CHAPTER-5
THE INSTITUTIONS PROMOTING ALTERNATE DISPUTE REDRESSAL METHODS

INTRODUCTION

In this chapter, the researcher has studied the institutions providing for different alternative dispute redressal methods, functioning at different levels. To start with, the study is conducted with respect to the institutions functioning at the grass root level in India. Secondly, the study is with respect to the institution functioning at the State level and National level in India and finally the study with respect to the institutions functioning in other Countries and at the International level providing for different forms of alternative dispute redressal method services.

India adopted a new economic policy in the year 1992, based on increased private and foreign participation and investment in the economy. The economic reforms would not be effective without the establishment of and arbitration friendly administration. The Indian Legal system is under immense strain with stifling economic competitiveness and the pursuit of justice\textsuperscript{448}. There are millions of cases pending in Indian Courts,\textsuperscript{449} some of which have been appealed and argued for more than 20

\textsuperscript{448} Raghavan, Vikram, New Horizons for Alternative Dispute Resolution in India: The New Arbitration Law of 1996. 13 J. Int’l Arb. 5, 9-24 (1996). (The structure was comprised of the Puga, the Srenti, and the Kula, each representative of a class or locality of people.)

\textsuperscript{449} The number of pending cases is indeed alarming. On July 5, 2000, the total number of outstanding cases before the Supreme Court was 21,600 against 1.05 lakhs a decade ago (one lakh equals 100,000). As for the number for the High Courts, pending cases number 34 lakhs now, against 19 lakhs 10 years ago. The number of cases pending for more than 10 years is 645 in the Supreme Court and 5,00,085 in the High Courts. More than 20m cases are pending in the 12,378 district and subordinate Courts across India. All but 2 million of these cases are criminal. V. Venkatesan, For Fast Track Justice, 18(4) THE HINDU, July 7, 2001.
years. However, India spends only 2 percent of its GNP on the judiciary, which is admittedly an artificial benchmark and should be put in the context of the size of India’s economy and the range of judicial functions that the Indian legal system performs. The fact is India, is not alone in dealing with a hugely cumbersome and overburdened legal system. Backlog and delay plague stemming from innumerable factors including uneven incentive structure among the key players exists in a wide array of legal systems around the world. The problem of judicial arrears and delays, has created broad political and economic implications for Indian society that has been developing with the economic boom and globalization in the recent decade.

India has had a long history of alternative dispute redressal methods, the earliest recorded instances date back to several centuries. Many of these forms still exist with little change in the interiors and rural India. As one of the basic step towards the understanding of the different dispute redressal methods that are already in existence and those methods, which can be effectively adopted for redressing the disputes, the study of the Village Panchayats, Nyaya Panchayat, Gram Nyayalaya and Lok Adalat is done hereunder. The mechanisms through which fundamentally the Indian Parliament and Court of law sought to deal with this problem is through the introduction of Lok Adalats and Nyaya Panchayats, especially for its functioning at grass root level in the dispute redressal process. The institution of Lok Adalat was designed to promote

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450 With so many years elapsing after a case is filed, the underlying circumstances and conditions of the dispute may change so as to leave the parties disinterested in the litigation, further increasing judicial delay and resulting in wasted resources.


rapid conciliation and binding resolution of disputes.\textsuperscript{454} The institution of Lok Adalats and Nyaya Panchayats is the need of the time with the aim that, it would not only reduce backlog but also promote the rapid and equitable resolution of disputes in a manner that is culturally attuned to traditional Indian jurisprudence. The said study is imperative in understanding the problem of judicial arrears and backlog in the Courts of law in India. It is also intended for finding the appropriate solution for the problem of judicial arrears and judicial delay existing in the Indian Court mainly with the help of different alternative dispute redressal methods.

5.1 THE PANCHAYAT SYSTEM

Village Panchayats represents the age-old traditional institutions existing in India. The working of the panchayat was such that, it is difficult to classify it exclusively as mediation, conciliation, arbitral tribunal or a judicial body.\textsuperscript{455} Panchayats have existed in India for thousands of years and they are the unique characteristic institution of the Indian civilization\textsuperscript{456}. The literary meaning of the term “Panchayat” is the coming together of five persons; hence, a council, meeting or Court consisting of five or more members of a village or caste assembled to judge disputes or determine group policy is said to be panchayat.

In specific, ‘Panchayat’ literally means assembly (yat) of five (panch) wise and respected elders chosen and accepted by the village community. Traditionally, these assemblies settle disputes between individuals and villages. Modern Indian government has decentralised

\textsuperscript{454} One example of the prevalence and success rate of fast track Courts may be seen in Andhra Pradesh. In this state alone, 135,000 cases have been transferred to the LAs and 58,662 were disposed of. Eighty-six new Court buildings have also been constructed in the state. This raises questions about the potential for the creation of an alternative, parallel legal system which is quicker but with far fewer procedural safeguards.


\textsuperscript{456} C.P.ramaswamy Aiyar, The Cultural Heritage of India,1969,Vol II p497
several administrative functions at the village level, by empowering the elected gram panchayats. Gram panchayats are different from that of khap panchayats or the caste panchayats found in some parts of India. The term ‘Panchayat Raj’ originated during the British administration. ‘Raj’ literally means governance or government. The first panchayat under the British regime were established in 1673 in Bombay by Generald Aungier, the President of the East India Company’s factory at Surat. It consisted of the community or caste representatives. The panchayats had the judicial power to take decisions of the cases amongst persons of their own casts, who agreed to submit the disputes to their arbitration. In addition to it panchayats had police power and to look after the estates of the orphans of the respective communities. In the year 1920, the Bombay Village Panchayats Act IX of 1920 made provisions for the establishment of the Panchayats with the jurisdiction to perform judicial functions in the villages. In the year 1933 the Bombay Village Panchayats Act VI of 1933, Sec.115, repealed this Act. Under this Act a Panchayat constituted for each village consisting of members elected by all adult persons of the village and out of them as per section 37-A the Village Bench consisting of five persons were elected for performing the minimal judicial functions as per section 37 and section 40 of the said Act. An appeal lies to the District Court in a civil suit and to the District Magistrate in a criminal case, against the decree or the order of the Village Court.

In the Presidency town of Madras, the Regulation V of 1816 established the Village Panchayats in 1816. It consisted of an odd number of members, not less than five and not more than eleven. The members of

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457 Rohit Mullick & Neelam Raaj (9 Sep 2007). "Panchayats turn into kangaroo Courts". The Times of India.
458 John Mathai, Village Government in British India,1915(p163-4)
the panchayat were most respectable inhabitants of the village, who served the office in rotation under the penalty of Rs. 5 if they refused. The decisions of the panchayat were based on majority. There was no provision for appeal from the decisions of the Village panchayat. Nevertheless, as per Section 11 of Regulation V of 1816 the decisions could be quashed by the Zillah Judge on the ground of partiality within 30 days from the date of decisions. In the year, 1889 the Panchayat Courts and the Village Munsifs were re-organised under the Madras Village Courts Act, 1889(I of 1889). Under the Act, these Courts were at first given Civil Jurisdiction only. By the Amending Act II of 1920, section 26, added Chapter VIII to the original Act, where by the criminal jurisdiction was also conferred upon them. No appeal lies from the decisions of a Panchayat Court but the District Magistrate or the Sub-Divisional Magistrate may set aside any conviction on the ground of corruption, gross partiality or misconduct, or miscarriage of justice.

Mahatma Gandhi advocated Panchayati Raj, a decentralized form of Government where each village is responsible for its own affairs, as the foundation of India's political system. In 1925, the Civil Justice Committee observed that “the village panchayats villagers mediating between contending parties in their own village has in some form or the other, existed in this country from earliest times,” that the “judicial work of the panchayat is part of that village system” which in most parts of India “has been the basis of the indigenous administration from time immemorial.”

459 ‘Village Court’ means the Court of Village Munsif or a Panchayat Court-Act II of 1920, Sec4.
460 A short History of the Judicial System of India and some foreign Countries ,Harihar Prasad Dubey Tripathi Pvt Ltd.(p323 to 336)
461 Civil Justice Committee Report 1925( p105-6)
The framework, constitution, jurisdictions and composition of panchayat vary from one State to another, as such a common meaning of the Panchayat System giving general account of the characteristics features of the panchayat and its evolution form the beginning until the introduction of Gram Nyayalayas Bill is studied under the following subheadings.

5.2 PRINCIPLES OF DECENTRALISATION

India has, by law, a decentralised system of administration whereby rural villages govern themselves through leaders they elect in panchayats, or local bodies. The Gram or the Village Panchayat is the lowest rung of governance, accountable to two more institutions above it at area and district level in this three-tiered system of administration. The adoption of the Balwantray Mehta Committee Report (1958) on the concept of democratic decentralization paved way to the creation of a three-tier system of Panchayats. The three levels are Gram Panchayat at the village level, Panchayat Samiti at the Bloc level and Zilla Parishad at the District level\(^{462}\). This decentralized system of village self-administration was a dream of Mahatma Gandhi, the father of Indian independence in 1947. The revival of panchayat system and the efforts towards giving it a legal shape in India was done during the year 1984-89. However, a Bill then introduced in Parliament for ushering in a three-tier Panchayat system was defeated in the Rajya Sabha. Again in June 1991, a modified version of the Panchayat Raj Bill and a resolution for the amendment of the Constitution there for were introduced in Parliament in September 1991 and on 24 April 1993, the Constitutional (73rd Amendment) Act, 1992 came into force to provide constitutional status to the Panchayat Raj institutions.

\(^{462}\) Balwantray Mehta Committee 1957
Under the Constitutional (73rd) Amendment Act, 1992, all States are to establish a three-tier of Panchayats at Village, Block and District levels, and regular elections taking place every five years. It involves inter alia proportionate reservation of seats for scheduled castes and scheduled tribes, reservation of not less than one-third seats for women, meeting of Gram Sabhas four times a year and devolution of 29 subjects listed in the 11th schedule of the Constitution. These subjects include agriculture, minor irrigation, small-scale industries, rural housing, adult education, roads and other means of communication, cultural activities, health and sanitation, social welfare and public distribution system.

5.2.1 GRAM PANCHAYAT

Village Panchayat in other words the Gram panchayats are local governments and the basic units of administration at the villages in India. The gram panchayat is the foundation of the Panchayat System. A gram panchayat can be set up in villages with minimum population of 500. Sometimes two or more villages are clubbed together to form group-gram panchayat when the population of the individual villages is less than 500. It is a local body working for the goodness of the village. The number of members of the village panchayat usually ranges from 5 to 31; occasionally, groups are larger, but they never have fewer than 5 members.

Panchayat also refers to a council of elected members taking decisions on issues key to a village's social, cultural and economic life. Thus, a panchayat is also a village's body of elected representatives. The council leader is named “Sarpanch” in Hindi, and each member is a “Panch”. The panchayat acts as a conduit between the local government and the people. Decisions are taken by a majority vote (Bahumat). It is
said that in such a system, each villager can voice his opinion in the governance of his village. Decisions are taken without lengthy legal procedures and the process remains for the most part transparent. Since its inception, Panchayat has come a long way.  

Members of the Gram Panchayat are elected directly by the village people on the basis of adult franchise, for a term of five years. A candidate contesting in this election must be 21 years old. The minimum number of members elected is 5 and the maximum is 31. Some of the seats are also reserved for Scheduled Castes, Scheduled Tribes and women.

5.2.1.1 SARPANCH

The Sarpanch or Chairperson is the head of the Gram Panchayat. The members of the Gram Sabha elect from among themselves a Sarpanch and a Deputy Sarpanch for a term of five years. In some States, village people directly elect the Sarpanch. The Sarpanch presides over the meetings of the Gram Panchayat and supervises its working. He implements the development schemes of the village. The Deputy Sarpanch, who has the power to make his own decisions, assists the Sarpanch in his work.

The Sarpanch has the responsibilities of looking after streetlights, construction and repair work of the roads in the villages and the village markets, fairs, festivals and celebrations. The Sarpanch does the work of keeping a record of births, deaths and marriages in the village, looking after public health and hygiene by providing facilities for sanitation and

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drinking water, providing for education, implementing development schemes for agriculture and animal husbandry.

The main source of income of the Gram Panchayat is the property tax levied on the buildings and the open spaces within the village. Other sources of income include professional tax, taxes on pilgrimage, animal trade, grant received from the State Government in proportion of land revenue and the grants received from the Zilla Parishad.

5.2.1.2 GRAM SABHA

All men and women in the village who are above 18 years of age form the Gram Sabha. The Gram Sabha meets twice a year. Meetings of the Gram Sabha are convened to ensure the development of the people through their participation and mutual co-operation. The annual budget and the development schemes for the village are placed before the Gram Sabha for consideration and approval. The Sarpanch and his assistants answer the questions put by the people. The different problems and difficulties of the people are also discussed in the Gram Sabha. All decisions of community development are taken in Special Gram Sabha.

5. 2. 2 PANCHAYAT SAMITI

Panchayat Samiti is a local government body at the Tehsil or Taluka level, the middle tire of the panchayatiraj system in India. It works for the villages of the Tehsil or Taluka that together are called a Development Block. The Panchayat Samiti is the link between the Gram Panchayat and the District administration. There are a number of variations of this institution in various states. It is known as Mandal Praja

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Parishad in Andhra Pradesh, Taluka Panchayat in Gujarat, Mandal Panchayat in Karnataka, etc.

Panchayat Samiti is composed of all the sarpanchas of the panchayat within a bloc of the village or the elected representatives of the sarpanchas. In some States the MPs and MLAs\textsuperscript{465} of the area, the representatives of Scheduled Castes, Scheduled Tribes and women, associate members in the form of a farmer of the area, a representative of the cooperative societies and one of the marketing services and some elected members also form part of the samiti. The Samiti is elected for 5 years and is headed by the Chairman and the Deputy Chairman known as the Pradhan\textsuperscript{466}.

The common departments in the Samiti are the departments of, General Administration, Finance, Public Works, Agriculture, Health, Education and Social Welfare. There is an officer for every department. A government appointed Block Development Officer is the secretary to the Samiti and the chief of its administration.

The Panchayat Samiti does the work of implementing schemes for the development of agriculture, establishment of primary health centers and primary schools, supply of drinking water, drainage, construction and the repair of roads, development of cottage and small-scale industries and opening of cooperative societies, establishment of youth organisations. The main source of income of the Panchayat Samiti is grants-in-aid and loans from the State Government.

\textsuperscript{465} Members of Parliament and Members of the Legislative Assembly
\textsuperscript{466} Marc Galanter, The emergence of the Modern Legal System, 1989(p60-64)
5.2.3 ZILLA PARISHAD

The Zilla Parishad is a local government body at the district level in India. It looks after the administration of the rural area of the district and its office is located at the district headquarters. The Hindi word Parishad means Council and Zilla Parishad translates to District Council.

Members of the Zilla Parishad are elected from the district based on adult franchise for a term of five years. Zilla Parishad has minimum of 50 and maximum of 75 members. There are seats reserved for Scheduled Castes, Scheduled Tribes, backward classes and women. The Chairmen (Pradhans) of all Panchayat Samitis are the members of Zilla Parishad. A President heads the Parishad and a Vice-President. The Chief Executive Officer (CEO), who is an IAS officer, heads the administrative machinery of the Zilla Parishad. The CEO supervises the divisions of the Parishad and executes its development schemes.

The Zilla Parishad work towards providing essential services and facilities to the rural population, the planning and execution of the development programmes for the district. In some States it supplies improved seeds to farmers, informs the farmers of new techniques of training. Its works includes construction of small-scale irrigation projects and percolation tanks, maintaining pastures and grazing lands, setting up and running schools in villages. Executing programmes for adult literacy, running libraries, starting primary health centers and hospitals in villages, starting mobile hospitals for hamlets, vaccination drives against epidemics and family welfare campaigns, constructing bridges and roads, executing plans for the development of the scheduled castes and tribes is also done under its supervision.
The Zilla Parishad is also seen running ashrams for adivasi children, setting up free hostels for scheduled caste students, encouraging entrepreneurs to start small-scale industries like cottage industries, handicraft, and agriculture produce processing mills, dairy farms, etc. One of the prominent jobs done is that of implementing rural employment schemes of the Government by supply work for the poor people, tribes, scheduled caste, and lower caste. The fund for all its functioning comes from the Taxes on water, pilgrimage, markets, and such other sources. Fixed grant from the State Government in proportion with the land revenue and money for works and schemes assigned to the Zilla Parishad.

From the above study, it can be said that, the decentralized Panchayat raj system if provided with some basic dispute resolution powers will have the advantage of disposing the disputes at the village level and there by contributing towards reducing the burden of regular Courts largely. The panchayats would surely succeed in getting a large number of cases compromised through peaceful conciliation, as the people living in that village and the panchayat would have the better access to the facts and circumstances of the dispute and the disputing parties. The villagers in general would be satisfied with the administration of justice obtaining in village or panchayat Courts and that the decisions of these Courts would do substantial justice. Appeals and revisions from these decisions would thus be small in number, there by resulting in the speedy and cheap disposal of cases. The litigants and witnesses who are mostly agriculturists can conveniently attend these Courts and thus there would be no interference with agricultural activities in the village. The panchayat could bring justice nearer to the villager without involving the expenditure that would otherwise have to be

incurred in establishing regular Courts. Panchayat would have an educative value. Local Courts acquainted with the customs of the neighborhood and nuances of the local idiom would be better equipped to understand why certain things are said or done by the disputed parties. An institution nearer to the people holds out greater opportunities for settlement and a decision taken by the panchayats would not leave behind that trial of bitterness, which generally follows in the wake of litigation in ordinary Courts. There are better chances of conciliatory method of approach in Nyaya panchayats. People in a village are so closely known to each other that the parties to a dispute would not be able to conceal or produce false evidence easily and those who tell lies before the Nyaya panchayat face the risk of being looked down upon and even boycotted by others. Panchas being drawn from among simple village folk strive at decisions which are fair and at the same time consistent with the peculiar conditions of the parties.\footnote{K.N. Chandrasekharan Pillai titled “Criminal Jurisdiction of Nyaya Panchayats” Journal of the Indian Law Institute Vol. 19, October-December, 1977 p. 443}

\textbf{5.3 LAW COMMISSION OF INDIA REPORT}

The Law Commission of India\footnote{One Hundred and Fourteenth Report of Law commission of India, August 1986 (Chapter V para. 5.3)} in its 114\textsuperscript{th} report indicated that, “Article 39A of the Constitution of India directs the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by economic or other disabilities. This is the Constitutional imperative. Denial of justice on the grounds of economic and other disabilities is in nutshell referred to what has been known as problematic access to law. The Constitution now
commands to remove the impediments to access to justice in a systematic manner. All agencies of the Government are now under a fundamental obligation to enhance access to justice. Article 40 which directs the State to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government, has to be appreciated afresh in the light of the mandate of the new article 39A.”

The resolution of disputes in panchayats is so effective and widely accepted that Courts have more often recognised them. In Sitanna Vs. Viranna\(^{470}\), the Privy Council affirmed the decision of the Panchayat and Sir John Wallis observed that the reference to a village panchayat is the time-honored method of deciding disputes. It avoids protracted litigation and is based on the ground realities verified in person by the adjudicators and the award is fair and honest settlement of doubtful claims based on legal and moral grounds.

Thus, there is also a need to deliberate on the methodologies to be adopted for encouraging justice dispensation through the traditional forum of Panchayats. Strengthening the institution of Panchayats and empowering people at the grass-root level to resolve their disputes amicably would solve many of the problems that are faced by conventional justice dispensation machinery in its attempts to percolate to the lowest levels. This would provide a, solution to the problems of access to those living in remote regions. Certain states like Bihar, Uttar Pradesh, Uttarakhand, Jammu and Kashmir, Himachal Pradesh, Punjab, Madhya Pradesh and Chattisgarh have already made provisions for establishing Nyaya Panchayats

\(^{470}\) AIR 1934 SC 105
5.4 PROVISIONS OF THE CONSTITUTION PROVIDING FOR NYAYA PANCHAYAT

The draft Constitution of India did not contain any reference to villages and was subjected to criticism that ‘no part of it represents the ancient polity of India’. Dr. B.R.Ambedkar, the Chief draftsman, vigorously defended the omission of village. The Constitution as it emerged did include certain village – oriented Directive Principles of State Policy. The Indian Constitution, with the 73rd amendment in 1992 accommodated the idea to establish Panchayats in various States. The Constitution Amendment Act of 1992 contains provision for devolution of powers and responsibilities to the panchayats to both for preparation of plans for economic development and social justice and for implementation in relation to twenty-nine subjects listed in the eleventh schedule of the Constitution. The adoption of the Balwantray Mehta Committee Report on democratic decentralization led to the creation of a three-tier system of Panchayati Raj. On April 24, 1993, the Constitutional (73rd Amendment) Act, 1992 came into force to provide Constitutional status to the Panchayat Raj institutions. This Act was extended to Panchayats in the tribal areas of eight States, namely Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa and Rajasthan from December 24, 1996. Article 40 of the Constitution directs the government to establish panchayats to serve as institutions of local self-government. Most States implemented this Directive Principle along the lines of the recommendations of the

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471 Art.48 urges the State to ‘endeavor to organize agriculture and animal husbandry on modern and scientific line’. Art 42 exhorts the State ‘to endeavor to promote cottage industry on an individual or corporative basis in rural areas’. Art 46 to ‘promote with special care’ the ‘educational and economic interests of the weaker sections of the people, and in particular of the schedule castes and Tribes’, who shall be protected against injustice and ‘all forms of exploitation’.


government's Balwantrai Mehta Commission report. The general powers and responsibilities delegated to Panchayat at the appropriate level are with respect to the preparation of plan for economic development and social justice, implementation of schemes for economic development and social justice in relation to 29 subjects given under the Eleventh Schedule of the Constitution and to levy, collect and appropriate taxes, duties, tolls and fees.

The ideology of separation of the judiciary from the executive powers, embodied in Article 50, was the impulse that led to the creation of Nyaya Panchayats in the States, which did not have such separate bodies. As the panchayat institutions had reorganized and oriented to a wider range of functions, it was widely felt that considerations of efficiency in performance of the assigned developmental and governmental tasks required the relief from the judicial workload, thus the need and development of a separate institution of Nyaya Panchayats came into being.

It is noteworthy that with the establishment of Nyaya Panchayat, the village panchayats lost their adjudicatory powers. Thus, a forum for the resolution of disputes with the participation of people in local justice administration is the goal envisaged by Article 39A of the Constitution of India. It is for the government to take immediate steps to activate Nyaya Panchayats and render access to justice in rural areas simpler and quicker. Nyaya Panchayats guided by local traditions, culture and behavioral pattern of the village community instill confidence in the people towards the administration of justice.
5.4.1 NYAYA PANCHAYATS

The earliest Nyaya Panchayats were the ‘Village Courts’ established under the Village Courts Act of 1988. The Royal Commission on Decentralization of 1909 recommended of revival of Nyaya Panchayats having both civil and criminal jurisdiction in petty cases arising within the village. In May 1915, by a resolution passed by the Government of India, the matters regarding the establishment of Nyaya Panchayat was left to the State Government. For the first time in the year 1920, Bombay Village Panchayat Act was passed and that resulted in the conduct of a series of Panchayat Adalat. However, select committee of the legislative council opposed the investing of judicial powers on panchayats. In 1933, a village bench consisting of elected members and outsiders were created as per provisions of the Bombay Village Panchayat Act in Bombay. Since independence, almost all States enacted village panchayat Acts as guided by the directive principles and have resulted in the creation of statutory Nyaya Panchayat legislation. The village Panchayat and Nyaya Panchayat existed as dual entities in order to have separation of judiciary from the executive.474

A General account of the System of Nyaya Panchayat concerning the constitution and compositions of it is discussed hereunder. The Legislative details concerning Nyaya panchayat vary as regards to a particular region. Thus the main features of Nyaya Panchayat organization which have now become more general are that, the Naya Panchayat are established for a group of village usually covering 7 to 10 villages. It usually covers a population of 14000 to 15000 villagers.

474 Nyaya Panchayat : Need for decentralised administration, Kerala Calling December 1997 PP 27 -29
The essential prerequisites for the member of a Nyaya Panchayat are that the member must be able to read and write the State language, must not hold an office of Sarpanch or be a member in the samiti, parishad or state or union legislature. Nyaya Panchayat has a chairperson and secretary elected by its members; one-third of its members retire every second year. Each Gram Panchayat, which is an elected body, elects members for Nyaya panchayat. In some States like U.P., Bihar there is combination of both elections and nominations, and such nomination is done by consensus. In the State of Kerala all the Nyaya panchas are nominated and in the Union Territory of Delhi all of them are directly elected. The Law Commission ,in its 14th said that in principle it did not support elected judiciary and it did not regard Nyaya Panchayat as judiciary in the proper senses of the term, but rather as ‘tribunal’ which has to inspire the confidence of the villagers.

The Jurisdiction of Nyaya Panchayat is both civil and criminal. Civil jurisdiction of Nyaya Panchayat is confined to pecuniary claims of the value of Rs. 100 and by agreement among the parties; it may be raised to Rs.200 involving money due on contracts not affecting any interest in immovable property, compensation for wrongfully taking or damaging property and recovery of movable property. The Criminal jurisdiction is comparatively extensive such as criminal negligence or trespass, nuisance, possession or use of weights and measures, theft, misappropriation with pecuniary limit as low as Rs. 25 to 50, intimidation, perjury and attempt to evade a summons and so forth. It has authority to levy fines, but they have no power to sentence offender to imprisonment, substantively or in default of fine. The State Government has the power to enhance the jurisdiction of Nyaya Panchayat as well as

to diminish it if there is admission of injustice. More emphasis is given on the amicable settlement of disputes in the system of Nyaya Panchayat. Therefore, the method of conciliation is being emphasised over adjudication. In state of Bihar and Kerala it has been made obligatory on Nyaya Panchayat to first resort to conciliation in all matters, including criminal cases but in the state of Rajasthan conciliation is permissible though not obligatory.

The procedures adopted by Nyaya Panchayat are simple and flexible. The revenue for the functioning of Nyaya Panchayat is derived from the fine deposited to the Nyaya Panchayat and contributions of the village panchayats. The complaints may be made orally or in writing, the hearing before it is informal in nature, panchas confer among themselves and arrive at a decision, which is pronounced in open Court. The final judgment is written and read out in open Court. It is signed by the parties to the dispute, signifying the communication of judgment to them. Nyaya Panchayat has power to issue summons, to proceed ex parte in case of recalcitrant defendant/ respondent it has power to levy execution through attachment orders in unfulfilled decrees. The Nyaya Panchayat maintains records of the civil and criminal matters, its judgments, gist of depositions by the witness and parties, Court fees an fines, summons and notices, the expenses. The Sub divisional or District magistrate can transfer a case from one Nyaya Panchayat to another in case of any miscarriage of justice has occurred. In addition to the power of appeals from Nyaya Panchayat to the magistrate Court, parties have a privilege to apply for revision of a decision of Nyaya Panchayat. The Law Commission of India in its 14th report had insisted for the need of short-term training programmes of the Panchas enabling them to act judicially

476 Pillai, Nyaya Panchayat (1974:p56-57)
477 The Study Team on Nyaya Panchayat-1958, Report 1962:p128
in the sense that they must bear in mind that all are equal before law and that the law is no respecter of persons. They must conform to the principles of natural justice and must avoid bias, ill will, affection and appear to have so avoided such ills<sup>478</sup>.

Thus from the above study it is found that the fervor for institutionalisation of Panchayat Raj system and its democratic decentralization has contributed to the creation of Nyaya Panchayat. Through Nyaya Panchayat the administration of justice is brought at the doorstep of the villages. The Law Commission in its 14th report stressed that Nyaya Panchayat would educate the villager in the art of self-government. The Nyaya Panchayat is said to be the lowest rungs of state system of administration of justice as well as a sub-system of the panchayats as organs of local self – government<sup>479</sup>.

5.5 PANCHAYAT SYSTEM IN PONDICHERY

French India is a general name for the former French possessions in India. These included Pondicherry (now Puducherry), Karikal and Yanaon (now Yañam) on the Coromandel Coast, Mahé on the Malabar coast, and Chandannagar in Bengal. Pondicherry never had village panchayat system in the past, as there was no provision for this in the previous French system of municipal administration<sup>480</sup>. The French Metropolitan Decree dated 12 March 1880 adopted a six-year term of office for Mayors, Municipal Councilors and Commune Panchayats unlike the present five-year term. In Pondicherry the French system of municipal administration existed since 1880 and until the last poll held in

<sup>480</sup> Freedom struggle in Pondicherry - Government of India publication(p7-18)
Elections to civic bodies were held in three phases in June and July, 2006 for the first time after a gap of 38 years. For more than three decades, the bureaucracy manned the Municipalities and Commune Panchayats. Special Officers stepped into the shoes of Mayors and took charge after the civic bodies, which were formed in the year 1968; they completed their six-year term in 1974. In the year, 2006 again municipal elections were held. From then all the civil records were maintained perfectly in Pondicherry Union Territory.

Much of the powers conferred on the municipalities by the various French laws ceased to have effect as Indian laws had replaced these laws. As a result, the municipal administration as conceived in the Nineteenth Century stood eroded, substantially. The Pondicherry Village and Commune Panchayat Act, 1973 and the Pondicherry Municipalities Act, 1973 were enacted respectively to govern village and town administration. Both these Acts came into force from 26 January 1974. Commune Panchayat Act provides for a two-tier system of Panchayat administration, one at the Village level and the other at the Commune level. The Mayors and Deputy Mayors ceased to function with effect from that date. All the executive powers of the Mayors stood transferred to the Commissioners appointed under this Acts. Under the re-organized set up, the Inspectorate of Local Bodies was converted into a Directorate headed by a Director to deal with the administrative matters. He was conferred the ex-officio secretariat status with two Deputy Directors to deal with "Municipal Administration" and "Rural Development" respectively. The Council became the governing body of the Municipality as well as the Commune Panchayats with powers to issue directions to the executive authority. The Chairman, as the presiding officer of the

Municipal Council/Commune Panchayat represents the Council in the
day-to-day administration of the Municipality/Commune Panchayat and is
entitled to be kept continuously informed of the working of the
executive authority Commissioners were appointed as the Chief
Executive Heads of the Municipalities, in different ranks according to the
grade of the municipalities. The Commissioner has to consult the
Chairman in respect of all matters on which such consultation would be
conducive to the smooth working of these bodies.

Following the introduction of the Pondicherry Municipalities Act,
1973, four municipalities came into existence in Pondicherry, Karaikal,
Mahe and Yanam towns. The jurisdiction of the Pondicherry Municipality extended to Pondicherry and Mudaliarpettai commune,
which stood amalgamated to form a single municipality. The entities of
Karaikal, Mahe and Yanam communes formed the municipalities of
Karaikal, Mahe and Yanam. The erstwhile Ozhukarai Commune
Panchayat was upgraded as a Municipality with effect from 14 January
1994 and thereby the number of municipalities in this Union Territory has
increased to five and the Commune Panchayat became 10 in number.
Current commune panchayats of Pondicherry region Ariankuppam,
Bahour, Mannadipat, Nettapakkam, Villianur 482.

In May 8th 2006, Elections to 1,138 local bodies was held in three
phases - June 24, June 26 and July 1. These included five municipalities,
10 commune panchayats and 98 village panchayats in the union territory.
Elections were held for the posts of five municipal Chairmen, 98 village
panchayat presidents, 122 municipal councilors, 98 commune panchayat

482 The Pondicherry village and Commune Panchayats (Conduct of election of Members of Commune
Panchayt councils and Presidents & Members of village Panchayats) (Amendment) Rules 2002
councilors and 815 village panchayat ward members. There are 650,000 voters in Pondicherry.\textsuperscript{483}

Though the Pondicherry Village and Commune Panchayat Act was enacted in 1974, the object of democratic decentralization of powers contemplated in the Act has not been achieved due to non-conduct of election to Village/Commune Panchayats. The Act provides for a two-tier system of Panchayat Administration viz., Village Panchayat and Commune Panchayat Council (Council). The Act also empowers the Government to appoint a Director to supervise the operation of these local bodies and appoint Commissioners and Executive Officers. The Government appointed the Director of Local Administration Department (LAD) as Director and Commissioner for all the ten Commune Panchayats. However, election was not held for Village or Commune Panchayats and the Act was amended in March 1978 under which Special Officers to the Commune Panchayats were appointed to exercise the powers and functions of the Councils with the assistance of Commissioner. In the absence of elections, the Village Panchayats are not constituted and the Director had not appointed Executive Officers.\textsuperscript{484} As such, the Panchayat Raj Institutions, which were to function as institutions of self-governance, functioned only as a wing of the Government.

Government amended the Act in 1994 to provide for reservation of seats to Other Backward Classes (OBCs). Government framed rules (November 1995) providing 27 per cent reservation for OBCs. When the Election Commission constituted in September 1994, made arrangement for conducting election in 1996, the reservation of seats for OBCs was

\textsuperscript{483} Election Commission Notification Dated 2006/pdy, Election Commissioner R. Narayana.
\textsuperscript{484} S.Nadarajan The voice of the people will be heard again Online edition of The Hindu, India's National News Paper , May 29, 2006.
challenged in the High Court of Madras. The Court stayed the conduct of
election and in April 1998 ruled that reservation without reference to the
population was unconstitutional and unenforceable. Government repealed
(April 2002) the provision regarding reservation of seats for Other
Backward Class (OBCs). Thus, amending the Act in contravention of the
provision of the Constitution delayed the election by over six years. The
Act empowers the local bodies to execute all rural development works.
Though the rural development schemes of Government of India provide
for people’s participation through Gram Panchayats and Gram Sabhas,
District Rural Development Agency, Pondicherry executed these schemes
through the Block Development Officers functioning under the Rural
Development Department. Government stated (October 2002) that merger
of Rural Development Department with Director of Local Administration
Department is under consideration and the Government of India funds
would be released to the local bodies after the merger. Commune
Panchayats derive their income from taxes and fees levied under the Act
and Government grants. In addition, Government also gives loans for
specific schemes. The Act did not prescribe any procedure for the
maintenance of accounts\textsuperscript{485}. The Act provides for participation by Village,
and Commune Panchayats in the selection of development works. The
area, and population of each panchayat varies considerably. The
reorganization of Commune Panchayats based on area, population etc.,
remained to be taken up so that economically viable Commune
Panchayats were formed so as to achieve the fruits of self-governance.

\textsuperscript{485} Local Administration Department - V - Financial Assistance to Local Bodies and Others-2002 (p7-9)
5.6 RECENT DEVELOPMENT IN THE ADR METHODS AT GRASS ROOT LEVEL

5.6.1 GRAM NYAYALAYA

The Law Commission of India in its 114 Report on Gram Nyayalaya suggested its establishment so that speedy, inexpensive and substantial justice could be provided to the common man. The Gram Nyayalayas Bill, 2007 was broadly based on the recommendations of the Law Commission. The Gram Nyayalayas Bill, 2007, provided for the establishment of Gram Nyayalayas for the purpose of providing access to justice – both civil and criminal – to the citizens at the grassroots level and to ensure that opportunities for securing justice are not denied to any citizen for reasons of social, economic or other disabilities and for matters connected therewith. The preamble of the Bill reverberated Article 39A of the Indian Constitution. The objective behind the introduction of this bill is that the Government by bringing forward this Bill can ensure access to justice to citizens at grass root level. It will help the earnestness of the Government to clear the backlog of cases to render inexpensive, easily available, non-formal and substantial justice. However, there are still doubts as to whether setting up of Gram Nyayalayas as proposed in this Bill alone will reduce pendency of cases.

In New Delhi, Union cabinet on April 24 2008 approved the bill to reduce pending Court cases. The cabinet gave its approval for withdrawal of the Gram Nyayalayas Bill, 2007, pending before Rajya Sabha, and introduction of the Gram Nyayalayas Bill, 2008, in the upper house in the light of the recommendations of the Parliamentary Standing committee on Personnel, Public Grievances, Law and Justice and the Law

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486 The Gram Nayalayala Bill 2007-08
Ministers & Law Secretaries & Registrar Generals of High Courts Conference, according to an official note. The new bill will provide for a system of judiciary which will be less expensive, free from protracted procedural wrangles, quick and available at the grassroots level, accessible to the common people and render justice to them as enshrined in Article 39 A of the Constitution, the note said.

5.6.2 JURISDICTION OF GRAM NYAYALAYAS

The Bill provides that a Gram Nyayalaya shall be the lowest Court of subordinate judiciary in the State. However, the Committee takes cognizance of the fact that as per Section 29 of the Code of Criminal Procedure, 1973 the Court of a Magistrate of the Second Class is the lowest Court. Gram Nyayalayas will exercise jurisdiction over all offences under the Central Acts where the maximum punishment provided for is imprisonment not exceeding one year, whether with or without fine.

The Gram Nyayalaya will be in addition to the regular civil and criminal Courts. The Gram Nyayalayas will cover both civil and criminal cases of a simple nature as specified in the Schedule to the proposed legislation. The Nyayalayas will follow summary procedure in criminal cases and a simple procedure having regard to the principles of natural justice in civil cases. The proceedings in these Nyayalayas will be less expensive, free from protracted procedural wrangles, quick and available at the grassroots level, accessible to the common man and render justice to him as enshrined in Article 39A of the Constitution.

The Gram Nyayalayas shall not have jurisdiction to take cognisance of the following classes of disputes:
A dispute by or against the Central Government or the State Government or a public servant for anything which is in good faith done or purported to have been done by him in his official capacity; A dispute where one of the parties is a minor or a person of unsound mind; and Any claim cognisable by revenue Courts.

Further, the Nyayadhikari, in the interest of justice, may close a case and advise the parties to approach the appropriate Civil Court in respect of matters relating to any complicated issue of fact or of law, which should be decided by any other competent Court of law.

5.6.3 NYAYADHIKARI

The proposed Gram Nyayalayas shall be presided over by a Nyayadhikari who shall be qualified to be eligible to be appointed as a Judicial Magistrate of the first class and belonging to a cadre of Nyayadhikaris constituted by the Governor in consultation with the Chief Justice of the High Court preference. The Bill is silent regarding the term of office, salary, allowances and other terms and conditions of the services of the Nyayadhikari. To ensure some uniformity throughout the country, provisions addressing the same would be vital and necessary. As per the proviso, Nyayadhikari shall be a person qualified to be eligible to be appointed as a Judicial Magistrate of the first class and the qualification requires for the same is just a bachelor degree in law with or without prior experience in the Bar.

5.6.4 GRAM NYAYALAYAS FUNCTIONING

The Nyayadhikari shall periodically visit the villages under his or her jurisdiction and conduct proceedings in close proximity to the place where the parties normally reside, thus functioning as a mobile Court.
However, mentioning ‘periodical’ visits to villages by the Nyayadhikari without prescribing number of visits might not serve the purpose. The Bill needs to prescribe a minimum number of visits to be made. The Bill is silent regarding the pecuniary jurisdiction of the Gram Nyayalayas, which needs to be specified. Empowering Nyayalayas to take up a dispute without any ceiling in the matter of pecuniary jurisdiction would be a risky venture, as the Nyayalayas shall consist of Nyayadhikarlis who hardly have any prior Court experience. Thus, a pecuniary jurisdiction of a specific amount is needed.

The Bill directs Gram Nyayalayas to make efforts for conciliation and settlement of civil disputes for which appointment of Conciliators by the District Judge in consultation with the District Magistrate has been envisaged. However, no minimum qualification is prescribed for their appointment. There is a need for some kind of uniformity amongst the States in regard to qualification, tenure, the method of appointment and remuneration of the Conciliators. Since the Conciliators play a very important role, any disparity would not be conducive to their working. Sufficient incentives including enhanced remuneration should be paid to the Conciliators and preference in appointment should be given to those with legal background apart from having experience in social service. This is vital to reduce nepotism and interference and to provide better solutions to the people.

5.6.5 SPEEDY JUSTICE

A deep-rooted problem in the functioning of the Courts, particularly in the Trial Courts, is the granting of frequent adjournments, mostly on flimsy grounds. The Bill under clause 33(9) gives Nyayalayas the right to adjourn the hearing beyond the following day provided the
necessary reasons are recorded in writing. This very provision would undermine the objective of ensuring speedy justice, as the Judges usually tend to act with unfettered discretion. The Bill has armed the Nyayadhikari with directions ‘not be bound by the procedure laid down in the Code of Civil Procedure, 1908’ but to be guided by the principles of natural justice. Further, the Gram Nyayalayas have also been vested with powers to proceed ex parte if any of the parties does not appear. To regulate the discretion, the Bill must lay down the exceptional circumstances when an adjournment may be granted. An appeal from the judgment of the Gram Nyaylaya will lie with the Sessions Court, which will be heard and disposed of within six months from the date of filing of the appeal.

5.6.6 COORDINATION

All the officers including the Nyayadhikaris, conciliators, local police officers, and other officials need to coordinate with each other for the effective implementation of the Act. They need to work together to ensure justice within the rural mass. In particular, the Bill calls for a high degree of coordination for implementation between the State Government and the High Court as Table 1 substantiates. Provisions for ensuring the same in a time bound period would be a herculean task and needs to be addressed rather than consigning them as administrative details or of procedures that cannot be provided for in the Bill. The coordination of prescribed tasks should be within their powers as laid down and need to ensure that neither overrides the other. In other words, either of them should not influence the other.
5.6.7 GROUNDS FOR REMOVAL

Incompetence is one of the grounds for removal from the office of Nyayadhikari as provided in clause 8(1). However, incompetence is not a crime. Hence, a Nyayadhikari who has been removed based on incompetence should not be barred from other appointments in Government as stated in clause 8(2). His merits are to be acknowledged.

The Gram Nyayalayas Bill 2008 was passed by the Parliament on December 21, 2008. The Rajya Sabha passed the bill on December 17, 2008. This bill ensures that it will provide for inexpensive and efficacious justice is delivered to the remotest areas possible, as it provides for holding of mobile Courts and conducting proceedings by the ‘Nyaya Adhikari’ (Judicial Magistrates First Class) by periodically visiting the villages. The Gram Nyayalayas are expected to exercise both civil and criminal jurisdiction and adopt summary procedures in trials. The quality of justice through Gram Nyayalayas would finally depend upon the nature of the forum that will be set up ultimately to render justice. The Bill seeks to address on top priority the problem of tackling mounting arrears in Courts through decentralisation of the system of administration of justice by providing for a participatory forum of justice within the Constitution. By setting up of Gram Nyayalayas for every Panchayat, the Constitutional goal is to make justice inexpensive, easily available, non-formal and substantial.

Thus as studied above, at the grass root level the alternative disputes redressal mechanisms includes Gram panchayats, Nyaya Panchayat and the Gram Nyayalaya. The Gram Nyayalayas Bill is yet to get the accent of the President of India. From the above study it is evident

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488 www.cuts-international.org
that The Gram Nyayalaya Act will provide for the establishment the
Gram Nyayalaya , which will be economical, with simple procedure and
quick resolution of disputes at the grassroots level. It will be easily
accessible to the villagers and common people in India for resolving their
disputes of particular nature at the pre litigation stage itself. Thus, it can
be said to be one of the methods that can be adopted progressively as one
of the solution to the problem of judicial arrears.

5.7 LOK ADALAT

The emergence of ADR has become a “global necessity” as judicial
backlog proliferates.489 Fast and equitable dispute resolution is the need of
the nations around the World and thus has led to the adoption of various
manifestations of alternative dispute resolution, 490 including India. 491 Lok
Adalat as the name suggest means people’s Court. The vernacular
meaning of the word Lok means people and Adalat means Court. Though
the term Court is used it Lok Adalat has hardly anything in common with
the Law Court except that both are tools in the legal to deliver justice.
Lok Adalat goes to the people to deliver justice at their doorsteps. Thus is
a forum provided by the interested people such as social activists, legal
aiders and public-spirited people belonging to every walk of life. In order
to ensure that the settlement is fair according to law, the forum may

489 Jitendra N. Bhatt, A round table Justice through Lok-Adalat, 1 SCC (JOUR) 11 (2002).
490 In California, for example, ADR was introduced to civil trials only two decades ago, today 94% of
cases are referred for settlement through ADR and 46% of such cases are settled without contest.
The Northern District of California is one of ten federal district Courts authorized by 28 U.S.C. Sec
651-658 to establish a mandatory, nonbinding Court-annexed arbitration program. In the U.S since
the enactment of the Civil Justice Reform Act 1990, there has been tremendous growth in the
creation of ADR programs.
491 Arguments for and against consensual dispute resolution has been sparked among the scholars of
different countries for example Owen M. Fiss, Against Settlement, 93 YALE. L. J. 1073, 1076
(1984); Andrew W. McThenia & Thomas L. Shaffer, For Reconciliation, 94 YALE. L. J. 1660
(1985) (responding to Fiss); Owen M. Fiss, Out of Eden, 94 YALE L. J. 1669 (1985) (responding to
McThenia & Schaffer); Carrie Menkel-Meadow, For and Against Settlement: Uses and Abuses of
the Mandatory Settlement Conference, 33 UCLA L. REV. 485 (1985); Judith Resnik, Many Doors?
Closing Doors? Alternative Dispute Resolution and Adjudication, 10 OHIO ST. J. ON DISP. RESOL.
consist of legally trained people. Their function is to enable the disputed parties who voluntarily seek the Adalat’s intervention to understand their respective rights and obligation with reference to the disputes brought before it and to help them in keeping the dialogue going in fair manner. The role of the presiding officers of the Lok Adalat is to clarify the law before the disputed parties and bring about settlement of the disputes between the parties through conciliation and persuasive efforts.

5.7.1 THE EVOLUTION OF LOK ADALATS

The study of the evolutionary history of dispute resolution methods elucidate that Lok Adalat originated from the discontent of the Indian legal system to provide fast, effective, and affordable justice. The Courts have become a competitive field for proving one’s social status as against the other. The counsel, judge, and litigants often cite deference of honor, harassment, and speculation as reasons for filing the cases in Courts and that makes cases drag out for, in some cases, decades. In many instances, petitioners seek endless series of appeals, revisions, and reviews. However, excessive party control places those seeking legal redress of their claims in an unequal position since respondents can abuse and delay resolution procedures with impunity. Commonly made interlocutory appeals shatter cases into many parts, each making its own path through the judiciary. The ignorance of the presence of alternatives

492 M.G.Chitkara, Lok Adalat and the poor, 1993, p35
494 This phenomenon is not unique to India. It has been suggested that similar reasons, i.e. enhancing power and influence, are given for resorting to Courts in the U.S. SALLY MERRY, GETTING JUSTICE AND GETTING EVEN (1990).
495 Party control over evidentiary development of litigation has traditionally been a significant distinguishing feature of the British, American, and Indian systems compared to the Continental European systems of Germany and France, and former colonies influenced by models of greater judicial control. John H. Langbein, The German Advantage in Civil Procedure, 52 U. Chi. L. REV. 823 (1985)
to litigation makes a full, discontinuous trial necessary, regardless of how long a full trial may take. Once a judgment is reached, the truly hard work of enforcement and execution begins. When these factors are mixed with inefficient Court administration systems, judicial passivity, and severely limited substitutes to a protracted and discontinuous litigation, widespread distress and distrust of the Indian justice system is the inevitable result. The Supreme Court of India has repeatedly interpreted that a “speedy trial is of essence to criminal justice and there can be no doubt that the delay in trial by itself constitutes denial of justice.”

It is a common phenomenon for the disputed parties to primarily approach a respected individual and have him act as a mediator for resolving the dispute and the process for arriving at a compromise in Lok Adalats is often through conciliation and mediation. Lok Adalats are a blend of all three forms of traditional ADR: arbitration, mediation, and conciliation. Lok adalats use conciliation, with elements of arbitration given that decisions are typically binding, and are an illustration of legal decentralization as conflicts are returned to communities from whence they originated for local settlement.

496 Hussainara Khatoon Vs State of Bihar AIR 1979 SC 1364. In yet another case the Court affirmed this principle by adding that “there can be no doubt that speedy trial -- and by speedy trial we mean a reasonably expeditious trial -- is an integral and essential part of fundamental right to life and liberty enshrined in Art 21.” Maneka Gandhi Vs UOI, AIR 1978 SC 597.

497 Conciliation is often held to be a constructive approach to justiciable disputes. Though the term “conciliator” is interchangeable with the term “mediator,” there are differences between these two positions. A mediator is usually a person accepted by the disputants themselves, whose principal task is to bring the parties together so that they can arrive at an agreed solution to the dispute. The mediator may see the parties privately, listen to their viewpoint, and impress upon each party an understanding of the viewpoint of the other party. Like a mediator, a conciliator also has the primary duty of helping the parties to a dispute reach an amicable settlement. On the other hand, the conciliator also draws up the terms of the agreement for settlement after having a detailed discussion with the parties to the dispute. Each party is invited to a conciliation conference to place their viewpoints before the conciliator, who clarifies complicated issues and takes notes. After the conference, the conciliator may talk to the parties separately and ascertain their “bottom line,” that is, the figure at which each party would be prepared to settle. The conciliator then proposes a solution to the parties. Anurag K. Agarwall, Role of Alternative Dispute Resolution in the Development of Society: Lok Adalat in India, IIMA WORKING PAPERS 2005-11-01 (2002).

The first modern Lok Adalat was held in Junagadh in 1981, though some argue that they originated in Gujarat from the late Chief Justice of the Gujarat High Court, M P Thakkar. Others contend that they began in Maharashtra well before 1982.499 Justice Thakkar had a significant influence in directing the contemporary evolution of Lok Adalat. The guiding principle of Justice Thakkar was, when he considered creating a system of Lok Adalats to form a system that was “less expensive, less speculative, less glamorized, more participatory, and more resolution oriented that would work to serve the purpose of justice with humanity in mind.” 500

The 1987 Legal Services Authorities Act provided free and competent legal service501 to the “weaker” sections of the society to ensure that opportunities for securing justice are not denied to any citizen due to economic or other disabilities and to organize Lok Adalat to see that operation of the legal system promotes justice based on equal opportunity. This statute also gave statutory authority to Lok Adalat, based on the practice of panchayat.502 Under this system, Lok Adalat is available at both the pre-litigation and litigation stages of dispute resolution.

In traditional Lok Adalat, one or both parties give their consent for the matter to be heard by conciliators in a Lok Adalat. The conciliators are comprised of a sitting or retired judicial officer and other “persons of

501 Article 39A of the Indian Constitution, as amended in February 1977, reads: “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 disability.”
“repute” who may be prescribed by the state government in consultation with the chief justice of the High Court. Where no compromise is arrived at through conciliation, the matter is returned to the concerned Court for disposal according to the law. This system gave the choice of forum for the resolution of their disputes along with the Courts so that they may better make well-informed, rational decisions.

Lok Adalats have been successful in the settlement of various types of claims, including: motor accident claims, matrimonial and family disputes, labor disputes, disputes relating to public services, bank recovery cases, and other cases. Up to 2004, more than 200,000 Lok Adalats had been held throughout India leading to the settlement of more than 16 million cases, half of them involving motor accident claims. Partition suits, damages, and matrimonial cases can be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases. The Media across India, including the press for example ,The Hindu, have applauded the widespread adoption of Lok Adalats as a way to expedite justice. While preferring Alternative Dispute Redressal methods the effectiveness is seen as the main target, rather than as a way to better justice.

5.7.2 ADVANTAGES OF LOK ADALAT OVER THE COURTS

Lok Adalats has many advantages over the Courts. Fundamentally, Lok Adalats are less formalized and less expensive than the Courts. The litigants have greater scope for participation in the satisfactory resolution of their cases. The reason for this is that money claims are more easily settled in a Lok Adalat since in most such cases the amount alone may be in dispute, meaning a more simple settlement. Likewise more than 7,214 cases of land acquisition matters where the quantum of compensation alone was in dispute have been settled. If these cases were to be dealt with in regular Courts or tribunal it would have taken years or even decades to decide them. Lok Adalat for speedy justice, THE HINDU, Dec. 18, 2001.

of their disputes. Lok Adalats can act simultaneously as conciliators, mediators, arbitrators or adjudicators as the situation demands. As such, Lok Adalats plays many different roles such as preventing conflicts from festering, negotiating, bargaining, compromising and resolving disputes efficiently base on the circumstances of the individual cases. Lok Adalats can be considered a recent expression of this trend in judicial populism and the benefits of traditional dispute resolution that has continued in India since Vedic period and re introduced after independence and traces its roots back to the Britishers attempts to establish local panchayats that would handle petty disputes.

Originally, Lok Adalats were held only several times per year on Sundays in towns throughout the Districts of India, and the subject matter jurisdiction was potentially unlimited. Lok Adalats handled disputes arising from the tahsil the subdivision of a district in which the town was located. This tradition has continued. These days, Lok Adalats have the jurisdiction to settle, by way of effecting compromise between the parties, matters that may be pending before a Court, as well as matters at pre-litigation stage, i.e. disputes which have not yet been formally instituted in any Court of law. Nowadays Lok Adalats are held frequently and almost daily. The disputes may be civil or criminal in nature, but the Lok Adalat cannot decide any matter relating to an offence not compoundable under any law even if the parties involved therein agree to settle the same.

505 Legal Services Authorities Act, 1987, Sec 19(3).
506 In particular, cases may be referred for consideration by Lok Adalats by: (1) consent of both parties to the dispute; (2) consent of one of the parties, who then makes an application to refer the matter to an LA; (3) if the Court is satisfied that the matter is appropriate for an LA; and (4) if a compromise settlement is reached, then the matter is returned to the concerned Court for disposal in accordance with the law. Such awards are deemed as decrees of a Civil Court, and are final and binding.
The benefits of Lok Adalats include no Court fee and if a Court fee has been paid in the Court, it is refunded when the dispute is settled in a Lok Adalat. There is direct consultation with a judge without procedural hurdles, an extremely abbreviated hearing schedule and the final decision by the Lok Adalat is binding. The disputants prefer Lok Adalat, as compromise position is often reached and the problem of judicial stagnation right away calls for simplifying procedures and increasing their flexibility.

There is a trend to have specialized Lok Adalats be convened, including consumer commissions for deficiencies in service provided by contractors, doctors and insurance companies, to dedicated motor vehicle accident and public utility service disputes. The prisons have been hosting Lok Adalats, in some cases leading to the freeing of dozens of prisoners or under-trials. It is entirely up to the conciliators at the lok adalats whether to accept a petition or reject it. Since 2002, Lok Adalats have been found to be a successful tool of alternate dispute resolution in India. It is most popular and effective because of its innovative nature and inexpensive style. These panels have been described as a “revolutionary evolution of the resolution of disputes”. As such, Lok Adalats have now been widely accepted and recognized as an effective vehicle for conciliating and settling disputes.

509 Bhatt, Jitendra N. (Judge, High Court of Gujarat, and Executive Chairperson, Gujarat State Legal Services Authority, Ahmedabad), A Round Table Justice through Lok Adalat (People’s Court): A Vibrant ADR in India, 1 Supreme Court Cases (Journal) 11(2002).
510 Under Section 89 of the Code, Courts have been empowered to explore the possibilities of settlement of disputes through Lok Adalats, arbitration and conciliation.
5.7.3 THE ADVENT OF PERMANENT LOK ADALATS

The introduction of Lok Adalats as a dispute redressal mechanism added a new chapter to the justice dispensation system of India and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. The Legal Services Authorities Act 1987 was enacted to give a statutory base to legal aid programs throughout the country on a uniform pattern. This Act was finally enforced on 9th of November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994.

Article 39A of the Constitution of India provides for equal justice and free legal aid. It is, therefore clear that the State has been ordained to secure a legal system, which promotes justice on the basis of equal opportunity. The language of Article-39A is understood in mandatory terms. This is made more than clear by the use of the twice-occurring word "shall" in Art-39 A. It is emphasized that the legal system should be able to deliver justice expeditiously on the basis of equal opportunity and provide free legal aid to secure that opportunities for securing justice are not denied to any citizens by reasons of economic or other disabilities.

The Legal Services Authorities Act, 1987 was enacted to constitute legal services authorities for providing free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity. The system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the Courts.
A traditional view was that the Lok-Adalat only deals with the petty legal matter like accident claim cases or insurance claim cases etc., and in a way it is good for poor litigants who wish to have quick justice system in place for insignificant legal matters. Nevertheless, this common sentiment is no longer the case with respect to permanent lok adalats, which are distinguishable from lok adalats in all but, name.

Certain salient features of the Legal Services Authority Act are enumerated under the following sections. Section 2 (d) gives the definition of the term 'Lok Adalat'. Lok Adalat means a Lok Adalat organised under Chapter VI of the Act. Section 19 provides that, the Central, State, District and Taluk Legal Services Authority are created who are responsible for organizing Lok Adalats at such intervals and place. Conciliators for Lok Adalat comprise of a sitting or retired judicial officer, other persons of repute as may be prescribed by the State Government in consultation with the Chief Justice of High Court. Section 20 provides for the reference of cases. The Cases can be referred for consideration of Lok Adalat by consent of both the parties to the disputes. One of the parties makes an application for reference. Where the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat it shall make such reference. Compromise settlement shall be guided by the principles of justice, equity, fair play and other legal principles. Where no compromise has been arrived at through conciliation, the matter shall be returned to the concerned Court for disposal in accordance with Law. Section 21 provides that once an agreement is arrived by the consent of the parties, the conciliators pass award. The matter need not be referred to the concerned Court for consent decree. Every award of Lok Adalat shall be deemed as decree of Civil Court. Every award made by the Lok Adalat shall be final and
binding on all the parties to the dispute. Moreover, No appeal shall lie from the award of the Lok Adalat. Section 22 provides that every proceedings of the Lok Adalat shall be deemed to be judicial proceedings for the purpose of Summoning of Witnesses, discovery of documents, reception of evidences and requisitioning of public record.

In 2002, the Indian Parliament amended the 1987 Legal Services Authorities Act (‘LSSA’). 511 Chapter VI-A was introduced with the caption “Pre-litigation Conciliation and Settlement,” which included Section 22-B envisaging the establishment of permanent lok adalats “at different places for considering the cases in respect of Public Utility Services (“PUS”).”512 Under section 22C (1) any civil dispute with a public utility service, where the value of the property in dispute does not exceed Rs1 million, or any criminal dispute that does not involve an offense not compoundable under any law, can be taken up in the permanent lok adalat.513 The permanent lok adalats is then expected to conciliate and bring about a settlement between the parties as is its primary duty as per section 22-C(4).514 While conducting such conciliation proceedings, it is incumbent on the members of permanent lok adalat to assist the parties to reach an amicable settlement. Once one party has made an application to permanent lok adalat, no party to that application shall invoke the jurisdiction of any Court in the same dispute.

512 PUS mean, as defined in Section 22-A(b), transport service for carriage of passengers or goods by air, road or water; postal telegraph or telephone services; supply of power, light or water to the public; system of public conservancy or sanitation; services in hospital or dispensary and insurance services. The Central or the State Government is also given power to issue notification declaring any other service also as a PUS in public interest.
513 Legal Services Authorities (Amendment) Act, 2002 Section 22 C (1).
514 Section 22-C(3) provides for rudimentary discovery that when an application is filed raising a dispute, the parties shall be directed to file written statements with appropriate proof, including documents and other evidence. Copies of documents produced and statements made by the parties shall be given to each other.
Permanent lok adalats attempt to settle disputes involving public utility services through conciliation and, if not on the basis of merit. Panels are guided by the principles of natural justice, objectivity, fair play, and equity without being bound by the Code of Civil Procedure and the Indian Evidence Act. What makes permanent lok adalats unique from traditional lok adalats is that, if the conciliation fails, “the permanent lok adalat still has the jurisdiction to arbitrate and decide the dispute.”\textsuperscript{515}

Explicitly, if the permanent lok adalat is of the opinion that, there exist elements of settlement in such proceedings, which may be acceptable to the parties, it shall formulate the terms of possible settlement, communicate its observations to the parties and if the parties agree, the settlement shall be signed and an award shall be passed. Award shall be in terms of such settlement and copies of the award shall be furnished to the parties.\textsuperscript{516} For all these purposes, permanent lok adalats are vested with the same powers as the Civil Courts under the 1908 Code of Civil Procedure, including: enforcing the attendance and examination of witnesses, discovery or production of documents, reception of evidence on affidavits, requisitioning of public records and documents, and such other matter as the Government may prescribe.\textsuperscript{517} Permanent lok adalats may even specify their own procedure for deciding the dispute, which is still deemed to be a judicial proceeding.

The award of a permanent lok adalat, whether made on merit or on settlement, is final and binding on the parties and is be deemed to be a decree of a Civil Court. This fact was recently litigated, and confirmed by the Indian Supreme Court in a series of cases.\textsuperscript{518} It shall be executed as

\textsuperscript{515} Legal Services Authorities (Amendment) Act, 2002 Section 22 C (8).
\textsuperscript{516} Legal Services Authorities (Amendment) Act, 2002 Section 22 C(7).
\textsuperscript{517} Legal Services Authorities (Amendment) Act, 2002 Section 22 C (8).
if it is a decree of a Civil Court having jurisdiction in respect of the dispute involved. Yet the award cannot be called into question in any “original suit, application or execution proceedings.” In other words, no appeal is provided from the award of the permanent lok adalat. Then again, permanent lok adalats require execution of its award by District Civil Courts with local jurisdiction. Hence, the quantum of a permanent lok adalat award may be reviewable by a three-person panel in the District Court, of which the District Judge is the Chairman. This distinction with traditional lok adalats means that an appeal is possible against an award of a permanent lok adalat in terms of Section 96(1) of the Code of Civil Procedure, when the 1987 Legal Services Authorities Act does not specifically bar it and as the award has all the attributes of a decree of a Civil Court. There is always a constitutional remedy available under articles 226 and 227 of the Indian Constitution, which provides for the aggrieved party to approach the concerned High Court by filing a writ petition. It would be pertinent to note that the above-mentioned amendment was challenged, but the Supreme Court upheld its validity.

5.7.4 CRITICISM OF PERMANENT LOK ADALATS

Significant opposition has existed against amending the Legal Services Authorities Act for the establishment of the permanent Lok Adalat. Such a response might be expected, as advocates stand to lose business if lok adalats are successful in draining from the District Courts

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519. Legal Services Authorities (Amendment) Act, 2002 Section 21 (2).
520. The Lok Adalat is not treated as a Court, but only vested with certain powers of a Civil Court or shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
521. S. N. Pandey Vs. Union of India (Civil writ No. 543/2002)
many of the petty cases filed there. The main opposition has focused on the fact that the permanent lok adalats are being given the power to decide a dispute not through conciliation, but through binding arbitration, unlike ordinary lok adalats envisaged in Section 19 of the Legal Services Authorities Act.522

The fact that permanent lok adalats have the capacity to decide disputes without the parties’ agreement makes them unique, more like adjudication than conciliation, and without the procedural safeguards inherent in Courts of law. Provisions of the Code of Civil Procedure and the Indian Evidence Act do not apply. Determination or decisions can be in a summary manner without redress. The only check on this authority is whether there exists elements of the settlement that may also be subjected to judicial review under Article 226 of the Constitution of India. Other standards of procedural fairness are at best, vague, enshrining “principles of natural justice, objectivity, fair play, equity and other principles of justice, and which is entirely at the subjective discretion of the arbitrator. It is exceedingly difficult to review whether a judge has decided in accordance with such broad standards. The award of a permanent lok adalat has all the attributes of a Civil Court decree and it is deemed as a decree of a Civil Court, but without any of the protections of a Civil Court.523

The Legal Services Authorities Act requires three people namely a judge, a lawyer, and a social worker to sit on a Lok Adalat panel this is rarely done524. These situations have been arising, due to the fact that the lawyers who are the members of the panel have to attend to the cases of their personal clients and the social workers are bound by the different

522 LSAA Section 19.
523 Section 96(1) of the Code of Civil Procedure, 1908.
524 Field Study Report Chapter-VIII
organizational service activities to which they are attached to. Thus, often, one retired High Court judge acting alone is deciding the cases. This is a tremendous amount of power to put in the hands of one person, however well meaning they may be. An illustration of the dangers of inadequate procedural protections in fast track justice occurred in the “Best Bakery” case, in which 14 Muslims were murdered in Vadadara on March 1, 2002. The Fast Track Court of H.U. Mahida acquitted all the 21 accused. The National Human Rights Commission, in its Special Leave Petition in the Indian Supreme Court, argued against the verdict. This episode draws attention to the true cost of the lack of procedural protections in lok adalats and other Fast Track Courts. Such a system could propound miscarriages of justice, decreasing public confidence in the judiciary. This could ultimately lead to the erosion of the judiciary even as alternative dispute redressal methods was designed to save it. Because of the power of permanent lok adalats to decide which cases to hear, to set their own procedures, and issue binding decrees, often ordinary men and women are at a distinct disadvantage relative to utility companies, rather than the reverse. The only factor that has changed is the peoples’ option of dragging litigation out so much that it was no longer to the companies advantage to pursue it. Now, with the potential for the rapid, binding resolution of outstanding claims, Insurance companies, Banks and other public utilities are able to circumvent proper judicial review for the sake of the bottom line, sacrificing consumer confidence, and dis-intensifying efficient power development and distribution along the way.

The spirit behind the Lok Adalat is to provide speedy and inexpensive justice to the masses in their various Civil, Criminal and revenue disputes. Lok Adalat must aims at providing a alternative dispute
redressal mechanism to that of judiciary, which could settle the dispute after a summary hearing, open discussion. Thus methods, that are more understandable to the people and thereby saving their valuable time, energy and scanty monetary resources must be adopted by the Lok Adalat. The beauty of Lok Adalat depends on the elimination of bitterness, as compromise is the very spirit of the Lok Adalat Justice. The need of the hour is frantically beckoning for setting up Lok-Adalats on permanent and continuous basis. The institution Lok Adalat has taken birth between an over-burdened Court System crushing under its own weight and alternative dispute resolution machinery for a just, inexpensive and quick dispensation of justice. The researcher has confined the study of the system of Lok Adalat as one of the alternative dispute resolution methods, aimed at reliving the over burdened Court system out of the problem of judicial arrears and judicial delay.

5.8 ALTERNATIVE DISPUTE REDRESSAL SERVICES INSTITUTIONS IN INDIA

5.8.1 THE TAMIL NADU MEDIATION & CONCILIATION CENTRE

The Tamil Nadu Mediation and Conciliation Centre was inaugurated by the Hon'ble Justice Y.K. Sabarwal, then Judge, Supreme Court of India, on 9th April, 2005 as a part of the Madras High Court in the presence of then Chief Justice of Madras High Court Hon'ble Thiru. Markandey Katju. The Tamil Nadu Mediation and Conciliation Centre is located at the ground floor of the western wing of the Madras High Court buildings.

525 www.hcmadras.tn.nic.in
The Tamil Nadu Mediation and Conciliation Centre was set up by the Madras High Court to facilitate the settlement of disputes pending in Courts. It has a panel of trained mediators who mediate cases referred to them by the Court. It is the first Centre of its kind in the country, which is set up by, and housed in the Court to handle Court referred cases. The Tamil Nadu Mediation and Conciliation Center’s purpose is to create awareness about mediation and conciliation, train mediators, organize and implement schemes for referral of cases by the Court to mediation. This includes orientation programs for Judges and selection of mediators.

The High Court of Madras refers appropriate cases for mediation to the Centre under Section 89 of the Code of Civil Procedure. A mediator from the Center’s panel is appointed to mediate the dispute. If settlement is reached in such process, it will be reported to the Court and the Court will pass suitable orders in terms of the settlement. If settlement is not reached, the Court will hear and dispose of the matter in its usual course. Lawyers render their professional service of assisting their clients during the mediation process. They protect their client's rights and promote the client’s interests in reaching a good settlement. Lawyers are also trained to become effective Mediators through various seminars conducted by this institution. The Tamil Nadu Mediation and Conciliation Centre in association with Union Territory of Pondicherry Legal Services Authority (UTPLSA) have also successfully conducted a training programme on mediation from 7th to 9th December 2007 for the Pondicherry lawyers\textsuperscript{526}.

As a major step taken in the growth of alternative dispute redressal services in India, is the establishment of institutions such as, IIAM - Indian Institute of Arbitration and Mediation, ICA - Indian Council for Arbitration, ICADR – International Centre for Alternate Dispute

\textsuperscript{526} Field study report on UTPLSA (Chapter 7 of thesis)
Resolution. These institutions provide the services of negotiation, mediation, conciliation, arbitration, settlement conferences etc. They also help in finding lacunae in existing ADR\textsuperscript{527} laws and recommended reforms to overcome them.

5.8.2 INDIAN INSTITUTE OF ARBITRATION AND MEDIATION (IIAM)

The Indian Institute of Arbitration and Mediation is a non-profit organisation registered under the TC Literary Scientific and Charitable Societies Registration Act, 1955. The institute was formed by a group of professionals and businessmen in the year 2001.

The legal and ethical aspects of IIAM are guided and advised by the IIAM Advisory Board. The entire process and controlling changes of IIAM DPM Service are evaluated and approved by the Advisory Board, which acts as the Process and Certification Control Board (PCCB). The Board also ratifies the certified legal auditor training procedures, auditors’ and mediators’ ethics and disciplinary process. The Advisory Board comprises of distinguished and eminent persons from various fields.

The Governing Body, based on the guidelines of the Advisory Board, decides the general administration and policy aspects of the institution. The President is the in charge of administration and policy aspects and general ADR and DPM\textsuperscript{528} projects\textsuperscript{529}.

\textsuperscript{527} Abbreviation of the term “Alternative Dispute Redressal Methods”
\textsuperscript{528} Abbreviation of the term “Dispute Prevention and Management”
\textsuperscript{529} pre@arbitrationindia.com
The Secretary General is the in charge of negotiation and settlement programs. The Director (Training) is the in charge of Training and Academic programs. The Director (DPM) is the in charge of DPM project - ICLA Legal Audit. The Director is the in charge of general administration and franchise operations. The DPM Coordinator is the in charge of DPM Project and IIAM Community Mediation Service. The ADR Coordinator is the in charge of coordination of academic & moot programs.

5.8.2.1 THE SERVICES

The Indian Institute of Arbitration & Mediation (IIAM) is providing alternative dispute resolution services. Services available through IIAM include negotiation, mediation, conciliation, arbitration, settlement conferences and so forth. It provides the facilities for international and domestic commercial arbitration, mediation and conciliation and maintains a panel of arbitrators and mediators for arbitration, conciliation and mediation.

IIAM offers service of negotiation and mediation for disputes and for deal making and provide nationally and internationally trained and accredited negotiators and mediators, empanelled with it. IIAM in partnership with corporate, as part of Corporate Social Responsibility, offers Mediation Clinics as part of IIAM Community Mediation Service. IIAM aids and assists settlement of disputes and liabilities with Banks.
and Financial Institutions for effective One Time Settlement (OTS) or Revival.

Members and the non-members can initiate for the IIAM services. Initiating IIAM services like mediation, conciliation, settlement or arbitration is based on IIAM Rules, which provide an easy and comprehensive procedure for parties to adopt.

To cater the requirements of various segments of people, IIAM conducts various courses, domestic and international, to suit their convenience and need. The primary level certificate programs on ADR and DPM are aimed at giving law and management students and professionals an overview on the subject and a basic level training. The distance education program is intended for busy professionals, who are not able to attend regular classroom training. International training programs are done in association with international training institutes and organizations. The US Certificate program and US LL.M program are conducted in association with the highly ranked Hamline University School of Law, USA. For creating awareness about ADR and DPM, IIAM provides opportunity for internships and conducts annual moot competitions on ADR for law students.

IIAM is also dedicated to promote the amicable and fair settlement of disputes. It aims to create an environment in which people can work together to find enduring solutions to conflicts and tensions. IIAM provides a triple level solution for total management of disputes. It provides facilities for alternative dispute resolution (ADR), which includes international and domestic commercial arbitration, mediation, conciliation and negotiation and maintains a panel of arbitrators and mediators, who are known for their integrity, impartiality and expertise.
for arbitration and mediation, conciliation, for effective resolution of disputes outside Court.

IIAM provide facilities for dispute prevention and management (DPM) services, which includes legal audit, legal risk assessment and business compliance assessment. It conducts training, academic programs and workshops on ADR and DPM and provides accreditation for mediators and arbitrators and certifies Legal auditors, thereby providing professional neutrals and auditors with integrity, impartiality and expertise.

IIAM’s aim is to create awareness about ADR and DPM and popularize the use of ADR and DPM for effective dispute resolution, prevention and management in commercial, corporate, workplace, family and other disputes. IIAM is also committed in delivering services of the highest quality and has in place stringent quality control mechanisms for all of its services.

The disputants can rely on IIAM system, which is characterized by neutrality, complete freedom of the parties to choose the option, venue, the applicable law, the language of the proceeding and the nomination of neutrals, and at the same time enjoy the security of a supervisory body and the administrative services offered by it. Going to Court is not the only method for resolving disputes. The high costs, long delays, aggravations and loss of privacy involved in going to Court are just a few of the reasons why more and more people with disputes are turning to more effective ways to settle their differences. Alternative dispute resolution (ADR) refers to any means of settling disputes outside the Courtroom. Normally alternative dispute redressal methods are cost effective, fast, flexible and fair.
5.8.2.2 DISPUTE PREVENTION & MANAGEMENT (DPM)

Prevention is always better than cure. IIAM believes that an effective litigation management practice and risk management tool will avoid 50 – 70% of the litigation expenses of a company and the industry. IIAM Dispute Prevention and Management (DPM) are intended to provide legal risk assessment, business compliance assessment and legal audit services. The legal audit and due diligence contexts can benefit in significant ways. This is vouched by IIAM by issuing the Legal and Business Compliance certificate. An independent audit is one of the foundations for establishing trust and enhances the business and legal compliance reputation. Thus, IIAM is the institution, which provides not only the different alternative dispute redressal method services but also facilities for dispute prevention and management.

5.8.3 INTERNATIONAL CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION (ICADR)\(^{535}\)

At the initiative of some of the leading legal luminaries, an International Centre for Alternative dispute resolution was established at New Delhi to effectively implement the provisions of the Arbitration and Conciliation Act, 1996 and to achieve its objectives. The Centre has its Regional Centers at Hyderabad and Bangalore. More regional centers are proposed to be opened in other States. It is expected that this institution will open new channels of dispute resolution, will provide necessary relief to the litigants and will help the Courts in reducing arrears. It will also train the manpower required for conciliation and mediation work. There is now a growing shift the world over to Mediation and Conciliation which unlike arbitration and Court trials does not involve a

\(^{535}\)www.ICADR.org
determination of issues by a third party. A mediator or the conciliator is a neutral third party appointed with the mutual consent of the disputants to facilitate a negotiated settlement of the dispute. These days the method of mediation and conciliation is the most rapidly growing form of alternative dispute redressal methods. It is being actively utilised in almost every conceivable type of dispute resolution and comes in various forms. The process has also been effectively adapted for multiple party dispute resolution with tremendous success. On average the success rates of mediation processes range from 80% to 85%.

There are some important organizations making significant contribution in promoting alternative dispute redressal method services in India which need a special mention herein namely ICA and ICADR, the Federation of Indian Chambers of Commerce and Industry, Indian Chamber of Commerce, the Bengal Chambers of Commerce and Industry. The Indian Council for Arbitration (ICA) established on April 15, 1965 provides arbitration facilities for all types of domestic and international commercial disputes and conciliation of international trade complaints received from Indian and foreign parties, for nonperformance of contracts or noncompliance with arbitration awards. It maintains comprehensive international panel of arbitrators with eminent and experienced persons from different lines of trade and professions for facilitating choice of arbitrators. The council has launched on internet a special web site called COMLAWNET to provide information on arbitration and commercial laws. There is a need for more organizations such as the ICA, ICC and FICCI that render specialized services and promote alternative dispute redressal methods. One would agree that these organizations have a vital role to play in resolving disputes, in particular, commercial disputes across the glob.
5.8.3.1 DISPUTE RESOLUTION

Delays in the resolution of disputes are often cited as a major reason behind delays in implementation of projects. International Centre for alternate dispute resolution has been established as an autonomous organization under the aegis of Ministry of Law, Justice and Company Affairs to promote settlement of domestic and international disputes by different modes of alternate dispute resolution. ICADR has its headquarters in New Delhi and has regional office in Lucknow and Hyderabad. Almost all areas of disputes in commercial, civil, labour and family in respect of which parties are entitled to conclude a settlement, can be settled by alternative dispute redressal methods procedures.

Disputes can be referred to ICADR in two ways. Firstly, by a clause in agreement providing for the reference of all future disputes under that contract for resolution through ICADR. Secondly, even where the parties have not included the arbitration clause in their original agreement for referring their dispute to ICADR, the parties can enter into a separate arbitration agreement for settling their disputes through arbitration and referring the same to ICADR.

The remedy of alternative dispute redressal methods is also available to the foreign investors, companies etc. in India in terms of the provisions of the new Arbitration and Conciliation Act, 1996, provided there is an agreement between the parties to refer their disputes to arbitration, conciliation or mediation.

5.8.3.2 THE SERVICES OFFERED

The seven dispute resolution procedures administered by the ICADR are Negotiation, Conciliation, Mediation, Mediation- Arbitration,
Mini Trial, Arbitration, and Fast Track Arbitration. ICADR has a panel of Arbitrators and Conciliators, consisting of retired Supreme Court and High Court judges, Law officers, Advocates, Engineers, Charted Accountants, etc. Besides the appointment of arbitrator and conciliators, ICADR can also provide facilities like conference hall for conducting arbitration proceedings, stenographic assistance, etc. ICADR also keeps track of the proceedings held by these arbitrators with a view to early conclusion of the proceedings. Fee for the arbitrator, both in case of domestic arbitration and conciliation and international arbitration and conciliation, are specified under the Arbitration and Conciliation Rules, 1996, framed by the Government of India. The parties and the arbitrator are, free to settle their fees in particular cases involving intricate legal or technical questions.

5.8.4 INDIAN COUNCIL OF ARBITRATION (ICA)536

The Indian Council of Arbitration (ICA) is the apex arbitral organisation in India. It was established to promote and encourage arbitration as the best alternative to litigation for the amicable and quick settlement of industrial and trade disputes. Indian Council of Arbitration (ICA) at present it is located at Federation House, Tansen Marg New Delhi, India.

The Government of India, the Federation of Indian Chambers of Commerce and Industry, other important chambers of commerce and trade associations in India as well as export promotion councils, public sector undertakings, companies and firms are in its membership537.

537 www.ficci.com
The Indian Council of Arbitration (ICA) was set up, in pursuant to a recommendation of the Indian Ministry of Commerce, in 1965, under the Societies Registration Act, 1860. It is founded and sponsored among others by The Government of India and The Federation of Indian Chambers of Commerce and Industry. Many other public and private sector undertakings interested in commercial and arbitration matters are members of the Council. ICA is a non-profit service organisation for promotion of the use of commercial arbitration and the smooth flow of trade.

5.8.4.1 FUNCTIONS

ICA provides arbitration facilities for all types of domestic and international commercial disputes. It uses its good offices for conciliation of international trade complaints, non-performance of contracts or non-compliance with arbitration awards. It organizes arbitration conferences and training programmes in different parts of India. ICA conducts research and publishes arbitration literature, including a Quarterly Arbitration Journal. It provides information and advice to all interested parties on drafting of trade contracts and arbitration laws and on establishing dispute settlement procedures and facilities. It also maintains cooperative links with arbitration bodies throughout the World.

ICA boasts a panel of around 1500 arbitrators with an extensive array of professional qualifications and expertise both legal and non-legal, guaranteeing a tribunal of the highest aptitude and proficiency.
5.8.4.2 THE SERVICES

The ICA’s services are available to all parties, irrespective of their membership in the Council. The facilities include Court and conference rooms, ranging from 12 to 175 persons capacity.

ICA offers facilities and services, on par with international standards, for the settlement of international commercial disputes and maritime disputes arising out of charter party contracts. It encourages international commercial arbitration in India and administers international and domestic arbitrations under the ICA Rules of Arbitration. ICA also does the work of providing assistance for the enforcement of awards, offering the option of conciliation for the settlement of disputes under the ICA Rules of Conciliation and providing advice and assistance to parties who approach ICA.

5.8.4.3 OTHER SERVICES

In order to provide arbitration services under the rules of foreign arbitral organisations, ICA has entered into arbitration service agreements and international mutual co-operation agreements with important foreign arbitral institutions in more than 40 countries.

It also does the work of providing technical knowledge on Arbitration Laws and ADR Procedure. The Council also organizes conferences and training programs both national and international, publishes literature and provides advisory services to business organisations and arbitration practitioners on trade terms and arbitration clauses.

The ICA website provides a gamut of information ranging from arbitration law, ICA Rules of Arbitration and Conciliation to judgments,
publications and the ICA Journal. Updated information about the activities of ICA, its panel of arbitrators, upcoming conferences and seminars may also be obtained from the website.

ICA has regional offices at Kolkata, Chennai and Mumbai and state-level offices at Ahmedabad, Bangalore, Bhubneshwar, Hyderabad, Pune, Cochin, Guwahati, and Jaipur to ensure that our clients receive cost-effective, value added and a fully integrated service.

Under ICA Fast Track Arbitration, parties may request the arbitral tribunal, before commencement of arbitration proceedings, to settle disputes within a fixed time frame of 3 to 6 months or any other time frame agreed by the parties, without any oral hearings.

The ICA Arbitration Quarterly contains important articles, information on institutional arbitration facilities, Court decisions, and news and notes on matters of interest in the field of arbitration, from different parts of the world. There are several other publications of ICA, on different aspects of the law and practice of arbitration and allied matters, including a joint publication with UNCTAD and the WTO on ‘Arbitration and Alternate dispute resolution: How to settle international business disputes’.
5.9 INTERNATIONAL INSTITUTIONS PROMOTING ALTERNATIVE DISPUTE REDRESSAL METHODS

5.9.1 INTERNATIONAL CHAMBER OF COMMERCE

5.9.1.1 ORIGIN AND FUNCTIONING OF THE INTERNATIONAL CHAMBER OF COMMERCE

The International Chamber of Commerce was founded in 1919 with an overriding aim to serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital.

Much of ICC’s initial impetus came from its first president, Etienne Clémentel, a former French minister of commerce. Under his influence, the organization's international secretariat was established in Paris and he was instrumental in creating the ICC International Court of Arbitration in 1923. ICC has evolved beyond recognition since those early post-war days when business leaders from the allied nations met for the first time in Atlantic City. The original nucleus, representing the private sectors of Belgium, Britain, France, Italy and the United States, has expanded to become a world business organisation with thousands of member companies and associations in around 130 countries. Members include many of the world’s most influential companies and represent every major industrial and service sector. In December 2004 the World Council elected Yong Sung Park as the Chairman of ICC, Marcus Wallenberg as the Vice-Chairman and Jean-Rene Fourtou as the Honorary Chairman. In June 2005, Guy Sebban was elected International Secretariat by the

World Council. Initially representing the private sectors of Belgium, Britain, France, Italy and the United States, it expanded to represent worldwide business organizations in around 130 countries.

As a voice of international business traditionally, ICC has acted on behalf of business in making representations to governments and intergovernmental organisations. Three prominent ICC members served on the Dawes Commission that forged the international treaty on war reparations in 1924, seen as a breakthrough in international relations at the time.

A year after the creation of the United Nations in San Francisco in 1945, ICC was granted the highest level consultative status with the UN and its specialised agencies. Ever since, it has ensured that the international business view receives due weight within the UN system and before intergovernmental bodies and meetings such as the G8 where decisions affecting the conduct of business are made.

As a defender of the multilateral trading system, the ICC's reach and the complexity of its work have kept pace with the globalisation of business and technology. In the 1920s, ICC focused on reparations and war debts. A decade later, it struggled vainly through the years of depression to hold back the tide of protectionism and economic nationalism. After war came in 1939, ICC assured continuity by transferring its operations to neutral Sweden.

In the post-war years, ICC remained a diligent defender of the open multilateral trading system. As membership grew to include more and more countries of the developing world, the organization stepped up demands for the opening of world markets to the products of developing countries. ICC continues to argue that trade is better than aid. In the
1980s and the early 1990s, ICC resisted the resurgence of protectionism in new guises such as reciprocal trading arrangements, voluntary export restraints and curbs introduced under the euphemism of "managed trade".

After the disintegration of communism in Eastern Europe and the former Soviet Union, ICC faced fresh challenges as the free market system won wider acceptance than ever before, and countries that had hitherto relied on state intervention switched to privatisation and economic liberalisation. As the world enters the 21st century, ICC is building a stronger presence in Asia, Africa, Latin America, the Middle East, and the emerging economies of eastern and central Europe. Sixteen ICC commissions of experts from the private sector cover every specialised field of concern to international business. Subjects range from banking techniques to financial services and taxation, from competition law to intellectual property rights, telecommunications and information technology, from air and maritime transport to international investment regimes and trade policy.

Self-regulation is a common thread running through the work of the commissions. The conviction that business operates most effectively with a minimum of government intervention inspired ICC's voluntary codes. Marketing codes cover sponsoring, advertising practice, sales promotion, marketing and social research, direct sales practice, and marketing on the Internet. Launched in 1991, ICC's Business Charter for Sustainable Development provides 16 principles for good environmental conduct that have been endorsed by more than 2300 companies and business associations.

ICC keeps in touch with members all over the world through its conferences and biennial congresses. In 2004, the world congress was
held in Marrakech. As a member-driven organisation, with national committees in 84 countries, it has adapted its structures to meet the changing needs of business. Many of them are practical services, like the ICC International Court of Arbitration, which is the longest established ICC institution. The Court is the world's leading body for resolving international commercial disputes by arbitration. In 2004, 561 Requests for Arbitration were filed with the ICC Court, concerning 1682 parties from 116 different countries and independent territories.

The first Uniform Customs and Practice for Documentary Credits came out in 1933 and the latest version, UCP 500, came into effect in January 1994. These rules are used by banks throughout the world. A supplement to UCP 500, called the eUCP, was added in 2002 to deal with the presentation of all electronic or part electronic documents. In 1936, the first nine Incoterms were published, providing standard definitions of universally employed terms like Ex quay, CIF and FOB, and whenever necessary they are revised. Incoterms 2000 came into force on 1 January 2000.

In 1951, the International Bureau of Chambers of Commerce (IBCC) was created. It quickly became a focal point for cooperation between chambers of commerce in developing and industrial countries, and took on added importance as chambers of commerce of transition economies responded to the stimulus of the market economy. In 2001, on the occasion of the 2nd World Chambers Congress in Korea, IBCC was renamed the World Chambers Federation (WCF), clarifying WCF as the world business organization's department for chamber of commerce affairs. WCF also administers the ATA Carnet system for temporary duty-free imports, a service delivered by chambers of commerce, which started in 1958 and is now operating in over 57 countries. Another ICC
service, the Institute for World Business Law was created in 1979 to study legal issues relating to international business. At the Cannes film festival every year, the Institute holds a conference on audiovisual law.

In ICC’s fight against commercial crime, in the early 1980s, it set up three London-based services to combat commercial crime namely, the International Maritime Bureau dealing with all types of maritime crime, the Counterfeiting Intelligence Bureau and the Financial Investigation Bureau. A cyber crime unit was added in 1998. An umbrella organisation, ICC Commercial Crime Services, coordinates the activities of the specialized anti-crime services. All these activities fulfils the pledge made in a key article of the ICC's constitution: "to assure effective and consistent action in the economic and legal fields in order to contribute to the harmonious growth and the freedom of international commerce."

5. 9.1.2 THE OBJECTIVES

The International Chamber of Commerce (ICC) is an international organization that works to promote and support global trade and globalisation. It serves as an advocate of world business in the global economy, in the interests of economic growth, job creation, and prosperity. As a global business organisation, made up of member states, it helps the development of global outlooks on business matters. ICC has direct access to national governments worldwide through its national committees among others.

To attain this objective, ICC has developed a range of activities. The ICC International Court of Arbitration is the most respected service of its kind in the world. Its voluntary rule writing for business spreads best practice in areas as varied as banking, marketing, anti-corruption and environmental management. Their policy-making and advocacy work
keeps national governments, the United Nations system and other global bodies apprised of the views of the world business on some of the most pressing issues of the day.

5.9.1.3 ICC’s WORLD COUNCIL, NATIONAL COMMITTEES, AND INTERNATIONAL SECRETARIAT

The ICC World Council is a general assembly of a major intergovernmental organisation composed of business executives. National committees name delegates to the Council. Ten direct members may be invited to participate. It usually meets twice a year. The Council elects the Chairman and Vice-Chairman for two-year terms. The Council elects the Executive Board on the Chairman's recommendation.

The Secretary General heads the International Secretariat. The Secretary General works with the national committees to carry out ICC's work programs and is appointed by the World Council. The ICC International Secretariat is based in Paris and is the operational arm of ICC. It carries out the work program approved by the World Council, feeding business views into intergovernmental organizations.

The Executive Board is responsible for implementing ICC policy. The Executive Board has between 15 and 30 members of both business leaders and ex-officio members. They serve for three years. They have a one-third rotation in membership. The Chairman, his immediate predecessor, and the Vice-Chairman form the Chairmanship.

National Committees represent the ICC in their respective countries. They recommend to the ICC their respective national business concerns in its policy recommendations to governments and international organizations. There are established formal ICC structures in over 90
countries. In countries where there is no national committee, companies and organisations such as, chambers of commerce and professional associations can become direct members. ICC has unrivalled access to national governments through its network of national committees.

Finance Committee, advises the Executive Board on all financial matters. It reviews the financial implications of ICC's activities and supervises the flow of revenues and expenses of the organization. The ICC World Council elects the Chairman. Commissions develop international and national government initiatives in their subject areas. They also develop business positions for submission to international organizations and governments. Commissions are composed of more than 500 business experts from member companies.

5. 9.1.4 THE DISPUTE RESOLUTION SERVICES

ICC International Court of Arbitration continues to provide the most trusted system of commercial arbitration in the world, having received 14000 cases since its inception in 1923. Over the past decade, the Court's workload has considerably expanded as its reputation for fast, flexible dispute resolution services spreads around the globe. The Court's membership has also grown and now covers 86 countries. With representatives in North America, Latin and Central America, Africa and the Middle East and Asia, the ICC Court has significantly increased its training activities on all continents and in all major languages used in international trade.

In the world of international commerce, the ICC is perhaps best known for its role in promoting and administering international arbitration as a means to resolve disputes arising under international contracts. It is one of the world's premier and leading institutions in
providing international dispute resolution services, together with the American Arbitration Association, the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), and the Stockholm Chamber of Commerce.

It is common for international commercial contracts to provide for an agreed means of resolving any disputes that may arise, and the ICC is one of leading institutions for administering international arbitration. The ICC's dispute resolution services also include ADR procedures such as mediation and expert determinations.

5.9.1.5 ICC's BUSINESS ACTION TO STOP COUNTERFEITING AND PIRACY (BASCAP)

With the launch of ICC's BASCAP (Business Action to Stop Counterfeiting and Piracy) initiative, more than 130 companies and trade associations are now actively engaged in a set of projects designed to defeat the pirates and increase public and political awareness of the economic and social harm caused by this illegal activity. BASCAP is using ICC's global media network and national committee structure to spread the word. BASCAP was launched in 2004 by the then ICC Chairman, Jean-Rene Fourtou, and its an operational platform established by ICC that connects all business sectors and cuts across all national borders, drawing them together to ensure that their message is clearly heard by governments and the public. BASCAP is prepared for a sustained effort to end this scourge. As the only business organisation with a truly global reach, ICC is well placed to take the fight against counterfeiting to the level required for action to be effective.
5.9.1.6 ICC CONSTITUTION

International Chamber of Commerce is the voice of world business championing the global economy as a force for economic growth, job creation and prosperity. Because national economies are now so closely interwoven, government decisions have far stronger international repercussions than in the past. It is the world's only truly global business organisation responds by being more assertive in expressing business views.

ICC activities cover a broad spectrum, from arbitration and dispute resolution to making the case for open trade and the market economy system, business self-regulation, fighting corruption or combating commercial crime. ICC has direct access to national governments all over the world through its national committees. The organisation's Paris-based international secretariat feeds business views into intergovernmental organizations on issues that directly affect business operations.

In setting rules and standards, the ICC has played significant roles. The arbitration under the rules of the ICC International Court of Arbitration is on the increase. Since 1999, the Court has received new cases at a rate of more than 500 a year. ICC’s Uniform Customs and Practice for Documentary Credits (UCP 500) are the rules that banks apply to finance billions of dollars worth of world trade every year. The ICC terms are standard international trade definitions used every day in countless thousands of contracts. ICC model contracts make life easier for small companies that cannot afford big legal departments. The ICC is a pioneer in business self-regulation of e-commerce. ICC codes on advertising and marketing are frequently reflected in national legislation and the codes of professional associations.
In promoting growth and prosperity, the ICC has played significant roles. The ICC supports government efforts to make a success of the Doha trade round. ICC provides world business recommendations to the World Trade Organization. ICC speaks for world business when governments take up such issues as intellectual property rights, transport policy, trade law or the environment. The signed articles by ICC leaders in major newspapers and radio and TV interviews reinforce the ICC stance on trade, investment and other business topics. Every year, the ICC Presidency meets with the leader of the G8 host country to provide business input to the summit. ICC is the main business partner of the United Nations and its agencies.

The ICC has played significant roles in spreading business expertise also. Primarily, at UN summits on sustainable development, financing for development and the information society, ICC spearheads the business contribution. Together with the United Nations Conference on Trade and Development (UNCTAD), ICC helps some of the world’s poorest countries to attract foreign direct investment. In partnership with UNCTAD, ICC has set up an Investment Advisory Council for the least-developed countries. ICC mobilizes business support for the New Partnership for Africa’s Development. At ICC World Congresses every two years, business executives tackle the most urgent international economic issues. The World Chambers Congress, also biennial, provides a global forum for chambers of commerce. Regular ICC regional conferences focus on the concerns of business in Africa, Asia, the Arab World and Latin America.

As an advocate for international business, ICC speaks for world business whenever governments make decisions that crucially affect corporate strategies and the bottom line. ICC’s advocacy has never been
more relevant to the interests of thousands of member companies and business associations in every part of the world. Equally vital is ICC's role in forging internationally agreed rules and standards that companies adopt voluntarily and that can be incorporated into binding contracts. ICC provides business input to the United Nations, the World Trade Organization, and many other intergovernmental bodies, both international and regional.

5.9.2 THE PERMANENT COURT OF ARBITRATION (PCA)

The Permanent Court of Arbitration (PCA) is an international organization based in The Hague in the Netherlands. It was established in 1899 as one of the acts of the first Hague Peace Conference, which makes it the oldest institution for international dispute resolution. As of 2006, 106 countries were party to one or both of these founding Conventions of the PCA. With the accession of Montenegro in April 2007, this number increased to 107.

The PCA was established by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899 during the first Hague Peace Conference. The Conference was convened at the initiative of Czar Nicolas II of Russia "with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments." The most concrete achievement of the Conference was the establishment of the PCA as the first global mechanism for the settlement of disputes between states. The 1899 Convention was revised at the second Hague Peace Conference in 1907.

539 Abbreviation of the term “Permanent Court of Arbitration”
The PCA is an intergovernmental organization with over one hundred member states. Established in 1899 to facilitate arbitration and other forms of dispute resolution between states, the PCA has developed into a modern, multi-faceted arbitral institution that is now perfectly situated at the juncture between public and private international law to meet the rapidly evolving dispute resolution needs of the international community. PCA provides services for the resolution of disputes involving various combinations of states, state entities, intergovernmental organizations, and private parties. The PCA assists in the selection of arbitrators, and can be called upon to designate or act as appointing authority. The PCA is also a center for scholarship and publication, and a forum for legal discourse. PCA celebrate the 100th anniversary of the 1907 Hague Peace Conference and the 1907 Convention for the Pacific Settlement of International Disputes. A commemorativaive meeting of the PCA’s Administrative Council was held for PCA member states on October 18, 2007.

5.9.2.1 THE SIGNIFICANCE

The PCA is not a “Court in the conventional understanding of that term, but an administrative organization with the object of having permanent and readily available means to serve as the registry for purposes of international arbitration and other related procedures, including commissions of enquiry and conciliation.” In short, it is a permanent framework available to assist temporary arbitral tribunals or commissions.

The PCA is housed in the Peace Palace in The Hague, which was built specially for the Court in 1913 with an endowment from Andrew Carnegie. From 1922 on, the building also housed the distinctly separate Permanent Court of International Justice, which later became the International Court of Justice in 1946. Unlike the ICJ, the PCA is not just open to States but also to other parties. The PCA provides services for the resolution of disputes involving various combinations of States, State entities, intergovernmental organizations, and private parties. In the early 1980s, the PCA did important work in setting up the administrative services of the Iran-United States Claims Tribunal\textsuperscript{541}.

The public at large is usually more familiar with the International Court of Justice than with the Permanent Court of Arbitration. The fact that people are relatively unfamiliar with the PCA is due to the closed nature of the cases and to the few number of cases dealt with between 1946 and 1990. The PCA has experienced a significant renaissance in recent years, with an exceptional growth in caseload\textsuperscript{542}.

The PCA administers cases arising out of international treaties (including bilateral and multilateral investment treaties), and other agreements to arbitrate. The cases conducted by the PCA span a wide range of legal issues, including disputes over territorial and maritime boundaries, sovereignty, human rights, international investment (investor-state arbitrations), and matters concerning international and regional trade. Hearings are rarely open to the public and sometimes even the decision itself is kept confidential at the request of the parties.


5.9.2.2 THE STRUCTURE

The PCA is not a Court in the traditional sense, but a permanent framework for arbitral tribunals constituted to resolve specific disputes. The PCA has a three-part organizational structure consisting of an Administrative Council that oversees its policies and budgets, a panel of independent potential arbitrators known as the Members of the Court, and its Secretariat, known as the International Bureau, headed by the Secretary-General.

The PCA houses the Editorial Staff of the International Council for Commercial Arbitration (ICCA) in its premises at the Peace Palace. ICCA’s publications include the Yearbook Commercial Arbitration, the International Handbook on Commercial Arbitration and the ICCA Congress Series.

5.9.2.3: THE SERVICES

The PCA administers arbitration, conciliation and fact finding in disputes involving various combinations of states, private parties, state entities, and intergovernmental organizations. International commercial arbitration can also be conducted under PCA auspices. The PCA’s two working languages are English and French. However, proceedings may be conducted in any language agreed on by the parties. The PCA offers hearing facilities at the Peace Palace and ancillary administrative services to tribunals operating ad-hoc or under the auspices of another institution.

The Secretary-General of the PCA may be called upon to act as the appointing authority for the appointment of arbitrators under the PCA’s Rules of Procedure, the UNCITRAL Arbitration Rules, or other rules of procedure. Parties may also consult the list of PCA Members of the Court.
who are nominated by member states and are available to act as arbitrators in PCA-administered proceedings. However, the Secretary-General and parties in PCA proceedings are not obliged to select arbitrators from this list and are free to exercise their discretion in selecting the individual best suited to the case at hand.

As a centre for scholarship and publication, the PCA compiles and edits scholarly works on current issues of international law and dispute resolution. As part of its environmental dispute resolution services, the PCA maintains a list of arbitrators who specialize in disputes relating to the environment and natural resources, as well as a list of scientific and technical experts who may be appointed as expert witnesses under the PCA’s Environmental Rules.

The PCA provides registry services and administrative support in international arbitrations involving various combinations of states, state entities, international organizations and private parties. The PCA has experience in administering international arbitrations concerning disputes arising out of treaties, including bilateral investment treaties and multilateral treaties, and other instruments. The PCA also plays an important role under the UNCITRAL Arbitration Rules.

5.9.2.4 THE REGISTRY SERVICES

The PCA regularly provides administrative services in support of parties and arbitrators conducting arbitral proceedings under the PCA’s auspices, serving as the official channel of communications and ensuring safe custody of documents. It can also provide such services as legal research, financial administration, logistical and technical support for meetings and hearings, travel arrangements, and general secretarial and linguistic support. A staff member of the International Bureau may be
appointed as registrar or administrative secretary for a case and he can carry out administrative tasks at the direction of the arbitral tribunal.

The parties may agree or tribunals may request that the PCA provide such registry services, as transmitting oral and written communications from the parties to the arbitral tribunal and vice-versa and between the parties, maintaining an archive of filings and correspondence. Making all arrangements concerning the amounts of the arbitrators’ fees and advance deposits to be made on account of such fees in consultation with the parties and the arbitrators; holding the party deposits and disbursing tribunal fees and expenses. Assisting the arbitral tribunal to establish the date, time and place of hearings, and giving such advance notice thereof to the parties as the tribunal determines. Making its hearing and meeting rooms in the Peace Palace available to the parties and the arbitral tribunal at no charge (costs relating to catering, Court reporting, or other support associated with hearings or meetings at the Peace Palace or elsewhere shall be borne by the parties). Arranging for transcription, recording, interpretation, translation, catering, or other support associated with hearings or meetings at the Peace Palace or elsewhere, the costs of which shall be borne by the parties. Assisting with travel and hotel reservations, as well as procurement of visas and carrying out any other tasks entrusted to it by the parties or the arbitral tribunal.

5.9.2.5 THE FEES AND COSTS

The PCA does not fix arbitrator fee amounts and does not have a schedule of arbitrators’ fees. These fees are determined by agreement with the parties. The PCA is experienced in facilitating a variety of arrangements for the payment of arbitrators’ fees, including individual hourly rates, fixed fees, or the use of a scale.
Parties in PCA administered proceedings pay no rental fee for use of the hearing and meeting rooms in the Peace Palace, but only expenses that arise in their case, such as registry fees, arbitrators' fees, costs of Court reporters, courier charges, catering, fees for interpretation, and the costs of expert evidence and other assistance provided to the tribunal.

Other costs of PCA arbitration include the costs of expert evidence and other assistance provided to the tribunal, fees and expenses of the appointing authority, and the expenses of the International Bureau, including hearing expenses. Parties to proceedings in which the PCA acts as registry may use the hearing and meeting rooms in the Peace Palace free of charge, and only pay for the services provided for their particular case.

5.9.2.6 HOST COUNTRY AGREEMENTS

To make its dispute resolution services more widely accessible, the Permanent Court of Arbitration (“PCA”) has adopted a policy of concluding “Host Country Agreements” with states that are contracting parties to either the 1899 or 1907 Convention for the Pacific Settlement of International Disputes.

Dispute resolution administered by the PCA includes arbitration, mediation, conciliation, and fact-finding commissions of inquiry. Through a Host Country Agreement, the host country and the PCA establish a legal framework under which future PCA-administered proceedings can be conducted in the territory of the host country on an ad hoc basis, without the need for a permanent physical PCA presence in that territory. Dispute resolution proceedings may be administered by the PCA, whether or not they are conducted pursuant to the 1899 or 1907 Conventions for the Pacific Settlement of International Disputes, or any
of the PCA’s optional rules of procedure, thus guaranteeing to the parties in dispute the maximum degree of procedural autonomy.

The PCA and the host country cooperate to ensure that adjudicators, PCA staff, and participants in proceedings (such as counsel, agents, and witnesses) are able to perform their functions under similar conditions to those guaranteed under the PCA’s Headquarters Agreement with the Kingdom of The Netherlands. The Host Country Agreement secures the provision by the host country of the facilities and services required for PCA-administered proceedings such as office and meeting space and secretarial services. It regulates the privileges and immunities that are afforded by the host country to adjudicators and participants in PCA-administered proceedings such as certain fiscal exemptions and immunity, under certain conditions, from legal process in respect of words spoken or written. The PCA and the host country may also establish a PCA facility in the territory of the host country.

Thus, the Host Country Agreement allows parties in dispute who are located in or near the host country to take full advantage of the flexibility and efficiency of PCA-administered proceedings in the territory of the host country. The wider benefits of the Host Country Agreement to the host country, neighboring states, and parties in dispute are, attracting arbitrations to the host country that would otherwise be conducted elsewhere, raising the international profile of the host country as an arbitral forum. Increasing domestic and regional awareness of arbitration and other methods of dispute settlement offered by the PCA. Promoting the use of arbitral institutions located in the host country. The strengthening cooperation between the PCA and national or regional arbitral institutions and facilitating the exchange of expertise and increasing the accessibility of PCA-administered dispute resolution.
5.9.2.7 ENVIRONMENTAL DISPUTE RESOLUTION

The PCA’s Optional Rules for Arbitration of Disputes Relating to the Environment and Natural Resources (“Environmental Rules”) were adopted in 2001. The working group and committee of experts in environmental law and arbitration drafted the rules. The Environmental Rules seek to address the principal lacunae in environmental dispute resolution identified by the working group. In the year 2002 the optional rules for conciliation of disputes with respect to the environment and natural resources was adopted. The PCA also provides guidance on drafting environmentally related dispute settlement clauses.543

The Environmental arbitration Rules provide for the establishment of a specialized list of arbitrators considered to have expertise in this area. The Rules also provide for the establishment of a list of scientific and technical experts who may be appointed as expert witnesses pursuant to these Rules.

Parties to a dispute are free to choose arbitrators, conciliators and expert witnesses from these Panels. However, the choice of arbitrators, conciliators or experts is not limited to the PCA Panels.

The Environmental Rules were drafted, inter alia, to serve as procedural rules for the resolution of disputes between States parties to multilateral environmental agreements (“MEAs”). To assist with the incorporation of references to the PCA’s Environmental Rules in the dispute resolution clauses in these instruments, the PCA participates regularly in negotiations facilitated by United Nations convention secretariats, such as Conferences of the Parties to the UN Framework Convention on Climate Change (UNFCCC). In the field of climate

543 www.pca-cpa.org/showfile.asp
change, the PCA actively promotes the use of its Environmental Rules in dispute resolution clauses in emissions trading contracts. The International Emissions Trading Association ("IETA") recommends the PCA Environmental Arbitration Rules in its various Model Emissions Reduction Purchase Agreements.

The PCA’s specialized panels, established pursuant to the Environmental Arbitration Rules, include emissions trading experts who are available for appointment to arbitral tribunals or conciliation commissions. The Secretary-General also maintains his own list of emissions trading experts.

5.9.2.8 MASS CLAIMS PROCESSES

Mass claims processes, established to consider legal claims resulting from significant historical events, have become increasingly important in international dispute resolution. The PCA Steering Committee on International Mass Claims Processes, chaired by Judge Howard Holtzmann, was established in response to the proliferation of mass claims systems in recent years. The Steering Committee, composed of individuals who have been active in two or more of the mass claims processes, either as an arbitrator, an administrator or counsel, has met regularly at the Peace Palace since 2000.


\textsuperscript{544} www.jusct.org
The International Oil Pollution Compensation Funds. The completed mass claims processes are the Commission for Real Property Claims for Bosnia Herzegovina (CRPC) and the Housing and Property Claims Commission (HPCC)\textsuperscript{545}.

5.9.2.9 FINANCIAL ASSISTANCE FUND

In October 1994, the Administrative Council agreed to establish a Financial Assistance Fund that aims at helping developing countries meet part of the costs involved in international arbitration or other means of dispute settlement offered by the PCA.

A “Qualifying State” may seek such financial assistance by submitting a written request to the Secretary-General. Qualifying States are state parties to the Convention of 1899 or 1907 that, they have concluded an agreement for the purpose of submitting one or more disputes, whether existing or future, for settlement by any of the means administered by the PCA. At the time of requesting financial assistance from the fund, are listed on the “DAC List of Aid Recipients” prepared by the Organization for Economic Co-operation and Development (OECD). An independent Board of Trustees decides on the request.

Parties to a bilateral treaty or other agreement who wish to have any future dispute referred to arbitration under the auspices of the PCA can insert an arbitration clause into that treaty or agreement. If the parties have not already entered into an arbitration agreement, or if they mutually agree to modify a previous agreement in order to provide for arbitration under the auspices of the PCA, they can enter into an agreement to submit their dispute accordingly. The International Bureau is available to provide

\textsuperscript{545} \url{www.ipcciraq.org}
information pertaining to the drafting of dispute resolution clauses and agreements.

5.9.3 WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO) ARBITRATION AND MEDIATION CENTER\textsuperscript{546}

Based in Geneva, Switzerland, the WIPO Arbitration and Mediation Center was established in 1994 to offer Alternative Dispute Resolution (ADR) options, in particular arbitration and mediation, for the resolution of international commercial disputes between private parties. Developed by leading experts in cross-border dispute settlement, the procedures offered by the center are widely recognized as particularly appropriate for technology, entertainment and other disputes involving intellectual property.

An increasing number of cases are being filed with the center under the WIPO Arbitration, Expedited Arbitration, Mediation and Expert Determination Rules. The subject matter of these proceedings includes both contractual disputes with respect to patent and software licenses, trademark coexistence agreements, distribution agreements for pharmaceutical products and research and development agreements and non-contractual disputes such as patent infringement. WIPO disputes have involved parties based in different jurisdictions including Austria, China, France, Germany, Hungary, India, Ireland, Israel, Italy, Japan, the Netherlands, Panama, Spain, Switzerland, the United Kingdom and the United States of America. The center makes available a general overview of its caseload as well as descriptive examples of particular cases.

\textsuperscript{546} en.wikipedia.org/wiki/Permanent_Court_of_Arbitration
The center believes that the quality and commitment of the neutrals are crucial to the satisfactory resolution of each case. The center assists parties in the selection of mediators, arbitrators and experts from the center's database of over 1,500 neutrals with experience in dispute resolution and specialised knowledge in intellectual property disputes. Where necessary in individual cases, the center will use its worldwide contacts to identify additional candidates with the required background. After appointment also, the center monitors its cases in terms of their time and cost effectiveness.

The center conducts a number of workshops focused on its procedures in Geneva during the course of the year which are frequented especially by intellectual property professionals including prospective WIPO neutrals. There is also available an online course on arbitration and mediation under the WIPO Rules.

One of the case administration facilities, which the center makes available at the parties’ option, is the WIPO Electronic Case Facility (WIPO ECAF). WIPO ECAF allows for secure filing, storing and retrieval of case-related submissions in a web-based electronic docket, by parties, neutrals and the center from anywhere in the world. It also facilitates case management by providing, in addition to the online docket, a case overview, time tracking and finance information.

While WIPO ECAF is available only to parties to a WIPO procedure, the Center, under certain circumstances, makes available this facility in non-WIPO procedures. For example, the center provides a customized version of WIPO ECAF for use in the Jury procedure of the 32nd America’s Cup, the international yachting competition that

\[547 \text{www.wipo.int/amc/ecaf}\]

The Center has also focused significant resources on establishing an operational and legal framework for the administration of disputes relating to the Internet and electronic commerce. The center is recognized as the leading dispute resolution service provider for disputes arising out of the abusive registration and use of Internet domain names. In addition, the center is frequently consulted on other specialized dispute resolution services. As an independent and impartial body, the center forms part of the World Intellectual Property Organisation.

### 5.9.4 LONDON COURT OF INTERNATIONAL ARBITRATION

The London Court of International Arbitration (LCIA) is a London based institution providing the service of international arbitration. The "London" portion of the name is deceptive, as the administrative headquarters of the LCIA are merely based there. It is an international institution, and provides a forum for dispute resolution proceedings for all parties, irrespective of their location or system of law. Although arbitration and the provisional of formal arbitration tribunals are the institution's main focus, the LCIA is also active in mediation, a form of alternative dispute resolution (ADR).

#### 5.9.4.1 EVOLUTIONARY HISTORY OF LCIA

The LCIA charts its history from 5 April 1883, the Court of Common Council of the City of London set up a committee to draw up proposals for the establishment of a tribunal for the arbitration of

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548 [www.lcia-arbitration.com](http://www.lcia-arbitration.com)
domestic and, in particular, of trans-national commercial disputes arising within the ambit of the City. In 1884, the committee submitted its plan for a tribunal that would be administered by the City of London Corporation, with the co-operation of the London Chamber of Commerce and Industry. However, though the plan had arisen out of an identified and urgent need, it was to be put on ice pending the passing of the English Arbitration Act 1889.

In April 1891, the scheme was finally adopted and the new tribunal was named "The City of London Chamber of Arbitration". It was to sit at the Guildhall in the City, under the administrative charge of an arbitration committee made up of members of the London Chamber and of the City Corporation. The Chamber was formally inaugurated on 23 November 1892, in the presence of a large and distinguished gathering, which included the then President of the Board of Trade. Considerable interest was also shown both by the press and in legal commercial circles.

In April 1903, the tribunal was re-named the "London Court of Arbitration" and, two years later, the Court moved from the Guildhall to the nearby premises of the London Chamber of Commerce. The Court's administrative structure remained largely unchanged for the next seventy years.

In 1975, the Institute of Arbitrators (later the Chartered Institute) joined the other two administering bodies and the earlier arbitration committee became the "Joint Management Committee", reduced in size from the original twenty four members to eighteen, six representatives from each of the three organisations. The Director of the Institute of Arbitrators became the Registrar of the London Court of Arbitration. In 1981, the name of the Court was changed to "The London Court of
International Arbitration", to reflect the nature of its work, which was, by that time, predominantly international

5.9.4.2 LCIA OPERATIONS

The LCIA remains one of the bigger permanent international arbitration institutions today. It promulgates its own rules and procedures, which are frequently adopted in ad hoc arbitrations even where the LCIA itself is not involved.

The LCIA is formed as a not-for-profit company limited by guarantee. The LCIA Board of Directors who are largely the prominent London-based arbitration practitioners is concerned with the operation and development of the LCIA's business and with its compliance with applicable company law. The Board does not have an active role in the administration of dispute resolution procedures, though it does maintain a proper interest in the conduct of the LCIA's administrative function. The LCIA Court is the final authority for the proper application of the LCIA Rules. Its key functions are appointing tribunals, determining challenges to arbitrators, and controlling costs. Although the LCIA Court meets regularly in plenary session, most of the functions to be performed by it under LCIA rules and procedures are performed, on its behalf, by the President, by a Vice President or by a Division of the Court. The Court is made up of up to thirty five members, selected to provide and maintain a balance of leading practitioners in commercial arbitration, from the major trading areas of the world, and of whom no more than six may be of UK nationality.
5.9.4.3 SECRETARIAT

Headed by the Registrar, the LCIA Secretariat is based at the International Dispute Resolution Centre in London and is responsible for the day-to-day administration of all disputes referred to the LCIA.

LCIA case administration is highly flexible. All cases are allocated dedicated computer and hard-copy files and computerised account ledgers. Every case is computer-monitored, but the level of administrative support adapts to the needs and wishes of the parties and the tribunal (or ADR neutral), and to the circumstances of each case. Due to the confidentiality of laws, the LCIA does not publish facts or statistics about the matters it adjudicates. Mediation, a form of alternative dispute resolution (ADR), also refers to appropriate dispute resolution, and aims to assist two or more disputants in reaching an agreement. Whether an agreement results or not, and whatever the content of that agreement, if any, the parties themselves determine rather than accepting something imposed by a third party. The disputes may involve states, organisations, communities, individuals or other representatives with a vested interest in the outcome. Mediators use appropriate techniques and skills to open and improve dialogue between disputants, aiming to help the parties reach an agreement with concrete effects on the disputed matter. Normally, all parties must view the mediator as impartial. Disputants may use mediation in a variety of disputes, such as commercial, legal, diplomatic, workplace, community and family matters.

5.9.5 THE WORLD TRADE ORGANIZATION

The World Trade Organization (WTO) is an international organization designed to supervise and liberalize international trade. The

\[549\text{www.wto.org}\]
WTO came into being on 1 January 1995, and is the successor to the General Agreement on Tariffs and Trade (GATT), which was created in 1947, and continued to operate for almost five decades as a de facto international organization. Its headquarters is located at the Centre William Rappard, Geneva, Switzerland. Its Official language is English, French, and Spanish.

The World Trade Organization deals with the rules of trade between nations at the global level. WTO is responsible for negotiating and implementing new trade agreements, and is in charge of policing member countries adherence to all the WTO agreements, signed by the majority of the world's trading nations and ratified in their parliaments. Most of the issues that the WTO focuses on derive from previous trade negotiations, especially from the Uruguay Round. The organization is currently working with its members on a new trade negotiation called the Doha Development Agenda (Doha round), launched in 2001. The WTO has 153 members, which represents more than 95% of total world trade. The WTO is governed by a Ministerial Conference, which meets every two years; a General Council, which implements the conference's policy decisions and is responsible for day-to-day administration; and a director-general, who is appointed by the Ministerial Conference.

5.9.5.1 FUNCTIONS

The WTO's main activities are the Negotiating and reducing or elimination of obstacles to trade (import tariffs, other barriers to trade) and agreeing on rules governing the conduct of international trade (e.g. antidumping, subsidies, product standards, etc.). Administering and

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monitoring the application of the WTO's agreed rules for trade in goods, trade in services, and trade-related intellectual property rights. WTO monitors and reviews the trade policies of the member states and ensuring transparency of regional and bilateral trade agreements. It settles disputes among the members regarding the interpretation and application of the agreements. WTO assists the process of accession of some 30 Countries who are not yet members of the organization. It Conducts economic research and collects and disseminates trade data in support of the WTO's other main activities. Explaining and educating the public about the WTO, is its mission and activities.

Among the various functions, the work of overseeing the implementation, administration and operation of the covered agreements and the work of providing a forum for negotiations and for settling disputes are regarded as the most important functions of the WTO\textsuperscript{551}.

Additionally, it is the WTO's duty is to review the national trade policies, and to ensure the coherence and transparency of trade policies through surveillance in global economic policy-making. Another priority of the WTO is the assistance of developing, least-developed and low-income countries in transition to adjust to WTO rules and disciplines through technical cooperation and training. The WTO is also a center of economic research and analysis. The regular assessments of the global trade picture is reported in the annual publications of the organization along with the research reports on specific topics\textsuperscript{552}. Finally, the WTO


\textsuperscript{552} P. van den Bossche, The Law and Policy of the World Trade Organization, 80
cooperates closely with the two other components of the Bretton Woods system, the IMF and the World Bank.\textsuperscript{553}

### 5.9.5.2 PRINCIPLES OF THE TRADING SYSTEM

The WTO establishes a framework for trade policies; it does not define or specify outcomes. That is, it is concerned with setting the rules of the trade policy games. Five principles are of particular importance in understanding both the pre-1994 GATT and the WTO namely, the Non-Discrimination, Reciprocity, Binding and enforceable commitments, Transparency and Safety valves.

There are 11 committees under the jurisdiction of the Goods Council each with a specific task. All members of the WTO participate in the committees. The Textiles Monitoring Body is separate from the other committees but still under the jurisdiction of Goods Council. The body has its own chairperson and only ten members. The body also has several groups relating to textiles.\textsuperscript{554}

### 5.9.5.3 VOTING SYSTEM

The WTO operates on a one country, one vote system, but actual votes have never been taken. Decision making is generally by consensus, and relative market size is the primary source of bargaining power. The advantage of consensus decision-making is that it encourages efforts to find the most widely acceptable decision. Main disadvantages include large time requirements and many rounds of negotiation to develop a consensus decision, and the tendency for final agreements to use ambiguous language on contentious points that makes future interpretation of treaties difficult.

\textsuperscript{553} Article 24 of the DSU

\textsuperscript{554} B. Hoekman, The WTO: Functions and Basic Principles, 42
In reality, WTO negotiations proceed not by consensus of all members, but by a process of informal negotiations between small groups of countries. Such negotiations are often called "Green Room" negotiations, named after the colour of the WTO Director-General's Office in Geneva, or "Mini-Ministerials", when they occur in other countries. These processes have been regularly criticised by many of the WTO's developing country members that are totally excluded from the negotiations.555

5.9.5.4 DISPUTE SETTLEMENT

In 1994, the WTO members agreed on the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) annexed to the "Final Act" signed in Marrakesh in 1994556. Dispute settlement is regarded by the WTO as the central pillar of the multilateral trading system, and as a "unique contribution to the stability of the global economy"557. WTO members have agreed that, if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. The operation of the WTO dispute settlement process involves the DSB panels, the Appellate Body, the WTO Secretariat, arbitrators, independent experts and several specialized institutions.

The WTO adjudicates on trade disputes between nations or groups of nations. The main areas of dispute are what are seen as 'non-tariff' barriers to trade. Under this nomenclature eco-labeling is a barrier to trade, discrimination against sweat shop labour or pariah regimes is a

556 Stewart-Dawyer, The WTO Dispute Settlement System, 7
557 Settling Disputes:a Unique Contribution, World Trade Organization,S. Panitchpakdi, The WTO at ten,8
barrier to trade, restrictions on unhealthy or hazardous products are a barrier to trade, measures to protect the environment and endangered species are barriers to trade. Unlike any other UN or international body, the WTO, because it acts on behalf of powerful corporations, has teeth.

A dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow-members considers to be breaking the WTO agreements, or to be not living up to its obligations. WTO members have agreed that if they believe fellow members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. That means abiding by the agreed procedures, and respecting judgments. A former WTO Director-General characterized the WTO dispute settlement system as "the most active international adjudicative mechanism in the world today." 558

In 1994, the WTO members agreed on the Understanding on Rules and Procedures Governing the Settlement of Disputes or DSU (annexed to the "Final Act" signed in Marrakesh in 1994) 559. Pursuant to the rules detailed in the DSU, member states can engage in consultations to resolve trade disputes pertaining to a "covered agreement" or, if unsuccessful, have a WTO panel hear the case. The priority, however, is to settle disputes, through consultations if possible. By July 2005, only about 130 of the nearly 332 cases had reached the full panel process 560.

The operation of the WTO dispute settlement process involves the parties and third parties to a case and may involve the DSB panels, the Appellate Body, the WTO Secretariat, arbitrators, independent experts,

558 Settling Disputes: a Unique Contribution, World Trade Organization, S. Panitchpakdi, The WTO at ten, 8
559 Stewart-Dawyer, The WTO Dispute Settlement System, 7
560 Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members, World Trade Organization, Article 21.1 of the DSU.
and several specialized institutions. The General Council discharges its responsibilities under the DSU through the Dispute Settlement Body (DSB)\textsuperscript{561}. Like the General Council, the DSB is composed of representatives of all WTO Members. The DSB is responsible for administering the DSU, i.e. for overseeing the entire dispute settlement process. It also has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize the suspension of obligations under the covered agreements\textsuperscript{562}. The DSB meets as often as necessary to adhere to the timeframes provided for in the DSU\textsuperscript{563}.

5.9.5.5 PROCEDURE ADOPTED FOR SETTLEMENT OF DISPUTE

If a member State considers that a measure adopted by another member State has deprived it of a benefit accruing to it under one of the covered agreements, it may call for consultations with the other member State\textsuperscript{564}. If consultations fail to resolve the dispute within 60 days after receipt of the request for consultations, the complainant state may request the establishment of a panel. It is not possible for the respondent state to prevent or delay the establishment of a Panel, unless the Dispute Settlement Body (DSB) by consensus decides otherwise\textsuperscript{565}. The panel, normally consisting of three members appointed ad hoc by the Secretariat, sits to receive written and oral submissions of the parties, on the basis of which it is expected to make findings and conclusions for presentation to the DSB. The proceedings are confidential, and even

\textsuperscript{561} Article IV:3 of the WTO Agreement  
\textsuperscript{562} Article 2.1 of the DSU  
\textsuperscript{563} Article 2.3 of the DSU  
\textsuperscript{564} A.F. Lowenfeld, International Economic Law, 152  
\textsuperscript{565} Article 6.1 of the DSU
when private parties are directly concerned, they are not permitted to attend or make submissions separate from those of the state in question\textsuperscript{566}.

The final version of the panel’s report is distributed first to the parties; two weeks later it is circulated to all the members of the WTO. In sharp contrast with other systems, the report is required to be adopted at a meeting of the Dispute Settlement Body (DSB) within 60 days of its circulation, unless the DSB by consensus decides not to adopt the report or a party to the dispute gives notice of its intention to appeal\textsuperscript{567}. A party may appeal a panel report to the standing Appellate Body, but only on issues of law and legal interpretations developed by the panel. Each appeal is heard by three members of the permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They must be individuals with recognized standing in the field of law and international trade, not affiliated with any government. The Appellate Body may uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days\textsuperscript{568}. The possibility for appeal makes the WTO dispute resolution system unique among the judicial processes of dispute settlement in general public international law\textsuperscript{569}.

Members may express their views on the report of the Appellate Body, but they cannot derail it. The DSU states unequivocally that an appellate body report shall be adopted by the Dispute Settlement Body (DSB) and unconditionally accepted by the parties, unless the DSB

\footnotesize{\textsuperscript{566} Article 6.1 of the DSU  
\textsuperscript{567} Article 6.1 of the DSU  
\textsuperscript{568} Article 17 of the DSU  
\textsuperscript{569} M. Panizzon, Good Faith in the Jurisprudence of the WTO, 275}
decides by consensus within thirty days of its circulation not to adopt the report\textsuperscript{570}. Unless otherwise agreed by the parties to the dispute, the period from establishment of the panel to consideration of the report by the DSB shall generally not exceed nine months if there is no appeal, and twelve months if there is an appeal\textsuperscript{571}.

### 5.9.5.6 COMPLIANCE

The DSU addresses the question of compliance and retaliation. Within thirty days of the adoption of the report, the member concerned is to inform the DSB of its intentions in respect of implementation of the recommendations and rulings. If the member explains that it is impracticable to comply immediately with the recommendations and rulings, it is to have a "reasonable period of time" in which to comply. If no agreement is reached about the reasonable period for compliance, that issue is to be the subject of binding arbitration, the arbitrator is to be appointed by agreement of the parties. If there is a disagreement as to the satisfactory nature of the measures adopted by the respondent state to comply with the report, which disagreement is to be decided by a panel, if possible the same panel that heard the original dispute, but apparently without the possibility of appeal from its decision. The DSU provides that even if the respondent asserts that it has complied with the recommendation in a report, and even if the complainant party or the panel accepts that assertion, the DSB keeps the implementation of the recommendations under surveillance\textsuperscript{572}.

\textsuperscript{570} Article 17.14 of the DSU
\textsuperscript{571} Article 20 of the DSU
\textsuperscript{572} Article 21 of the DSU
5.9.5.7 COMPENSATION AND RETALIATION

If all else does not succeed, two more possibilities are set out in the DSU. Firstly, if a member does not succeed within the "reasonable period" to carry out the recommendations and rulings, it may negotiate with the complaining State for a mutually acceptable compensation. Compensation is not defined, but may be expected to consist of the grant of a concession by the respondent State on a product or service of interest to the complainant State. Secondly, if no agreement on compensation is reached within twenty days of the expiry of the "reasonable period", the prevailing State may request authorization from the DSB to suspend application to the member concerned of concessions or other obligations under the covered agreements.573 The DSU makes clear that retaliation is not favored, and sets the criteria for retaliation.574 In contrast to prior GATT practice, authorization to suspend concessions in this context is semi-automatic, in that the DSB "shall grant the authorization within thirty days of the expiry of the reasonable period", unless it decides by consensus to reject the request. Any suspension or concession or other obligation is to be temporary. If the respondent State objects to the level of suspension proposed or to the consistency of the proposed suspension with the DSU principles, still another arbitration is provided for, if possible by the original panel members or by an arbitrator or arbitrators appointed by the Director-General, to be completed within sixty days from expiration of the reasonable period.575

While such "retaliatory measures" are a strong mechanism when applied by economically powerful countries like the United States or the European Union, when applied by economically weak countries against  

573 Article 22.2 of the DSU  
574 Article 22.3 and 22.4 of the DSU  
575 Article 22.6 of the DSU
stronger ones, they can often be ignored. This has been the case, for example, with the March 2005 Appellate Body ruling in case DS 267\textsuperscript{576}, which declared US cotton subsidies illegal. Whether or not the complainant has taken a measure of retaliation, surveillance by the DSB is to continue, to see whether the recommendations of the panel or the appellate body have been implemented\textsuperscript{577}.

The WTO acts as an unofficial, unrepresentative, unelected world government to enforce a rigid set of rules governing all aspects of trade on behalf of global corporations. It acts to ensure that global corporations have unrestricted access to a cheap supply of labour and raw resources and guaranteed access to markets to off-load their consumer junk. The WTO puts greed before need, profit before people and planet.

Thus, the World Trade Organization is the international organization whose primary purpose is to open trade for the benefit of all. The WTO provides a forum for negotiating agreements aimed at reducing obstacles to international trade and ensuring a level playing field for all, thus contributing to economic growth and development. The WTO also provides a legal and institutional framework for the implementation and monitoring of these agreements, as well as for settling disputes arising from their interpretation and application.

From the above study, it found that these institutions functioning at different levels are the step, which strengthen the domestic as well as the international dispute resolution mechanisms, and shows the ways to explore new avenues in the ADR field.

\textsuperscript{576} United States – Subsidies on Upland Cotton PDF (969 KiB)  
\textsuperscript{577} Article 22.8 of the DSU