constituted which consists of three members, one designated by the International chamber of commerce, the other by the countries in which no national committees of the ICC exist i.e. mainly the socialist countries, and the chairman being a member of one of these two groups in rotation; the chairmanship changes every two years. The function
western countries, the foreign trade organisations of the socialist countries try to obtain agreement to clauses submitting disputes to the arbitration tribunals of their own country. Since these tribunals have a reputation for fair and impartial dealings in purely commercial matters, some exporters in the western countries do not object; others whose object will normally find that the foreign trade organisation under the rules of the ICC Court of Arbitration, or to "neutral" arbitration, e.g. in Sweden or Switzerland. In Yugoslavia there is no difficulty in obtaining the consent of the indigenous trade corporations, which enjoy considerable independence from the State, to arbitration outside the country.

Arbitration in the socialist countries differs in some respects from that in the countries of free economy, but following the liberalization policy of many Eastern Countries, these differences are diminishing and likely to disappear completely in course of time. The rules governing the constitution of and procedure in the arbitration courts in the Eastern countries are published and most of them are available in English language.

The countries of the Council of Mutual Economic Assistance (CMEA) adopted on May 26, 1972 a revised convention on the Settlement by Arbitration of Civil Law Disputes resulting from Economic, Scientific and Technical Co-operation. Further, in 1975 the Executive Committee of CMEA approved revised uniform Rule for Arbitration Tribunals of the CMEA countries, these Uniform Rules are amended from time to time.

of the special committee is to appoint the arbitrator or umpire and to settle procedural details of the arbitration if the contract is silent or the parties cannot agree. The Special committee constitutes a bridge between Eastern and Western system of arbitration.
The particulars character of foreign trade arbitration in the socialist countries has raised difficult and delicate problems in the courts of the Western Countries. In the Swiss courts the question arose whether awards of the Arbitration Court of the Czechoslovak Chamber of Commerce in Prague were enforceable in Switzerland under the Geneva Convention of 1927 to which both Czechoslovakia and Switzerland were parties; the Federal Supreme Court of Switzerland held that the fact that the members of the arbitration court were nominated by the President of the Czechoslovak Chamber of Commerce was not against Swiss public policy and that the enforcement of the Czech award could not be refused on that ground. In the English and American courts proceedings have been stayed so that arbitration in Moscow could proceed. The Soviet Foreign Trade Commission - the predecessor of the Moscow Arbitration Court - itself had to consider the plea that the Soviet tribunal and the Soviet party were, in fact, one and the same person and rejected it. In all these cases the courts attached decisive importance to the fact that the defendant, when accepting the arbitration clause, had voluntarily submitted to the jurisdiction of a tribunal in a socialist country; to relieve him of that obligation on the ground that the tribunal was composed in a particular manner, would be contrary to the principle that contracts have to be performed (pacta sunt servanda). Differences in legal concepts between countries of a

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87 In England: Mav & Hassell Ltd. V. Exportles (1940) 66 L.I.L.R. 103.
different economic order have been considered by the English courts in another connection and have been held not to infringe English public policy.

7(8). ENFORCEMENT OF AWARDS:

The decision of the arbitrator or umpire is called the award. In many cases the awards are carried out faithfully by the parties, but sometimes it is necessary to ascertain the means by which the award can be enforced in law. In India the Arbitral Awards were recognized and implemented through adoption of the Arbitration (Protocol and Convention) Act 1937, Foreign Award (Recognition and Enforcement) Act 1961, Indian Arbitration Act 1940 etc. But enacting Arbitration and Conciliation Act 1996 the above-mentioned laws are repealed in arbitration matters. However the new law incorporates New York convention Award, Geneva Convention Award by which the enforcement of Awards will be made. The said Act itself in its chapter VIII contains the provision for enforcement of Awards.

In England an English award is normally enforced in the same manner as a judgment; the only difference is that leave of the court must first to be obtained for the execution of an award. Leave is granted by a master of the court in a simple and inexpensive procedure, which is commenced by originating summons. In exceptional cases, e.g. when the submission was oral, an action for the enforcement of the award has to be brought which is heard by the judge.

More important in international trade relations is the question whether an English award can be enforced in a foreign country where a foreign

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89 Luther V. Sagor (1921) 3 K.B. 532, 539.
90 In French it is called la Sentence, the same word as is used for a court decision.
91 Arbitration Act 1950, S. 26
award can be enforced in the English jurisdiction. As matters stand at present, it can be stated that in many cases the enforcement of a foreign award is possible, but the legal method of enforcement varies. As far as the enforcement of a foreign award in England is concerned - and the same applies to the enforcement of an English award in the respective foreign countries - one distinguishes between the enforcement under the Geneva Protocol and Convention and that under the New York Convention. Both aim at making the enforcement of a foreign award as simple as that of an award made within the jurisdiction and to admit it to execution under the same conditions. Enforcement under the Geneva Protocol and Convention is regulated by the Arbitration Act 1950 and these awards are known as foreign awards. Enforcement under the New York convention of 1958 is possible under the Arbitration Act 1975 and these awards are referred to as convention awards. The New York convention is designed to supersede the Geneva Protocol and Convention by one instrument and, at the same time, to make more effective the international recognition of arbitration agreements and foreign arbitral awards and the enforcement of the latter. In addition to these two methods, a foreign arbitral award made in a country to which the Foreign Judgments (Reciprocal Enforcement) Act 1933 is made applicable can be enforced in England and Wales upon registration, provided that it is enforceable in the country in which it was made, in the same manner as a judgment². Speaking generally, it is easier to enforce a foreign arbitral award than it is to enforce a foreign judgment, particularly if the recognition and enforcement is governed by the New York Convention.

² Foreign Judgments (Reciprocal Enforcement) Act 1933, S. 10A, added by the Civil Jurisdiction and Judgments Act 1982, Sched. 10, para 4
An arbitration award can be enforced against property in foreign state for the time being in use or intended for use for commercial purposes. In India the Arbitral Awards were recognized and implemented through adoption of the Arbitration (Protocol and Enforcement) Act 1937, Foreign Award (Recognition and Enforcement) Act 1961, Indian Arbitration Act 1940 etc. But enacting Arbitration and Conciliation Act 1996 the above mentioned laws are repealed in arbitration matters. However the new law incorporates New York Convention Award, Geneva Convention Award by which the enforcement of Awards will be made. The said Act itself in its chapter VIII contains the provision for enforcement of Awards.

7(9). THE GENEVA PROTOCOL AND CONVENTION:

Two international agreements have been concluded in Geneva, the protocol on Arbitration clauses of 1923, and the convention on the Execution of Foreign Arbitral Award of 1927. Both agreements have been ratified by a number of countries, amongst them the United Kingdom. By the Arbitration Act 1950 statutory effect is given in the United Kingdom to the protocol on Arbitration Clauses of 1923 by sections 4(2) and 35, and to the Convention of the Execution of Foreign Arbitral Awards of 1927 by section 35. The Protocol is contained in the First Schedule and the Convention in the Second Schedule to the Act of 1950.

Under the Convention a foreign award can be enforced in the English jurisdiction in the same manner as an English award, provided the

94 India has also passed a law; The Arbitration and Conciliation Act 1996 which repeals this convention on (earlier it was adopted)
95 They were sponsored by the League of Nations.

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arbitration agreement is valid under its proper law and certain other requirements have been satisfied, but the enforcement will be refused if the award is contrary to English public policy. The application of these provisions depends on reciprocity being granted by the country where the award is made. Awards are mutually enforceable under the Convention in the various countries.  

7(10). THE NEW YORK CONVENTION:  

On June 10, 1958, a Convention on the Recognition and Enforcement of Foreign Arbitral Award was approved by a United Nations Conference at New York. New York Convention has been given effect in India by the Foreign Award Act 1961. As many as 70 States have agreed to be bound by the Convention but some States have ratified or acceded subject to reservations, notably specifying that the Convention's application is subject to reciprocity (the reciprocity reservation) or that it is limited to business and commercial transactions (the commercial reservation).

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96 Antigua and Barbuda, Australia, Bahrain, Bangladesh, Belgium, Belize, Czechoslovakia, Denmark, Dominica, Finland, France, Federal Republic of Germany, German Democratic Republic, Greece, Grenada, Guyana, India, Republic of Ireland, Israel, Italy, Japan, Kenya, Luxembourg, Malta, Mauritius, Netherlands, New Zealand, Pakistan, Portugal, Romania, Saint Christopher and Nevis, St. Lucia, Spain, Sweden, Switzerland, Tanzania, Thailand, United Kingdom of Great Britain ad Northern Ireland, Western Samoa, Yugoslavia, Zambia. Anguilla, British Virgin Islands, Cayman Islands, Falkland Islands, Falkland Islands Dependencies, Gibraltar, Hong Kong, Montserrat, Turks and Caicos Islands, Antigua and Barbuda, Austria, Bahamas, Bangladesh, Belgium, Belize, Czechoslovakia, Denmark, Dominica, Finland, France, Federal Republic of Germany, German Democratic Republic, Greece, Grenada, Guyana, India, Republic of Ireland, Israel, Italy, Japan, Kenya, Luxembourg, Malta, Mauritius, Netherlands (including Curacao), New Zealand, Pakistan Portugal, Romania, Saint Christopher and Nevis, St. Lucia, Spain, Sweden, Switzerland, Tanzania, Thailand, United Kingdom of Great Britain and Northern Ireland, West Samoa, Yugoslavia, Zambia.

97 Now this Act has been repealed and the Arbitration and conciliation Act, 1906 has come into force.

98 These reservations are made by virtue of Art. I(3) of the New York Convention.
The New York Convention represents great progress in the field of international arbitration, when compared with the Geneva provisions. They were founded on the requirement of reciprocity, which made it necessary to conclude bilateral agreements between states before the Geneva provisions could become operative in their jurisdictions. The requirement of reciprocity guaranteed by bilateral treaties is abandoned by the New York Convention which applies, in principle, to every foreign award, i.e. an award made in the territory of any State other than that in which its recognition and enforcement is sought, but, as already observed, when ratifying the Convention or acceding to it some States have limited the application of the Convention to award made in the territory of other Member states (Art. I). It has rightly been said that the reservation is self-liquidating since its effect will abate as more and more States ratify the Convention.

Further, whilst the application of the Geneva Protocol of 1923 depended on the parties to the agreement being subject to the jurisdiction of different States which were members of the Protocol, the New York Convention no longer stipulates that requirement and applies to all agreements in writing under which the parties undertake to submit arbitration.

7(11). ENFORCEMENT OF AWARD IN THE ABSENCE OF INTERNATIONAL REGULATION:

In countries which do not adhere to the international regulation, the position is the following: An arrangement for the reciprocal enforcement of money judgments has been made with some common wealth countries under

Reference are to the New York Convention.
the Administration of Justice Act 1920 and this arrangement is extended arbitral awards which, under the law in force where they are made, are enforceable in the same manner as judgment. A similar provision is contained in the Foreign Judgments (Reciprocal Enforcement) Act 1933. In these cases the enforcement of the award is by simple registration in the country in which enforcement is sought. This method is satisfactory because it is inexpensive and requires the observation of few formalities. The method of registration is available in Australia, New Zealand, the Canadian Provinces of Newfoundland and Saskatchewan and Gibraltar, and many other parts of the commonwealth. In those parts which do not admit the system of registration, e.g. Canada (with the exception of Newfoundland and Saskatchewan), and in the foreign countries outside the Commonwealth which have not ratified the Geneva or New York Conventions with effect to the United Kingdom, the enforcement of English awards depends entirely on private international law and might meet with considerable difficulties.

7(12). MARITIME ARBITRATION:

After the successful experiment of Arbitration in business matters the I.C.C has established International Maritime Arbitration Organisation (IMAO). The I.C.C and the Comite Maritime International (CMI) have jointly produced a set of rules for maritime arbitration. The administration of

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1920 Act, S. 12 (1).
1933 Act, S. 10A, added by the Civil Jurisdiction and Judgments Act 1982, Sched. 10, Para 4;
This method is alternative to those admitted by the Geneva Convention of 1927 or the New York Convention of 1958.
A foreign award which, for one reason or another, cannot be enforced in the United Kingdom registration may be enforced by action (which may be in personam or in rem) but the cause of
arbitration cases submitted under the ICC/CMI. Arbitration Rules is entrusted to an organization common to the two institutions, the IMAD. The Rules enforce since 1978, are designed for the conduct of arbitration disputes relating to maritime affairs including inter alia charter parties. Contracts of carriage of goods by sea or of combined transport, contracts of marine insurance, salvage and general average, Ship Building and Ship repairing contracts, contracts of sales of vessels and other contracts creating regrets in vessels.

The standard clause recommended by I.C.C States:

"All disputes arising from this contract/charter party shall be finally settled in accordance with the I.C.C/C.M.I. International Maritime Arbitration Rules by one or more arbitrators appointed in accordance with the said Rules." 

Thus we reach at the conclusion that the world order is in favour of alternative resolutions.

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the action is the agreement of the parties to submit to arbitration and not the award itself: The Saint Anna (1983) 1 W.L.R. 895.