

Part-I Overview of the Dispute Resolution Mechanism. Chapter II Alternative Dispute Resolution: How Out-of-Court Systems are used as Dispute Resolution Mechanisms

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CHAPTER II

ALTERNATIVE DISPUTE RESOLUTION: HOW OUT OF COURT SYSTEMS ARE USED AS DISPUTE RESOLUTION MECHANISMS

1. Overview of the ADR

Alternative dispute resolution (which for the sake of brevity we shall refer to as ADR) as the name suggests, is an alternative to the traditional judicial process. ADR gives people an involvement in the process of resolving their dispute that is not possible in a public, formal and adversarial justice system bristled with abstruse procedures and recondite language of the law. It offers a wide range of choices in method, procedure, cost, representation and location. It is often quicker than judicial proceedings and helps to ease burdens on the courts.

What kinds of ADR are available?

A wide range of dispute prevention and resolution procedures exist in India that allow the participants to develop a fair, cost-effective, and private forum to resolve disputes. All ADR mechanisms available in the country can be broadly discussed at two levels:

- 1) Those which are applicable throughout the country &
- 2) Those which are available at the state / UT level to deal with specific problems arising under their jurisdiction.

The following models for ADR as prototypes for use in disputes redressal exist on national level:

1. Tribunals, commissions, boards, etc.
2. *Lok Adalats*
3. *Nyaya Panchayats*
4. Arbitration
5. Conciliation
6. Ombudsman
7. Fast Track Courts (new concept)

1. Tribunal system in India:

Two decades after commencement of the Constitution of India, it was realized that the existing court system alone was insufficient to cater the needs of people and to deal with all types of disputes. The Constitution was accordingly amended and Article 323-B was added to authorize the legislature to establish tribunal, commissions, district boards, etc., for the adjudication or trial of any disputes, complaints or offences with respect to any matters.¹ In furtherance of the constitutional mandate, the following tribunals have been set up under different statutes:²

Name of the Statute	Name of the Tribunal
Administrative Tribunals Act, 1985.	i) Central Administrative Tribunal.
	ii) State Administrative Tribunal
	iii) Joint Administrative Tribunal.
Air Force Act, 1950	i) General Courts Martial.
	ii) District Courts Martial.
	iii) Summary-General Courts Martial
Aluminum Corporation of India (Acquisition & Transfer of Aluminum Undertakings) Act, 1984.	Commissioner of Payments.
Amritsar Oil Works (Acquisition & Transfer of Undertakings) Act, 1982.	Commissioner of Payments.
Andhra Scientific Company Ltd. (Acquisition & Transfer of Undertakings) Act, 1982.	Commissioner of Payments.
Army Act, 1950.	i) General Courts Martial.
	ii) District Courts Martial.
	iii) Summary-General Courts Martial.
Auroville (Emergency Provisions) Act, 1980.	Auroville (Emergency Prov.) Tribunal.
Banking Regulation Act, 1949.	Banking Regulations Tribunal.
Bengal Chemical Pharmaceutical Works Ltd. (Acq.& Transfer of Undertakings) Act, 1980.	Commissioner of Payments.
Bengal Immunity Company Ltd. (Acq. & Transfer of Undertakings) Act, 1984.	Commissioner of Payments.
Bird & Company Ltd. (Acq. & Transfer of Undertakings & Other Properties) Act, 1980.	Commissioner of Payments.
Border Security Force Act, 1968.	i) General Security Force Courts.
	ii) Petty Security Force Courts.
	iii) Summary Security Force Courts.
Braithwate & Company (India) Ltd. (Acq. & Transfer of Undertakings) Act, 1976.	Commissioner of Payments.
Brentford Electric (India) Ltd. (Acq. & Transfer of Undertakings) Act, 1976.	Commissioner of Payments
Britannia Engineering Company Ltd. (Mokameh Unit) & the Arthur Butler & Company Ltd. (Acq. & Tr. of Undertakings) Act, 1978.	Commissioner of Payments
British India Corporation Ltd. (Acquisition of Shares) Act, 1981.	Commissioner of payments.
Burn Company & Indian Standard Wagon Company (Nationalization) Act, 1976.	Commissioner of Payments.

¹ 42nd amendment to the Constitution in 1976.

² S. P. Sathe, *The Tribunal System in India*, The Institute of Advanced Legal Studies, N.M Tripathi (P) Ltd. (1996), Appendix I, p. 223- 6.

Cinematograph Act, 1952.	Cinematograph Tribunal.
Cineworkers & Cinema Theatre Workers (Regulation of Employments) Act, 1981.	Cineworkers Tribunal.
Coal Bearing Areas (Acq.& Development) Act, 1957.	Coal Bearing Areas (Acquisition & Development) Tribunal.
Coal Mines (Nationalization) Act, 1973	Commissioner of Payments.
Coast Guard Act, 1978	Coast Guards Court.
Coking Coal Mines (Nationalization) Act, 1972.	Commissioner of Payments.
Consumer Protection Act, 1986.	i) District Forum.
	ii) State Commission.
	iii) National Commission.
Customs Act, 1962.	Customs, Excise and Gold (Control Appellate Tribunal.
Central Excises and Salt Act, 1944.	
Gold Control Act, 1968	
Customs & Excise Revenues (Appellate Tribunal) Act, 1986	Customs & Excise Revenues Appellate Tribunal.
Dalmia Dadri Cement Ltd. (Acquisition & Transfer of Undertakings) Act, 1981.	Commissioner of Payments.
Delhi Rent Control Act, 1958.	Appellate Tribunal.
Displaced Persons (Claims Supplementary) Act, 1954.	Commissioner
Displaced Persons (Comp. & Reht) Act, 1954.	Commissioner
Displaced Persons (Debts Adjustment) Act, 1951.	Displaced Persons (Debts Adjustment) Tribunal.
Employees Provident Funds & Miscellaneous Provisions Act, 1952.	Employees Provident Funds Appellate Tribunal.
Employees State Insurance Act, 1948.	Employees' Insurance Court.
Equal Remuneration Act, 1976.	Appellate Authority.
Evacuee Interest (Separation) Act, 1951.	Appellate Authority.
Family Courts Act, 1984.	Family Courts.
Foreign Exchange Regulation Act, 1973.	Foreign Exchange Regulation Tribunal.
Foreigners Act. 1946.	Foreigners Tribunal.
Gresham & Craven of India (Pvt.) Ltd. (Acq. & Transfer of Undertakings) Act, 1977.	Commissioner of Payments.
Hind Cycles Ltd. & Sen-Raligh Ltd. (Nationalization) Act, 1980.	Commissioner of Payments.
Hindusthan Tractors Ltd. (Acquisition & Transfer of Undertakings) Act, 1978.	Commissioner of Payments.
Illegal Migrants (Determination by Tribunals) Act, 1983.	i) Illegal Migrants Tribunal.
	ii) Illegal Migrants Appellate Tribunal.
Income Tax Act, 1961.	Income Tax Appellate Tribunal.
Business Profits Tax Act, 1947	
Companies (Profits) Surtax Act, 1964.	
Expenditure Tax Act, 1987.	
Gift Tax Act, 1958.	
Hotel Receipts Tax Act, 1980	
Interest Tax Act, 1974.	
Wealth Tax Act, 1957	
Indian Iron & Steel Co. (Acquisition of Shares) Act, 1976.	Commissioner of Payments.
Industrial Disputes Act, 1947.	i) Labour Courts.
	ii) Industrial Tribunal.
	iii) National Tribunal.
Payment of Bonus Act, 1965.	
Inland Vessels Act, 1917.	Inland Vessels Accident Claims Tribunal.

Insurance Act, 1938.	Insurance Act
Inter-State Water Disputes Act, 1956.	Water Dispute Tribunal.
Jute Companies (Nationalisation) Act, 1980.	Commissioner of Payments.
Life Insurance Corporation Act, 1956.	Life Insurance Corporation of India Tribunal.
Maruti Ltd. (Acquisition & Transfer of Undertakings) Act, 1980.	Commissioner of Payments.
Merchant Shipping Act, 1958.	Merchant Shipping Tribunal.
Minimum Wages Act, 1948.	Commissioner.
Monopolies & Restrictive Trade Practices Act, 1969.	Monopolies & Restrictive Trade Practices Commission.
Motor Vehicles Act, 1988.	i) State Transport Appellate Authority.
	ii) Accident Claims Tribunal.
Narcotic Drugs & Psychotropic Substances Act, 1985.	Appellate Authority.
National Company Ltd. (Acquisition & Transfer of Understandings) Act, 1980.	Commissioner of Payments.
Naval & Aircraft Prize Act, 1971.	Prize Courts.
Navy Act, 1957.	i) Commanding Officer.
	ii) Disciplinary Court.
	iii) Court Martial.
Plantations Labour Act, 1951.	Commissioner.
Press & Registration of Books Act, 1867.	Appellate Board.
Railway Claims Tribunal Act, 1987.	Railway Claims Tribunals.
Railways Act, 1989.	Railways Tribunal.
Recovery of Debts Due to Banks & Financial Institutions Act, 1993.	i) Debts Recovery Tribunal.
	ii) Debts Recovery Appellate Tribunal.
Richardson & Cruddas Ltd. (Acquisition & Transfer of Undertakings) Act, 1972.	Richardson & Cruddas Ltd. (Acquisition & Transfer of Undertakings) Tribunal.
Securities Laws (Amendment) Act, 1995.	Appellate Authority.
Sick Industrial Companies (Special Provisions) Act, 1986.	Appellate Authority for Industrial and Financial Reconstruction.
Sick Textile Undertakings (Nationalization) Act 1974.	Commissioner of Payments.
Smith, Stanistreet & Co. Ltd. (Acquisition & Transfer of Undertakings) Act, 1977.	Commissioner of Payments.
Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.	Appellate Tribunal.
Special Protection Group Act, 1988.	Special Protection Group Tribunal.
Textiles Committee Act, 1963.	Textiles Committee Tribunal.
Transformer & Switchgear Ltd. (Acquisition & Transfer of Undertakings) Act, 1983.	Commissioner of Payments.
Unlawful Activities (Prevention) Act, 1967.	Unlawful Activities (Prevention) Tribunal.
Urban Land (Ceiling & Regulation) Act,	Urban Land (Ceiling & Regulation) Tribunal.
Wakf Act, 1954.	Wakf Tribunal.
Working Journalists & Other Newspaper Employees' (Cond. of Service) & Misc. Provisions Act, 1955.	i) Tribunal for Working Journalists.
	ii) Tribunal for Non-Journalists.
Workmen's Compensation Act, 1923	Commissioner

However, the above list is not exhaustive of statutes, providing for establishment of tribunal or of number of tribunals / fora established in India. Every day almost, new legislations come up, providing for setting up of tribunals to resolve any conflict, which may arise thereunder.

The tribunals, as alternative fora of dispute adjudication, are quicker, economical, less formal and possess expertise in a subject compared to the courts. They discharge the quasi-judicial functions.³ The procedure in these tribunals is not typical adversarial, but lawyers are permitted to represent the parties and appeal may lie against the decision of the tribunal either to the high court or the Supreme Court, as provided by the statutes. Tribunal disposals are of vital importance as it involves revenue to the tune of million of rupees.⁴

2. Lok Adalats

Let us now turn to *Lok Adalat*-another mode of ADR. In recent times, *Lok Adalats* as an ADR has gained momentum. *Lok Adalat* means people's court, in contrast to the regular law courts established by the government.

In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the chairmanship of a judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and it started monitoring legal aid activities throughout the country. This gave birth to *Lok Adalats*. The introduction of *Lok Adalats* added a new chapter to the justice dispensation system in India and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes.

In 1987 Legal Services Authorities Act was enacted to give a statutory status to the institution of *Lok Adalat*. Chapter VI of the Act contains provisions providing for organization of *Lok Adalats*; the power and functions of the *Lok Adalat* and the effect of the award made by the *Lok Adalat*. Under section 19 of this Act, anybody can get his dispute referred to *Lok Adalat* for its settlement through mediation and conciliation. Once a compromise or settlement is arrived at before the *Lok Adalat*, then the award based thereon, acquires the force of a decree of a civil court. It attains finality and binds the parties to the dispute. The Act forbids filing of appeal to any court against such an award except on the ground of fraud. Thus, the dispute gets resolved once for all ensuring mental peace to the parties. The parties are not required to pay any court fee or engage a lawyer.⁵ Section 20 of the Act empowers the court to refer any case to *Lok Adalat* when it feels that there are chances of settlement; or the matter is an appropriate one to be taken cognizance of by the *Lok*

³ *S.C. Legal Aid Committee Representing Undertiral Prisoners v. Union of India* (1994) 6 SCC 731, 745.

⁴ Example, Income Tax Appellate Tribunal, decides tax matters and have a bearing on the economy.

⁵ G.C.Bharuka, *ICA Arbitration Quarterly*, Vol 50, No.3, Oct-Dec, 2001.

Adalat. The *Lok Adalats* decide the dispute with utmost expedition to arrive at a compromise or settlement on the basis of principles of justice, equity, fair play and other legal principles. When *Lok Adalat* is not able to arrive at a compromise or settlement, the record of the case is returned to the court, which referred the case to the *Lok Adalats*. The *Lok Adalat* is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker.

Experience shows it is easier to settle money claims in *Lok Adalat*.⁶ In recent times the concept of *Lok Adalat* has gained popularity. Prison *Lok Adalat*, Provident Fund *Lok Adalat*, Labour Law *Adalat*, etc., are being organized almost every day in one part or other of the country, to settle disputes.⁷ So far, *Lok Adalats* have settled 15 million cases.⁸

There is a move to amend the Legal Services Authorities Act, 1987 to insert a new Chapter VIA for providing compulsory pre-litigative mechanism (Permanent *Lok Adalats*). A Bill to this effect to be known as the Legal Services Authorities (Amendment) Bill, 2002 will be introduced in the forthcoming Budget Session of Parliament. Presently, *Lok Adalat*, set up under the Act, can decide cases only on the basis of compromise. Under the proposed scheme, now the Permanent *Lok Adalat* will have power to decide a case on merit if parties are not able to arrive at any settlement or compromise. However, the *Lok Adalat* will take up cases up to the monetary value of Rs. 1 million only. Permanent *Lok Adalat* under the new scheme would have jurisdiction over cases relating to public utility services, namely (i) transport of passengers or goods by air, road or water, (ii) postal, telegraph and telephone services, (iii) power and water supply, (iv) conservancy or sanitation, (v) hospitals and (vi) insurance.⁹

3. Nyay Panchayats

In India *Panchayats* are in existence since ancient times. In villages, the administration was carried out by a *Panchayat* headed by village headman which among others, were deciding petty civil, criminal and revenue cases. The respectable members of the village community formed the *Panchayat*, where the five preferred ones amongst them used to resolve the disputes by a process of conciliation and mediation. *Panchayat*'s decisions were generally honoured and accepted by the village community. In the pre-British period, the *Panchayat* formed the key-stone of the

⁶ http://pib.nic.in/archieve/ppinti/ppioct2001/low_and_justice.html

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Public Utility Services To Be Brought Under Lok Adalats*, January 8, 2002, PIB Release, <http://pib.nic.in/archieve/lreleng/lyr2002/rjan2002/08012002/r080120025.html>

village arch.¹⁰ However, during the British rule *Panchayat* were not permitted to function as autonomous and self-sufficient bodies.¹¹ After India became independent *Panchayats* were revived and it began to function in all states.

The functions of *Panchayats* cover a wide sphere of activities, which may be classified under four broad categories (i) civic amenities; (ii) social welfare activities; (iii) development work; and (iv) judicial functions such as resolution of petty civil, criminal and revenue cases.

The dispensation under the Constitution of India, pertaining to *Panchayats*, was introduced by the Constitution (73rd Amendment) Act, 1992, w.e.f. 01.06.1993, by inserting Part-IX, from Articles 243 and 243(A) and to 243(O) and schedule-XI as organic parts of the Constitution. It enjoined the state to take steps to organise village *Panchayats* and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The 73rd Constitution Amendment lays down in broad outline, the constitution, composition, reservation of seats, duration, disqualification for membership, powers, authority and responsibilities of *Panchayat*, power to impose taxes, and several other related matters. Apart from the above, one of the highlights of the 73rd Amendment is the *Gram Sabha* (village assembly) for every *Panchayat*. When *Panchayat* dispense justice it acts as *Nyaya Panchayat*.

The major characteristics of *Panchayat* are as under :

- i) *Panchayats* have become the institutions of local self-governance in rural areas, where people elect their own representatives.
- ii) The duration of the office of every *Panchayat* is five years, unless dissolved.
- iii) It is a community organization free from party affiliation.¹²
- iv) It is not only a unit of local self-government but also an effective institution for securing social justice.
- v) For attaining the goal of social justice, express provision under the 73rd Amendment of the Constitution is made for reservation of seats for Schedule Castes and Scheduled Tribes with the number of seats reserved, bearing, as nearly as possible, the same proportion to the total number of seats to be filled by direct election, as the population of the Schedule Castes or the Schedule Tribes in that *Panchayat* area bears to the total population of that area. Such seats are allotted by rotation to different constituencies in a *Panchayat*.

¹⁰ Sharma Vidya Sagar, *Panchayat Raj* (Vidya Mandir, Hoshiarpur) (1962) p.19.

¹¹ *Id.*, at 29.

¹² *Id.*, at 79.

- vi) In order to give representation to women in *Panchayats*, as provided in the 73rd Amendment of the Constitution, one-third of the total number of seats are reserved for women.
- vii) *Panchayat* is required to prepare plans for economic development and social justice and implement such schemes.
- viii) *Panchayat* may levy, collect and appropriate such taxes, duties, tolls and fees as specified in the law by the legislature of the state.

The historic 73rd Constitutional Amendment Act, 1992 came into force on April 24, 1993, with the objective to improve the participation of people in the process of their development and to transform *Panchayati Raj* institutions into vibrant institutions performing necessary development, regulatory and general administrative functions. The number of *Panchayati Raj* institutions established in different states and union territories is given below:

S. No.	State	Gram Panchayats	Panchayat Samiti	Zilla Parishads	Total
1	Andhra Pradesh	21784	1093	22	22899
2	Arunachal Pradesh	2012	78	13	2103
3.	Assam	2489	202	21	2712
4	Bihar	12181	726	55	12962
5	Goa	188	0	2	190
6	Gujarat	13547	184	19	13750
7	Haryana	5958	111	16	6085
8	Himachal Pradesh	2922	72	12	3006
9	Jammu & Kashmir	2683	0	0	2683
10	Karnataka	5673	175	27	5875
11	Kerala	990	152	14	1156
12	Madhya Pradesh	31126	459	45	31630
13	Maharashtra	27611	319	29	27959
14	Manipur	166	0	4	170
15	Meghalaya	Traditional Councils			
16	Mizoram				
17	Nagaland				
18	Orissa	5255	314	30	5599
19	Punjab	11591	138	17	11746
20	Rajasthan	9184	237	32	9453
21	Sikkim	157	0	2	159
22	Tamil Nadu	12593	385	28	13006
23	Tripura	530	16	3	549
24	Uttar Pradesh	51705	809	70	52584
25	Uttaranchal	6995	95	13	7103
26	West Bengal	3314	340	16	3670
27	A&N Islands	67	0	1	68

28	Chandigarh	0	0	0	0
29	D & N Haveli	11	0	1	12
30	Daman & Diu	10	0	2	12
31	NCT Delhi	0	0	0	0
32	Lakshadweep	10	0	1	11
33	Pondicherry	10	0	1	11
		230762	5905	496	237163

Source: Panchayati Raj Wing, Krishi Bhawan, New Delhi.

The Composition of Panchayati Raj institutions: Article 243G of the Constitution, added to the Constitution, after the amendment, empowers the state legislatures to endow the *panchayats* with such powers and authorities as may be necessary to enable them to function as institutions of self-government. Legislating for these institutions remains the responsibility of the states. However, any such legislation has to conform to the mandatory provisions of Part IX of the Constitution, which provides for three tier system of *Panchayati Raj* as a participatory democratic forum, compulsory representation of women and Schedule Caste, Schedule Tribes among members and office bearers of *Panchayat Raj* institutions, etc.¹³ As on December 2001, the number of women chairpersons in *Panchayati Raj* institutions in states and union territories was:

S.No.	State / Uts	Gram Panchayat	Intermediate Panchayat	District Panchayat
1	Andhra Pradesh	15065	366	6
2	Arunachal Pradesh	Election not held		
3.	Assam	Election not held		
4	Bihar	Election to Chairperson not held		
5	Goa			
6	Gujarat			
7	Haryana	1199	38	5
8	Himachal Pradesh	970	23	4
9	Jammu & Kashmir	73 rd Amendment Act not extended		
10	Karnataka	1880	59	9
11	Kerala	257	39	5
12	Madhya Pradesh	11953	123	9
13	Maharashtra	9203	106	10
14	Manipur	55	0	2
15	Meghalaya	73 rd Amendment Act not extended.		
16	Mizoram	73 rd Amendment Act not extended.		
17	Nagaland	73 rd Amendment Act not extended.		
18	Orissa			

¹³ See Part IX of Constitution of India (73rd Amendment) Act, 1992, Arts. 243-B, 243-C, 243-D.

19	Punjab	0	47	5
20	Rajasthan	3064	80	10
21	Sikkim	50	0	1
22	Tamil Nadu	4323	139	10
23	Tripura	203	7	1
24	Uttar Pradesh	19535	301	22
25	West Bengal	1081	124	6
26	A&N Islands			
27	Chandigarh		ctn. Not held	
28	D & N Haveli	4	0	1
29	Daman & Diu	5	0	0
30	NCT of Delhi	73 rd Amendment Act not extended.		
31	Lakshadweep			
32	Pondicherry	Election not yet held		
33	Uttaranchal			
34	Chhattisgarh			
35.	Jharkhand	Election not yet held		
	TOTAL	68847	1452	106

Source: Panchayati Raj Wing, Krishi Bhawan, New Delhi.

Statewise Number of Elected Panachayat Representatives in the three tiers showing breakup into SC/ST & Women.

S.No.	States / UTs	Gram Panchayat				Panchayat Samite				Zilla Parishad			
		SC	ST	Women	Total	SC	ST	Women	Total	SC	ST	Women	Total
1	Andhra Pradesh	38674	15304	78000	230529	789	803	5420	14644	128	66	363	1093
2	Arunachal Pradesh	Arunachal Pradesh Panchayati Raj Act not passed.											
3	Assam			5469	30360			669	2564				845
		Figures not current. Fresh elections due since October, 1997.											
4	Bihar	Figures not available.											
5	Goa			468	1281								35
6	Gujarat	4739	9550	21351	123470	279	561	1275	3814	57	114	254	761
7	Haryana	12128	0	167604	54346	536	0	858	2430	66	0	182	226
8	Himachal Pradesh	3824	672	6016	18264	280	74	558	1661	46	14	84	252
9	Jammu & Kashmir	73rd Amendment not applicable in the State. State proposes adopting 73rd Amendment.											
10	Karnataka	17918	7575	35305	80627	601	169	1343	3340	165	47	335	919
11	Kerala				10270				1547				300
12	Madhya Pradesh	68924	157191	160077	474770	1316	2795	3031	9105	151	294	338	1008
13	Maharashtra	40766	35150	101182	303545	409	453	1174	3524	206	232	587	1762
14	Manipur	35	44	555	1556	0	0	0	0	1	2	22	61
15	Meghalaya												
16	Mizoram	Traditional councils perform duties of Local Govt. 73rd Amendment not applicable in these States.											
17	Nagaland												
18	Orissa	7394	11823	27036	81077	478	809	1754	5260	85	131	284	854

19	Punjab	23814	0	26939	75473	Elections							
						due.							
20	Rajasthan	17902	15616	33566	112897	943	804	1740	5494	177	154	33	1028
21	Sikkim	40	298	326	873	0	0	0	0	6	40	28	92
22	Tamil Nadu	18886	686	31548	125852	1358	41	2295	6499	137	3	22	648
23	Tripura	1237	704	1809	5421	48	26	67	196	15	7	24	70
24	Uttar Pradesh	101939	867	120591	799780	9126	135	13865	59991	389	7	634	2687
25	West Bengal	13644	3319	17883	49225	2354	582	2997	8520	200	50	243	716
26	A&N Islands	-		229	667			25				10	30
27	Chandigarh	Current figures not available											
28	D & N Haveli	3	103	46	135						11	4	16
29	Daman & Diu	1	17	25	63					1	3	5	15
30	NCT Delhi	NCT government propose conduct of Panchayat elections.											
31	Lakshadweep	0	79	30	79	0	0	0	0	0	22	8	22
32	Pondicherry				120								
	TOTAL	371868	258998	685155	2580680	18517	7252	37071	128589	1830	1197	3460	13456

Source: Panchayati Raj Wing, Krishi Bhawan, New Delhi.

Functions and powers of Panchayati Raj Institutions - *Panchayati Raj* institutions provide an effective institutional base of community participation in the rural development process. It endows a greater extent of autonomy to local bodies. Local government becomes the integral part of the Constitution. These institutions provide the possibility for local resources mobilisation.

The Constitution empowers the *panchayats* to impose taxes and constitute their own funds.¹⁴ The control over natural resources (land, water, forest, etc.) has been given to *panchayats* and powers related to implementation of development programmes and administration also lies with the *panchayats*.¹⁵ The status of devolution of departments /subjects with funds, functions and functionaries to *Panchayati Raj* institutions as on December 2001 is given below:

¹⁴ Constitution of India, Articles 243-G and 243-H.

¹⁵ Kavita Kanan, *Micro Planning: A Conceptual Framework*, 7(Participation Governance, November 2001), p.9

Sl.No.	States/Uts	No. of departments/subjects transferred to <i>Panchayats</i> with			No. of departments/subjects yet to be transferred to <i>Panchayats</i> with		
		Funds	Functions	Functionaries	Funds	Functions	Functionaries
1	Andhra Pradesh	05	13	02	24	16	27
2	Arunachal Pradesh	-	-	-	29	29	29
3	Assam	-	-	-	29	29	29
4	Bihar	-	-	-	29	29	29
5	Jharkhand	-	-	-	29	29	29
6	Goa	-	-	-	29	29	29
7	Gujarat	-	-	-	29	29	29
8	Haryana	-	16	-	29	13	29
9	Himachal Pradesh	02	23	07	27	06	22
10	Karnataka	29	29	29	-	-	-
11	Kerala	15	29	15	14	-	14
12	Madhya Pradesh	10	23	09	19	06	20
13	Chhattisgarh	10	23	09	19	06	20
14	Maharashtra	18	18	18	11	11	11
15	Manipur	-	22	04	29	07	25
16	Orissa	05	25	03	24	04	26
17	Punjab	-	07	-	29	22	29
18	Rajasthan	-	29	-	29	-	29
19	Sikkim	29	29	29	-	-	-
20	Tamil Nadu	-	29	-	29	-	29
21	Tripura	-	12	-	29	17	29
22	Uttar Pradesh	12	13	09	17	16	20
23	Uttaranchal	12	13	09	17	16	20
24	West Bengal	12	29	12	17	-	17
25	A&N Islands	-	-	-	29	29	29
26	Chandigarh	-	-	-	29	29	29
27	D & N Haveli	-	03	03	29	26	26
28	Daman & Diu	-	29	-	29	-	29
30	Pondicherry	-	-	-	29	29	29
31	Lakshadweep	-	06	-	29	23	29

Source: Panchayati Raj Wing, Krishi Bhawan, New Delhi.

The value of these Institutions - By their very nature, *Panchayati Raj* institutions focus on specific issues related to water, health, hygiene, education, children, social functions, agricultural, crime, peace and protection of environment. The second feature of these institutions is their voluntary character. People come together because they like to do so; not because they are deputed to do so or it is mandatory or there are some external compulsions. The voluntary nature of such institutions provides a level of energy and commitment, which acts as a fuel for the functioning of these institutions. The third feature of such institutions is that they maintain a largely informal basis of functioning. They govern themselves on the basis of commonly held

norms and values, social and interpersonal processes of communication, mutual trust and obligations. The quality of face-to-face interaction and related social mechanisms provide the basis for informal functioning of such associations.¹⁶

Nyay panchayats - *Nyay Panchayats*, as an indigenous system of participatory justice at the village level, exist to resolve the disputes by a process of conciliation and mediation at the village level. Their decisions are generally honoured and accepted by the village community.¹⁷ The earliest statutory recognition to these foras came in the form of the Village Courts Act, 1888 in Madras. As of today, *Nyay Panchayats* continue to be popular in India and the system is adopted in almost every state in the country by suitable legislation or schemes to ensure that opportunities for securing justice are not denied to any citizen on the grounds of economic or other disabilities.¹⁸ Usually *Nyay Panchayats* take cognizance of suits pertaining to:

1. money due on contract (other than contracts relating to immovable property);
2. recovery of movable property or the value of such property;
3. compensation for wrongfully taking or injuring movable property;
4. compensation for damage caused by cattle trespass.

In some states, other causes of action of a petty nature have also been brought within the jurisdiction of the *panchayat* courts such as suits for recovery of rent, tenancy and the like.¹⁹ The method followed by these fora resembles more closely to mediation. It encourages the parties to discuss their positions with greater candor and fosters compromise. It often allows the parties to voice their position in a joint session to discuss settlement opportunities.²⁰

¹⁶ Rajesh Tandon, *Grassroots Democracy*, 8 (Participation & Governance, 23 March, 2002), p 9.

¹⁷ Law commission of India, 114th Report, (August 1986).

¹⁸ Upendra Baxi, "Access Development and Distributive Justice: Access Problems of the "Rural" Population", 18 *Journal of the Indian Law Institute* (1976).

¹⁹ Law Commission of India, 14th Report, p. 882.

²⁰ Stephen A. Mayo, *Alternative Dispute Resolution Mechanisms: A Summary of Basic Mechanisms*, Institute for the Study & Development of Legal Systems, June 17, 1997, available on <http://www.isdls.org/adr.htm>

4. Arbitration

Settlement of disputes by arbitration has been practiced in India from the distant past and the legal literature tells us of the ancient system of arbitration for resolving disputes concerning the family, or the trade or a social group. The Constitution of India also puts it as a Directive Principle of State Policy that the State should encourage settlement of international disputes by arbitration.²¹

In the past, statutory provisions on arbitration were contained in three different enactments, namely, The Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Arbitration Act, 1940 laid down the framework within which domestic arbitration was conducted in India, while the other two Acts dealt with foreign awards. The Arbitration and Conciliation Act, 1996 has repealed the Arbitration Act, 1940 and also the Acts of 1937 and 1961, consolidated and amended the law relating to domestic arbitration²², international commercial arbitration²³ and enforcement of foreign arbitral awards and also defines the law relating to conciliation, providing for matters connected therewith and incidental thereto on the basis of the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985.

Some of the notable features of the Act are discussed below.

(1) Validity of arbitration agreement

Matters that may be referred to arbitration - restrictions under specific laws: Generally, all disputes which can be decided by a civil court, involving private rights, can be referred to arbitration. Thus, disputes about property or money, or about the amount of damages payable for breach of contract etc., can be referred to arbitration. However, according to the general practice, following matters are not referred to arbitration:

Matrimonial matters, like divorce or restitution of conjugal rights; matters relating to guardianship of a minor or other person under disability; testamentary matters, for example, questions about the validity of a will; insolvency matters, such as adjudication of a person as an insolvent; criminal proceedings; questions relating to charities or charitable trusts; matters falling

²¹ Constitution of India, Article 51(d).

²² Arbitration & Conciliation Act, 1996, sections 2(2), 2(7)

²³ *Id.*, section 2(1)(f).

within the purview of the Monopolies and Restrictive Trade Practices Act; dissolution or winding up of a company, etc.

Broadly, the reasons underlying this position is that matters involving morality, status and public policy cannot be referred to arbitration.²⁴

Capacity of the parties : Section 7(1) envisages an 'arbitration agreement' as agreement to submit disputes to arbitration. Hence there is an implied requirement that the parties must be competent to contract. An arbitration agreement being an "agreement", must possess legal validity according to the general law of contracts.²⁵

Form of Arbitration Agreement: Section 7(3) of the Arbitration Act, 1996 requires that the arbitration agreement must be in writing. Section 7(2) provides that it may be in the form of an arbitration clause in a contract or it may be in the form of a separate agreement. Under Section 7(4), an arbitration agreement is in writing, if it is contained in: (a) a document signed by the parties, (b) an exchange of letters, telex, telegrams or other means of telecommunication, providing a record of agreement, (c) or an exchange of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. In section 7(5), it is provided that a document containing an arbitration clause may be adopted by "reference", by a contract in writing.

Mandatory contents of Arbitration Agreement: Under Section 11(2) the procedure for appointment of arbitrators can be set out by the parties in their agreement. Failing agreement, under Section 11(4) in the case of sole arbitrator if a party does not appoint him after notice, the appointment should be made upon request by a party, by the Chief Justice of the High Court or by any person or institution designated by him. Similar procedure is provided when there are three arbitrators.²⁶

(2) Jurisdiction of arbitrator/ arbitral tribunal

Section 16 of the Arbitration Act, 1996 empowers the arbitral tribunal to rule on its jurisdiction. The arbitration tribunal can rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for this purpose an arbitration clause which forms part of a contract will be treated as an agreement independent of the other

²⁴ *Id.*, section 2(3)

²⁵ As regards the capacity of the parties, sections 10 to 12 of the Indian Contract Act, 1872 deal with the subject.

²⁶ Arbitration & Conciliation Act, 1996, sections 11(3) and 11(5).

terms of the contract; and a decision by the arbitral tribunal that the contract is null and void will not entail, ipso jure, the invalidity of the arbitration clause.

A plea that the arbitral tribunal does not have jurisdiction will, however, have to be raised not later than the submission of the statement of defence. However, a party shall not be precluded from raising such a plea merely because he has appointed, or participated in the appointment of an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority has to be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either of the cases referred to above, admit later a plea if it considers the delay justified.²⁷

The arbitral tribunal has to decide on a plea about lack of jurisdiction or about the tribunal exceeding the scope of its authority and where the arbitral tribunal takes a decision rejecting the plea, it shall continue with the arbitral proceedings and make the arbitral award. A party aggrieved by such an arbitral award is free to make an application for setting aside the award under section 34 of the Arbitration Act, 1996.

(3) Venue of Arbitration

Section 20(1) gives freedom to the parties to agree on the place of arbitration. Failing any such agreement, the place of arbitration will be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.²⁸

The Arbitral Tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or parties or for inspection of documents, goods or other property.²⁹

(4) Law Applicable to Arbitration Proceedings

The arbitral tribunal is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.³⁰ The arbitral tribunal has power to determine the admissibility, relevance, materiality and weight of any evidence.

Subject to the provisions of the law, parties have freedom to agree as regards the procedure to be followed by the arbitral tribunal. In the absence of such agreement, the arbitral tribunal can follow such procedure as it considers appropriate.³¹

²⁷ *Id.*, section 34

²⁸ *Id.*, section 20(2).

²⁹ *Id.*, section 20(3).

³⁰ *Id.*, section 19(1).

(5) The cost of arbitration

The costs of arbitration include arbitrator's fee, administrative and secretarial expense, expenses on travel of arbitrator and others concerned, stenographic, translation and interpretation charges, stamp duty on award, expenses of witnesses, cost of legal or technical advice and other incidental expenses arising out of or in connection with the arbitration proceeding or award.

Under Section 31 of the Arbitration & Conciliation Act, 1996, unless otherwise agreed by the parties, the cost of an Arbitrator shall be fixed by the Arbitral Tribunal. The tribunal is required to specify the party entitled to costs; the party who shall pay the costs; the amount of costs or method of determining that amount; and the manner in which the costs shall be paid.

(6) Power of the Court

Power to issue summons to witness: Section 27 provides that the arbitral tribunal or a party with the approval of the arbitral tribunal may apply to the court for assistance in taking evidence and the court may give such assistance within its competence and according to its rules on taking evidence.

Interim Measures of Protection: The new law deals with a variety of provisions as to relief under Sections 9 and 17. Section 9 empowers parties to apply to court for interim measures of protection before or during arbitral proceedings. Section 17 empowers the arbitral tribunal to order a party to take interim measures of protection on a request being made to it.

Modification or correction of the award: On application made to the arbitrator within 30 days of making of the award, the arbitrator can - correct clerical errors etc. in the award; or interpret the award. Court has no power, as such, to "modify" an award, but it can set it aside on specified grounds.³²

Setting aside of an award: Under Section 34 an aggrieved party may apply to the court within three months of receipt of the award, for setting aside the award. The grounds on which an award may be set aside are: Incapacity of a party, invalidity of the agreement, want of proper notice, award deals with dispute not referred to arbitration, arbitral tribunal was defective in composition, subject matter of the dispute not being capable of settlement by arbitration under the law for the time being in force, arbitral award being in conflict with public policy.³³

(7) Enforcement of domestic awards

³¹ *Id.*, sections 19(3)

³² *Id.*, sections 33-36

³³ *Id.*, sections 34(2)(a),(b).

Subject to the provisions for setting aside the award³⁴ the award is enforceable in the same manner as if it were a decree of the Court.³⁵

(8) Appeal

Section 37 provides that an appeal shall lie from certain orders. No second appeal will lie from an order passed in an appeal. However, the right to appeal to the Supreme Court is not affected. Incidentally, the new list of appealable orders is slightly narrower than that contained in Section 39 of the Arbitration Act, 1940.

(9) Types of arbitration

At present, following types of arbitration are provided:

Institutional arbitration: The Arbitration Act, 1996 expressly recognizes the role of arbitral institutions. In order to facilitate the conduct of the arbitral proceedings, section 6 provides that the parties or the arbitral tribunal, with the consent of the parties, may arrange for administrative assistance of a suitable institution. Further, section 2(8) expressly facilitates the adoption of institutional rules. Presently, there are 23 recognised arbitral organizations in India, which provide facilities for domestic and international commercial arbitration. The most prominent among these are the Indian Council of Arbitration (ICA), the Federation of Indian Chambers of Commerce and Industry (FICCI), the Bengal Chamber of Commerce and Industry (BCCI), Indian Chamber of Commerce, the East India Cotton Association Ltd., the Cotton Textiles Export Promotion Council etc. Some of the arbitral agencies deal with specific disputes such as the Bengal Chamber of Commerce, which administers arbitration primarily in the jute trade. The East India Cotton Association and the Cotton Textiles Export Promotion Council deal with settlement of disputes in the field of foreign cotton trade in textiles. Even foreign institutions get arbitration matters involving Indian interests. For example, a three-member international arbitral tribunal was appointed by the International Chamber of Commerce for conducting arbitration proceedings in the Rs 1330 million urea import scam, occurred in India.³⁶

Specialized Arbitration: "Specialized arbitration" is arbitration conducted under the auspices of arbitral institutions, which might have framed special rules to meet the specific requirements for the conduct of arbitration in respect of disputes as to commodities, construction, or specific areas of technology. Some trade associations concerned with specific commodities or Chambers of

³⁴ *Id.*, section 34

³⁵ *Id.*, section 36

³⁶ Urea arbitration Quicktakes, Friday, March 13, 1998, Financial Express, Delhi ed., p.7.

Commerce also specify that arbitration under their rules will be conducted only between members of that organisation.³⁷

*Statutory Arbitration*³⁸: “Statutory Arbitrations” are arbitrations conducted in accordance with the provisions of certain special Acts which provide for arbitration in respect of disputes arising on matters covered by those Acts. There are about 24 such Central Acts. Among them are the Cantonments Act, 1924, the Indian Electricity Act, 1910, the Land Acquisition Act, 1894, the Railways Act, 1890 and the Forward Contracts Regulation Act, 1956. Many State Acts also provide for arbitration in respect of disputes covered by those Acts, including Acts relating to co-operative societies.³⁹

Compulsory arbitration by Government: Government contracts generally provide for compulsory arbitration in respect of disputes arising there under and usually the arbitrators appointed to decide such dispute are senior government officers. A standing committee consisting of senior officers is constituted to ensure that no litigation involving such dispute is taken up in a court / tribunal without the matter having been first examined by the said committee and the committee’s clearance for litigation has to be obtained. This procedure has helped in the settlement of a large number of disputes in an amicable manner, which otherwise would have ended up in litigation. The award of the arbitrator in such dispute is binding on parties to the dispute. The Government of India had introduced in 1966 a scheme for Joint consultative Machinery and compulsory arbitration for resolving differences between the government as an employer and the general body of the employees. The Scheme provides for compulsory arbitration on pay and allowances, weekly hours of work and leave of a class or grade of employees. Under the scheme the Board of Arbitration was set up in July 1968. Till 31st December 2000, 241 cases had been referred to the Board and the Board has disposed of 238 cases.⁴⁰

Permanent Machinery of Arbitrators: Permanent Machinery of Arbitrators has been set up in Department of Public Enterprises for resolving commercial disputes except taxation between Public Sector Enterprises inter-se as well as between a Public Sector Enterprise and a Central Government Department/Ministry. No lawyer is allowed to appear on behalf of either party for presenting/defending the cases. The Arbitrator issues notices to parties concerned for submission

³⁷ Arbitration & Conciliation Act, 1996, section 2(4)

³⁸ *Id.*, section 2(5).

³⁹ *Id.*, sections 2(4) and 2(5).

⁴⁰ Ministry of Labour (Government of India) Annual Report 2000-2001, p. 30.

of facts of the case and their claims and counter claims. He invites the parties to present their case before him. Based on written records and oral evidence the Arbitrator gives an award. Both the disputing parties have to bear the arbitration cost equally. An appeal against the award of the Arbitrator can be made to the Secretary, Ministry of Law, in case either party is not satisfied with the award. The decision of Secretary, Ministry of Law is final and binding on the parties. No appeal can be made in the Court of Law/Tribunal against the decision of Secretary(Law).⁴¹ During the year 1999-2000, 9 cases were referred to the Arbitrator of Permanent Machinery of Arbitrators for arbitration. In addition the present Arbitrator is also processing 33 old cases between Public Sector Enterprises. There are 14 pending references from Public Sector Enterprises for arbitration, which are being processed by Permanent Machinery of Arbitrators. The amount realized from parties as arbitration cost during the year up to 10.02.2000 was Rs. 7,77,113/-⁴²

From 1993-94 disputes with Port Trusts have also been included under the purview of Permanent Machinery of Arbitrators for arbitration. The Ministry of Railways is excluded from the purview of Permanent Machinery of Arbitrators.⁴³

5. Conciliation

There is not much difference between mediation and conciliation. Mediation is one of the methods by which conciliation is achieved. Conciliation is essentially a consensual process.⁴⁴

The conciliation has got statutory sanction under the Arbitration and Conciliation Act, 1996. Part III of the Act consisting of Section 61 to 81 provides for method of conciliation of disputes arising out of legal relationship, whether contractual or not. It is by an independent conciliator.⁴⁵

The settlement agreement arrived at by such conciliation has the status and effect as if it is an arbitral award on agreed terms.⁴⁶

Conciliation and Arbitration

Unlike an arbitrator, a conciliator does not give a decision but his main function is to induce the parties themselves to come to settlement. An arbitrator is expected to give a hearing to the parties,

⁴¹ (DPE D.O. No.15(9)/86-BPE(Fin) dated 29th March, 1989)

⁴² <http://dpe.nic.in/vsdpe/anrch7.htm>

⁴³ vide DPE OM dated 12.2.97.

⁴⁴ Chapter 24, para 24.74, Report of First National Judicial Pay Commission (1999),

<http://www.kar.nic.in/fnjpc/cwcm&adr.html>

⁴⁵ Indian Council of Arbitration, Vol. XXXXX No. 3, Arbitration & Conciliation Law p. 11, Oct. – Dec. 2001.

⁴⁶ *Supra note 44.*

but a conciliator does not engage in any formal hearing, though he may informally consult the parties separately or together. The arbitrator is vested with the power of final decision and in that sense it is his contribution that becomes binding. In contrast, a conciliator has to induce the parties to come to a settlement by agreement. An arbitrator generally decides after a contest between the parties while in the case of conciliation the final result depends on the will of the parties. Therefore, at the end of the proceedings, emotional harmony between the parties may not suffer much, in the case of conciliation.

Scope

Under Section 61(1) of the new law, conciliation can be resorted to in relation to "disputes arising out of a legal relationship, whether contractual or not".

Commencement

A party initiating conciliation can, under Section 62 of the new law, send to the other party a written invitation to conciliation. Conciliation commences when the other party accepts in writing this invitation. If it does not accept it, then there will be no conciliation.⁴⁷

Conciliators

There will be only one conciliator, unless the parties agree to two or three. Where there are two or three conciliators, then as a rule, they ought to act jointly. Where there is only one conciliator, the parties may agree on his name. Where there are two conciliators, each party may appoint one conciliator. Where there are three conciliators, each party may appoint one, and the parties may agree on the name of the third conciliator, who shall act as presiding conciliator.⁴⁸

Institutional Assistance

Parties may enlist the assistance of a suitable institution or person regarding appointment of conciliator. The institution may be requested to recommend or to directly appoint the conciliator or conciliators. In recommending such appointment, the institutions etc. shall have regard to the considerations likely to secure an "independent and impartial conciliator". In the case of a sole conciliator, the institution shall take into account the advisability of appointing a conciliator other than the one having the nationality of the parties.⁴⁹

⁴⁷ Arbitration & Conciliation Act, 1996, section 62.

⁴⁸ *Id.*, sections 63 and 64(1).

⁴⁹ *Id.*, section 64(2) and proviso thereunder.

Stages

Sections 65 to 73 give the procedure to be adopted by the conciliator. Their gist can be stated in short form:-

The conciliator, when appointed, may request each party to submit a statement, setting out the general nature of the dispute and the points at issue. Copy is to be given to the other party. If necessary, the parties may be asked to submit further written statement and other evidence.

The conciliator shall assist the parties "in an independent and impartial manner", in their attempt to reach an amicable settlement. The conciliator is guided by the principles of "objectivity, fairness and justice". He has to give consideration to: rights and obligations of the parties; trade usages; and circumstances surrounding the dispute, including previous business practices between the parties.⁵⁰ He may, at any stage, propose a settlement, even orally, and without stating the reasons for the proposal.⁵¹ He may invite the parties (for discussion) or communicate with them jointly or separately.⁵² For successful conciliation, parties themselves must, in good faith, co-operate with the conciliator and supply the needed written material, provide evidence and attend meetings.⁵³ If the conciliator finds that there exist "elements of a settlement which may be acceptable to the parties", then he shall formulate the terms of a possible settlement and submit the same to the parties for their observation. On receipt of the observations of the parties, the conciliator may re-formulate the terms of a possible settlement in the light of such observation. If ultimately a settlement is reached, then the parties may draw and sign a written settlement agreement. At their request, the conciliator can help them in drawing up the same.⁵⁴

Legal Effect

The settlement agreement signed by the parties shall be final and binding on the parties.⁵⁵ The agreement is to be authenticated by the conciliator.⁵⁶ The settlement agreement has the same status and effect as if it were an arbitral award rendered by the arbitral tribunal on agreed terms.⁵⁷

The net result is that the settlement can be enforced as a decree of court by virtue of section 36 of the Act.

⁵⁰ *Id.*, sections 67(2), 67(1).

⁵¹ *Id.*, section 67(4).

⁵² *Id.*, section 68.

⁵³ *Id.*, section 71.

⁵⁴ *Id.*, sections 73(1) and 73(2).

⁵⁵ *Id.*, section 73(1).

⁵⁶ *Id.*, section 73(4).

⁵⁷ *Id.*, sections 74, 30.

Role of the Parties

Under section 72 of the new law, a party may submit to the conciliator his own suggestions for the settlement of a dispute. Such suggestions may be submitted by him on his own initiative or on the conciliator's request.

Conciliator's Procedure

The net result of section 66, Section 67 (2) and Section 67(3) of the new law can be stated as follows :-

The conciliator is not bound by the Code of Civil Procedure or the Evidence Act. The conciliator is to be guided by the principles of objectivity, fairness and justice. He may conduct the proceedings in such manner as he considers appropriate, taking into account the circumstances of the case; wishes expressed by the parties; and need for speedy settlement.

Disclosure and Secrecy

Factual information received by the conciliator from one party should be disclosed to the other party, so that the other party can present his explanation, if he so desires. But information given on the conditions of confidentiality cannot be so disclosed. This obligation extends also to the settlement agreement, except where disclosure is necessary for its implementation and enforcement.⁵⁸

Admissions etc.

In any arbitral or judicial proceedings (whether relating to the conciliated dispute or otherwise), the party shall not rely on, or introduce as evidence views expressed or suggestions made by the other party for a possible settlement; admissions made by the other party in the course of conciliation proceedings; proposal made by the conciliator; and the fact that the other party had indicated his willingness to accept a settlement proposal.⁵⁹

Parallel Proceedings

During the pendency of conciliation proceedings, a party is debarred from initiating arbitral or judicial proceedings on the same dispute, except "such proceedings as are necessary for preserving his rights".⁶⁰

Conciliator Not to Act as Arbitrator etc.

⁵⁸ *Id.*, section 75.

⁵⁹ *Id.*, section 81.

⁶⁰ *Id.*, section 77.

Unless otherwise agreed by the parties, the conciliator cannot act as arbitrator, representative or counsel in any arbitral or judicial proceedings in respect of the conciliated dispute. Nor can he be "presented" by any party as a witness in such proceedings.⁶¹

Practical application

Conciliation is the most frequently used process for resolving industrial & family disputes. Family Courts, set up throughout the country for resolution of marital discords under the Family Courts Act 1984⁶², use conciliation to resolve amicably disputes, without the help of lawyers. 85 family courts have so far been established: 7 in Andhra Pradesh; 1 each in Assam, Bihar, Manipur, Sikkim and Pondicherry; 4 in Gujarat; 3 in Jharkhand; 8 in Karnataka; 7 in Kerala 16 in Maharashtra 2 in Orissa; 6 each in Rajasthan & Tamil Nadu 14 in Uttar Pradesh; 2 each in Uttaranchal and West Bengal.

A total of 1,18,509 cases are pending in the Family Courts as on December 2001. Of these 7234 cases are pending for more than 3 years.⁶³

Conciliation is also widely used in the human rights field by Human right commissions, social welfare organizations, who call on both parties and offer their offices for solving bitter differences.

6. Ombudsman

The institution of ombudsman is slowly gaining momentum in India. Keeping in view the time constraints, the economy and the resources involved in regular courts some of the institutions have preferred to have an ombudsman for settlement of disputes arising against their institution. In this process, two developments are visible:

- (i) Setting up of grievance redressal machinery, a step in this direction.
- (ii) Setting up of the offices of *Lok Ayukta*⁶⁴ at the state level.

Grievance redressal machinery

From 1996 onwards a consensus emerged in the government on effective and responsive administration culminating in the Chief Ministers' conference in May 1997. One of the major

⁶¹ *Id.*, section 80.

⁶² *Law Minister Expresses Centre's Concern Over Tardy Progress Of Fast Track Courts*, October 30, 2001 (PIB release) <http://pib.nic.in/archieve/lreng/lyr2001/roct2001/30102001/r301020012.html>

⁶³ <http://www.nic.in/lawmin/Just.htm>

⁶⁴ The synonym for Ombudsman

decisions of the conference was to formulate and operationalise grievance redressal machinery at the Centre and in the states in sectors which deal with a large public interface such as railways, telecom, post, public distribution systems, hospitals, revenue, electricity and petroleum among others. Pursuant to this decision, nodal agencies are marked for handling public grievances at the Public Wing of the Prime Minister's Office, the Department of Administrative Reforms & Public Grievances, Ministry of Personnel, the Department of Pensions, and the Directorate of Public Grievances in the Cabinet Secretariat.⁶⁵

These designated agencies to strengthen internal grievance redressal machinery in the interest of promoting responsive administration observe following:

1. A meetingless day on every Wednesday is observed strictly. The designated officer or his/her immediate subordinate is accessible on this day for entertaining emergent complaints.
2. A locked complaint box is placed at the reception, and opened each day for expeditious action.
3. In the interest of expeditious disposal of grievances, the director of Grievance goes through papers/ documents of cases pending for more than 3 months and takes decisions with the approval of the Secretary of the Ministry/Department or Head of the Department/Organization.
4. Ministries/Departments are put under an obligation to analyze grievances, with a view to identifying the major grievance-prone areas and take corrective measures to reduce recurrence of such grievances.
5. The grievances column of the newspapers is regularly examined by each Ministry/Department/agency of Government for picking up cases which relate to it and it has to publicize the action taken.
6. Certain departments like that of Railways hold regular *Staff Adalats*.
7. *Lok Adalats/Staff Adalats* are constituted, and held every quarter for quicker disposal of public as well as staff grievances and pensioners' grievances.

⁶⁵ *Public Grievance Redressal Mechanism*, <http://pib.nic.in/feature/feyr2000/faug2000/f220820001.html>

7. Fast Track Courts

A novel experiment aimed at clearing the massive backlog in court cases has just begun in the country with the setting up of 'fast track' courts in various states. A total of 1,734 such courts are expected to be set-up by the Government of India under a wholly centrally-funded scheme. Fast track courts are meant to expeditiously clear the colossal scale of pendency in the district and subordinate courts under a time-bound programme. A laudable objective of the five-year experimental scheme is to take up on top priority basis sessions and other cases involving under-trials. An estimated 1,80,000 undertrials are languishing in various jails in the country. The fast track courts are expected to substantially reduce the number of under-trials in jails at the end of the first year. A vast majority of them would be set free, thereby reducing expenditure as well as burden on jails. The scheme was given the outright grant of Rs. 5029 million by the Eleventh Finance Commission. Under the government's action plan, the fast track courts will take up as their first priority sessions cases pending for two years or more, particularly in which the accused persons have been on bail. State-wise distribution of fast track courts has, however, been done keeping in view the pendency of cases and the average rate of disposal of cases in courts. Uttar Pradesh will have the largest number of 242 additional courts followed by Maharashtra's 187, Bihar's 183, Gujarat's 166 and West Bengal's 152. Karnataka's tally is 93, Jharkhand's 89, Andhra Pradesh's 86, Madhya Pradesh's 85, Rajasthan's 83, Orissa's 72, Tamil Nadu's 49, Uttaranchal's 45, Kerala's 37, Haryana's 36, Chhatisgarh's 31 and Punjab's 29. Assam will have 20 fast track courts, Jammu & Kashmir 12, Himachal Pradesh 9, Goa and Arunachal Pradesh 5 each and Mizoram, Manipur, Nagaland, Sikkim and Tripura 3 each. Jammu and Kashmir and Punjab are not content with the allotted number of fast track courts. They have notified to the Centre that they will respectively establish 43 and 34 additional courts.

The scheme envisages the appointment of ad-hoc judges from amongst the retired sessions / additional sessions judges, judges promoted on ad-hoc basis and posted in these courts or from among members of the Bar. The states, which are lagging behind their targets, are being persuaded by the Centre to speed up the work.⁶⁶

The fast track courts are expected to serve as model courts for speedy disposal of cases pending for a long time. 793 fast courts have been set up by the end of September 2001.⁶⁷ Out of 41,374 cases

⁶⁶ Dinkar Shukla, *Fast Track Courts*; see <http://cbi.nic.in/case.htm>

⁶⁷ <http://pib.nic.in/welcome.html>

transferred to fast track courts 11,580 cases have been disposed of by these courts as per the information available from eight states only.⁶⁸

Quite apart from the aforesaid model for ADR there exist separate fora to deal with consumer, labour and environment disputes. Thus there are district forum at district level, state commission at state level and National Commission at Central level for resolution of consumer disputes. Like consumer fora, following following alternative dispute settlement machinery exists for the resolution of labour disputes:

- (i) Conciliation officer
- (ii) Board of Conciliation
- (iii) Voluntary arbitrator
- (iv) Labour court
- (v) Industrial tribunal
- (vi) National tribunal

Similarly to deal with environmental dispute various machinery exists under various legislative enactments.

ADR in Consumer disputes is examined in Chapter III, ADR in Labour disputes has been discussed in Chapter IV, and ADR in Environment disputes is dealt in the chapter V.

ADR options in the state/ UT level

These differ from one state/UT to another.

Meghalaya: In tribal states of India, i.e., north-east belt, community based traditional dispute resolution mechanism, are allowed to function even now, excluding the jurisdiction of normal courts. For example, in the tribal areas of Meghalaya, District Council Courts and other subordinate courts owe their origin to the Sixth Schedule of the Constitution of India. The hierarchy of these courts begins from the village courts presided over by Lyngdohs, Dolois or Headmen right up to the District Council Court at the apex, which is presided by an officer designated as a judge. The District Council have jurisdiction to try only cases where all or both the

⁶⁸ *Supra* note 62.

parties are tribals resident in the area.⁶⁹ District Councils enjoy judicial powers mainly over the following items: land other than reserve forests, forests other than reserve forests, use of any land or water course for agricultural purposes, regulation in the practice of jhum or other forms of shifting cultivation, establishment of village or town administration including village or town police and public health and sanitation, appointment and succession of chiefs and their powers, establishment of village or town committees or councils and their powers, regulation of laws or inheritance of property, marriage, social customs.⁷⁰

Orissa: In Orissa, Electricity Regulatory Commission is designed to be an autonomous authority responsible for regulation of the power sector while policy-making power continues to be retained by the State Government. The Commission is a three-member body with the necessary supporting staff. As an independent Regulatory body, Orissa Electricity Regulatory Commission

- Arbitrates in disputes between licensees
- Arbitrates in disputes between licensees and consumers
- Handles consumer grievances.⁷¹

Himachal Pradesh: In Himachal Pradesh, The Excise & Taxation Department, headed by an Excise and Taxation Commissioner performs quasi judicial functions as an appellate and revisional authority under various Excise and Taxation laws. For the same, state government has constituted a Tax Advisory Committee, Kar Adalat and Sales Tax Tribunal.⁷² Also, Himachal Pradesh Electricity Regulatory Commission has the powers of a civil court in respect of :

- summoning and enforcing the attendance of any witness and examining him on oath;
- discovery and production of any document or other material object producible as evidence;
- reception of evidence on affidavits;
- requisition of any public record;
- issue of commission for examination of witnesses;
- review its decisions, directions and orders;
- any other matter which may be prescribed.

⁶⁹ <http://meghalaya.nic.in/admn/judiciary.htm>

⁷⁰ http://meghalaya.nic.in/frame_f.htm

⁷¹ <http://www.orierc.org/overview.htm>

⁷² <http://hptax.nic.in/chap11.htm>

Any person aggrieved by any decision or order of the Commission can file an appeal to the high court. The proceedings before the commission are deemed to be judicial proceedings.⁷³

In Himachal Pradesh, Conciliation Courts are set up for dispute resolution and are working satisfactorily.⁷⁴ From period of 1984-1990, total of 29,549 cases were disposed by these courts.⁷⁵

New Delhi: In **New Delhi**, Registrar, Cooperative Societies⁷⁶ has power to

- (i) Settle disputes of cooperative societies through the process arbitration;
- (ii) Function as an appellate court;
- (iii) Enforce / Execute orders, awards and decrees of various courts.

Disputes touching the constitution, management or the business of a cooperative society other than a dispute regarding disciplinary action taken by the society against a paid employee are referred to the Registrar for decision and no court has jurisdiction to entertain any suit or other legal proceedings in respect of such disputes. There is a provision for appeal to the Cooperative Tribunal against the decision / Award.⁷⁷

Uttar Pradesh: In this state, Uttar Pradesh State Electricity Board has full judicial power of civil courts, full powers as per the Arbitration Act to decide all matters and disputes relating to the power industry.⁷⁸

Haryana: In **Haryana**, Haryana Electricity Regulatory Commission entertains complaints by consumers if

- (i) the complainant has exhausted the channels of redressal of his complaint as set out in the Licensee's complaint redressal procedure (duly approved by the Commission) together with adequate documentary evidence and
- (ii) if known, specific references to any law, licence condition, regulation, code and/or standard that is alleged to have been violated.⁷⁹

Tamil Nadu: In this state, the mediation centres exclusively for women are established. At present 77 mediation centres apart from 45 centres for women are set-up in selected villages. As many as

⁷³ <http://hperc.nic.in/pages/links.html>

⁷⁴ *Supra* note 44.

⁷⁵ Appendix VII, p. 175, Report of the Arrears Committee (1989-1990).

⁷⁶ <http://delhigovt.nic.in/sear/welcome.html>

⁷⁷ Co-operative Societies Act, 76 (1)(i)

⁷⁸ Jyotsna Bhatnagar, *Mayawati govt still dilly-dallying over power privatization*, 16.8.1997, Indian Express Newspapers (Bombay) Ltd.

⁷⁹ <http://herc.nic.in/documents/html/chpherc.html>

17,638 cases have so far been settled at these centres of which 7,382 cases relates to matrimonial issues.⁸⁰

Dispute resolution between states & the states and the Union

The Constitution provides for a number of dispute resolution mechanisms to sort out differences that may arise among the states and between the states and the Union. Article 262 empowers the Parliament to set-up a suitable machinery for adjudication of any dispute or complaint with respect to the use, distribution, or control of the waters of inter state rivers and river valleys. Article 280 provides for constitution of a Finance Commission for distribution between the Union and the states of the net proceeds of taxes. Apart from potential disputes there is another feature of our political set up which warrants standing institutionalized consultation. Keeping this in view, the framers of our Constitution conceived Inter-State Council to be set up under article 263. Various subject-special consultative forums have been established under article 263. Five Zonal Councils have been set up under the States Reorganization Act, 1956 to deliberate on contentious regional issues.⁸¹

2. Current Situation Regarding the Use of ADR

With the liberalization of the economy and major economic reforms under way, the ADR methods have gained currency and acceptability and have come to occupy an important place in justice dispensation system. This is evident from the statistics depicted below:

Number of cases handled by various forums that offer settlement of disputes alternatively to the regular courts is discussed one by one.

The Press Council of India: Set up in the year 1966 acts as a quasi-judicial authority with all the powers of a civil court for any matter that may have a bearing on the freedom of the press and its preservation. The Council is being approached by more and more complainants every year. The reason for the steady increase in the number of complaints being lodged with it is that as days pass, the Council's forum is being widely known and preferred over courts where the proceedings, by their very nature, are costly and time consuming. The Council strives to provide quick justice at the doorstep and to this end, it regularly meets in different parts of the country to hear cases

⁸⁰ http://pib.nic.in/archieve/ppinti/ppioct2001/low_and_justice.html

⁸¹ <http://indiainage.nic.in/interstatecouncil/CHAPTER1.htm#>

from the particular region. The proceedings of the Council are open to public. The parties are entitled to adduce relevant evidence, oral or documentary, make submissions in support of their contentions, and to be represented by the lawyers.⁸²

Number of complaints handled by the council in the year 1998:

A total of 1075 complaints were instituted in the Council. Of these 301 complaints were by the press against the authorities of the Government and 774 complaints were directed against the Press for breach of journalistic ethics. With 965 matters pending from the previous year, there were a total of 2040 matters for disposal by the Council. Of these 1349 matters were disposed of during the year either by way of adjudication or through summary disposal by the Chairman on account of settlement by the mediation of the Chairman or due to lack of sufficient grounds for holding inquiries or non prosecution (withdrawal) or on account of matters becoming sub-judice. In all 691 matters were being processed at the close of the year.

Debt Recovery Tribunal (DRT): The DRTs are set up to handle cases pertaining to bad loans of commercial banks and financial institutions by a specialised forum that disposes of the cases faster.⁸³ Currently, there are 22 DRTs, which are quasi-judicial forums, that tackle cases of Rs 1 million and above, and 5 debt recovery appellate tribunals in the country. The total number of cases of State Bank of India and its associate banks pending with DRT was around 8,400.⁸⁴ The government, in its budget for 2001-02, had sanctioned setting up of five more DRTs. The Pune DRT is a part of this exercise. Mumbai has 3 DRTs, which are believed to be handling cases of loans amounting to almost Rs 2,00,000 million.

The Central Board of Excise & Customs: The Central Board of Excise & Customs is responsible for the monitoring of all Excise cases in the high court and lower courts and High Court at Delhi relating to all Central Excise Commissionerates in the country. There are 50 cases pending in the Supreme Court involving duty to the extent of Rs.167.1 million pertaining to the Commissionerate. Further, there are 81 cases pending in High Court of Delhi.⁸⁵

Income tax cases pending with Income Tax Tribunal Authorities: During 2000-2001, there were 189601 cases pending with C.I.T (Appeals). Besides 173720 cases were pending with Supreme Court, high courts and Income Tax Tribunals. The percentage of income tax cases and

⁸² Press Council of India, 19th Annual Report,1997-1998 See <http://www.nic.in/pci/ar97-98.htm>

⁸³ *Pune to get debt recovery tribunal*, Yahoo Banking Bureau Mumbai, 11/26/2001; <http://in.biz.yahoo.com/011111/26/18m5b.html>

⁸⁴ *SBI Group netted 51% of profits FY 01*, Economic Times, 01 August,2001, p.7

⁸⁵ <http://finmin.nic.in/cbec/>

wealth tax cases disposed of by the Settlement Commission during the year decreased to 21.18 % and 22.05 % from 32.30 % and 34.97 % respectively during 1998-99.⁸⁶

Number of cases handled by Human Right Commissions: The nation is going through a phase when there is a profound yearning for a return to decency and fair-play in our society. This yearning is manifesting itself in a variety of ways - from demands for greater probity in public life to demands for greater respect for the rights of its people in all parts of the land. This led to enactment of Human Rights Act, 1993. The Act provided for setting up of Human Rights Courts, National Commission and State Commissions.⁸⁷ The commissions can

a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of violation of human rights or abatement thereof or negligence in the prevention of such violation, by a public servant;

b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court⁸⁸

c) dismiss a complaint in limine.

d) afford a personal hearing to the petitioner or any other person on his behalf for appropriate disposal of the matter before it.

e) call for records and examine witnesses in connection with the complaint.

The work of the commission in regard to complaints on reports of serious violations has begun to gain depth and a sharper edge. These included cases of death in custody or in questionable circumstances, illegal arrests or detention, collusive action by the police with law breakers e.g. land grabbers, fake-encounters, kidnappings, implication in false cases, inhuman conditions in jails and the like.⁸⁹ At present 9 state human rights commissions have been set up to look after the grievances.⁹⁰ No fee is chargeable on complaints by the commission.

Number of cases registered, processed and pending consideration by the Commission, from 1.4.98 to 31.3.99 are as depicted below:

⁸⁶ Para 2.21, CAG Report, 2001, http://www.cagindia.org/reports/d_taxes/2001_book1/overview.htm

⁸⁷ Human Rights Act, 1993, section 12(d).

⁸⁸ Chapter III, National Human Rights Commission Annual Report For The Year 1993-94

⁸⁹ National Human Rights Commission Annual Report 1994-95

⁹⁰ http://nhrc.nic.in/vsnhrc/news_let_feb.htm

Sl. No.	Name of the State/UT	No. of cases consideration as on 1.4.1998	No of cases registered		Total (3)+(4)+(5)	No of cases considered	No of cases processed but pending consideration
			Complaints	Custodial deaths/rapes			
1	2	3	4	5	6	7	8
1	Andhra Pradesh	200	405	122	727	760	11
2	Arunachal Pradesh	11	18	03	32	27	05
3	Assam	81	120	37	238	236	02
4	Bihar	1251	3887	193	5331	5340	17
5	Goa	10	24	01	35	34	01
6	Gujarat	113	429	15	592	592	-
7	Haryana	443	1261	21	1725	724	01
8	Himachal Pradesh	41	154	02	197	191	06
9	Jammu & Kashmir	263	269	-	532	492	40
10	Karnataka	148	363	49	530	515	15
11	Kerala	212	370	30	612	600	12
12	Madhya Pradesh	628	1945	120	2693	2611	82
13	Maharashtra	677	1344	190	2140	2113	10
14	Manipur	26	39	03	78	66	12
15	Meghalaya	03	15	07	25	25	-
16	Mizoram	07	26	-	33	32	01
17	Nagaland	13	08	01	22	19	03
18	Orissa	340	464	68	872	865	16
19	Punjab	227	499	58	784	766	18
20	Rajasthan	879	1781	52	2712	2705	07
21	Sikkim	04	04	-	08	08	-
22	Tamil Nadu	761	907	55	1723	1704	19
23	Tripura	13	16	01	30	23	07
24	Uttar Pradesh	5862	21806	237	27905	37744	161
25	West Bengal	247	604	47	1098	1088	10
26	Union Terrotories	1047	2499	21	3562	3493	69
Total		13512	39427	1297	54236	53711	525

Source: National Human Rights Commission, Annual Report 1998-99 p. 121

Income Tax Appellate Tribunal (ITAT)⁹¹ : 53 Benches spread over 24 cities have so far been established. At the beginning of the 1999, the pendency of the appeals before the ITAT was 3,03,509 and as on 1st October, 1999 the number of appeals rose to 2,70,594. The government has sanctioned 15 additional Benches at the following places viz. Bombay(5), Delhi(2), Bangalore (2), Chandigarh, Agra, Panaji, Jodhpur, Rajkot, Vishakhapatnam, out of which Rajkot and Jodhpur Benches were made functional.

Foreign Exchange Regulation Appellate Board⁹²: The Board has all India jurisdiction with its seat at New Delhi. It goes in circuit to hear appeals at places other than Delhi. During the period from 1.4.1998 to 1.12.1998 , 148 appeals were filed. Total number of appeals disposed of from 1.1.98 to 15.12.1998 is 72. The total disposal of interim application during the period i.e., 1.1.98 to till 1.12.2000, was 295.

Lok Adalats: are set up from time to time to improve efficiency in justice delivery system. Permanent and continuous *Lok Adalats* are being set up in every district throughout the country. Number of *Lok Adalats* held, cases settled & compensation paid in MACT cases as on 30.11.2001

Sl. No.	Name of the State/ Union Territory	No. of Lok Adalats Held	No. of cases (including MACT Cases settled)	No. of MACT cases settled	Compensation paid in MACT Cases
1	Andhra Pradesh	15740	457158	58855	2837919879
2	Arunachal Pradesh	2	23	23	Not provided
3	Assam	294	51586	7541	259285410
4	Bihar	625	143258	2115	220981418
5	Goa	214	3851	3260	195133810
6	Gujarat	29528	2415701	131315	6091229724
7	Haryana	1428	333858	16108	811795683
8	Himachal Pradesh	1359	54362	1881	178672128
9	Jammu & Kashmir	383	11749	2456	264957544
10	Karnataka	4368	533300	71399	2091676693
11	Kerala	4937	90083	47435	1316424477
12	Madhya Pradesh	5413	1115471	47403	1184205665

⁹¹ Annual Report, Ministry of Law, Justice and Co. Affairs, 2000, Chapter 2.

⁹² *Ibid.*

13	Maharashtra	5127	212119	40192	3494787551
14	Manipur	19	3514	379	16209500
15	Meghalaya	38	3292	574	59115500
16	Mizoram	132	279	210	4414080
17	Nagaland	3	37	37	4810000
18	Orissa	4293	2093875	17079	875612948
19	Punjab	1421	103393	12362	1068443686
20	Rajasthan	30956	1328980	40676	1834347525
21	Sikkim	125	757	116	6626000
22	Tamil Nadu	5609	109796	97419	4623297085
23	Tripura	31	1896	194	19685424
24	Uttar Pradesh	5903	4228742	51296	2884520221
25	West Bengal	714	17022	13740	655713931
26	Andamand & Nicobar	10	140	13	-
27	Chandigarh	88	34656	3450	244884492
28	Dadar & Nagar Haveli	5	410	86	8127699
29	Daman & Diu	4	135	28	Nil
30	Delhi	723	93929	14230	1348915067
31	Lakshadweep	1	65	5	435000
32	Pondicherry	122	6702	5799	170577256
33	SCLSE	Nil	Nil	Nil	Nil
	Total	119615	13450139	688306	32769805396

(Based On The Information Provided By The State Legal Service Authorities)

Nyay panchayats : The following table gives the number of *Nyay Panchayats* established so far in some districts: ⁹³

Name of the district	No. of Nyay Panchayats set up	Up to period
FIROZABAD	79	1999
FAIZABAD	129	2000
DEORIA	177	1997-98
TINDWARI BLOCK	9	2000
BAGPAT	46	2000
NARAINI BLOCK	14	2000
MAHUVA BLOCK	10	2000
BADOKHAR KHURD BLOCK	8	2000
KAMASIN BLOCK	8	2000
BISENDA BLOCK	8	2000
BALIA	163	2000
BARABANKI	135	2000

⁹³ Source : Zila Sankhikiya Partika 1998 see <http://banda.nic.in/naraini.htm>

BAGESHWAR	35	1999
BASTI	139	2000
ALIGARH	122	1999
RAEBARELI	179	2000
SANT KABIR NAGAR	85	1997-98
SAHARANPUR	113	1997-98
KAUSHAMBHI DISTRICT (LUCKNOW)	96	
JYOTIBAPHULE NAGAR	55	1997-98
HAMIRPUR	61	1997-98
BAREILLY	144	2000-01

The number of cases handled by Nyaya Panchayats

The *Nyaya Panchayats* are formed out of the members of the *Gram Panchayats* for deciding petty civil, criminal and revenue cases. The states are responsible to set up *Nyaya Panchayats* at district level, block-level, etc. in the villages. However, there is no official statistics available indicating the number of cases handled by the *Nyaya Panchayats* set-up all over the country. They meet as and when required. In certain places they sit at regular intervals, viz., after every two weeks and decide the cases among the people of the locality, village or block. Their decisions are mostly informal and no data is kept about them. The disputes decided by the *Nyaya Panchayats* have no finality and the courts can be approached for the same dispute.

Commercial arbitration offered by the Indian Council of Arbitration:

1997-1998: During 1997-98, 446 new arbitration matters were received by the Council, 434 under its Rules of Arbitration and 12 maritime arbitration matters. Out of 446 arbitration matters under the Rules of Arbitration of the Council 12 were of international character between Indian and foreign parties from USA, Israel, Korea, France, Singapore, UK, Canada and Liberia. 27 cases were settled during the year by awards, compromise settlement etc. 18 under ICA rules, and 7 under maritime arbitration rules and 2 adhoc cases. At the beginning of the year i.e. on 1st April, 1997, 120 arbitration cases were pending with the Council at different stages of arbitration proceedings. At the end of March 1998, 158 arbitration cases were under process including 15 arbitration matters which have been stayed under court orders pursuant to litigation between the parties, regarding arbitrability of the disputes or similar other grounds.⁹⁴

2000-2001: During 2000-2001, 61 new arbitration matters were received by the Council, 51 under its commercial Rules of Arbitration and 10 maritime arbitration matters. Out of 61 arbitration matters under the Rules of Arbitration of the Council 5 were of international character between

⁹⁴ <http://www.ficci.com/icanet/repo3.htm>

Indian and foreign parties from Japan, Singapur, Malta, Iran & U.K. 57 cases were settled during the year by awards, compromise settlement etc. 51 under ICA rules, and 6 under maritime arbitration rules. At the beginning of the year i.e. on 1st April 2000, 334 arbitration cases were pending with the Council at different stages of arbitration proceedings. At the end of March 2001, 277 arbitration cases were under process including 26 arbitration matters which have been pending in courts pursuant to litigation between the parties.⁹⁵

Commercial arbitration offered by the World Intellectual Property Organization:

Arbitration as an ADR mechanism is also resorted to by the stock exchanges⁹⁶, WIPO⁹⁷. The World Intellectual Property Organisation (WIPO) also provides global online arbitration service to combat cyber-squatting Already over 200 cases have been filed with the system since it was set up in December 1999.⁹⁸

Ombudsman

The Central Vigilance Commission, acts as a central ombudsman redress grievances regarding corruption and vigilance matters. The number of applications filed before it and disposed by it during 1998-2001 is:⁹⁹

1998	1999	2000	2001 (till July '01)
2274	5516	12401	10802
5064	5168	6438	na

Apart from above statistics, it is pertinent to note that in some states efforts are currently on to make as many innovations as possible for conciliated settlement of matters involving the state government, even before any case came up before the courts. One such experiment in pre-litigation settlement is being explored through the Andhra Pradesh State Legal Services Authority, in the matter of land acquisition for a huge project of flood flow canals in Karimnagar and Nizamabad districts. The state government has taken up a big exercise for deregulation and simplification of its

⁹⁵ ICA Annual report 2000-2001, <http://www.ficci.com/icanet/annual3a.htm>

⁹⁶ Market Briefing -- CSE member trapped in SBI counter, Financial Express, 23.7.1997, Bombay ed.

⁹⁷ DLF wins battle against cyber squatter, Financial Express, 23.12. 2000, Bombay bureau.

⁹⁸ WIPO gets 1st domain name dispute, Briefing, Financial Express, 27.3.2000

⁹⁹ <http://cvc.nic.in/vsevc/cvc3years.htm>

laws and procedures and removal of administrative discretion, to reduce the institution of new cases before courts.¹⁰⁰

3. Parties' Viewpoints With Regard To ADR

(a) The reasons for choosing or not choosing ADR

The alternative mechanisms of dispute resolution are less expensive, quicker, and less intimidating than the machinery of courts. They do not involve court fees, procedure adopted in these forums is less technical and presence of lawyers is not mandatory. Parties can go directly and plead before these forums. Also, they are more sensitive to the concerns of the disputing parties. They dispense better justice, result in less alienation between the parties and satisfy their desire to retain a certain degree of control over the process of resolution.¹⁰¹

(b) Whether the defects of the court system influence the choice?

With the adoption of the Constitution guaranteeing freedoms to the citizens and the establishment of an independent and powerful judiciary, with powers of judicial review, the spread of literacy and the considerable increase in the level of awareness of their social, economic and political rights by larger sections of the population, the demands on the justice delivery and dispute resolving institutions came under tremendous pressure, as reflected in the number of cases that are taken to the courts. The most telling index of the malaise is the sheer size and number of cases pending in courts. While the number of fresh institution of cases steadily increased, the rate of disposal of cases, especially at lower levels, remained static or worse.¹⁰² All this prompted the search for alternatives to court litigation.

Also, the justice system is top heavy - lawyers, courts, and outdated legal practices and jargon dominate it. Traditional civil litigation imposes substantial costs and delay long before a trial commences. Further, the congestion of trial calendars in most courts, caused in part by a substantial criminal docket, contributes substantially to that cost and delay. In this environment, alternative processes for dispute resolution offer many advantages.¹⁰³

¹⁰⁰ The Chief Minister Andhra Pradesh At ICADR, *Speech at the Presentation Ceremony of P.G. Diploma in Alternative Dispute Resolution*, <http://www.andhrapradesh.com/>

¹⁰¹ Union Minister Arun Jaitly, March 14, 2001; See <http://pib.nic.in/welcome.html>

¹⁰² *Supra* Chapter – I, Court System in India, p. 6-8.

¹⁰³ *Supra* note 20.

Realization was there that it is in no-one's interest to create a litigious society. Government wanted people to make responsible choices about whether a case is worth pursuing; whether to proceed by negotiation, court action, or in some other way; and how far to take a relatively minor issue. This has led to the Government focusing on legal aid spending on social welfare schemes and improving the range of options available to people for resolving disputes without a formal court adjudication process. Therefore, several different models of ADR, including mediation, arbitration and ombudsman schemes, are being made available to citizens.

ADR offers a number of possible advantages. It can be less formal and adversarial; and in some cases, it may allow disputes to be resolved more quickly and cheaply.

(c) Whether any cultural or mental factors influence the choice of ADR?

The interest in ADR movement in this country also stems from a desire to revive and reform old and traditional mediation mechanism, that were in place before the advent of British rule. The mediation, conciliation and negotiation adopted by various ADR providing foras preserves important social relationships between disputing parties. All this has led to increase in the number of filing of suits and complaints before these foras.

(d) Whether the cost and time are comparative advantage of ADR to litigation?

Time

Since every person's time has value in social life and the value is measured in terms of either utility or in money, a person, who is capable of producing a most socially useful product or service with appropriate skill or specialization, his time is more valuable than a person, who has no such skill or specialization. This is also applicable in case of a company or an Institution. If such individuals or company are locked up in any dispute, the same will result in wasting of their time in an unproductive arena by diverting their mental and physical faculties from other than their own useful purposes or faculties. The time that is wasted in this manner is nothing but wasting more of the social energies in the wasteful expenditure, which does not contribute to the wealth of the country. Any effort in reduction in wastage of one's time in mundane and unproductive litigation is definitely a contributing factor for the efficiency and growth of an individual and the State.

The need of ADR has become more urgent to Indian people in view of the opening up of the borders to the global competition. There is desirability of disputants taking advantage of ADR,

which provides procedural flexibility, saves valuable time and money and avoids the stress of a conventional trial.

The usefulness and the advantages of the arbitration and conciliation methods provided under the Arbitration & Conciliation Act, 1996, over the justice delivery system through the regular courts may be summarized as:-

	Court	Arbitration	Conciliation
Choice of Judges	No	Yes	Yes
Choice of place/venue	No (fixed)	Yes	Yes
Choice over procedure	No (fixed)	Yes	Yes
Control over time	No	Yes	Yes
Predictability	Largely unpredictable	Predictable	Totally predictable
Technical pleas	Full play	Very restricted	Nil
Unending litigation through remedies	Yes	Restricted	Nil
Control over proceedings	No control	Yes	Full control
Binding nature of the Decisions	binding as decree	binding as decree	binding as decree

From the above table one may find that the ADR mechanisms have more advantageous features with equally efficacious results than the court system from the point of view of control over the proceedings, binding nature of orders, predictability and the efficacy in its social relations.

Costs

Costs that accrue by adoption of ADR modes over litigation in regular court of law can be best depicted by comparing litigation with any one ADR mechanism. And for the same, we are comparing proceedings in court of law and under Arbitration & Conciliation Act, 1996, before arbitral tribunal.

Table of Costs

	COURT	ARBITRATION
Lawyers notice	Lawyer's fees	Private letter – less cost – no fees
Plaint	Preparation fees	Claim statement at less cost
Court fees in A.P.	@ 1 % of the value	Fees to arbitrator about equal amount
Summons	Fees for serving notices	Postage
Documents	Copying fees	Cost of photocopying
Witnesses	Cost of travel	Cost of travel – may be avoided
Lawyer's fees	Stipulated	May be reduced by personal arguments
Stamp duty	Does not arise	Rs. 250 maximum
Registration charges	specified in case the decree requires registration	same

(e) Whether there are any institutional constraints on the existing ADR?

Arbitration, once considered an alternative to litigation, is now afflicted by the same problems of cost, delay, complexity, and dependence on legal representation. Many questions remain regarding their actual success in increasing efficiency and in providing broader access to justice. Even though participants are generally pleased with the conciliatory, comprehensible, and flexible procedures of ADR, but the efficiency gains are minimal. The study of those cases, which were appealed from arbitral tribunal to the Supreme Court of India led to the conclusion that the aggregate costs for the courts, and average time to disposition of cases, had not declined.

A second challenge concerns the consequences of ADR on access to justice. Critics argue that the restoration of traditional dispute resolution mechanisms, as for example in India, subjects women to the application of discriminatory social norms rather than the relatively fair justice of a rights-based legal system.¹⁰⁴

Coming to the effectiveness of ADR, unlike a judge, a mediator or arbitrator has no power to order a party to appear and defend a claim. Nor can a mediator or arbitrator compel the losing side to comply with a decision. Sometimes the desire to remain on good terms with the other party or to preserve one's reputation provides the incentive to submit to an ADR process and abide by its outcome.

(f) Whether people trust ADR?

Even though with the emerging globalization, more and more matters are being taken out of the normal courts and vested in regulators,¹⁰⁵ people still have faith on the higher judiciary. This is evident from the number of appeals that come before the high courts and the Supreme Court of India from awards of arbitrator and appellate tribunal bodies.

(g) Can court system be replaced by the ADR?

The justice system has to serve everyone, regardless of means. Modern ways of funding litigation, like 'no win, no fee' agreements, and a new "fast-track" court system, leading to fixed-cost hearings, has thrown open access to justice to people on modest income who do not qualify for legal aid, and dare not risk going to court at their own expense because of the unpredictable cost. These changes will help to create a justice system that is no longer daunting, uncertain and

¹⁰⁴ Whitson, Sarah Leah, " 'Neither Fish, nor Flesh, nor Good Red Herring' *Lok Adalats*: an Experiment in Informal Dispute Resolution in India.", *Hastings International and Comparative Law Review* 15:391-445 (1991-1992)

¹⁰⁵ Electricity Regulatory Commissions, now set-up in almost every state in India.

prohibitively expensive that ordinary people have no real access to justice. People will be able to find out what their rights are, and if necessary protect and enforce them, at a predictable and reasonable cost in a system which serves everyone. These speedier justice delivery systems, through the process of reduction in procedural technicalities help to reduce the large number of cases on hand. ADR procedures help in the reduction of the work-load of the courts and thereby help them to focus attention on the cases which ought to be decided by courts.¹⁰⁶ All this only goes to prove that the existence of both, court system as well as ADR providing foras has become life support system of justice system of the country.

Type of disputes where ADRs are not preferred mode over litigation:

As discussed earlier at p. 8 of this chapter, not all types of disputes can be referred to be resolved by arbitration. Similar restricts are statutorily placed on other ADRs over the type of disputes that can be resolved by them. As a general rule, any ADR fora cannot resolve disputes arising out of illegal contracts or illegal transactions. Criminal offences, which are non-compoundable, cannot be referred to any fora, except the regular court of law. Apart from this restriction, important matters relating to Constitutional right can also be not touched by these foras.

4. Problems of ADRs

Problems faced in the enforcement of decision rendered by ADR bodies:

The parties, notwithstanding, delays in the court system, availability of ADR mechanisms tend to return to the regular courts of law, either by raising doubts about the jurisdiction of the ADR fora to entertain a dispute or by raising dispute over the award / decision of these foras. On every important matter, inspite of availability of tribunal, people petition higher judiciary for getting remedy. One reason for this being the immense faith towards higher judiciary and other being delaying tactics resorted to by parties who are aware of unfavourable outcome in their favour.

Problems of tribunal system:

There are no uniform standards and practices in respect of the establishment of the tribunals in India. There are large variations in the compositions, qualifications of members, powers, procedures and provisions for appealing against the decisions or orders of the tribunals. Also, there is no official document regarding the general principles applicable for the tribunals or

¹⁰⁶ *Supra* note 100.

uniform nomenclature for the tribunals. Sometimes they are called district forums, sometimes court, sometimes merely appellate authority, or a Board or a Commission (example, the National Consumer Commission or the M.R.T.P. Commission). The tribunals have grown up rather sporadically and the legislation pertaining to them have been ad-hoc.¹⁰⁷

The party against whom decision of a tribunal is unfavourable, tacitly tries to avoid the outcome by filing appeal against in the normal courts. In this way again the award of arbitral tribunal or conciliation process is challenged in the ordinary courts of law on principles of natural justice. This whole vicious cycle as opposed to saving time, delays the whole procedure of getting justice. All this induces parties to shun ADR mechanisms and resort to normal courts. Examples of this are numerous.

In *Jajodia (Overseas) Pvt. Ltd. v. Industrial Development Corp. of Orissa Ltd.*¹⁰⁸ the Industrial Development Corporation of Orissa Ltd. (IDCO) and Jajodia (Overseas) Private Ltd. (JOPL) entered into an agreement where under IDCO agreed to supply to JOPL 5000 tons of M.S. Rounds for export on the terms and conditions mentioned therein. The goods were not supplied. Thereafter the claim against IDCO for damages for breach of contract made by JOPL was referred to the Chief Secretary to the Government of Orissa, the arbitrator named in the agreement, for adjudication. The Chief Secretary declined to act as arbitrator. Thereupon JOPL filed a suit under section 20 of the Arbitration Act 1940, in the Calcutta High Court praying that the agreement be taken on file and the dispute between JOPL and IDCO be referred to an arbitrator to be nominated by the court. That plaint was returned to JOPL to be presented before the proper court. It was presented in the court of the Subordinate judge, Bhubaneswar. On 4th April 1973, the learned Subordinate Judge appointed a retired Judge of the Patna High Court to act as the arbitrator to give his award on the dispute between the parties as enumerated in their respective pleadings and the order of this court. Reference was made to him requesting him to make the award by 30th June 1974. The arbitrator entered upon the reference and, after hearing parties and considering the material placed upon the record before him, gave an award on 24th September 1975. (Almost more than 1 year later than the date by which he was supposed to give an award). Further complications arose when this award was challenged by IDCO before the Subordinate Judge, Bhubaneswar, as it was directed by the award to pay Rs. 11,00,344 only with pendente lite

¹⁰⁷ *Supra* note 2, p.23.

¹⁰⁸ (1993) 2 SCC 106.

interest @ 6 per cent per annum from 28th April, 1974 to the date of award (24th September, 1975). It was dismissed. Against this, Orissa High Court was approached by IDCO. The learned Judge held that the arbitrator had been guilty of legal misconduct so that the award was set aside. Against the judgment and order of the Orissa High Court, both JOPL and IDCO went in appeal to the Supreme Court of India in 1980. The Supreme Court took almost 13 years to arrive at decision. In 1993 it decided the issue in favour of JOPL, quashing the judgment of the Orissa High Court and restoring the order of subordinate judge. Hence the award of the arbitrator was upheld. Therefore JOPL could execute the award almost 20 years later than the date on which it had instituted arbitration proceedings.

The facts of the case goes on to show that adoption of ADR mechanisms sometimes gives no advantages and the parties again have to go through cumbersome judicial proceedings. The whole purpose of circumventing delay is defeated. In this case, further no order as to costs was made. The party, which delayed the award, was not even penalized. All this goes to prove that all is not well with our ADR mechanisms.

Similarly in, *U.P. State Electricity Board v. M/s. Searsole Chemicals Ltd.*,¹⁰⁹ on April 6, 1990 the arbitrators made an award for a sum of Rs. 1,74,338.98 by way of refund, while in regard to losses suffered on account of interruption in the power supply as a result of the negligence and acts of omission and commission by the appellant a sum of Rs. 24,00,000 was awarded with interest at 12% with effect from 12.11.1986 up to the date of the award and interest @ 6 % per annum from the date of the award till the date of payment. In the Court of the Civil Judge the award was filed. Overruling the objections of the appellant, the Civil Judge made a decree in terms of the award against which an appeal was preferred to the High Court and which appeal having been dismissed, the appeal by special leave was filed before the Supreme Court of India. The Supreme Court in 2001 dismissed this appeal and upheld thereby the award of the arbitrator. Hence, even in this case it took almost 11 years to get the award.

The arbitration proceedings, between *National Housing Bank* and *ANZ Grindlays Bank* in connection case related to the securities scam of 1992 were spread over more than 300 meetings in five years, saw more than Rs 15 crore being spent in litigation.¹¹⁰ Still the case went in appeal

¹⁰⁹ (2001) 3 SCC 397

¹¹⁰ *Grindlays told to pay Rs 912-cr to NHB*, 5.2.1998, Indian Express Newspapers (Bombay) Ltd. the case is still pending before the court.

before the regular courts – from the Special Court handling scam cases, to the Bombay High Court and from thereon to the highest court of the country, the Supreme Court of India.

Problems areas under the new Arbitration Act, 1996

Ever since the Act of 1996 came into force on 22.8.96, demands have been voiced requesting amendments to the provisions of the 1996 Act, in so far as they related to arbitration. Among others, it has been stated that in several cases, parties have been deprived of a right to seek prompt interim relief pending proceedings in international arbitration agreements, where the seat of arbitration is outside India. In several cases, the awards ultimately remain only on paper, at the end of the day. Several other drawbacks have been pointed out in various representations.

In the 1996 Act, the difficulties have arisen because undue emphasis has been laid on speedy disposal than even what the Model law intends and no provision is made for decision on preliminary issues, which go to the root of the matter before the arbitrator as well as in the appellate court.

Under the 1940 Act, the award had to be filed by the arbitrators in the ‘Court’ and the court would scrutinize the award before making it a rule of court, to ensure that the award complied with provisions relating to stamp and registration. Further, once the award was in the court, there was little scope for tinkering with the date of the award or the body of the award.

Under the 1996 Act, it is stated in section 36 that after the expiration of time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced in the same manner as if it were a decree of the court. It need not be filed in any court at all.

It has been pointed out that there must be some record of the award is originally passed before a court or other authority and a registration of the awards received from arbitrators is to be maintained with a serial number and that is must be ensured that all the pages of the award shall be duly stamped and initialed by the presiding officer of the court or ministerial officer of the court. This would ensure the authenticity of awards and avoid any dispute as to the date or contents of the award as passed. Hence, suggestions are plenty to amend section 31 also.

Problems of the Nyay Panchayats: Experience has shown that these *Panchayats* have not succeeded in bringing the desired result. The major cause is that such awards are appealable become victim of civil courts resulting in long pendency of disputes. The decisions of the *panchayats* are not the decree of the court.

Problems of fast track courts:

The setting up of Fast-Track Courts has called for lot of criticism from the academic and juristic circles in the recent times. A three judge Bench of the Supreme Court comprising B.N. Kirpal, K.G. Balakrishnan and Arijit Passayat, JJ. while dealing with a Public Interest Petition filed by the Bar Council of State of Andhra Pradesh, challenging the fast-track courts scheme in its orders dated November 8, 2001 expressed its concern at the high rate of acquittals (90 to 95 percent). It noted that though the scheme initiated by the law Minister to reduce the backlog of cases, in criminal matters, was not an absolute solution, and called for deriving maximum benefit from it.¹¹¹

5. Value in ADR

The twin benefits of ADR mechanisms are essentially time and money. A satisfactory solution is an added bonus.

If we compare proceedings of the court to that of proceeding conducted before arbitral tribunal, following inference is deducible as to the benefits of arbitration:

Table of Benefits

	COURT	ARBITRATION
Adjudicator	No choice - designated	Can choose qualified person
Jurisdiction	May be disputed	Agreed
Place	Choice of claimant	Choice of both parties
Time of hearing	Decision of court	Choice of parties
Procedure	Strict – C.P.C. applies	Informal
Evidence	Strict – Evidence Act	Informal
Acceptance	Appeal and execution - delay	No appeal on merits

The analysis so far indicates that while the benefits of litigation is cut and dried, there are substantial side benefits in following the arbitration track provided it is done in a proper way. Similar analysis of comparison of other modes of ADR with proceedings in a regular court of law, reveals the same results, with ADR method fairing better in dispensing justice than regular court of law.

This leads support to the fact that ADR mechanisms are very vital and have immense value in our dispute redressal system.

¹¹¹ *Supreme Court On Efficacy Of Fast Track Court System*, Times Of India, Nov, 9, 2001, p. 7.