Alternate Dispute Resolution

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Overview and Meaning of Alternate Dispute Resolution (ADR)

One of the most common means by which most disputes are resolved nowadays is Alternate Dispute Resolution (ADR). The means is applied more commonly in commercial and business disputes. In recent times, it has become very common, and it widely applied in resolution of civil cases, when litigation is considered as the last option by both parties. ADR provides a much better understanding about the procedural and statutory underlining of the law and its interplay with litigation. The main aspect of ADR is its evolving role in professional ethics laid down for the attorneys deployed in the non-adversarial settings. In most of the cases, it is acknowledged, that the parties prefer attorneys, who is not only highly skilled in the litigation process, but is also skilled in resolution of dispute by means, beyond the court of law. The major reason for this preference is that the court proceedings in a case involve time and finances, and most individuals prefer to avoid these expenses. Legal disputes and court proceedings themselves include a huge timeline and when the case is dealt with unprofessional approach and indiscipline, it becomes more time consuming as the

judicial mechanism finds it more challenging to deal with. When the normal method of resolving litigation through judicial process becomes ineffective or non-feasible, another means or method of redressal and resolution is required. This is when methods like Alternate Dispute Resolution come into effect and this is the reason why this method has gained wide acceptability in the recent times. ADR also extends an organized scheme for a logical negotiation and mediation in a case.

Need for Alternate Dispute Resolution

The basis of the constitution is very well defined in the Preamble of the Constitution which ensures social and political justice as well as equality of status along with equality of justice to all citizens of India. The main aim of Article 39-A is to ensure that the judicial and legal system operates in a way that each and every citizen of the country has access to the legal procedures. The constitution aims at ensuring that no citizen of the country is denied justice from the judicial structure due to economic factors or otherwise. Despite such declarations, a ground reality exists, which depicts that there is a substantial population which remains out reach of the judicial structure. The reason behind this ground reality is that majority of such population is vulnerable because of reasons such as, illiteracy, geographical remote living and ignorance about their legal rights and responsibilities. Another challenge exists for the people who are aware about their rights cannot easily realise the rights into reality because of the many ordeals that exist in its way via litigation process. The delays in the legal proceedings and further delayed justice in numerous cases has promoted a sense of demotivation among the masses and many individuals are pushed to the limit of taking the law in their hands. To overcome these legal gaps and to ensure that the judicial structure does not fail completely, a middle path is advised and Alternate Dispute Resolution (including Lok Adalat) is identified as the middle path, through which several parties can resolve conflicts without the lengthy court and legal proceedings.

Forms of Alternate Dispute Resolution

Alternate Dispute Resolution encompasses great opportunity to the parties in conflict to resolve the conflict through mutual consent and the method also certain flexible and informal functions. Some of the main form of Alternate Dispute Resolution are as under:

a. Mediation
b. Arbitration
c. Conciliation

d. Lok Adalats (Including Legal Aid)

A. MEDIATION

When two parties enter into tussle, a possibility of legal settlement among the parties is almost impossible. Alternate Dispute Resolution provides a very important feature of third party mediation. The third-party mediator can be any retired judge or a lawyer with vast experience, who can assist both parties who reach an impasse, to logically resolve the conflict. There is a difference between this method and that of arbitration, because in the act of arbitration, the arbitrator is nominated by one of the disputant entities. The mediator approaches the conflict in a completely different manner.The disputant parties are asked to share their individual views about the conflicting matter. The individual views of both the parties are collected in a joint session and then the next approach is to collect further arguments from both the parties in individual sessions, where both parties are legally persuaded to reach a settlement. Another difference of mediation from arbitration is that the settlement reached at the end of the process is not binding on the parties. The mediator who is acting to resolve the conflict among the parties, must act neutral and unbiased in his/her approach as the proceeding is carried out without any formal court proceeding. The means of mediation is widely being preferred by the commercial sector internationally, because the method is cost effective and less time consuming as compared to the regular judicial proceedings. Business groups and commercial organizations are very cautious about their respective budgets and their respective spending on the legal proceedings. Moreover, the mediation process does not follow the rigid process of court proceedings and thus it is comparatively convenient to reach an understanding with the other conflicting party.

Certain Restrictions on The Mediator

No particular statute defines the powers of a mediator in a case, thus the mediation process in itself is not statutory. The main objective of the mediation process is that the mediator, with his/her immense experience and knowledge makes the parties understand the various legal angles associated with the dispute. The parties can draw a conclusion on their respective standing on the issue and can understand the dispute in different light and can eventually reach a mutual consent. The mediator however is also under certain restrictions by the law and cannot over-step certain boundaries, which are discussed below:

- The mediator cannot summon any person to appear in any meeting, nor can be any document can be forced to be produced by either party
- The meetings and sessions related to the case have to be observed without any biasness and thus no settlement can be imposed through *ex parte* statement
- The settlement reached through the process of mediation cannot be enforced on either party because the functions of the mediator are non-statutory
- The mediator cannot force any of the parties to accept the decisions drawn in the meetings, nor can the decisions be imposed on either party
- The role of mediator works in conjunction with the desire of the parties to seek mediation. If either party decides to withdraw from the proceedings, the role of the mediator seizes to exist into effect
- The main "bone of contention" or the matter of conflict cannot be moulded or modified by the mediator in any capacity. *In the case of, Union of India* v. *M/s Jagat Ram, the court held that if the conclusion or settlement drawn by the mediator or conciliator is beyond the scope of the basic subject-matter, the same cannot be executed even if both the parties agree to the terms that are drawn by the mediator/conciliator.*
- The mediator cannot punish or penalise any of the existing parties in conflict

It should hereby be noted again that the conclusion drawn by the mediator regarding the case or in other words, settlement proposed by the mediator is not enforced on either of the parties. It is however the independent choice of the parties to accept the settlement or not. If either party does not wish to comply with the terms of settlement, the terms cannot be imposed on the parties. Another aspect of the mediation function that should be considered is that if the parties convert the settlement into a legal agreement, then the conclusion of the conflict becomes bound by law. Then the parties are bound to follow the settlement and either party can also challenge the other party in the court of law, if either party fails to comply with the settlement terms of the conflict. "Section 74" of the Arbitration and Conciliation Act, 1996 protects the interests of the parties covered under the legal agreement drawn by mediation.

B. Arbitration

Arbitration is an arrangement or understanding which is drawn by two parties under a contract and has a binding result on the parties involved in contract. The ***Arbitration and Conciliation Act, 1996*** governs the functions and features of the Arbitration proceedings in India. In other words, Arbitration is a logical arrangement organised by the disputing parties

to reach the conclusion or resolution of the dispute and the differences that exist between the parties. The Arbitration process is in a way a non-judicial process which helps the disputing parties to draw an understanding between each other.

Arbitration Agreement- Section 7

The existence of an Arbitration agreement between the parties is the main pre-requisite for The Arbitration & Conciliation Act to apply. Without it, no two or more parties can refer their dispute to Arbitration and avail its advantages.

Section 7 of the Act defines and provides for the Arbitration Agreement. It states that *"arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not."*

The essentials of an arbitration agreement are-

a. It may be in the form of an arbitration clause in a contract or a separate agreement altogether.

b. It shall be in writing. Section 7(4)provides the scenario where an agreement shall be considered to be in writing. It states that the arbitration agreement is only considered "in writing", if:

- The document defining the involvement of the parties is duly signed by all the parties involved in the dispute
- The communication of the agreement should be carried by means such as email, fax or any other means of telecommunication
- An exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other. An allegation is an assertion or declaration about a fact and also refers to the narration of a transaction.[1]

Section 7(5) further states that if reference is further given regarding the arbitration agreement in a separate contract in written contract, then the further contract becomes a binding part of the arbitration agreement. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future.[2]

The Arbitration Agreement forms the basis on which the whole arbitration procedure rests and constituents of the Arbitration Agreement are as follows:

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[1] *S.N. Prasad* v. *Monnet Finance Ltd.*, 2010 (II) JT 479.
[2] *Jagdish Chander* v. *Ramesh Chander*, (2007) 5 SCC 719.

- The agreement must state the submission of all parties involved in the dispute to submit to the arbitration procedure to resolve a certain or all disputes. The dispute(s) must be duly defined in the agreement
- The dispute may or may not be contractual in nature, however the dispute must be in conjunction with a defined legal relationship
- The agreement can be designed in conjunction with the (I) Arbitration Clause or (II) separate defined agreement
- The agreement must in all cases be in written form
- The agreement must be duly signed by the parties involved in the conflict

In simpler words, an arbitration agreement is a contract raised between the disputing parties, which should be in a written form. The agreement broadly defines the clauses and details of the dispute, which the parties agree to settle outside of the court of law. The nature of dispute can be varied and the agreement covers disputes of various nature, whether it is non-performance in accordance to a previous drawn contract, ill-treatment at a workplace, unfair trade practices or a faulty product or service etcetera. The Law of Arbitration and Conciliation provides the freedom to the citizens to resolve any dispute through the arbitration agreement, given that the dispute should entail a legal nature and no illegal activity should be involved in the dispute.

The arbitration agreement can cover the aspect in the contract itself, where a provision can be raised, stating that the party or parties signing the agreement agree to the arbitration procedure in case any dispute arises. For instance, if a business owner forecasts that any party or business who gets involved with the business can enter into a dispute at a later stage, can draw a clause in the contract stating that by signing the contract, the party agrees to invoke arbitration to resolve a dispute, instead of undertaking the litigation procedure. The party or parties signing such an agreement are bound to undertake the path of arbitration in case a dispute arises, instead of following a path of court litigation. In case the nature of business is very complicated, then the mandatory arbitration clause of the business is very crucial and should be duly defined in the agreement.

In the case of *Enercon (India) Ltd.* v.*Enercon Gmbh & Anr*[3], *the Supreme Court observed that the arbitration clauses given in the agreement or contract, are considered a part of the valid arbitration agreement.*

[3] (2014) 5 SCC 1.

The Appellants involved in the case argued that the matter could not be marked or suggested for arbitration because the IPLA (Intellectual Property License Agreement), which contains the arbitration clauses or agreements, is not observed as a concluded contract. In this case, the Supreme Court rejected the plea of the Appellants and ruled that the existence of a legal relationship between the parties was considered and the court stated that the IPLA itself argued the intention of the parties towards arbitration.

The court stated the Section 16 of the act, which provides a provision, wherein the Arbitration clause which forms the part of the contract is treated as an independent agreement of the considerate contract. In a further clarification statement, the court ruled that the concept of severability was taken into account; wherein in the underlying contract, it is ensured that the intention of the parties to reach resolution of the disputes through arbitration cannot be denied by challenging the legality, finality, validity or breach of the contract.

Prescribed Form of the Arbitration Agreement

The Arbitration agreement is not bound by the law to be framed in any particular form or format. The parties have a discretion to frame the agreement in any given format or form. In the case of*Smt.Rukmani Bai Gupta*v.*Collector of Jabalpur*[4]the court observed that the arbitration agreement is not bound to be in any particular form or format. The point of contention as referred and concerned by the court was whether the parties had agreed to enter into a contract or agreement and whether they had agreed to enter into arbitration in case any dispute arises between them. If the aspect of entering into arbitration in case of dispute is covered in the contract, then such an agreement is considered as an arbitration agreement; which can be in any format.

Section 8 provides the power to the Court to refer parties to Arbitration where there is an existence of the arbitration agreement between them. It states that when a matter is listed before a judicial authority and upon the application of either of the parties, the court shall refer the matter to arbitration. This provision has been upheld by the apex court in a number of cases, one of the landmark being *P. Anand Gajapati Raju* v. *P.V.G. Raju (Dead)*[5] However, the above said application will not be entertained unless there is an *Original/Certified Arbitration Agreement* available between them. A matter may be referred

[4] AIR 1981 SC 479.
[5] 2000 (4) SCC 539.

to Arbitration even during its pendency in the Court and an award may be made.

The availability of an arbitration agreement between the parties is absolutely mandatory.[6] Also, it must be noted that the mere existence of arbitration clause in agreement does not bar jurisdiction of Civil Court automatically.[7]

Section 9 of the Act provides Interim Measures/Relief to either of the parties from the arbitral proceedings. That is to say, either party mat before or during arbitral proceedings or after the award is pronounced but before it is enforced may apply to the court for 'interim protection' for the following purposes-

a. appointment of a guardian of a minor or a person of unsound mind
b. for preservation or interim custody of the goods which are the subject matter of the case
c. for securing the amount in dispute;
d. for detention, preservation or inspection of any property in dispute;
e. interim injunction
f. appointment of a receiver etc.

This section empowers the parties to seek interim protection of the court during the pendency or even after the arbitral proceedings. A party may apply for this when it suspects breach of terms or agreement or when other party militates against equity, or for fair play & natural justice.[8]

Arbitral Tribunal

The Arbitral Tribunal as defined under Section 2(1)(d) means a sole arbitrator or a complete panel of arbitrators, which are appointed to carry out the arbitration proceedings. In case, when the Tribunal is the panel consisting of various arbitrators, the parties involved in the dispute have a discretion to choose the strength and number of arbitrators to be a part of the panel. This number should however, not be an even number according to Section 10(1). Sections 10 (2), further defines that if the parties fail to choose the arbitrators and fail to decide upon the number of arbitrators, the tribunal should consist of a sole arbitrator.[9]

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[6] *Atul Singh* v. Sunil Kumar Singh, AIR 2008 SC 1016.
[7] *Mahesh Kumar* v. *Rajasthan State Road Transport Corporation,* AIR 2006 Raj 56.
[8] *Baby Arya* v. *Delhi Vidyut Board,* AIR 2002 Del 50.
[9] *Sri Venkateshwara Construction Co. v. Union of India,* AIR 2001 AP 284.

Qualifications of an Arbitrator

The act does not describe or prescribe any formal qualification to become an arbitrator. The act does not even restrict the qualification on the basis of nationality. Section 11(1) of the Act provides that person of any nationality or citizenship status can be appointed as the arbitrator, until and unless otherwise agreed by the parties. The act describes the fact that the parties involved in the dispute are the best judge about the nature and requirements of the dispute. The parties involved are aware of the disputes that exist and might further arise in course of the conflict resolution, so they should appoint the arbitrator according to their requirements. It is however, advised that the parties must agree to the appointment of arbitrator at the initial stages or arbitration process because if the appointment is delayed, some further disputes might arise among the parties and the process of arbitration might get delayed. It is for the benefit of the parties involved, to determine the qualifications of the arbitratorbecause in case where the dispute resolution requires a person with technical knowledge, the arbitral award might be set aside.

Appointment of Arbitrator

Section 11 provides the entire procedure to be adopted for the appointment of the Arbitrator.

Appointment of arbitrators.

1. A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

2. Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

3. Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

4. If the appointment procedure in sub-section (3) applies and-

a. a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

b. the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made upon request of a party, by the chief justice or any person or institution designated by him.[10]

5. Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator if the parties fail to agree on the arbitrator within thirty days from receipt of a

[10] *Bharat Sanchar Nigam Ltd. v. Motorola India Pvt. Ltd.*, 2008 (7) Supreme 431.

request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice of any person or institution designated by him.

6. Where, under an appointment procedure agreed upon by the parties,-

a. a party fails to act as required under that procedure; or

b. the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

c. a person, including an institution, fails to perform any function entrusted him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

7. A decision on a matter entrusted by sub-section (4) or sub- section (5) or sub section (6) to the Chief Justice or the person or institution designated by him is final.

8. The Chief' Justice or the person or institution designated by him, in appointing arbitrator, shall have due regaled to-

a. any qualifications required of the arbitrator by the agreement of the parties and

b. other considerations as are likely to secure the appointment of an independent, and impartial arbitrator.

9. In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the 7 parties where the parties belong to different nationalities.

10. The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.

11. Where more than one request has been made under sub-section (4) or subsection (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

12. a. Where the matters referred to in sub-sections (4), (6), (7), (8) and (10) arise in an international commercial arbitration the reference to "Chief Justice" in those subsections shall he construed as a reference to the "Chief Justice of India."

b. Where the matters referred to in sub-sections (4), (5), (7), (8), and (10) arise in any other arbitration, the reference to "Chief Justice" in those sub-sections shall he construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil

Court referred to in clause (e) of sub-section (1) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief justice of that High Court.

The Section 11(2) of the act defines the appointment of the arbitrator as per the requirements and preferences of the participating parties. Section 11(3) further describes that when the parties fail to agree upon the appointment of the arbitrator, there is a further provision to appoint three arbitrators in the panel. The procedure is that the parties would appoint two arbitrators and the two appointed arbitrators further appoint the third arbitrator to complete the panel of arbitration. The limitations associated with the appointment process are further described in Section 11(4). This sub section clarifies that if the parties fail to appoint an arbitrator with 30 days of the raising of request and if the two selected arbitrators fail to select the third arbitrator within 30 days of their appointment, then the appointment can be made on request of party by the Chief Justice or any other person or institute designated by him, in his stead. Section 11 (5) further describes that the agreement upon the appointment of the arbitrator should be achieved within 30 days of receipt of the arbitration request by either party. In case the appointment of the arbitrator is not agreed by the parties within 30 days, the Chief justice can appoint any person or institute as the arbitrator of the dispute resolution.
Section 11 and sub section (10) further adds that the Chief Justice also has the authority to prescribe any scheme which he deems appropriate for the resolution of dispute.
Two major aspects that must be taken into consideration are that the person or institution which is designated by the Chief Justice to select the arbitrators. The first aspect is that the nominated person or institute must comply with the qualifications thatare required according to the agreement or that are agreed by the parties. The second aspect is that the appointed parties must secure appointment of the arbitrator in accordance with Section 11(8). In case there is more than one request made for the appointment of the arbitrator to the Chief Justices of more than one High Court or their respective designates then the request that is received the earliest is treated prior to the other requests.

Code of Communication

The Arbitrator must comply with the set code of communication with the parties and this code has to be followed. The aspects are described below:

- The arbitrator has to send out a written communication to the parties involved in the arbitration agreement about his role as an appointed arbitrator in the dispute.
- The written communication should comply with the section 3 of the act
- The forms of communication also must be agreed upon by the parties and they are free to describe the procedure of communication to be followed during the course of arbitration
- The written communication can be exchanged through emails or telefax as agreed by the parties
- If the parties fail to agree upon the procedure of written communication, then the communication should be sent on the addresses provided by the parties in form of letter
- If the addresses provided by the parties are not found then the communication should be sent on the last known address of business or the habitual address
- The communication sent on the addresses must be sent via a registered letter that provides a receipt and no other substitute means should be adopted to send the communication

Duties of the Arbitrator

The incidences of partiality and biasness are addressed by the Arbitration and Conciliation Act 1996 through its wide coverage of various aspects. The act imposes huge amount of responsibility on the arbitrator. The aim of the act was to make the procedure detailed and descriptive so that it removes the chance of any confusion or miscommunication. The arbitrator has the duty to comply with the sub section (1) of section 12 and inform the parties about the details provided in the section and sub section. The communication is required to be carried out at the time when the parties appear before the arbitrator in response to the notice. The only reason why the arbitrator should avoid such incident is given in Section 12(2).

Some of the highlights of the duties of the Arbitrator are given below:

- The Arbitrator must be impartial and must provide equal treatment to the parties
- The Arbitrator should restrict his involvement to the parties in relation to the matters concerning the dispute only
- The Arbitrator is bound by law to follow the provisions of the 1996 Act
- He is bound by law towards the Public Policy

- The Arbitrator also has an obligation towards Time Limitation
- He has an obligation towards remuneration
- The Arbitrator is bound by law to provide reasoned award in accordance with the Act only
- He must follow the principles of natural justice
- The Arbitrator must not act beyond his jurisdiction
- The Arbitrator should make sure that he is not found to be guilty of fraud or misconduct
- He has a duty of finality and reasonableness
- He should follow the rules of justice and act judicially with equity and good conscience
- The Arbitrator has to make sure that the dispute is resolved according to law
- He has a duty to render accounts
- He has a duty towards usages as per trade
- The Arbitrator has a duty towards settlement

Powers of Arbitrator

- The Arbitrator has the power to make awards of settlement
- He has the access to assistance
- He has the power to rule on its jurisdiction
- The Arbitrator has the power to pass interim relief
- He has the power to determine, Rules of Procedure
- The Arbitrator can determine the place for Arbitration
- He can select the language for Arbitration
- He has the power to hearing and written proceedings
- He has the right towards default of a party
- The arbitrator can appoint an expert
- He has the power to assistance from court to access evidence
- He has the power towards award & settlement
- The arbitrator can terminate proceedings
- He can correct and interpret Award and provide additional award
- He can impose deposits and interest
- He has the remuneration power

How Can the Appointment of the Arbitrator be Challenged?

Section 12 and 13

Section 12: *Grounds for challenge.*

1. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

2. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub section (1) unless they have already been informed of them by him.

3. An arbitrator may be challenged only if-

a. circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

b. he does not possess the qualifications agreed to by the parties.

4. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reason, of which he becomes aware after the appointment has been made.

The appointment of the arbitrator can be challenged by either party under the following circumstances:

- If the parties find out that the appointed Arbitrator does not fulfil the requirements and qualifications which were laid down by the parties as mentioned in Section 12(3).
- If the Arbitrator does not take into account the impartiality feature of the Arbitration function and fails to carry out fair proceedings of Arbitration
- Either party can take a recourse and challenge the appointment in front of the arbitrator himself

The proceedings to challenge the appointment of the arbitrator is enlisted under Section 13.

JURISDICTION OF ARBITRAL TRIBUNALS – SECTION 16

- The arbitral tribunal has the power to rule on its own jurisdiction. It can further rule on any objections which may arise as regards any existence or validity of the arbitration agreement. For this purpose, following points are to be considered-

- (I) Any clause of arbitration, which forms the part of contract shall be treated as a separate agreement altogether.
- (II) Any decision passed by the arbitral tribunal which rules the contract to be void, would not effect the validity of the arbitration agreement or clause.

  A plea questioning the jurisdiction of the tribunal should not be invoked later than the submission of the statement of defence.
- During the arbitral proceedings, when a party wishes to raise a plea stating that the concerned tribunal is exceeding the scope of its authority; such plea should be raised as soon as possible without delay.
- In case a conflicting party is aggrieved with the award given by arbitral tribunal, the party can file an application to set aside the award according to section 34

Conduct of Arbitral Proceedings

The Chapter V of the act further explains the schemes that are involved in the arbitral proceedings, which can be followed by the parties. The Act defines that equal opportunity is given to all the parties involved in the dispute, assuring the unbiased approach of the proceedings. The Act further provides the freedom to the parties to decide the particular manner by which they wish to take forward the arbitration proceedings. If in case, the parties fail to arrive at a decision regarding the manner which needs to be followed, then the Arbitral Tribunal can determine the same, keeping in mind the relevance, weight of evidence and the materiality involved in the dispute.

Section 18 provides that both the parties shall be treated equally without biasness and partiality in the arbitral proceedings.

Section 19 provides that the Arbitral Tribunal is free to follow any Procedure as agreed by the parties and are not bound by the Code of Civil Procedure, 1908 and The Indian Evidence Act, 1872.

Place of Arbitration- The Section 20(1) of the Act extends the freedom to choose the place for arbitration proceedings to the parties involved in dispute. However, if the parties fail to agree on a location or place, the Arbitral Tribunal can decide upon the same, keeping in mind the logistics involved with the evidence in lieu of the circumstances of the case and the convenience of the parties.

Language of Arbitration- Section 22 of the Act provides the freedom to decide the language/languages of the arbitral proceedings. The tribunal also has the power to determine the language of the arbitral proceedings, however it should be in agreement with the parties involved in dispute.

Procedure of Arbitral Proceedings- The Sections 23 to 27 of the Actprovides for the details and the guidelines that must be followed in the course of the arbitration proceedings.

Statement of Claim and Defence The claimant shall state the claims of the dispute, the points of issue, facts of the case and the relief that is sought, in a stipulated time which is agreed prior to beginning the arbitration proceedings. Likewise, the respondent shall also state his replications, facts, points in issue and relief sought within the stipulated time. Section 23(3) also provides the details and guidelines towards the amendment in statement of claim while the proceedings of the arbitration proceedings are underway.

Hearings and Written Proceedings- The Section 24 of the Act defines the manner in which the proceedings of the arbitration should be undertaken. The section covers the aspects in conjunction with the hearings and submission of the written applications before the Tribunal. The Act extends another right to the Tribunal, wherein it can decide whether the proceedings shall be conducted orally, in written format or the manner of taking evidence on records.

Action in case of default by the parties- The Arbitrator is empowered by Section 25 of the act to terminate the proceedings of arbitration if any of the claimant fails to submit the statement of claim in concerns with the dispute, within the stipulated time and if the claimant does not have sufficient cause for the delay. However, if the respondent fails to revert or submit the statement of defence within the stipulated time, the arbitrator shall proceed with the process of arbitration without treating such a failure in itself as an admission of claimant's allegations. Also, in case any party fails to submit evidence or attend hearings, the tribunal has the power to pass any arbitral award as it feels just in such a situation.

Appointing an Expert- The Arbitral Tribunal under Section 26 of the Act is empowered to appoint one or more than one experts to analyze certain angle(s) concerning the dispute.

Assistance from Court- When the Arbitral Tribunal wants to align certain angles of the arbitration proceedings such as securing attendance of the witnesses or accessing certain documents concerning the case, it can take assistance from the court, under Section 27 of the Act. The Act also provides additional authority to the court, who can issue summons to the witnesses and can also issue notice for the production of the documents required.

Types of Arbitration Proceedings

There are broadly two categories of Arbitration proceedings; namely Ad-hoc arbitration and Institutional Arbitration.

Ad-Hoc Arbitration process is the procedure, where the parties involved in dispute, determine the path and code of conduct for the arbitration proceedings. In such an arrangement, the parties involved in the dispute, agree to the arrangements required in the process, without any intervention by the arbitral institution. In this case, if the parties fail to reach an arrangement, as to who would be the arbitrator and how to carry forward the proceedings, then the Chief Justice of High Court or Supreme Court or their respective designate would appoint the arbitrator for the proceedings. The fee of the arbitrator has to be agreed by all the parties involved and the arbitrator to initiate the proceedings.

In case of **Institutional Arbitration**, the proceedings of the arbitration process are governed by an arbitral institution. The aspect of arbitration process is duly covered in the initial stage, when the parties are entering into a contract. The aspect clearly defines that if and when a dispute arises between the parties, a particular institution would be referred for the arbitration proceedings. Major Indian institutions renowned for arbitration based dispute resolution are Indian Council of Arbitration and the International Centre for Alternate Dispute Resolution. Some of the international institutes for arbitration include; International Arbitration and the American Arbitration Association. These institutes have vast experience and have addressed several cases till now, so they are capable of handling and resolving cases of almost any nature.

ARBITRAL AWARD- Sections 28 to 37

An arbitral Award is the decision of the Arbitration Tribunal about an arbitration between parties. Such an award is determined upon the merits of the case and is analogous to a judgment of the Court. As per Section 2(1)(c) an Arbitral Award includes an interim award also which might be passed during the pendency of the Arbitral proceedings.

Essentials of Arbitral Award

The pre-requisites of a valid Arbitral Award are-

- The Arbitral Award shall be in written form
- The Award should be duly signed by the members of the Arbitral Tribunal
- The Award shall clearly state the reasons on which the award is based and reached
- The date and place of Arbitration should be clearly mentioned in the Award

After passing the Award, the signed copies of the Award must be duly delivered to the parties. If the situation requires, the tribunal can also pass the interim arbitral award.

Interpretation and Correction of Arbitral Award- Section 33 provides for any correction and interpretation of the Arbitration Award. The Section provides a provision to the Tribunal can correct the award and present it again within 30 days from the receipt of request. If the Tribunal finds the request of correction to be reasonable and justifiable in lieu of law, then it may proceed to correct the specific points that are raised in the request within 30 days of the receipt of request. If the Tribunal finds it fit to extend the time period required for correction of the Award, it may do so.

Additional Award which states that if there are some aspects of the disputes, which are omitted in the Award, a party can notify both the other party as well as the Tribunal. The Tribunal can then consider to provide an Additional Award, covering the omitted aspects of the dispute.

The arbitral award shall be final and binding on both/all the parties to arbitration.[11]

The Enforcement angle of the Arbitration Award if covered under Section 36 of the Act, which provides that if in case the time prescribed to set aside the award under Section 34 expires, then the Award shall be enforced as per Code of Civil Procedure, 1908, similar to the decree of a court.

[11] Section 35 of Arbitration and Conciliation Act, 1996.

Reasoned or Speaking Award

This is the most important perquisite to a valid Arbitral Award. Every award must be a reasoned and unambiguous order. The Supreme Court in the case of *Jajodia (Overseas) Pvt. Ltd.* v. *IDC of Orissa Ltd.*[12]settled the legal position that *a speaking or reasoned award is one which discusses or sets out the reasons which led the Arbitrator to make the award. Setting out the conclusions upon the questions of issues that arise in the arbitration proceedings without discussing the reasons for coming to these conclusions does not make an award a reasoned or speaking award.* A similar observation was made by the Court in the case of *Union of India* v. *Hindustan Motors Ltd.*[13], wherein the Supreme Court stated that *there is no elaborate discussion does not mean that the reasons have not been articulated. The rational basis of the award is revealed in the narration. In our opinion it is a speaking award, and not a silent award, though it speaks in few words. We must therefore proceed on this footing.*

Stamping of Arbitral Award

On several occasions, the Courts have been confronted with the issue whether an arbitral award which is not stamped is enforceable or not. In the case of *Naval Gent Maritime Ltd.* v. *Shivnath Rai Harnarain*[14]*the court stated that*in any case the issue of Stamp Duty cannot stand in the way of deciding whether the award is enforceable or not. The Supreme Court decided a similar issue in the case of *M. Anasuya Devi & Anr.* v. *M. Manik Reddy and Ors.*[15]wherein the Apex Court had observed that *the question as to whether the award is required to be stamped and registered, would be relevant only when the parties would file the award for its enforcement under Section 36 of the Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter the exercise undertaken to decide the said issue by the Civil Court as also by the High Court was entirely an exercise in futility. The question whether an award requires stamping and registration is within the ambit of Section 47 of the Code of Civil Procedure and not covered by Section 34 of the Act.*

[12]1993 SCR (1) 229.
[13] AIR 1982 Delhi 366.
[14] 2000 (54) DRJ 639.
[15] 2001 (5) ALT 367.

Setting Aside of Award- SECTION 34

The Arbitral award can be set aside as per the provision of Section 34 of the Act. There are various circumstances provided by the Act, under which the Award can be set aside by the court, such as;

- The party involved in dispute has some incapacity
- The Agreement raised between the parties is not legally valid
- The appointment of the arbitrator or the holding of arbitral proceedings is not duly notified
- When the arbitral award addresses the issues, which are not covered in the terms of submission to the arbitration or it contains the matters which are beyond the scope of submission
- When the arbitration tribunal and its composition or the arbitral procedure is not in conjunction with the agreement of the parties
- When the court denotes that the subject matter of the dispute is not lawfully capable for settlement by arbitration
- The Award is in direct conflict with the Public Policy

Setting Aside of Award on Grounds of Public Policy

Throughout the Arbitration regime, the point of contention has been the "public policy" under Section 34. It was rightly explained by Justice Borroughs, that "public policy" is an *unruly horse*. The Public Policy is very unpredictable in nature, where the fluctuating policy works in conjunction with the ongoing fashions of the time, and with the ever-growing trade and commerce, it is very unpredictable to ascertain the exactness of the policy. The major point of concern is that the Public Policy does not remain stagnant or constant in a given community. The policy not only varies from generation to generation, but also varies within the same generation. The reason behind this is that if the policy remains the same for over a period of time and does not change according to the changing trends, then it is considered useless. The power extended to the courts to set aside an Award, if it finds it in conflict with the public policy, is in a way violation of the very concept of ADR, which is limited intervention by the judiciary.

APPEALS TO ARBITRAL AWARDS- SECTION 37

Appeal shall only for the following orders to the Courts authorized by law to hear appeals from original decrees of the Court passing the order-

a. granting or refusing to grant any measure under Section 9 (interim measures);
b. setting aside or refusing to set aside an arbitral award under section 34;
c. accepting the plea under Sections 16(2) and 16(3) regarding jurisdiction;
d. granting or refusing interim measure plea under section 17.

No second appeals shall lie against the appeal results.

Conciliation

Conciliation is yet another means of alternate dispute resolution(ADR), wherein the parties that are involved in a dispute, appoint a conciliator in order to resolve the dispute. The Conciliator can meet the parties either separately or together, but the motive of the function is to resolve the dispute that exists between the parties. The conciliators work on the basic idea of lowering the tensions that exist between the parties; which is done by primarily improving communication between the parties, which further makes it easy to interpret the issues that exist. The Conciliators encourage the parties to explore the ideas through which the potential solution can be reached and they assist the parties to reach a mutually acceptable outcome. Unlike arbitration where it is absolutely mandatory for the parties to enter into an arbitration agreement/clause; no such pre-condition is specified for conciliation. Conciliation is a more informal, friendly yet organised kind of ADR.

Commencement of the Conciliation Proceedings- Section 32

While the Conciliation function begins, some of the below given aspects are to be covered through the process;

- When one party wishes to commence the conciliation function, the party is required to send to the other party, a written invitation to conciliate briefly describing the subject of the dispute.
- Conciliation proceedings can only begin, if the other party duly accepts the invitation to conciliation
- If in case, the responding party rejects the invitation to conciliation, tno conciliation will be initiated.
- In case the sending party does not receive any confirmation within thirty days of sending the invitation or within the time frame mentioned for response in the invitation itself, the invitation is deemed to be rejected and in such case, the

initiating party must send a written communication to the other party stating the same, that it has acknowledged the rejection.

Number of Conciliators- Section 63

- The mandatory conciliator is only one, however, if the parties desire for more than one conciliator, than they can appoint 2-3 of them.
- When there are more than one conciliators, they are bound to act jointly towards dispute resolution

Appointment of Conciliator- Section 64

- The parties may mutually agree on the name of the conciliator
- In other case, each party can appoint on conciliator
- In case the parties require three conciliators, the parties may agree for one conciliator each and jointly appoint the third conciliator, who can preside the proceedings
- The parties may enlist the assistance of a suitable institute or person in connection with the appointment of a conciliator.

Submission of Statements to Conciliator- Section 65

- When a conciliator is appointed, he shall request each party to submit awritten statement in brief, which denotes the details of the dispute and the points of issue alongwith the documentary and other evidence, the copies of which can be given to both parties.
- The conciliator can further request each party to submit supporting documents and statements, stating their respective position in the dispute. The parties are required to comply with the request raised by the conciliator and furnish all the required documents.
- The conciliator has the right to demand any further clarification and additional information from the parties during the course of conciliating proceedings.

Section 66 enunciates that the Conciliator is not bound by the rules of Code of Civil Procedure, 1908 and the Indian Evidence Act.

Role of Conciliator- Section 67

- The first and foremost role of the conciliator is to assist the parties to reach an agreement and mutually resolve the dispute. The conciliator is required to function in a just and unbiased manner.

- The main principles that must guide the conciliator are that of fairness, justice and objectivity. The conciliator is required to give consideration to the obligation of the parties and the usage of trade concerned and the previous practices between the parties.
- The conciliator is provided the capacity to decide as to how the proceedings would take place and he must take into account the requests/wishes made by the parties, circumstances of the case, requests for oral statements and speedy settlement of dispute.

Administrative Assistance – Section 68

During the course of resolution through conciliation, the conciliator can, with the consent of the parties call for administrative assistance in order to resolve the issue. This assistance can be arranged from any person or institute.

Communication Among Parties and Conciliator

- The conciliator can invite the parties for meeting and the communication may be in either oral or written format. It is the discretion of the conciliator to communicate with the parties separately or together for resolving the dispute.

Disclosure of Information

During the course of conciliation process, if the conciliator receives any additional information or facts regarding the subject matter, the conciliator must disclose such information to the other party, in order to enable the other party to be able to defend their claim or provide an explanation about the same. On the other hand, if any party provides some information to the conciliator on the condition of confidentiality, the conciliator shall not disclose the information to the other party.

However, the parties as well as the conciliator are bound by the clause of confidentiality extended upon them by the Act. The parties and the conciliator, are required to keep the development of the confidentiality proceedings and the settlement agreement, confidential, until and unless, where the disclosure is deemed as unavoidable.

Settlement Agreement- Section 73

- During the course of conciliation proceedings, if at a certain point, the conciliator feels that the dispute can be resolved through certain pointers, he shall frame the proposal of possible settlement and submit it to the parties for their review. When the conciliator receives the observations from the parties, he can reformulate the

settlement proposal with the amended terms of possible settlement among the parties.

- When the parties agree on the terms of settlement, these terms should be duly drawn on a document and signed by the parties. The settlement document can be either drawn by the conciliator or can be drawn by the parties under the supervision of the conciliator.
- When the settlement agreement is signed by the parties, it is considered to be final and binding upon the parties and their affiliated persons.
- The settlement agreement is authenticated by the conciliator and each party is provided with a copy of the agreement.
- The settlement agreement shall have the same status and effect as that of the Arbitral [16]Award.

Termination of Conciliation Proceedings – Section 76

The conciliation proceedings can be terminated through the following means:

- The parties can sign the settlement agreement on the prescribed date of agreement

  Or
- By a written declaration of the conciliator, after consulting with the parties that the process of conciliation is no longer required/justified, on the date of declaration;

  Or
- The parties can address a written declaration to the conciliator, stating that the conciliation proceedings are hereby terminated and are no longer needed, on the date of declaration

  Or
- One party can send a written declaration to the other party and the conciliator (if appointed), stating that the conciliation proceedings are terminated, on the date of declaration.

Difference Between Arbitration and Conciliation

Comparison Basis	**Arbitration**	**Conciliation**
Meaning	Arbitration is a way of dispute settlement, wherein an impartial and unbiased	When an independent person is appointed to resolve a dispute among two

[16] Section 74 of the Arbitration and Conciliation Act, 1996.

	third party is appointed to resolve the dispute, on basis of hearings from both sides and deliver a resolution which is binding to both parties.	parties, it is called Conciliation. The Conciliator helps the parties to reach a resolution
Enforcement	The resolution can be enforced by the arbitrator, over the parties.	The conciliator cannot enforce the decision over either of the parties
Prior Agreement	Required	Not Required
Applicable on	Current as well as future disputes	Current Dispute
Legal Proceeding	Yes	No

- In an Arbitration procedure, the parties involved in the dispute, provide and present their case in front of a neutral third party, who resolves the issue and imposes the resolution.

  Whereas Conciliation is a method, wherein an independent person meets the disputing parties severally and jointly to arrive at a mutually agreed resolution. The resolution cannot be imposed on either of the parties
- When the decision is made by the Arbitrator, the resolution is accepted by the parties, as they submit to the arbitrator's will to some extent.

  On the other hand, the conciliator cannot impose the decision under any circumstance
- In order for the parties to bring Arbitration function into effect, prior agreement is required, which requires the parties to sign on the term that in lieu of any dispute the parties would resolve it through arbitration.

  In case of conciliation, no prior agreement is required to be signed by the parties and the provision of conciliation can be invoked at any point of time by the disputing parties
- The validity of the resolution reached by the function of arbitration, is on the current disputes as well as the disputes that may arise among the parties in future, in conjunction with the same subject matter

On the other hand, the Conciliation function is only valid on the current disputes between the parties

- Arbitration process is similar to the legal proceedings of a court room, where the witnesses are produced in a hearing and both the parties are present at the hearing. Conciliation process is a more informal way of resolving the issues, and it does not include any legal proceedings.

LOK ADALATS AS ALTERNATE DISPUTE RESOLUTION

Lok Adalats play a unique role as extended upon them by the Constitution of India. Lok Adalats work as an arbitrator, mediator and conciliator all at once. Lok Adalat is based on the aim to promote fair play, equality and justice in the system and to provide the disputing parties with a chance to resolve the issues quickly and in a just manner. Lok Adalat at no point does substitute the existing system, but in a way, provides an additional provision in order to shoulder the burden of the courts of law. Lok Adalat is translates to "People's Courts" and the decisions are sought after complete expedition of the aspects of the dispute at hand.

The Judges of the apex courts have repeatedly emphasized on the need for free legal aid to the poor. Legal aid is one of the basic human rights that every individual is entitled to. In this view itself, Article 39 (A) was introduced in the Constitution of India in 1977. This article provides equality in opportunity to seek legal aid in court matters to every individual irrespective of their economic standing. In view thereof, Legal Services Authorities Act, 1987 was introduced by the legislature to ensure that legal aid for securing justice is not denied to any citizen by reason of economic or other disabilities; since it is an established fact that

seeking legal recourse is an expensive process in India. The said Act further organized Lok Adalats to give access to justice to resource less and needy.

Justice Ramaswamy rightly said " Resolving disputes through Lok Adalat not only minimizes litigation expenditure, it saves time of the parties and their witnesses and also facilitates inexpensive and prompt remedy appropriately to the satisfaction of both the parties."

Law Courts in India face multiple problems such as extremely high number of cases, high cost involved in prosecution and disposal of cases including lawyer's fee, extreme delays in disposal of cases etc. Lok Adalats offer relief from most of these problems. It saves the people from undergoing lengthy court procedures by resolving disputes out of court, it is extremely economical and doesn't pay any burden on a needy man's pocket, it is a quick process and the relations between the parties remain cordial.

The main aim of Lok Adalats is to reach to a conclusion with utmost fair play and unbiased approach. If in case the Lok Adalat is not able to resolve a dispute, the case is sent back to the court, from where the court was referred. The court can continue to proceed with the normal course of matter. The Lok Adalat constitutes a retired judicial officer, who presides over it, accompanied by two other members; one lawyer and one social worker. The main aim of a Lok Adalat is to resolve as many cases in a day, as possible. These cases have pending or pre-litigation in a court of law and they are referred to Lok Adalat by these courts. The Legal Services Authorities Act, 1987 provides statutory status to Lok Adalats. The award or decision reached by Lok Adalat is deemed as similar to decree of a civil court. The decisions of the Lok Adalat are final and binding to all the parties involved in the dispute. Also, the decisions cannot be appealed against in any court of law. Although there is a no provision for the parties to appeal against the decisions of the Lok Adalat, they can however initiate litigation through the court of appropriate jurisdiction. Lok Adalat is considered as the most effective in settling disputes that have money as the central matter of dispute. Each and every case is not referred to the Lok Adalat as the cases like partition suits, matrimonial cases and damages can be resolved prior to the interference by the Lok Adalat.

Organization of Lok Adalats

The civil society witnesses several cases of crime and criminal activities. There is always a possibility that the cases in court can be dealt with biasness in the court of law. The

organization of Lok Adalats is made mandatory in every legal society to ensure the unbiased functioning of the legal function. There are several aspects associated with the organization of Lok Adalat and they are discussed below:

i) The Lok Adalat can be organized by any State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee or the Taluk Legal Services Committee. They have the discretion to organize the Lok Adalat as per the duration as they deem fit.

ii) The members consisted in every Lok Adalat shall consist of:
   a) Any serving or retired judicial officer
   b) Any other person who is specified by the State Authority, District Authority, Supreme Court Legal Services committee or High Court Legal Services Committee, or in some cases, by the Taluk Legal Services Committee

iii) As per the clause(b) of sub section (2), the experience and qualification of the other persons organizing Lok Adalat, prescribed by Supreme Court Legal Services Committee must be decided by the Central Government after consulting the Chief Justice of India.

iv) The other persons referred to in clause (b) sub section (3) of the same law, shall be prescribed by the State Government in consultation with the Chief Justice of High Court.

v) The Lok Adalat has power and jurisdiction to draw settlement of the following nature:
   i) Any case pending before the court of law
   ii) Any matter which is pending and is never before presented to the court for which the Lok Adalat is organized

- Consent of Parties

The sub clause (5) of Section 19 derives for the Lok Adalat, the hedging by the expression "to determine and arrive at a compromise or settlement". In legal terminology, this refers to the power to exercise the award that is vested upon the Lok Adalat, cannot exceed the extend of the prevailing dispute in the precise subject matter which is agreeable by the parties for resolution. If any of the parties involved in dispute, show their unwillingness to reach a compromise, the Lok Adalat is deemed to be stripped off the jurisdiction to deal with the concerned dispute. The similar development was witnessed in the precedent, *Commissioner of Karnataka State Public Instruction (Education), Bangalore*v. *Nirupadi Virbhadrappa Shiva Simpi.*

Suo Motu Refer the Case to Lok Adalat

Under Section 20, there are certain conditions that are laid down for the case to be referred to Lok Adalat. The case can be referred to the Lok Adalat either by the application of either of the conflicting parties or it can be referred via *suo motu* by the court. The *suo motu* can come in effect is the court is satisfied that the case holds all the elements that can reach the avenue of settlement. If the case is referred to Lok Adalat on basis of one party, it is mandatory that the other party be given an opportunity to present their arguments.

Effect of Lok Adalat

It is a composite endeavour to resolve cases through Lok Adalat and it is not a supplementary machinery to resolve the cases pending in the courts. The functioning of Lok Adalat involves the aspects of persuasion, counselling, discussion and conciliation and it lends equal opportunity to the parties involved to present their arguments. The whole process of Lok Adalat is very cheap and allows the parties to reach speedy resolution on basis of mutual consent among each other. The function can be explained as a participatory justice, wherein parties and judges work together to resolve the issues with mutual consent and discussion. Conciliatory techniques and voluntary actions are involved in reaching to the resolution through the function of Lok Adalat.Another very important effect of the Lok Adalat is that it helps in creating awareness about the law to the people who are less familiar with the legal obligations of their dispute. It provides legal literacy in conjunction with the basic laws which are related to the day-to-day life. The function also helps social workers to be aware of the legal bindings and provide "legal first-aid" to people who need immediate reference as and when a dispute occurs.

Experience and Qualification of Members

A person can be included in the Lok Adalat under Rule 13 of the National Legal Services Authority Rules, 1995 only if the following conditions are met:

- The person is the member of legal profession
- The Lok Adalat can only include a person of repute
- The person should be interested in the implementation of Legal Services and Programmes
- The person can be an eminent Social Worker, involved with uplifting the weaker sections of the society

- The Social Worker shall be engaged in work for benefits of Scheduled Castes, Scheduled Tribes, children, women, urban and rural labour

The qualification and criteria of the members of Lok Adalat have to be finalised with consultation with the Chief Justice. This means that concurrence must be established for finalizing of the appointment of the members of Lok Adalat and the concurrence is similar to the appointment of the Judges of High Court.

Functioning of Lok Adalat System and Regular Judicial System Compared

In the regular functioning of the judicial system, it is often seen that people find the judgements awarded by judicial courts, to be in bad taste. The extension of Lok Adalats is for the litigants and for the regular people. The introduction of Lok Adalats is carried out with the motive of preventing loss of faith of people in the judicial structure of the country and to sustain the democratic structure. In many cases, it is witnessed that the cases remain pending in the courts for several years and when the case is presented in the Lok Adalat, it is resolved quickly. It is however maintained that both the regular judicial structure and Lok Adalats don't function regularly at the same time, so as not to demote the value of the regular judicial structure. It is often argued that not all cases should be marked or referred to the Lok Adalat and cases with a particular nature are referred. This practice is followed so that the citizens don't lose faith in the functioning of the judicial courts. In order to strengthen the normal judicial structure, it is suggested that the normal courts be carried in the manner in which Lok Adalats are carried. The functioning of Lok Adalats has promoted an argument which suggests that certain amendments should be brought in the lawmaking function of the country which would enable the regular courts to be as effective as the Lok Adalats.

Lok Adalat: Supplement the Existing Judicial System

If we consider the connotation of the Lok Adalats, they are not considered as a court or are not compared with the regular courts. It is considered as an extension of the judicial structure of the country to promote dispute settlement and to promote the effect of the judicial functioning among the normal people of the country. It is promoted as a forum to promote alternate dispute resolution. In some cases, it is seen that Lok Adalats have supplemented the existing judicial system that serves justice. Lok Adalats are held under the supervision of Advice Boards and the State Legal Aid as per the directives issued by Committee for implementing Legal Aid Schemes (CILAS). Lok Adalats have been organized by these boards across various parts of the country, regularly.

In most cases, the date and location to hold the Lok Adalat are fixed one month prior to the date. The holding of Lok Adalat is promoted through various mass media such as cinema slides, television advertisements, posters and radio. Before the Lok Adalat is held, the organizers coordinate with the presiding officers of various courts and see if there are some cases available, which can be taken forward for reconciliation and resolution. When such cases are identified and shortlisted, then the local law students and various social workers canvass and motivate the parties of these cases to appear in Lok Adalat and resolve the dispute. The participants who work as motivators are provided with incentive in form of transportation charges and food on the day of Lok Adalat.

Members of Lok Adalat

The important aspect in this direction is the veto powers extended to the members of the Lok Adalat. The Lok Adalat is presided by a judge, whether sitting or retired and (or) judicial officers. The special powers of the members of the Lok Adalat allows fast and quick resolution of cases, as compared to the normal judicial courts. The different angles of power associated with the judges of Lok Adalat are as follows:

- The judge is kept independent from any legal restraints, punishments and checks, that are otherwise imposed on other public officers
- He is free from any criticism
- He enjoys civil and criminal immunity
- He is not removed from office for normal offense, and is removed in case of a scandalous offense

These are the reasons why choosing the members of Lok Adalat is a very important task because the person enjoys unparalleled power in terms of law.

Principles of justice, Equity and Fair Play

The term “Lok” in Lok Adalat refers to the common people and the formation of Lok Adalat holds truth as far as the people aspect is concerned. In a way, Lok Adalat is the extension of the regular legal structure to make people more comfortable with the functioning of legalities. The most common sentiment of the people is somewhat negative regarding the normal functioning of the judicial courts and Lok Adalats make things more convenient for the people. The formation of Lok Adalat holds a somewhat missionary zeal as its base and it is committed to extend justice to the people. It is a very balancing act to carry forward the function of Lok Adalat, because the function is promoted to be unbiased and “friendly” towards the people, still the legal aspect has to be carried out. The justice as per law has to be

served to the people and this is very challenging for Lok Adalat, because it has to be served in a single day.

Scheme of Lok Adalat

Section 19, sub-section (1) declares that the Lok adalat shall be organized with due diligence of the authorities in the areas that the authorities deem fit. In is seen that in a given area, there are several different Lok Adalats that are formed to undertake different cases of different nature and aspects. Sub section (2) explains that the Lok Adalat has to be consistent of a retired judicial officer and other persons. The clause (b) of the sub section explains that the experience and qualification of the "other people" included in Lok Adalat. According to clause(ii) of sub-section (5) of Section 19, a Lok Adalat has the jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any case pending before any Court. Similarly, under clause (ii) of sub-section (5) of section 19, any matter which is at pre- litigative or pretrial stage and is falling within the jurisdiction of the Lok Adalat and has not been brought before a Court of law can also be referred to it by the concerned authority or committee. Sub-section (5) of Section 19 is of very wide amplitude. It confers the widest possible jurisdiction on the Lok Adalat in the sense that the Lok Adalat can deal with any matter irrespective of its legal character and irrespective of the Court or Tribunal in which it might be pending and even when it is not so pending and is still at a pre-trial stage. However, as per proviso to sub- section (5) of Section 19, criminal matters relating to an offence which is not compoun1able have been kept outside the purview of Lok Adalat but all others cases which do not fall under the proviso to subsection(5) of Section 19 come within the way of a Lok Adalat.

Structural and Functional Character of a Lok Adalat

The Sections from 19 to 22 explain that the formation of Lok Adalat are by name and means considered as "court" as per the legal definition of the word court in Section 2(aaa). The court therefore as explained is the criminal, civil or revenue court constituted for the provided time period, to undertake judicial or quasi-judicial functions. The hedging of jurisdiction as per the sub-clause (5) of Section 19 explains that it is formed with a primary motive of arriving at a settlement or compromise of the given cases. Also, during the course of action of Lok Adalat, if any one party shows unwillingness to agree to the terms of the resolution or shows unwillingness to participate in the function, the Lok Adalat stands stripped off its capacity over the dispute.

Hearing of Parties

The Section 20 refers to Lok Adalat as the civil court and in such an arrangement, the clause of the court is deemed invalid if either of the party is not allowed to file a hearing.

Finality of Award

Order XXIII, Rule 3 of the Code of Civil Procedure explains that every compromise awarded through an arrangement such as Lok Adalat, shall be denoted as a lawful direction, until or unless proven otherwise. If there is an admission made by a tenant regarding the existing statutory ground, either expressed or implied, it is considered sufficient without any need of evidence. The admissions made by the tenants are considered as binding on all parties involved. A decree, of any rate can't be denoted as a nullity, to further enable any court to go behind it.

- ***Surbhi Aggarwal***
(Founder & CEO, School of Legal Education)

Thankyou