Settlement:

1. **Settlement of Dispute [Section 67 (4), 72, 73]:** The role of the conciliator is to assist the parties to reach an amicable settlement of the dispute. He may at any stage of the conciliation proceedings make proposals for the settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of reasons. Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator the suggestions for the settlement of the dispute.

   When it appears to the cociliator that there exist elements of a settlement likely to be accepted by the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties the conciliator may reformulate the terms of a possible settlement in the light of such observations. If the parties reach agreement on a settlement of the dispute, a written settlement agreement will be drawn up and signed by the parties. If the parties request, the conciliator may draw up or assist the parties in drawing up the settlement agreements. When the parties have signed the settlement agreement it becomes final and binding on the parties and persons claiming under them respectively. The conciliator shall authenticate the settlement agreement and furnish its copy to each of the parties.

   Where the conciliator held some meetings with the parties and drew up the settlement agreement by himself in secrecy and sent it to the court in sealed cover, the Supreme Court held that an order passed by the High Court confirming such settlement agreement received from the conciliator was wholly unsupportable. The section clearly requires that in order to be binding and to have the status of an arbitral award, it must be signed by the parties.

2. **Status and effect of settlement agreement [Section 74]:** Section 74 provides that the settlement agreement shall have the same status and effect as an arbitral award on agreed terms under Section 30. This means that it shall be treated as a decree of the court and shall be enforceable as such.

Restrictions on role of conciliators [Section 80]: Section 80 places two restrictions on the role of the conciliator in the conduct of conciliator proceedings:

1) Clause (a) of Section 80 prohibits the conciliator to act as an arbitrator or asa representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute which is subject of the conciliation proceedings.

2) Clause (b) of Section 80 prohibits the parties to produce the conciliator as a witness in any arbitral or judicial proceedings.

Termination of Conciliation Proceedings [Section 76] : Section 76 lays down four ways of e termination of conciliation proceedings. These are:

1) The conciliation proceedings terminate with the signing of the settlement agreement by e parties. Here the date of termination of conciliation proceedings is the date of the settlement agreement [Section 76(a)].

2) The conciliation proceedings stand terminated when the conciliator declares in writing further efforts at conciliation are no longer justified. Here the date, of termination of conciliation proceedings is the date of the declaration. [Section 76(b)].

3) The conciliation proceedings are terminated by written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated. Here the date of termination of conciliation proceedings is the date of the declaration [Section 76(c)].

4) The conciliation proceedings are terminated when a party declares in writing to the other party and the conciliator, that the conciliation proceedings are terminated. Here the date of termination of conciliation proceedings is the date of the declaration [Section 76(d)].

In a case before the Supreme Court the facts were that the conciliator drew up the settlement agreement himself in secrecy and sent the same to the court in a sealed cover. The court to which it was sent refused even to entertain objections against the settlement. The Supreme Court held that the conciliator committed an illegality. The Bombay High Court was not correct in confirming the settlement paper received from the conciliator. The court set aside the settlement. The reason is that under Section 76 (a) a settlement proceeding comes to an end only when the settlement agreement is signed by the parties, whereas in this case the settlement was filed in the court without the signature of the parties. The court surveyed the totality of the provisions on conciliation and said:

Resort to Arbitral or Judicial Proceedings (Section 77]: As a general rule, the Parties cannot initiate arbitral or judicial proceedings during the conciliation proceedings in respect of a dispute which is the subject-matter of the conciliation proceedings. But in exceptional cases a party may initiate arbitral or judicial proceedings if in his opinion such proceedings are necessary for preserving his rights.

1. **Costs (Section 78) :** "Costs" means reasonable costs relating to the following:

   1) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;
   2) any expert advice requested by the conciliator with the consent of the parties;
   3) any assistance provided pursuant to Section 64(2) (b) and Section 68, and
   4) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

   It is the conciliator who fixes the costs of the conciliation proceedings upon their termination an gives written notice of it to the parties. The costs are borne by the parties in equal shares.

2. **Deposits (Section 79):** The conciliator may estimate the costs likely to be incurred and direct each party to deposit it in advance in any equal amount. During the conciliation proceedings, the conciliator may demand supplementary deposits from each party. If the required deposits are not paid in full by both parties within thirty days, the conciliator may either suspend the proceedings or terminate the proceedings by making--a written declaration to the parties. The termination of proceedings becomes effective from the date of declaration. Upon termination of the proceedings, the conciliator shall render to the parties accounts of deposits received and return the unexpended balance to the parties.

3. **Removal of Difficulties (Section 83):** Section 83 empowers the Central Government to make provisions for removing any difficulty arising in giving effect to the provisions of the Act. Such provisions may be made by orders published in the Official Gazette. But such orders must not be inconsistent with

the provisions of the Act. Every order made under this section is required to be laid before each House of Parliament. This section will remain effective only for a period of two years from the date of the commencement of this Act, Le., 25th January, 1996.

POWER OF HIGH COURT AND CENTRAL GOVERNMENT TO MAKE RULES (SECTION 82 AND 84)

Section 82 confers on the High Court the rule making power. Accordingly, the High Court may make rules consistent with the Act as to all proceedings before the court under this Act.

"Section 72 of the 1996 Act gives the High Court power to make rules consistent with the Act. All the High Courts have not so far made rules. Whereas Section 84 gives the Central Government power to make rules to carry out the provisions of the Act, the High Court should also, wherever necessary, make rules. It would be helpful if such rules deal with the procedure to be followed by the courts while exercising jurisdiction under S. 9 (Interim relief) of the Act. The rules may provide for the manner in which the application should be filed, the documents which should accompany the same and the manner in which such applications will be dealt with by the courts. The High Courts are, therefore, requested to frame appropriate rules as expeditiously as possible so as to facilitate quick and satisfactory disposal of arbitration cases."

Power of Central Government to make Rules (Section 84): Section 84 empowers the Central Government to make rules for carrying out the provisions of the Act. Accordingly, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of the Act.

IMPORTANT QUESTIONS

Q.1. Who is a conciliator? How is he appointed? Discuss the effect of settlement agreement.

Q.2. What do you mean by conciliation proceedings? What is its scope? How does the conciliation proceeding commence? Explain.

UNIT – V

LEGAL SERVICES AUTHORITY ACT, 1987

Article 39-A of the Constitution which was inserted by the Constitution (Forty second) Amendment Act, 1976 casts an obligation on the State to secure that the operation of the legal system promotes justice on a basis of equal opportunity, and in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Besides, the right to free legal aid has now been included as part of right to life and personal liberty guaranteed under Article 21 of the Constitution.

With a view to accomplishing this objective, the Government of India appointed, a committee for implementing the legal aid schemes in 1980. This committee was headed by Mr. Justice P.M. Bhagwati. The committee prepared a draft-legal aid programme which could be applicable throughout India. It is on the basis of the recommendations and the draft outlined by this Committee that the Legal Services Authorities Act, 1987, was passed to establish Statutory Legal Services Authorities. It also contained provisions relating to Lok Adalats.

Object of the Act: The main object of the Legal Services Authorities Act, 1987 is to provide free and competent legal services to the poor and weaker sections of the society so as to ensure that they are not denied the opportunities for securing justice by reason of economic or other disabilities and to organise Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity.

Entitlement to Legal Services: Section 13 of the Legal Services Authorities Act, 1987 provides that persons who satisfy all or any of the criteria specified in Section 12 shall be entitled to avail legal services provided that the concerned Legal Aid authority is satisfied that such person has a prima facie case to prosecute or to defend. The person concerned is required to file an affidavit stating that he is entitled to legal services under the Act.

Section 12 of the Act enumerates the categories of persons who are entitled to legal services. These are as follows -

1. A person who is a member of Scheduled Caste. or Scheduled Tribe;
2. A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution of India;
3. A woman or a child;
4. A person who is disabled as defined in Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

5. A victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster;

6. an industrial workman;

7. a person who is in custody under the Immoral Traffic (Prevention) Act, 1956; Juvenile Justice (Protection and care and children) Act, 2000, Mental Health Act, 1987;

8. A person whose annual income is less than Rs.9,000/- or a higher amount as may be prescribed by-the State Government, and less than Rs.12,000/- hen the case is before the Supreme Court.

In addition to the above, legal services may also be granted in cases of great public importance and in special cases which are considered deserving of legal services.

Cases for which legal aid is not available: The cases coming under any of the following category shall not entitle a person to receive legal aid from the State:

1. Cases involving the offence of defamation, malicious prosecution, contempt of Court, perjury etc.
2. Proceedings relating to elections;
3. Cases in which the fine imposed is not more than Rupees fifty;
4. Cases where the person seeking legal aid is not directly concerned with the proceedings and whose interests will not be affected, if not represented properly.

Withdrawal of Legal Aid/Services: The Legal Aid Committee has the power to withdraw the legal aid/ services granted to a person under the following circumstances:

1. Where the aid is obtained through misrepresentation or fraud;
2. Any material change occurs in the circumstances of the person to whom such legal aid was granted;
3. In case of misconduct, misbehaviour or negligence on the part of the aided person;
4. Where the aided person does not co-operate with the allotted lawyer or counsel;
5. If the aided person appoints another legal practitioner;
6. In case of death except in civil cases;
7. Where the proceedings amount to misuse of the process of law or of legal services :

Where the legal services are withdrawn, the Legal Aid Committee may recover the cost of legal services . granted. However, the person aggrieved has a right to appeal before the Chairman of the Legal Aid Committee.

Organisation of Lok Adalats: Lok Adalats are judicial bodies set up for the purpose of facilitating peaceful resolution of disputes between the litigating parties. They have the powers of an ordinary Civil Court such as summonig, examining, taking evidence etc. These Adalats can resolve matters except criminal cases that are non compoundable.

Special status has been assigned to the Lok Adalats under the Legal Services Authorities Act, 1987, which

has come into force with effect from 9th November, 1995. The said Act provides the statutory base to the Lok Adalats. The Lok Adalat shall now have :

1. The same powers as are vested in a civil court under the Code of Civil Procedure, 1908;

2. All proceedings before a Lok Adalat shall be deemed to' be judicial proceedings within the meaning of sections 193,219 and 228 of the Indian Penal Code;

3. Every Lok Adalat shall be deemed to be civil court for the purpose of section, 195 and chapter XXVI of the Code of Criminal Procedure, 1973;

4. The members of the Lok Adalats, in terms of the provisions of Section 23 of the Act, shall be

5. deemed to be public servants with in the meaning of section 21 of the Indian Penal Code; and

6. Every award made by a Lok Adalat shall be final, binding and non-appeable.

Lok Adalat under the Act shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:

Any case pending before: or any, after which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organized.

The Lok Adalat shall, however, have no jurisdiction in respect of any case of matter relating to an offense not compoundable under any law.

A dispute can now be referred to Lok Adalats by (a) Mutual consent; or (b) at the request of one of the parties; or (c) by the Court suo motu. So, even private cases can be referred to any decided by Lok Adalats.

National Legal Services Authority: The National Legal Services Authority consists of Chief Justice of India as Patron-in-Chief; a sitting or retired judge of the Supreme Court as Executive Chairman and a Committee constituted by Chief Justice of India. Equaily, in each state, Chief Justice of the High Court is patron-in-Chief; a sitting or retired High Court Judge is Executive Chairman and a committee constituted in that behalf. In each district there is a District Authority presided over by the Principal District Judge and a Committee. At Taluka or Mandai level for each Taluka or Mandai or a group of Taluka or Mandals, a committee would be constituted with a Principal Subordinate Officer as Chairman. Thus, the Lok Adalat system is now a uniform and court-oriented programme.

Both types of cases, that is, pre-litigative cases as well as post-litigative cases now be brought before he Lok Adalats for determination. The Lok Adalats, it would be seen, are court-oriented programme as supplement ADR to the regular trial procedure.

The Act provides incentive with regard to refund of court fee initially paid at the time of the institution of he case, if the case is eventually settled through the Lok Adalats.

The success of the Lok Adalat as a social institution is the massive literacy programme in advance. The empowerment of people, awareness of rights and general consciousness are basic requirements for successful resolution of disputes without resorting to extensive expenditure and delay.

The programme, though widespread and widely appreciated, is not continuously successful because of several reasons. They are:

a. It is not institutionalized
b. concepts are not clarified
c. infra-structure was not properly developed
d. no training for personnel
e. no minimum standards prescribed

It should appear fair and just in all aspects as Lok Adalat 'is supposed to be a substitute to judicial process. The Lok Adalat is a para judicial institution.

The Legal Services Authority Act 1987 was brought into force in 1995 after an amendment in 1994. When Jodhpur experiment could not be continued because of 40 days strike by ministerial staff and subordinate judicial officers, which ended in settlement which led to stoppage of Lok Adalat experiment till 1991. The need for institutionalizing the Lok Adalat and providing for legal sanctity and authority to continue the movement was felt and the Act of 1987 was passed. This Act was long overdue as justice has been merely an illusion for the poor and needy. It is strange, that the Act was brought into force eight years after it was made.

The Object: The object of the Act is to create authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen for reason of economic or other disabilities and to organise Lok Adalats to secure that the operation of the legal system promotes justice on basis of equal opportunity.

The Authorities under the Law: It created National (under Section 3), State (S-7) and District (8-9) Legal Service Authorities with the power to organize Lok Adalats. Each Lok Adalat has to be presided over by Judicial and Non-Judicial member. The award of Lok Adalat is deemed to be a Decree of Civil Court and without provision for Appeal. For the purpose of determination, the LokAdalat will have powers of Civil Court and its proceedings are deemed to be judicial proceedings with the jurisdiction of civil and criminal court,- revenue courts or any tribunal. At the national level National Legal Services Authority decides policy for the nation, while at state level, there is State Legal Services Authority. The Supreme Court Legal Services Committee and High Court Legal Services Committee will promote the Lok Adalat. At District and Taluk level also Legal Services Committees are constituted. (The Taluk level Committee (S 11A) was envisaged by 1994 amendment) All these authorities are empowered to organize LokAdalat to determine and arrive at a compromise or settlement between the parties to a dispute in respect of cases pending before or falling within jurisdiction of the respective courts.

For Whom : Section 12 entitled every person who has to file or defend a case to legal services, if that person belongs to Scheduled Caste or tribe, a victim of Trafficking in human being or beggar, a woman or child, a person with disability, a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or, an industrial workman, in custody, including custody in a protective home, juvenile home, psychiatric hospital or psychiatric nursing home, or a person who has in receipt of annual income less than rupees nine thousand if the case is before Supreme Court, and if the case is before a court other than the Supreme Court and less than Rupees twelve thousand rupees or such other higher amount as prescribed by the

Government. In cases before Supreme Court, the Center and in cases before other courts the s ate government may prescribe a higher amount as eligibility criterion to receive services under this ct. One of the main eligibility criterion is that the person mentioned under Section 12 should have a prima facie case to prosecute or to defend and the Authority should be satisfied about that factor according to S 13). The income criteria can be satisfied by an affidavit from a person seeking legal services.

The National Legal Aid Fund is created under Section 15. Similarly the State fund under Section 16 and District Fund under Section 17 was created.

Constitution and Jurisdiction of Lok Adalat: Section 19 says that every authority is empowered to organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit. The Lok Adalat consists of a serving or retired judicial officer and other persons on its bench. The Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of, (i) any case pending before or any matter which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organized. It has no jurisdiction in respect to an offence which is not compoundable under any law (S 19).

The Lok Adalat takes cognizance of a case referred if the parties agree, or one of the parties thereof makes an application to the court for referring the case to Lok Adalat and if such court is prima facie satisfied that there are chances of such settlement; or the court is satisfied that the matter is an appropriate one to be taken cognizance by the Lok Adalat (Section 20). The reference of any case to Lok Adalat by the court has to be done only after a due opportunity is given to the party which has not applied or reference. After such reference is made, the Lok Adalat has to proceed to arrive at a compromise or settlement between the parties, with utmost expedition. It has to be guided by the principles of justice equity, fair play and other legal principles. If the compromise or settlement could not be arrived at, the case will return to the Court.

The Section 21 is a significant one as it provided status of decree to the award of Lok Adalat, and legal sanctity for the proceedings before it. Every award of the Lok Adalat is deemed to be a decree of a civil court, and the court fee paid shall be refunded in the manner provided under Court-fees Act. Every such award shall be binding on all the parties to the dispute and no appeal shall lie to any court (S 21). Refund of court fee is an incentive for parties to negotiate for settlement. The Lok Adalat is vested with powers of civil court, with powers to summon and enforce the attendance of any witnesses, for discovery and production of any document, the reception of evidence in affidavits, to requisition of any public record from any court or office, etc. It can specify its own procedure for determination of any dispute coming before it. All the proceedings before it shall be deemed to be judicial proceedings, and Lok Adalat shall be deemed to be a civil court (S 22). All the officers and persons concerning the Lok Adalat and Authorities are regarded as public servants as per Section 23 which was substituted by 1994 amendment.

Almost in all districts and moffusil courts, the Lok Adalats were constituted and functioning in regular Intervals. yet the Lok Adalat is not a permanent seat of settlement. It has to be constituted by authority whenever it feels necessary to constitute.

The Permanent Lok Adalat: The Lok Adalat is a very useful experiment that succeeded in clearing the long pending cases. That success is one of the main reasons for transforming occasional, specific or special Lok Adatat into a permanent institution. If it retains the character of court annexed Alternative Dispute Resolution center, and provides for consensus dispute resolution process, there is nothing wrong in creating Permanent Lok Adalats (PLA). National Legal Services Authority Act was recently amended in July 2002 and Supreme Court found its earliest opportunity to hold it constitutionally valid, and now there is no hitch in launching the PLAs. Bar Council of India opposed the change and the structure of the PLA. The

NALSA Act was passed in 1987 to provide free legal services to weaker sections of society and to ensure that they are not denied justice by reason of economic or other disabilities. Under Section 19 to 22 of the NALSA Act, any matter pending before any court or tribunal may, if the parties make a joint application indicating their intention to compromise, be transferred to a LokAdalat.

To tackle the baffling figures of pending cases the Judiciary and Legislature are making all possible efforts and reforming the law. The Civil Procedure Code was drastically amended despite the fundamental objections raised by the lawyering community. The State is promoting Alternative Dispute Resolution mechanisms by all means. The changed CPC makes it an obligation of the Courts to refer to ADR methods before it finally decided to adjudicate upon (Section 89 of CPC).

Amendment 2002: Chapter VIA of the Legal Service Authorities (Amendment) Act 2002 provided for establishment of Permanent Lok Adalat in the name of providing for 'pre-litigation conciliation and settlement' Permanent Lok Adalat is headed by either former or sitting district judge or additional district judge or officer of rank higher than district judge. It will have two members with 'adequate experience in Public Utility Service". The PLA would decide by majority. Public Utility Service means any transport service, postal, telegraph, or telephone, power supply, Public conservancy or sanitation, hospital or insurance service agency. Thus any former employee of the above public utility service can be appointed as the members of the PLA and if they can form unity they can decide any case in any manner ignoring the chairman who is a judicial member. These PLAs can take up any matter where the value of the property in dispute is up to RS.10 lakhs. The PLA has to conduct conciliation proceedings or decide a dispute on merit and in doing so it has to be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice and shall not be bound under the Code of Civil Procedure, 1908 and the Indian Evidence Act, m1872. Two non-judicial members of the PLA must have never had any opportunity either to learn or practice natural principles of justice. The Chairman of PLA being the judicial person could be expected and experienced to have practiced the natural principles of justice. He could be of great help to the other two non-judicial members provided they agree with him. If they disagree and they constitute majority they will have entire power to decide the case.

Scope for Consensual Process: Before this Amendment the two disputants have to make a joint application seeking resolution of dispute before Lok Adalat. If one party alone makes an application to the court to refer the case to Lok Adalat, the Court can do so if it is satisfied that there are chances of settlement. Before such reference, the court is obliged to give a reasonable opportunity to the party which did not agree to refer the dispute to Lok Adalat. Though the conciliation or mediation is consensual process, the court can still impose the process based on its satisfaction that there is an element of settlement in the dispute.

Under the amendment the permanent Lok Adalat can take up the case even if one of the disputants applies for settlement before it. Another major change brought in is that the resolution process need not be consensual. It can be imposed by the PLA. If the disputant could resolve the dispute by conciliation process, there is no problem. But when they fail to resolve in consensual process, the PLA has the authority to decide case on merits without applying CPC and Evidence Act, and impose it on them. The parties have no authority to take it in appeal, which means, one of disputants can seek resolution by PLA, even if they fail to arrive at, he may have to accept the decision even when it was decided by majority of non-judiciary members and be satisfied with its decision which has the legal value of decree without having any scope for appeal. If injustice is hurried, the disputant must be happy that he got it for it was achieved in remarkable time with remarkable speed.

Institutions and Individuals: As all the disputes worth RS.10 lakhs concerning a public utility dispute have

to be resolved, undoubtedly, either by ADR or ad judicatory processes in reasonable speed, if the public utility service like RTC seeks a dispute, which is worth of RS.10 lakhs, PLA decides to initiate conciliation proceedings. If that person and RTC fail to conciliate, the PLA's both non-judicial members decide the case for RTC 2-1 majority (even if judicial member who is also a chairman decides in favour of individual against RTC, the individual has to shut his claim as that would be a final settlement as he could not go in appeal. Section 21 (E) (1) makes the award of these PLAs final and no appeal lies.

The permanent Lok Adalat would have been provided for consensual process, or the adjudication by natural principles of justice, appointed a bench of three members including one public utility service member with scope for justice and justice based majority, instead of such an unjustified composition of permanent Lok Adalat as provided by the Amendment. It is surprising that this provision against Natural Principles of Justice which may even lead to a serious unconstitutionality was not effectively noticed.

Either Union or the State Government can declare, in public interest, any service as public utility service. The moment such declaration is made, all the disputes in such a service, worth of which not exceeding RS.10 lakhs would be made over to PLA. Another major objection raised by the Advocates is that the very purpose of Legal Services Authority Act is to provide legal services to weaker sections of society, where as the new Amendment makes no such discrimination and every litigant in dispute with any public utility service would get the 'benefit' of the quick disposal. Every dispute except non compoundable offences, and disputes beyond value of RS.10 lakhs, every other civil or criminal case can be decided by PLA. There is no qualification prescribed for being appointed as the non-judicial members of PLA. Because of these reasons the BAR is opposing the Amendment saying that the Government has introduced innovative alternative justice redressal system forgetting the fact that litigants approach the courts for getting justice and not for mere disposal of cases.

The Supreme Court has validated the Amendment and the constitution of Permanent Lok Adalats as prescribed under the new Amendment to LSAAct.

It is true that existing legal system is ridden with flaws and procedural deficiencies, either because of law or practices. If practices and attitude of bench and bar are responsible for loss of credibility of adjudication process, practices could be changes and practices be reformed. A sincere effort is made to amend the process by two controversial amendments to Civil Procedure. It is a known fact that attitudes and gradually discredited systems cannot be reformed by amendments to law. With this backdrop, a law that inherently provides for bias and application of natural principles of justice is only a recommendatory possibility, how could justice be rendered? This shows that both the judiciary and legislative are interested in clearing the pending files by disposing them by some or the other way, without rendering justice.

The Lok Adalat contemplated under this new regulation is neither an adjudicating process nor an alternative dispute resolution process. It has imbibed deficiencies of adjudicating process and removed the role of consensus allowing imposition of unappealable' awards. The Supreme Court also hoped that only persons of integrity would be appointed in Lok Adalats. People too hope that such persons alone would be appointed in all levels of courts. Does it mean that persons with integrity are not available for courts and are available for Lok Adalats? Surprisingly the Supreme Court stated that the Act would ensure the justice to litigants speedily and impartially. With what speed Lok Adalat works has to be a waited and observed whereas impartiality had already become a casualty, with above referred deficiencies. With regard to lawyers' opposition, only remark that could be made is they either silently suffered from or exploited those loopholes and left the ordinary clients to hopeless situations. The same fate awaits the poor clients even in public utility courts headed by former judges.

ALTERNATIVE DISPUTE RESOLUTION SYSTEM

Introduction: In a society, the conflict of interest among the individuals or difference of opinion resulting in differences regarding the interest, rights and liabilities is an essential evil which may result in a dispute. Every dispute was to be resolved at earliest level from growing into a very serious problem. As the disputes are on rise, there is need to develop a dispute resolution technology to meet the demands of increased litigation and to protect the relationships. To resolve such disputes we have structured judicial system which incorporates rule of law (as explained by "Le Principe Legalite Le., governance not by persons but by principles or a system or by the developed constitution) and principles of natural justice Le., fairness, equity, equality and reasonableness in the process to administer justice. We have formal and rigid court system. Courts are empowered to decide the cases in accordance with; justice, equity and good conscience. In the present scenario due to the rapid economic growth and development in the society, the traditional judicial process has turned out to be overburdened. To help or assist the judiciary in the administration of justice, there must be an alternative mechanism.

The Emergence of Need of ADR: The need to resort to alternatives has emerged from these problems of litigation, such as unordinary delay, escalating costs of litigation, mounting arrears, pervasive corruption and inequalities in system, failing of nayaya panchayats. The legal profession ceased to be a nobel service oriented profession and is operating to market principle of demand and supply, without carrying for the need for justice. The system ignored their legitimate interests of the people and boggled down to the techniques, rules and unreasonable levels of interpretation. This led to people being alienated from system and they avoided litigation.

It is now widely acknowledged that our litigation system requires drastic curb on delaying. This is not to minimise the role our courts, especially the superior courts, play in the promotion of the rule of law. Generally speaking, except litigants who stand to gain by delaying the process of justice, others do not perhaps enjoy taking recourse to litigation that consumes innumerable number of years and considerable amounts by way of expenses. There is always a great rush for interim orders of courts. This state of affairs make people cynical about the judicial process, often subjecting it to ridicule.

We have no other choice but to vigorously and quickly devise effective alternative options to litigation to ease the present weight of judicial business. Of course, India is not the only country which is buffeted by arrears of court cases. Even the developed countries such as the United States of America and the United Kingdom suffer from this problem, albeit on a lesser scale. The USA and following its inspiration, several countries, including Australia, Canada, Germany, Holland, Hong Kong, New Zealand, South Africa, Switzerland and U.K. have used over the last 20 years or so what is popularly known as "Alternative Dispute Resolution" (ADR) that encouraged the disputants to arrive at a negotiated understanding with a minimum of outside help.

What is ADR?

An alternative to traditional litigation or administrative agency complaint process is ADR. It includes consensual, voluntary processes where there is no judge or decision makers (such as negotiation, meditation and facilitation), as well as adjudicative process where the parties hire a private judge or decision maker. ADR techniques are extra-judicial in character. They have been employed with encouraging results in several categories of disputes, especially civil, commercial, industrial and family disputes. In particular, these techniques have been shown to work across the full range of busi ess

disputes: banking, contract, contract performance and interpretation, construction contracts, intellect property rights, joint ventures, insurance liability, partnership differences, personal injury, product liability real estate and securities.

ADR is not intended to supplant altogether the traditional means of resolving disputes by means 0 litigation. It offers only alternative options to litigation. There are still a large number of important areas. including constitutional law and criminal law, in respect of which there is no substitute for court decisions, ADR may not be appropriate for every dispute even in other areas; even if appropriate, it can not be invoked unless both parties to a dispute are genuinely interested in a settlement.

In its philosophical perception, ADR process is considered to be the mode in which the dispute resolution process is qualitatively distinct from the judicial process. It is a process where disputes are settled with the assistance of a neutral third person generally of parties' own choice, where the neutral is generally familiar with the nature of the dispute and the context in which such disputes normally arise, where the proceedings are informal, devoid of procedure technicalities and are conducted by and large, in the manner agreed to by the .parties, where the dispute is resolved expeditiously and with less expenses, where the confidentiality of the subject-matter of ~he dispute is maintained to a great extent, where decision making process aims at substantial justice, keeping in view the interests involved and the contextual realities. In substance the ADR process aims at rendering justice in the form and content which not only resolves the dispute but tends to resolve the conflict in the relationship of the parties which has given rise to that dispute.

History of ADR in India: In India the origin of ADR could be traced to the origin of political institutions on the one hand and trade and commerce on the other hand. In rural India Panchayats (assembly of elders and respected inhabitants of a village) decided almost all disputes between the inhabitants of the village, while dispute between the members of a clan continued to be decided by the elders of clan.

ADR in India: Dr. Priyanath Sen in his book "The General Principles of Hindu Jurisprudence" has given an exposition of the dispute resolution institutions prevalent during the period of Dharmashastras. He refers to the resolution of disputes between members of a particular clan or occupation or between members of a particular locality, by Kulas (assembly of the members of a clan), Srenis (guilds of a particular occupation) and Pugas (neighbourhood assemblies).

One of the main characteristics of these traditional institutions is that they were recognised system of administration of justice and not merely 'alternatives' to the formal justice system established by the sovereign-the feudal lords, kazis, the adalat system introduced by the British and the existing court system. The two systems continued to operate parallel to each other. But as regards the procedure and the nature of proceedings these institutions were very much similar to the ADR procedures-simple, informal, inexpensive and quick, and the decisions were based not on abstract notions of justice but on the prevalent norms of expected behaviour. The procedure followed by the traditional institutions was that of arbitration and conciliation, depending on the nature of dispute, except that decision makers were not chosen by the parties.

The formal system of administration of justice introduced during the British rule replaced the old system of dispensing justice through feudal set up. But the traditional institutions such as *Kula, Srenis* and Pugas continue to play their role of dispute resolution though not known by their old names. Thus, we still have disputes between members of a clan or biradari being settied by that biradari. We have several traders and other commercial associations providing for settlement of the disputes of their members inter se which is similar to Srenis and we have Panchayats to resolve disputes between those residing within its territorial

limits. The justice process of these institutions is similar, in its essential features, to that of ADR procedures. Disputes are settled quickly, at affordable costs, with participation of the parties, in informal manner and these institutions are preferred as alternative to court system because of the law's unfamiliarity to the parties or its unsuitability to resolve the particular type of the disputes. However, these traditional modes of disputes resolution were not suited for settlement of commercial and other contractual disputes involving high monetary claims founded on statutory laws. At the same time the traders could ill afford the luxury of time involved ,in normal litigation in courts. The British had already a well established arbitration system with statutory backing and had no difficulty in introducing the same in India.

Over the years, largely due to the development of trade and commerce; arbitration came to be recognised as an effective alternative to formal judicial system. Due to its own merit of being adjudicatory in nature resulting in binding decision it held the field of a widely practised alternative to court system. The legal profession was soon attracted by the popularity and volume of arbitration in India. The result was obvious. The arbitral proceedings tended to be more and more formalised on the pattern of judicial adjudication in courts. The litigious nature of parties, encouraged by the legal profession and judge arbitrators who are mentally trained only in the judicial process, further contributed to judicialisation of arbitral process. Court's intervention, before, during, and after arbitration, made arbitration as dilatory as the court system.

The various ADR techniques now well recognized are :

Negotiation: A non-binding procedure involving direct interaction of the disputing parties wherein a party approaches the other with the offer of a negotiated settlement based on an objective assessment of each other's position. A trade-off of other interests not involved in the dispute is not uncommon in a negotiated settlement. Objectivity and willingness to arrive at a negotiated settlement on the part of both the parties are essential characteristics of negotiation.

Mediation/Conciliation: A non-binding procedure in which a neutral third party assists the disputing parties in mutually reaching an agreed settlement of the dispute. Mediation and conciliation are inter-changeable expressions. In both the procedures a successful. completion of the proceedings results in a mutually agreed settlement of dispute between the parties though, in some jurisdictions, mediation is treated as distinct from conciliation inasmuch as in mediation the emphasis is on more positive role of the neutral third party than in conciliation. However, this factor should not make mediation distinct from conciliation because the scope of the role that a mutual third party can play depends on the nature of the dispute, the degree of willingness of the parties and the skill of the individual neutrals.

Mediation Arbitration (MED-ARB): A procedure where the parties agree to settle their dispute first by attempting a conciliation within a specified time, failing which by arbitration. This is distinct from conciliation in the course of arbitral proceedings where, if a settlement is reached, the arbitration proceedings are terminated by making an award on agreed terms.

Mini-trial: A non-binding procedure where the disputing parties present their respective cases before their senior executives who are competent to take decisions and who are assisted by a neutral third party. Thus, the executives have an objective assessment of the dispute and, if possible; they can mutually arrive at an amicable settlement.

Arbitration: A binding procedure where the dispute is submitted for adjudication by an arbitral tribunal consisting of a sole or an odd number of arbitrators, which gives its decision in the form of an award that finally settles the dispute and is binding on the parties.

Fast-track Arbitration: A binding procedure where parties agree to accelerated arbitral proceedings resulting in rendering the arbitral award in a short time.

INDUSTRIAL DISPUTE ACT, 1947

Introduction: Industry plays a vital role in building the economic structure of a society. Therefore, the importance of labour and industrial laws in shaping the economy of a country can not be ignored. Industrial jurisprudence is of great importance to all developed or developing countries of the world because it is concerned with the study of problems relating to human relations arising out of a large scale development of factory system which has emerged in consequence of industrial revolution.

Principles of Labour Legislation: Labour legislation in any country should be based on the principles of social justice, social equity, international uniformity and national economy.

Social Justice: Social justice is a justice according to social interest. It is founded on the basic idea of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities.

Social Equity: Where it is felt that the law should be f1exibl.e and should be changed or modified as the circumstances and conditions change, the law empowers the government to make such changes. This is done by giving the government rule making power under the provisions of the Act. When power under the Act is given to the government the rules may be modified to suit the changed conditions. Such legislation is said to be based on social equity.

Social Security: The concept of social security is based on ideals of human dignity and social justice. The underlying idea behind social security measurers is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards. Social security means a guarantee provided by the State through its appropriate agencies against certain risks to which the members of the society may be exposed.

Industrial Adjudication: The essential function of industrial adjudication is to assist the state by helping a solution of industrial disputes. The objectives of industrial adjudication are industrial peace and economic justice. Following are some guiding principles of industrial adjudication-

a. Industrial adjudication must be in public interest.

b. Industrial harmony and goodwill in solving industrial issues must be taken into consideration.

c. The principle of equality should also be taken into consideration.

d. Whenever a tribunal has before it a matter which requires expert assistance in collecting and assessing the appropriate material as to technical matters, the tribunal should avail itself of such assistance.

e. The Tribunals must act in judicial manners.

The Industrial Dispute Act, 1947 extends to the whole of India. It came into operation on the first day of April, 1947. The object of the Act according to its preamble is to make provisions for the investigation and

settlement of industrial disputes.

Main Features of the Act

1. Any industrial dispute may be referred to an industrial tribunal by an agreement of parties to the dispute or by the state.

2. An award shall be binding on both the parties to the dispute for the specified period not exceeding one year. It shall be normally enforced by the Government.

3. Strikes and lock-out are prohibited-

   a) During the pendency of conciliation and adjudication proceedings; and

   b) During the pendency of settlements reached in the course of conciliation proceedings; and

   c) During the pendency of awards of Industrial Tribunal declared binding by the appropriate government.

4. In public interest or emergency the appropriate Government has power to declare the transport (other than railways), Coal, Cotton, textiles, food-stuff and iron and steel industries to be a public utility service for the purposes of this Act, for a maximum period of six months.

5. In case of layoff or retrenchment of workmen the employer is required to pay compensation to them.

6. Provision has also been made for payment of compensation to workmen in case of transfer or closure of an undertaking.

7. A number of authorities such as work committee, conciliation officers, Board of conciliation, courts of inquiry, labour courts, tribunal and National Tribunal are provided for settlement of industrial disputes. The nature of powers, functions and duties of these authorities differs from each other but each one of them plays an important role in ensuring industrial peace.

Authorities: The main purpose of codification of this Act was investigation and settlement of industrial disputes; the machinery for adjudication has been made available. The Act prescribes following authorities for investigation and settlement of industrial disputes.

a) Work Committee
b) Conciliation Officers
c) Boards of Conciliation
d) Courts of Enquiry
e) Labour Court
f) Industrial Tribunal
g) National tribunal
h) Arbitration

Section 3 Works Committee : The Works Committee is an authority under this Act. The following are the duties of the Works Committee-

1. to promote measures for securing and preserving amity and good relations between the employers and workmen;

2. to achieve the above object, it is their duty to comment upon matters of common interest or concern of employers and workmen;

3. to endeavor to compose any material difference of opinion in respect of matters of common interest or concern between employers and workmen.

The main purpose of creating the Works Committee is to develop a sense of partnership between the employer and his workmen. It is a body which aims to promote good-will and measures of common interest. This section is applicable only to such industrial establishment in which one hundred or more workmen are employed, or to an establishment in which a minimum of one hundred workmen have been employed on any day in the preceding twelve months. The word 'workmen' in this section is used in the same sense in which it appears in Section 2(5) of the Act. It means there must be one hundred workmen and not one hundred employees working in the establishment for many categories of employees are excluded from the definition of workmen. The appropriate Government under Section 3(1) is authorised, by general or special order, to require the employer to constitute in the prescribed manner a Works Committee.

The Committee consists of representatives of employers and workmen engaged in the establishment. The number of representatives of workmen on the Works Committee shall not be less than the number of representatives of the employer. The representatives of workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their Trade Union, if any, registered under the Indian Trade Unions Act, 1926.

Works Committee has been provided in the rules framed under the Industrial Disputes Act in order to look after the welfare and interest of the workmen. They are normally concerned with the problems arising in the day-to-day working of the concern, and function of the Works Committee is to ascertain the grievances of the employees and to arrive at some agreement when the occasion so arises. It is for that reason said that the Works Committee airs the grievances of workmen and endeavors to seek amicable settlement.

Section 4 Conciliation Officer: The appropriate Government may by notification in the Official Gazette, appoint conciliation officers. These officers are charged with the duty of mediating in and promoting the settlement of industrial disputes. The appropriate Government may appoint one or more conciliation officers, as it thinks fit. A conciliation officer may be appointed for a specified area or for specified industries in a specified area, or for one or more specified industries. The appointment may be made either permanently or for a limited period. The jurisdiction, powers and other matters in respect of the conciliation officer shall be published in the Official Gazette.

Section 5 Boards of Conciliation: The provision for appointment of Boards of Conciliation is made under the Act to bring the two parties to a dispute to sit together and thrash out their differences and to find out ways and means to settle them. Section 5 of the Act provides that the appropriate Government may, by notification in the Official Gazette, constitute a Board of Conciliation. The object of appointing the Board is promotion of settlement of an industrial dispute. A Board consists of a Chairman and two or four other

members, as the appropriate Government thinks fit.

Section 6 Courts of Inquiry: Section 6 points out that if "occasion arises" the appropriate Government may constitute a Court of Inquiry. If any matter is referred to a Court by the Appropriate Government, it shall inquire and make a report ordinarily within a period of six months from the commencement of inquiry. The purpose of constitution of Court of Inquiry is to inquire into any matter appearing to be connected with or relevant to an industrial dispute. The constitution of the Court has to be notified in the Official Gazette.

Section 7 Labour Court: The Appropriate Government may constitute one or more Labour Courts. The constitution of the Labour Court together with names of persons constituting the Labour Court should be notified in the Official Gazette.

Section 7(a) Tribunals: In our country the Industrial Tribunals were for the first time created by the Industrial Disputes Act, 1947. Commenting upon the status of these tribunals the Supreme Court has observed that the tribunals under the Act are invested with many trappings of a Court but do not have the same status as Courts. These Tribunals need not follow the strict technicalities of law in adjudication of industrial dispute.

The power to constitute Industrial Tribunal is conferred upon the Appropriate Government. The appointment of an Industrial Tribunal together with the names of persons constituting the Tribunal shall be notified in the Official Gazette; further, one or more than one tribunals may in the discretion of Appropriate Government, be constituted. It is the duty of the Tribunal to adjudicate upon any industrial dispute relating to any matter, whether specified in the Second Schedule or the Third Schedule. These tribunals shall perform such other functions as may be assigned to them under this Act.

The Tribunal shall consist of one person only, who shall be appointed by the State Government. Any person having one of the following qualifications may be appointed as the presiding officer of the Industrial Tribunal, namely-

a) if he is, or has been, a judge of a High Court; or
aa) if he has for a period of not less than three years, been a District Judge or an Additional District Judge.

It is provided by, Section 7-A(4) that the appropriate Government, if it thinks fit, may appoint two persons as assessors to advise the Tribunal in the proceedings before it.

These Tribunals are important for many practical reasons. First, only experienced persons of high integrity can be appointed as presiding officer of the Tribunal as stated above; secondly, almost any important matter can be submitted for adjudication to the Tribunal including questions relating to wages, bonus, provident fund, gratuity, dismissal etc. Thirdly, the Tribunals enjoy unlimited powers so long as they act within the scope of their authority.

Powers: The Tribunal is a judicial body or at any rate a quasi-judicial body. Therefore, a Tribunal must serve notice upon the parties of the reference by name and any award made without serving such notices is fundamentally wrong. It could make a suitable award for bringing about harmonious relations between the employers and workmen and can direct reinstatement of a workman if it is necessary in the interest of industrial peace. The Tribunal while arriving at a finding in a matter may rely on data available to it otherwise from evidence adduced on behalf of the parties.

While an application was made for quashing an award of the Industrial Tribunal, the Supreme Court held that no writ can be issued against a Tribunal which has ceased to exist. It is clear from the Act itself that Tribunals are constituted when an industrial dispute arises and normally function as long as such a dispute is not disposed of. The Tribunals can be appointed for a limited period or for deciding a specified number of disputes. When a new Tribunal is appointed it may start hearing of the case from the beginning, particularly when any prejudice is likely to be caused to any part. It is open to either party point out and convince the Tribunal that prejudice will be caused if a de novo trial is not held.

Jurisdiction: The question whether an objection to jurisdiction of a Tribunal could be raised before the Tribunal itself or it is necessary to apply to the High Court to quash the proceedings before the Tribunal, has been considered on a number of occasions by the Courts. There can be no difficulty where the question of jurisdiction is clear from the admitted facts. The difficulty of jurisdiction actually arises where the question of jurisdiction is a mixed question of law and fact. In such cases the question should be raised before the Tribunal itself which shall determine the question after going into the facts. The proceeding before the Tribunal comes to an end if it finds that it has no jurisdiction. If in its opinion the Tribunal thinks that it has jurisdiction it may proceed on to decide the industrial dispute itself. Where a preliminary finding is given by the Tribunal or the question of jurisdiction along with the dispute is decided by the Tribunal the High Court in appropriate proceedings may decide whether the Tribunal has acted with or without jurisdiction. Ordinarily the finding of fact with regard to the jurisdiction will not be interfered with by the High Court or the Supreme Court. The finding of the Tribunal may be set aside by these Courts, if it is found that the Tribunal while interpreting the facts has misapplied any principle of law. Where the objection as regards the jurisdiction was not raised before the Tribunal, it cannot be, for the first time, raised before the Court unless it is a pure question of law.

Section 7(b): National Tribunals: The National Tribunals can only be constituted by the Central Government. The power is to be exercised by issuing of notification in the Official Gazette. The name of ¬the person constituting the National Tribunal shall' also be notified in the Official Gazette. The Central Government may constitute one or more Tribunals. National Industrial Tribunals are constituted for the adjudication of industrial dispute, which in the opinion of the Central Government (i) involves question 0 national importance or, (ii) are of such a nature that the industrial establishments situated in more that one State are likely to be interested in or affected by such dispute. It is sole discretion of the Central Government to decide that the industrial dispute involves a question of national importance or industries establishments situated in more than one State are interested in or affected by the dispute.

A National Tribunal shall consist of one person to be appointed by the Central Government.

A person shall not be qualified for appointment as the presiding officer of National Tribunal unless he is or has been a Judge of a High Court.

The Central Government may, if it thinks fit, appoint two persons as assessors to advise the Nation Tribunal in the proceeding before it.

Reference of Industrial Dispute: The act of making a reference of any dispute under sub-section is an administrative act and neither judicial nor quasi-judicial. If the appropriate Government decides that no reference is necessary, the Government cannot be compelled by issuing a writ to make a reference. The use of the word 'may' shows that the power is discretionary and not mandatory. If in any particular case, the

Government acts arbitrarily or contrary to law in refusing to refer a dispute to the Tribunal or Labour Court, then such a refusal may be a right ground for petition under Article 226 of the Constitution.

Section 10: Scope of Reference: Sections 10 (1) and 1 0(4) of the Act lay down the scope of reference. Under the former clause matters appearing to be connected with or relevant to the dispute may be referred and under the latter clause the scope of reference shall be confined to specified points of dispute and matters incidental thereto. Unless a dispute was raised by the workmen with their employer it could not become an industrial dispute. The scope of reference under Section 10 has to be gathered from the circumstances preceding the Government order.

Sections 10 and 10-A are the alternative remedies to settle an industrial dispute.

Once the parties have chosen the remedy under Section 10-A, the Government cannot refer the same dispute for adjudication under Section 10. If any such reference is made, it is invalid.

Where a reference was made under Section 10 of the Tribunal regarding the question of abolition of contract labour it was pointed out that the appropriate Government has power under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 to prohibit employment of contract labour. If the work for which contract labour is employed is incidental to and closely connected with the main activity of the industry and is of a perennial and permanent nature, the abolition of contract labour could be justified. In such a case it would also be open to the Industrial Tribunal to have regard to the practice obtaining in their industries in or about the area.

Tribunal's Jurisdiction: In Calcutta Port Shramik Union v. The Calcutta River Transport Association and others, the Wage Board set up by the Central Government for Port and Dock Workers in major ports did not make any recommendation in respect of bargemen. Hence an industrial dispute was raised by bargemen claiming the benefit of Wage Board recommendation and the dispute was referred to National Tribunal. The National Tribunal was of the view that bargemen were dock workers and were as such entitled to wages in accordance with Wage Board recommendations. The Calcutta High Court held that the award of the Tribunal was beyond the scope of reference. Hence, this appeal by special leave to the Supreme Court. It was held that the Courts exercising judicial review should attempt to sustain the awards made by the Tribunal as far as possible instead of picking holes in the award on trivial points, ultimately frustrating the entire adjudication process before the Tribunal by striking down awards on hyper-technical grounds. The Tribunal was justified in coming to the conclusion that bargemen were also dock workers and there is no justification in denying them the benefit of the recommendation of the Wage Board. Such award is within its jurisdiction.

Section 10: Constitutional Validity: The validity of this section has been upheld by the Supreme Court holding Section 10 as intra-vires. Its validity in D. C. and G. Mills v. Shambhu Nath, was sought to be challenged on fresh grounds, namely, that Section 10 violated Article 14 of the Constitution. It was held that: "Where the Supreme Court has held that Section 10 is intra-vires and repelled the objection under Article 14 of the Constitution it would not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection. It is certainly easy to discover fresh ground of attack to sustain the same objection, but that cannot be permitted once the law has been laid down by the Supreme Court holding that Section 10 of the Act does not violate Article 14 of the Constitution."

Section 11. Procedure; Powers and Duties of Authorities: Section-11 procedure and Powers of Conciliation Officers, Boards, Courts and tribunals. Section 11 of the Act as it stood at the time- of its

enactment in 1947 has been amended in 1956. Sub-section (1) of Section-11 gives very wide powers to the authorities in so far as the procedure to be followed by them is concerned. This sub-section is worded in general terms. Sub-sections (3), (4) and (7) of this section provide special procedures to be followed in certain cases and to that extent they can be said to curtail the general power with regard to the procedure conferred by sub-section (1).

Section 11 (1) provides that "subject to any rules that may be made in this behalf, an arbitrator, Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. These provisions give very wide discretion to the authorities, and the discretion must be exercised with care and caution bearing in mind the principles of natural justice.

Under Section 11 (2) a Conciliation Officer or a member of a Board or Court or the Presiding Officer of a Labour Court, Tribunal or National Tribunal may, for the purpose of inquiry into any existing or apprehended industrial dispute, enter the premises occupied by any establishment to which the dispute relates. But before entering the premises such authority must give reasonable notice of its intention to do so.

Sub-section (3) which is in the nature of a proviso to sub-section (1) enacts that every Board, Court, Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in a Civil Court under the Civil Procedure Code, 1908, when trying a suit in respect of the following matters, namely-

1. enforcing the attendance of any person and examining him on oath;
2. compelling the production of documents and material objects;
3. issuing commissions for the examination of witnesses;
4. in respect of such other matters as may be prescribed.

Every inquiry or investigation by a Board, Labour Court, Tribunal and National Tribunal, shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. Section 193 of the Indian Penal Code deals with giving or fabricating false evidence in a judicial proceeding. Section 228 of the I.P.C. deals with intentional insult or interruption to a public servant acting in any stage of a judicial proceeding. Provisions of sub-section (3) do not refer to a Conciliation Officer. '

Sub-section (4) deals specially with the procedure to be followed by the Conciliation Officer. He may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering-

1. to be relevant to the industrial dispute; or
2. to be necessary for the purpose of verifying the implementation of any award; or
3. carrying out any other duty imposed on him under this Act.

Award of Industrial Tribunal: Any award of the Industrial Tribunal must be supported with sufficient reasons. The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdictions is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and

legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Secondly, it is a

well-known principle that justice should not only be done but should also appear to be done. Unreasonable conclusion may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Thirdly, it should be remembered that an appeal generally lies from the decisions of judicial or quasi-judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little, assistance to the court.

Unfair Labour Practices on the Part of Employers:

1. To interfere with, restrain from, or coerce, workmen in the exercise of their rights to organise, form, join or assist a Trade Union or to engage in concerted activities for the purposes' of collective bargaining or other mutual aid or protection, that is to say-

   a) threatening workmen with discharge or dismissal, if they join a trade union;
   b) threatening a lock-out or closure, if a trade union is organised;
   c) granting wage increase to workmen at crucial periods of the union organisation, with a view to undermining the efforts of the trade union at organisation.

2. To dominate, interfere with or contribute support, financial, or otherwise, to any trade union, that is to say-

   a) an employer taking an active interest in organising a trade union of his workmen; and

   b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members where such a trade union is not a recognised trade union.

3. To establish employer sponsored trade unions of workmen.
4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say –

   a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;

   b) discharging or dismissing a workman for taking part in the strike (not being a strike which is deemed to be an illegal strike under this Act);

   c) changing seniority rating of workmen because of trade union activities;
   d) refusing to promote workmen to higher posts on account of their trade union activities;
   e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

   f) discharging office-bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen-
   a) by way of victimisation;

b) not in good faith, but in the colourable exercise of the employer's right;

c) by falsely implicating a workman in a criminal case on false evidence or on conducted evidence;

d) for patently false reasons;

e) on untrue or trumped up allegations of absence without leave;

f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

7. To transfer a workman mala fide from one place to another, under the guise of following management policy.

8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.

9. To show favouritism or partiality to one set of workers regardless of merit.

10. To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent workmen.

11. To discharge or discriminate against any workmen for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

12. To recruit workmen during a strike which is not an illegal strike.

13. Failure to implement award, settlement or agreement.

14. To indulge in acts of force or violence.

15. To refuse to bargain collectively, in good faith with the recognised trade unions.

16. Proposing or continuing a lock-out deemed to be illegal under this Act.

Unfair Labour Practices on the Part of Workmen and Trade Unions of Workmen :

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union r refrain from joining any trade union, that is to say-

a. for a trade union or its members to picketing in such a manner that non-striking workmen are

physically debarred from entering the work places;

b. to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions and willful 'go slow', squatting on the work premises after working hours or 'gherao' of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in willful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

It is difficult to define and lay down exhaustive test of unfair labour practice, but it may be said that any practice, which violates the directive principles of State policy contained in Article 43 of the Constitution and such other Articles as deal with the decent wages and living conditions for workmen amount to unfair practice.

Victimization: Victimization means one of two things. One is when the workman concerned is innocent and yet he is punished because he has in some way displeased the employer, for example, by being an active member of a Union of workmen who were acting prejudicially to the interests of the employer. The second instance is where an employee has committed an offence but is given a punishment quite out of proportion to the gravity of the offence, simply because he has incurred the displeasure of the employer, or where the punishment is shockingly disproportionate to the misconduct or is such as no reasonable employer would impose under the circumstances. If an employer punishes an employee for a wrong which someone else has committed, it would be right to infer that the employee is victimized by being made a scape-goat to him.

IMPORTANT QUESTIONS

Q.1. What is the meaning and scope of Alternative Dispute Resolution system? What are its various techniques?

Q.2. Who do you mean by Lok Adalat? The settlement made by Lok Adalat is one of the effective Alternative Dispute Resolution Systems Comment.

Q.3. What is the meaning and scope of Alternative Dispute Resolution System? What are its various techniques? State the advantages of Alternative Dispute Resolution System in comparison to e regular judicial system?

Q.4. Write short note on:

a) Provisions of C.PC. 1908 relating to settlement

b) Mediation, its meaning and benefits

c) Account and satisfaction

Q.5. Discuss the salient features of Industrial Dispute Act.

SUGGESTED READING

1. B.P. Saraf & M. Jhunjhunwala, Law of Arbitration and Conciliation
2. PC. Raio & William Sheffield, Alternative Dispute Resolution - What it is and how it works
3. P.C. Markand, Law Relation to Arbitration and Conciliation
4. G.K. Kwatra, The Arbitration and Conciliation Law of India
5. Avtar Singh, Arbitration and Conciliation Act,
6. The Arbitration and Conciliation Act, 1956
7. Arvind Kumar Dubey {The Arbitration and Conciliation Act 1996}.