

## Chapter VI

# ALTERNATE DISPUTE RESOLUTION

### 1. ARBITRATION / MEDIATION / RECONCILIATION / COMPROMISE / SETTLEMENT

Not every dispute is or can be decided by the court. For different reasons, the disputing parties, depending on the nature of dispute and other constraints resort to less formal modes of dispute resolution. They are considered to be informal, less expensive and tardy. Parties have more say over the procedure and venue, which also makes those modes as preferred one in certain kinds of disputes, for example, family disputes, commercial disputes, etc. Proceedings can be conducted without the intervention of the lawyers, which, in India, is the main cause of tardy and expensive court proceedings.

In India, *Panchayats* (informal courts consisting of five selected at the community level) has been the oldest mode of alternative dispute resolution (ADR). There are statutory recognition of ADR, viz., arbitration, conciliation, mediation, negotiation, etc., under the Code of Criminal Procedure, Code of Civil Procedure, the Arbitration and Conciliation Act and other statutes.

**Arbitration in India:** The settlement of disputes through the mode of arbitration has a long history in India. In ancient India there were several grades of arbitrators in systematic hierarchy: *Puga* - board of persons belonging to different sects and tribes but residing in same locality; *Sreni* - assemblies of traders, artisans connected in some way with each other; and lastly *Kula / Kulani* - group of persons bound by family ties. The decision of *Kula* was subject to revision by *Sreni*, which in term could be revised by *Puga*. These arbitral tribunals were having sanction of society and not of

king and were widely accepted.

When power came to the East India Company, the Company framed Regulations in exercise of power vested in it by the British Parliament. Some of the Regulations touching arbitration were: Bengal Regulations I of 1772, 1781, 1787, XVI of 1793, 1795, 1893, etc.; Bombay Regulations I of 1799, IV, VI of 1827 and Madras Regulations I of 1802 and IV, VI, VII of 1822. the provisions of few of them may be noted. Bengal Regulations XVI of 1793 empowered the courts to submit the matters in dispute in a suit to the decision of an arbitrator mutually agreed by the parties, but if they could not agree as to the person to be appointed / if the person nominated by them refused to act and parties could not agree upon another, the court with the consent of the parties could appoint an arbitrator who was not interested in the dispute. If the parties did not consent, the case was not to be referred to arbitration but was to be tried by the court. Subsequent legislation namely, sections 312 and 314 of the Code of Civil Procedure, 1859 and the Arbitration Act 1899 likewise provided that the arbitrator has to be appointed in such manner as might be agreed upon by the parties.<sup>727</sup> Bengal Regulation (VII of 1822) for the first time empowered revenue officers to refer rent and revenue cases to arbitration<sup>728</sup>. The Code of Civil Procedure, 1908 extended to all places in India also dealt with arbitration in suits. In regard to arbitration agreements entered outside India and foreign awards, Arbitration (Protocol And Convention) Act, was passed in 1937. For dealing with domestic arbitration, Arbitration Act, 1940 came into being. In 1961, for the enforcement of certain foreign awards, the Foreign Awards (Recognition and Enforcement) Act was enacted.<sup>729</sup>

Till 1996, the law of arbitration was governed by the Arbitration (Protocol And Convention) Act, 1937, the Indian Arbitration Act, 1940 and Foreign Awards (Recognition and Enforcement) Act, 1961. The first two were enacted before the independence of the country by the British rulers. In 1996, the Arbitration and Conciliation Act was passed repealing all three previous enactments. The need for this new Act was felt from long time because repealed enactments did not prove to be adequate to meet the need of the changing times resulting in painfully long arbitral proceedings which most of the time used to end up in a court of law.

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<sup>727</sup> *Sheonath v. Ramnath*, (1905) 10 MIA 413 (a decision under the Code of Civil Procedure, 1859).

<sup>728</sup> R.S.Bachawat, *Law of Arbitration and Conciliation*, 3(Wadhwa & Company, Nagpur, 1999).

<sup>729</sup> P.M.Bakshi, *Arbitration Law in India* 7 (N.M.Tripathi Pvt. Ltd., Bombay, 1986).

Further, arbitral procedure under the 1940 Act had dissolved into a legal swamp, which left both the parties short of time and money. Efficiency and speed, therefore, were the criteria adopted in the course of reform. The Act of 1996 has encompassed the law relating to international arbitration as well as the enforcement of foreign awards as well as conciliation as a new mode of dispute resolution. This new Act is mainly modelled on the United Nations Resolution on International Trade laws adopted in 1985. It is also to meet the challenges of globalisation of the economy and remove the anomalies existing under the earlier law.

### **Arbitration procedure as given under the Act of 1996:**

As per the new law, arbitration agreement has to be in writing, in the form of an arbitration clause in a contract/ as a separate agreement.<sup>730</sup> An arbitration agreement is said to be in writing, if it is contained in- a document signed by the parties / an exchange of letters, telex, telegrams/ other means of telecommunication, providing a record of agreement / an exchange of claims and defence in which the existence of the agreement is alleged by one party and not denied by another<sup>731</sup>. The parties are free to adopt any procedure for the appointment of arbitrators. They are also free to decide on the number of arbitrators that will constitute arbitral tribunal<sup>732</sup>. However, in case they fail to reach an agreement for such appointment, the Act provides for the appointment to be made by the Chief justice of the High Court or institution designated by him, upon the request by a party,<sup>733</sup>(in case of domestic arbitration) and the Chief Justice of India (in cases of international commercial arbitration). Party has to raise plea of arbitral tribunal not having jurisdiction before the submission of the statement of defence.<sup>734</sup> The arbitral proceedings commence on the date on which the request for referring the dispute to arbitration is received by the respondent.<sup>735</sup> Within the period of time agreed upon by the parties / determined by the arbitral tribunal, the claimant has to state the facts supporting his claim, the points at issue and relief and remedy sought. Thereafter the respondent is required to state his defence.<sup>736</sup>

### **Powers and functions of arbitral tribunal:**

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<sup>730</sup> Arbitration And Conciliation Act, 1996, section 7(2).

<sup>731</sup> *Id*, section 7(4).

<sup>732</sup> *Id*, section 10(1)

<sup>733</sup> *Id*, section 11(2)

<sup>734</sup> *Id*, section 16(2)

<sup>735</sup> *Id*, section 21

1. The arbitral tribunal is empowered to rule on its jurisdiction including on any objection with respect to the existence / validity of the arbitration agreement.<sup>737</sup>
2. The arbitral tribunal has inherent power to order a party to take interim measures of protection, unless the power is excluded by agreement between the parties.<sup>738</sup>
3. Arbitral tribunal is neither bound by the Code of Civil Procedure, 1908 nor by the Indian Evidence Act, 1872. The parties are given freedom to agree as regards the procedure to be followed by the arbitral tribunal. However, if they fail in this regard, the arbitral tribunal is free to follow such procedure, as it considers appropriate.<sup>739</sup> Hence arbitral tribunal is empowered to determine the admissibility, relevance, materiality and weight of any evidence.<sup>740</sup>
4. The arbitral tribunal has to decide, unless otherwise agreed upon by the parties, whether to hold oral hearings for the presentation of the evidence / for oral arguments / whether the proceedings should be conducted on the basis of documents and other materials.<sup>741</sup>
5. An arbitral tribunal has to encourage settlement of the dispute by using mediation, conciliation / other procedures at any time during the arbitral proceedings to encourage settlement.<sup>742</sup>
6. Every award has to be in writing and signed by the members of the arbitral tribunal.<sup>743</sup>
7. Arbitral tribunal is also empowered to specify the costs to the party, procedure for its payment and so on, unless otherwise is agreed upon by the parties.<sup>744</sup>
8. Subject to any such agreement, where the award is for the payment of

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<sup>736</sup> *Id*, section 23(1)

<sup>737</sup> *Id*, section 16(1)

<sup>738</sup> *Id*, section 17

<sup>739</sup> *Id*, section 19

<sup>740</sup> *Id*, section 19(4)

<sup>741</sup> *Id*, section 24(1)

<sup>742</sup> *Id*, section 30(1)

<sup>743</sup> *Id*, section 31(1)

<sup>744</sup> *Id*, section 31(8)

money, the arbitral tribunal may award interest on the amount at a rate, which it may consider to be reasonable.<sup>745</sup>

9. Arbitral tribunal is authorised by the Act

- To correct computation, clerical / typographical errors;
- To give interpretation of specific points / any part of the award;
- To make additional award as to claims omitted from the original award.<sup>746</sup>

The award passed by the arbitral tribunal is a decree in itself.<sup>747</sup> It is an operative document and requires registration if it declares, assigns, limits / extinguishes any right, title / interest in immovable property of rupees 100 or upwards.<sup>748</sup>

**The role of the court:** Recourse to a court against an arbitral award may be made only by an application for setting aside such award.<sup>749</sup> An arbitral award may be set aside by the court only if –

- (i) the party making application furnishes proof that it was under some incapacity / the arbitration agreement is not valid under the law to which the parties have been subjected to / the party making the application was not given proper notice of the appointment of an arbitrator / of arbitral proceeding / was otherwise unable to present his case / the arbitral tribunal has dealt with a dispute not contemplated by / not falling within the terms of the submission to arbitration / it contains decisions on matters beyond the scope of the submission to arbitration / the composition of arbitral tribunal / procedure was not in accordance with the agreement by the parties;
- (ii) the court finds that the subject matter of the dispute is not capable of settlement by arbitration / the arbitral award is in conflict with the public policy of India.<sup>750</sup>

Such application has to be made before expiry of three months from the date on

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<sup>745</sup> *Id*, section 31(7).

<sup>746</sup> *Id*, section 33

<sup>747</sup> *Id*, section 36

<sup>748</sup> The Registration Act, section 17 (1) (b).

<sup>749</sup> Arbitration And Conciliation Act, 1996, section 34(1).

<sup>750</sup> *Id*, section 34(2).

which such award has been made<sup>751</sup>. On receipt of the application the court is empowered to adjourn the proceedings for a period of time to give arbitral tribunal an opportunity to resume arbitral proceedings and take such actions that will eliminate the grounds for setting aside the arbitral award.<sup>752</sup>

**Appeal against orders of the court:** According to the **Kinds of Arbitration in India:**<sup>753</sup> The arbitration in India is held through various modes, such as *ad-hoc*, institutional, specialized and statutory<sup>754</sup>, which are described as under:

**Institutional Arbitration:**<sup>755</sup> There are 23 recognised arbitral organizations in India, which provide facilities for domestic and international commercial arbitration.<sup>756</sup> The most prominent among these are the Indian Council of Arbitration, the Federation of Indian Chambers of Commerce and Industry (FICCI), the Bengal Chamber of Commerce and Industry (BCCI), Indian Chamber of Commerce, the East India Cotton Association Ltd. and the Cotton Textiles Export Promotion Council etc. Some of the arbitral agencies deal with specific disputes such as the Bengal Chamber of Commerce, though providing facilities for arbitration for all commercial disputes, administers arbitration primarily in the jute trade. The East India Cotton Association and the Cotton Textiles Export Promotion Council deal with settlement of disputes in the field of foreign cotton trade and foreign trade in textiles respectively.

**Specialised Arbitration:**<sup>757</sup> The Indian Council of Arbitration was established in 1965 as the apex arbitrage organization at the national level, to promote the amicable settlement of commercial disputes through arbitration. The Government of India, and all-important chambers of commerce and trade associations in India as well as export promotion companies and firms are its members. Disputes between the Government of India, State Governments and public sector undertaking with foreign Governments, trading organizations or parties are referred to arbitration under the Council's rules. The Council also provides arbitration services for settlement of maritime disputes arising out of charter party contracts and it has framed maritime arbitration rules for such disputes.

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<sup>751</sup> *Supra* note 23, section 34(3)

<sup>752</sup> *Id*, section 34(4)

<sup>753</sup> G K Kwatra *The Arbitration And Conciliation Law Of India: A Comparative Study Of Old And New Law*, , 7 (Indian Council Of Arbitration 1999)

<sup>754</sup> Under the Arbitration and Conciliation Act, 1996, and many other central acts.

<sup>755</sup> *Supra* note 27.

<sup>756</sup> *Id*, Appendix 26.

<sup>757</sup> *Id*, 71.

The Council maintains a panel of arbitrators, who are eminent and experienced persons from various fields of trade and professions. Foreign nationals, willing to act, as arbitrators are integrated in the panel to provide a wide choice to the foreign parties in the selection of their arbitrators. In order to provide arbitration services under the rules of foreign arbitral organizations, the council has entered into arbitration service agreements with 33 arbitral organizations in different parts of the world. The Council has framed its conciliation rules to provide conciliation proceedings in an economical and expeditious manner. Under the rules of arbitration of the council, either a sole arbitrator or three arbitrators are appointed. If the claim is below Rs.5 million, a sole arbitrator is appointed, whereas for claims above Rs.5 million, three arbitrators are appointed, unless the parties agree otherwise. The sole arbitrator is appointed by the parties, failing such consent, the council appoints the arbitrator. Where three arbitrators have to be appointed, each of the parties appoints one arbitrator and the council appoints third arbitrator who acts as the chairman of the arbitrage tribunal. The council also provides for the fast track arbitration under which the arbitral tribunal before the commencement of the arbitration proceedings tries to settle dispute in a fixed time frame of 3-6 months. The Government of India also recommends the use of institutional arbitration services.<sup>758</sup>

**Statutory Arbitration:** Apart from the Code of Civil Procedure, 1908 and the Arbitration and Conciliation Act, 1996 many central as well as state Acts provide for arbitration in respect of disputes arising on matters covered by those Acts. There are about 24 such central Acts. Among them are the Railways Act, 1890, the Land Acquisition Act, 1894, the Indian Electricity Act, 1910, the Cantonment Act, 1924 and the Forward Contracts Regulation Act 1956. These Acts also provide for combine sequentially, direct negotiations and, where the differences are not settled through direct negotiations, for compulsory arbitration. Government contracts generally provide for compulsory arbitration in respect of disputes arising there under and usually the arbitrators appointed to decide such dispute are senior government officers. A standing committee consisting of senior officers is constituted to ensure that no litigation involving such dispute is taken up in a court / tribunal without the matter having been first examined by the said committee and the committees clearance for litigation has to

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<sup>758</sup> Office Memorandum, Sectt.0..M. 53/3/6/91 – Cab. Dated 31<sup>st</sup> December 1991.

be obtained. This procedure has helped in settlement of a large number of disputes in an amicable manner, which otherwise would have ended up in litigation. The award of the arbitrator in such dispute is binding on parties to the dispute. Any party aggrieved by the award may make a reference for setting aside / revision of the award to the union law secretary whose decision binds the parties finally and conclusively. The courts are under an obligation to make efforts and to assist the parties in arriving at a settlement in certain categories of suits/proceedings.

## **2. ADMINISTRATIVE AGENCY AND TRIBUNALS (CLASSIFICATION & PROCEDURE):**

Two decades after framing of the Constitution, it was realized that the existing courts of law were insufficient to meet the judicial aspirations of the people and to deal with all types of disputes. Various new problems arose in view of the new socio-economic context and as result of this, it became imperative to look out for other *fora*, besides traditional judicial system. To address these new problems as well as to provide speedy disposal of cases, the idea of setting up of tribunal, commissions, district boards, etc., to entertain and dispose of large number of disputes evolved. These are constituted by the Act of Legislature and are invested with specific judicial powers. The Constitution of India authorizes state legislatures to constitute tribunals, special courts for the adjudication / trial of any disputes/ complaints / offences concerning:<sup>759</sup>

- (a) levy, assessment, collection and enforcement of any tax;
- (b) foreign exchange, import and export across customs frontiers;
- (c) industrial and labour disputes;
- (d) land reforms by way of acquisition by the state;
- (e) ceiling on urban property;
- (f) election to either house of Parliament;
- (g) production, procurement, supply and distribution of food stuffs and such other goods as the President by notification declares essential goods;
- (h) rent, its regulation, control and tenancy issues including the right, title and interests of landlords and tenants;

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<sup>759</sup> Constitution of India, Article 323-B.



Once the tribunal is set up, the matters for which it is set up is tried by it to the exclusion of courts.

**Classification and hierarchy of Tribunals and Commissions:** The Legislature is empowered to establish a hierarchy of tribunals. In pursuance to the provision in the Constitution, following tribunals, commissions and special courts are created. They have a permanent existence and are adjudicating bodies. The tribunals and commissions set up in India are listed below:

<b>Statute providing for tribunal / special court / commission:</b>	<b>Tribunal/ Special Court / Commission set up under the statute:</b>
Administrative Tribunal Acts, 1985.	(i) Central Administrative Tribunal. (ii) State Administrative Tribunal & Joint Administrative Tribunal.
Air Force Act, 1950	General Courts Martial. (ii) District Courts Martial. (iii) Summary-General Courts Martial.
Aluminum Corporation of India (Acquisition & Transfer of Aluminum Undertakings) Act, 1984	Commissioner of Payments.
Amritsar Oil Works (Acquisition & Transfer of Undertakings) Act, 1982	Commissioner of Payments.
Andhra Scientific Company Ltd. (Acquisition & Transfer of Undertakings) Act, 1982.	Commissioner of Payments
Army Act, 1950.	(i) General Courts Martial. (ii) District Courts Martial. (iii) Summary-General Courts Martial.
Auroville (Emergency Provisions) Act, 1980.	Auroville (Emergency Provisions) Tribunal
Banking Regulation Act, 1949.	Banking Regulations Tribunal
Bengal Chemicals Pharmaceutical Works Ltd. (Acquisition & Transfer of Undertakings) Act, 1980.	Commissioner of Payments
Bengal Immunity Company Ltd. (Acquisition & Transfer of Undertakings) Act, 1984.	Commissioner of Payments
Bird & Company Ltd. (Acquisition & Transfer of Undertakings) Act, 1980.	Commissioner of Payments

Border Security Force Act, 1968	(i) General Security Force Courts. (ii) Petty Security Force Courts. (iii) Summary Security Force Courts.
Braithwate & Company (India) Ltd. (Acquisition & Transfer of Undertakings) Act, 1976.	Commissioner of Payments.
Brentford Electric (India) Ltd. (Acquisition & Transfer of Undertakings) Act, 1987	Commissioner of Payments.
Britannia Engineering Company Ltd. (Mokameh Unit) & the Arthur Butler & Company (Muzaffarpore) Ltd. (Acquisition & Transfer of Undertakings) Act, 1978.	Commissioner of Payments.
British India Corporation Ltd. (Acquisition of Shares) Act, 1981.	Commissioner of Payments.
Burn Company & Indian Standard Wagon Company (Nationalization) Act, 1976.	Commissioner of Payments
Cinematograph Act, 1952.	Cinematograph Tribunal.
Cine-workers & Cinema Theatre Workers (Regulation of Employments) Act, 1981.	Cine-workers Tribunal.
Coal Bearing Areas (Acquisition and Development) Act, 1957.	Coal Bearing Areas (Acquisition & Development) Tribunal
Coal Mines (Nationalization) Act, 1973.	Commissioner of Payments.
Coast Guard Act, 1978.	Coast Guards Courts.
Coking Coal Mines (Nationalization) Act, 1972	Commissioner of Payments.
Consumer Protection Act, 1986	(i) District Forum. (ii) State Commission. (iii) National Commission
Customs Act, 1962, Central Excises and Salt Act, 1944, Gold Control Act, 1986.	Central Excises and Gold (Control Appellate Tribunal).
Customs & Excise Revenues (Appellate Tribunal Act), 1986.	Customs & Excise Revenues Appellate Tribunal
Dalmia Dadri Cement Ltd. (Acquisition & Transfer of Undertakings) Act, 1981.	Commissioner of Payments.
Delhi Rent Control Act, 1958	Appellate Tribunal.
Displaced Persons (Compensation & Rehabilitation) Act, 1954.	Commissioner.
Displaced Persons (Claims Supplementary Act), 1954.	Commissioner.
Displaced Persons (Debts, adjustment) Act, 1951	Displaced Persons (Debts adjustment) Tribunal.
Employees Provident Funds and Miscellaneous Provisions Act, 1952.	Employees Provident Funds Appellate Tribunal.

Employees State Insurance Act, 1948	Employees' Insurance Court.
Equal Remuneration Act, 1976	Appellate Authority.
Evacuee Interest (Separation) Act, 1951	Appellate Authority.
Family Courts Act, 1984	Family Courts.
Foreign Exchange Regulation Act, 1973	Foreign Exchange Regulation Tribunal.
Foreigners Act, 1946	Foreigners Tribunal.
Gresham & Craven of India (Pvt.) Ltd. (Acquisition & Transfer of Undertakings) Act, 1977.	Commissioner of Payments.
Hind Cycles Ltd. & Sen-Raligh Ltd. (Nationalisation) Act, 1980.	Commissioner of Payments.
Hindustan Tractors Ltd. (Acquisition & Transfer of Undertakings) Act, 1978.	Commissioner of Payments
Illegal Migrants (Determination by Tribunals) Act, 1983.	(i) Illegal Migrants Tribunal. (ii) Illegal Migrants Appellate Tribunal.
Income Tax Act, 1961, Business Profits Tax Act, 1947, Companies (Profits) Surtax Act, 1964, Expenditure Tax Act, 1987, Gift Tax Act, 1974, Hotel Receipts Tax Act, 1980, Interest Tax Act, 1974, Wealth Tax Act, 1957	Income Tax Appellate Tribunal
Indian Iron & Steel Co. (Acquisition of Shares) Act, 1976.	Commissioner of Payments.
Industrial Disputes Act, 1947 and Payment of Bonus Act, 1965	(i) Labour Courts (ii) Industrial Tribunal (iii) National Tribunal
Inland Vessels Act, 1917	Inland Vessels Accident Claims Tribunal.
Insurance Act, 1938	Insurance Courts
Inter-State Water Disputes Act, 1956	Water dispute Tribunal.
Jute Companies (Nationalisation) Act, 1980	Commissioner of Payments.
Life Insurance Corporation Act, 1956	Life Insurance Corporation of India Tribunal.
Maruti Ltd. (Acquisition & Transfer of Undertakings) Act, 1980.	Commissioner of Payments.
Merchant Shipping Act	Merchant Shipping Tribunal.
Minimum Wages Act	Commissioner.
Monopolies & Restrictive Trade Practices Act, 1969	Monopolies & Restrictive Trade Practices Commission

Motor Vehicles Act, 1988.	(i) State Transport Appellate Authority. (ii) Accident Claims Tribunal.
Narcotic Drugs & Psychotropic Substances Act, 1985	Appellate Authority.
National Company Ltd. (Acquisition & Transfer of Undertakings) Act, 1980.	Commissioner of payments.
Naval & Aircraft Prize Act, 1971	Prize Courts.
Navy Act, 1957	(i) Commanding Officer. (ii) Disciplinary Court. (iii) Court Martial.
Plantations Labour Act, 1951	Commissioner.
Press & Registration of Book, 1867	Appellate Board.
Railway Claims Tribunal Act, 1987	Railway Claims Tribunals.
Railways Act, 1989	Railways Tribunal.
Recovery of Debts to Banks and Financial Institutions Act, 1993.	(i) Debts Recovery Tribunal. (ii) Debts Recovery Appellate Tribunal.
Richardson & Cruddas Ltd. (Acquisition & Transfer of Undertakings) Act, 1972.	Richardson & Cruddas Ltd. (Acquisition & Transfer of Undertakings) Tribunal.
Securities Law (Amendment) Act, 1995	Appellate Authority.
Sick Industrial Companies (Special Provisions) Act, 1956	Appellate Authority for Industrial and Financial Reconstruction
Sick Textiles Undertakings (Nationalisation) Act, 1974.	Commissioner of Payments.
Smith, Stanistreet & Co. Ltd. (Acquisition & Transfer of Undertakings) Act, 1977.	Commissioner of Payments.
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1988.	Appellate Tribunal.
Special Protection Group Act, 1988	Special Protection Group Tribunal.
Textiles Committee Act, 1983	Textiles Committee Tribunal.
Transformer & Swichgear Ltd. (Acquisition & Transfer of Undertakings Act, 1983.	Commissioner of Payments.
Unlawful Activities (Prevention) Act	Unlawful Activiites (Prevention) Tribunal.
Urban Land (Ceiling & Regulation) Act	Urban Land (Ceiling & Regulation) Tribunal
Wakf Act, 1954	Wakf Tribunal
Working Journalists & Other Newspaper Employees' (Conditions of Services) & Miscellaneous Provisions Act, 1955	(i) Tribunal for Working Journalists. (ii) Tribunal for non-journalists.
Workmen's Compensation Act, 1923.	Commissioner.

Due to such large number of tribunals and other administrative *foras* that exist in India, it is not possible to discuss every one of them in detail. The composition, power and functions as well as procedure followed by one of the principal tribunal is discussed below in detail.

### **Central and State Administrative Tribunals**

India is a vast country. The Supreme Court sits only in Delhi and high courts mainly in capital cities of the states.<sup>760</sup> The number of complaints against administration is very large. For every infringement of right, it is impossible for an ordinary citizen as well as government servant to move to a proper court. Administrative tribunals have been set up with the aim and object of providing speedier justice to government servant regarding their service complaints or dispute and ease burden of the judiciary. Besides the principal bench at Delhi, the Central Administrative Tribunal (CAT) has benches in various states given below:

<b>Bench</b>	<b>Territorial jurisdiction of the bench</b>
Principal Bench ( New Delhi)	National Capital Territory Of Delhi
Ahmedabad Bench	State Of Gujarat
Allahabad Bench	(i) State Of Uttar Pradesh Excluding The Districts Mentioned Under The Jurisdiction Of Lucknow Bench (ii) State Of Uttaranchal
Lucknow Bench	Districts Of Lucknow, Hardoi, Kheri, Rai Bareli, Sitapur, Unnao, Faizabad, Ambedkar Nagar, ... In The State Of Uttar Pradesh
Banglore Bench	State Of Karnataka
Calcutta Bench	(i) State of Sikkim (ii) State Of West Bengal (iii) Union Territory of Andaman & Nicobar Islands
Chandigarh Bench	(i) State Of Jammu & Kashmir (ii) State of Haryana (iii) State of Himachal Pradesh (iv) State Of Punjab (v) Union Territory Of Chandigarh
Cuttack Bench	State of Orissa

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<sup>760</sup> In very few states benches have been set up under the high courts. Besides some of the high courts have jurisdiction over more than one state.

Ernakulam Bench	(i) State of Kerala (ii) Union Territory of Lakshawadeep
Guwahati Bench	(i) State Of Assam (ii) State of Manipur (iii) State of Meghalaya (iv) State of Nagaland (v) State of Tripura (vii) State of Arunachal Pradesh (viii) State of Mizoram
Hyderabad Bench	State Of Andhra Pradesh
Jabalpur Bench	(i) State Of Madhya Pradesh (ii) State of Chattisgarh
Jodhpur Bench	State of Rajasthan Excluding The Districts Under The Jurisdiction of Jaipur Bench
Jaipur Bench	Districts of Ajmer, Alwar, Baran, Bharatpur, Bundi, ...
Chennai Bench	(i) State Of Tamil Nadu Union Territory of Pondicherry
Mumbai Bench	(i) State of Maharashtra (ii) State of Goa (iii) Union Territory of Dadra And Nagar Haveli (iv) Union Territory Of Daman And Diu
Patna Bench	(i) State Of Bihar (ii) State of Jharkhand

**Procedure followed by Administrative tribunals:**

The tribunal is not bound by the procedure laid down by the Code of Civil Procedure, but is guided by the principles of natural justice and rules laid down by the tribunal itself as well as higher judiciary. Ordinarily every application is decided on a perusal of documents, written representations and affidavits and after hearing such oral arguments as are advanced. The tribunal is vested with same powers as civil court in respect of following matters: (a) summoning & enforcing the attendance of any person and examining him on oath; (b) requiring the discovery & production of documents; (c) receiving evidence on affidavits; (d) requisitioning any public record / document / copy thereof; (e) issuing commissions for the examination of witnesses / documents; (f) reviewing its own decisions; (g) dismissing an application for default / deciding it *ex-parte*; / setting aside any such order that is made by it.

**Powers and jurisdiction of administrative tribunals:** It has power to regulate conditions, fix place and time of its inquiry and to decide whether to conduct its proceedings in public or private. It has additional powers to: summon and enforce the attendance of any person and examine him on oath;<sup>761</sup> require the discovery and production of documents; receive evidence on affidavits; requisition any public record or document or copy of such record or document from any office; issue commissions for the examination of witnesses or documents; review its decisions; dismiss or set aside any representation for default or decide it *ex-parte*; to review its decision if review petition is filed within 30 days; to rectify its orders in case of mistake apparent on the face of the record;<sup>762</sup> to punish for contempt under the Contempt of Court Act, 1971.<sup>763</sup>

The tribunal is under an obligation to follow decisions laid down by the Supreme Court of India.<sup>764</sup> It cannot adjudicate upon the *vires* of their own parent statute. In other respects these tribunals would continue to be the courts of first instance in the areas of law for which they have been constituted. As a consequence no direct appeal from any judgment / order of the tribunals lies to the Supreme Court and special leave can only be filed against the decision of Division Bench of the High Court.<sup>765</sup> It exercises the jurisdiction, powers and authority exercisable by all courts except the

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<sup>761</sup> *Supra* note 23, section 22

<sup>762</sup> *Id.*, Section 22(2).

<sup>763</sup> *Id.*, Section 22(3).

<sup>764</sup> *UOI v. Kantilal Hematram Pandya* 1995 (3) SCC 17.

Supreme Court of India in relation to;<sup>766</sup>

(a) Recruitment and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being in either case, a post filled by the civilian;

(b) All service matters concerning- a member of any All India Service; or a person appointed to any civil service of the Union or to any civil post under the Union; or a civilian appointed to any defence services or to a post connected with defence.

In 1997, the Supreme Court of India in *L. Chandra Kumar v/s Union of India*<sup>767</sup> held that the tribunals constituted under Articles 323A and 323B of the Constitution can be vested with the power of judicial review over administrative action. But the power of judicial review of legislative action cannot be conferred upon them. It struck down the decision in *Sampath Kumar's case*<sup>768</sup> that held that the tribunals would be effective substitutes for the high courts, and held such proposition is factually and legally incorrect on account of various differences between high courts and tribunals as to power, jurisdiction, appointment and qualification of judges, expenditure and source of finance, etc.

#### **Procedure of appointment in Administrative tribunals:**

Each tribunal consists of a Chairman and a number of Vice-Chairmen and Judicial and Administrative members as are required.<sup>769</sup> A person shall not be appointed as the Chairman unless he – is, or has been, a Judge of a High Court; or (b) has, for at least 2 years, held the office of Vice-Chairman.

A person shall not be appointed as the Vice-Chairman unless he (a) is, or has been, or is qualified to be, a Judge of High Court; or (b) has, for at least 2 years, held the post of a Secretary or Additional Secretary for at least five years to the Government of India or any other equivalent post; or (c) has, for at least 3 years, held the office as a Judicial member or an Administrative member.

A person shall not be appointed as a Judicial member unless he- (a) is, or has been, or is qualified to be, a Judge of High Court; or (b) has been a member of the Indian Legal Service as Grade I officer for at least 3 years.

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<sup>765</sup> *L.Chandra Kumar v. UOI* 1997 (3) SCC. 261

<sup>766</sup> *Supra* note 23, section 14.

<sup>767</sup> *Supra* note 39.

<sup>768</sup> (1987) 1 SCC 124.



A person shall not be appointed as an Administrative member unless he- (a) has, for at least 2 years, held the post of an Additional Secretary for at least five years to the Government of India or any other equivalent post; or (b) has, for at least 3 years, held the post of a Joint Secretary to the Government of India or any other equivalent post.<sup>770</sup>

In most of the tribunals, appointments are made by Central Government after approval of the Chief Justice of India or the Chief Justice of High Court in whose jurisdiction the tribunal is established.

### **3. OTHER FORUMS (e.g., LOK ADALATS, NYAY PANCHAYATS IN INDIA)**

**Evolution of other forums:** The concept of parties settling their disputes by reference to a person / persons of their choice / private tribunals was well known to ancient India. Long before the king came to adjudicate disputes between persons, such disputes were peacefully decided by the intervention of the *Kulas*,<sup>771</sup> *Srenis*,<sup>772</sup> *Parishads*<sup>773</sup> and such other autonomous bodies. There were *Nyay Panchayats* - an indigenous system of participatory justice at the village level, before the advent of the British system of justice. Even in day-to-day affairs, ADR procedures were invoked without conscious efforts in respect of some categories of disputes, within family, between neighbours, disputes involving employer and employees, etc. Under this system, respectable members of the village community would form the *Panchayat*, the five preferred ones amongst them to resolve the disputes by a process of conciliation, mediation at the village level. Their decisions were generally honoured and accepted by the village community, and hardly a few disputes landed in courts.

While the *Mughal* rulers made some attempts for centralization of justice system, the British realized an emotional attachment to *Panchayat* system.<sup>774</sup> The earliest statutory recognition came in the form of the Village Courts Act, 1888 in Madras.

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<sup>769</sup> *Supra* note 23, Section 5(1).

<sup>770</sup> *Id*, section 6.

<sup>771</sup> Family or clan assembly

<sup>772</sup> Guilds of men following the same occupation

<sup>773</sup> Assemblies of learned men who knew law

<sup>774</sup> Law commission of India, 114<sup>th</sup> Report on Gram Nyayalya, (August 1986).

Subsequently, after the introduction of the Government of India Act 1935 some of the provinces enacted legislation for the revival of *Panchayats*

After independence, the Eleventh Law Commission of India had recommended conferring of extensive civil and criminal jurisdiction on the these fora.<sup>775</sup> The Commission laid down detailed guidelines as to selection/nomination of lay Judges for Gram Nyayalaya (synonym for Nyay Panchayat), their qualifications and disqualifications, composition, procedure and jurisdiction in civil, criminal and miscellaneous matters. Further, with a view to liberating the proposed forum from cumbersome, complex and time-consuming procedural shackle, the Commission suggested that neither the Civil Procedure Code nor the Evidence Act should apply to the proceedings before Gram Nyayalaya. It also emphasized to provide transport vehicle so that this new forum can speedily travel to the place of dispute, carry justice to the doorstep of the people and dispose of the matter on the spot

This historically popular institution of Nyaya *Panchayat* still exists and has attained Constitutional recognition. The Constitution 73 and 74 (Amendment) Acts provide for creation of village *Panchayats* and also reservation of 33% seats for women in the election for members and chairman of these *Panchayats*.<sup>776</sup> This *fora* for resolution of disputes with people's participation in the administration of justice is very popular in India and is adopted by almost every state in the country by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen on the grounds of economic or other disabilities.<sup>777</sup> In this respect, Nyaya *Panchayats* constitute an aspect of overall development.<sup>778</sup>

#### **Legal aid Movement and setting up of Lok Adalats:**

Article 39A of the Constitution of India directs State to secure the operation of the legal system, promote justice on the basis of equal opportunity, and provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reasons of economic or other disabilities. Articles 14 also require the State to ensure equality before law and a legal system that promotes justice on the basis of equal opportunity to all. Legal aid

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<sup>775</sup> The Eleventh Law Commission, 114<sup>th</sup> Report of Law Commission of India (1986).

<sup>776</sup> *Supra* note 9, Appendix 1, 51, Para 2. 10.

<sup>777</sup> Constitution of India, Article 39.

<sup>778</sup> Upendra Baxi, "Access Development and Distributive Justice: Access Problems of the "Rural"

strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. Since 1952, the Government of India became aware of this fact. In 1960, some guidelines were drawn by the Government for legal aid scheme. In some of the states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. This system goes a long way in providing effective and meaningful legal assistance to under trial prisoners, who feel handicapped in their defence on account of lack of resources / other disabilities and cannot engage a counsel to defend them. In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the chairmanship of a judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and it started monitoring legal aid activities throughout the country. This gave birth to *Lok Adalats* (People's Courts). Civil cases, and petty criminal matters with the consent of both the parties are referred to *Lok Adalats*. The retired judges mainly from the district courts form the court.

The introduction of *Lok Adalats* added a new chapter to the justice dispensation system in India and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9 November 1995.

**National Legal Services Authority** was constituted on 5th December 1995. It has branches in all the states. It was constituted for giving legal services to the eligible persons. The judge of the Supreme Court of India heads National Legal Services Authority. It is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes. In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct *Lok Adalats* in the State. The Chief Justice of the State High Court who is its *Patron-in-Chief* heads State Legal Services Authority. Every person who has to file /

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Population", 18 *Journal of the Indian Law Institute* (1976).

defend a case is entitled to legal services if that person is (a) a member of a Scheduled Caste or Scheduled Tribe; (b) a victim of trafficking in human beings or beggar; (c) a woman or a child; (d) a mentally ill or otherwise disabled person; (e) 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 (f) an industrial workman; or (g) in custody, including custody in a protective home; or in a juvenile home or in a psychiatric hospital or psychiatric nursing home; or (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government,<sup>779</sup> if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court. Legal Services Authority after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required court fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once a Legal Services Authority supports it. A nationwide network has been envisaged under the Act for providing legal aid and assistance. A serving or retired Judge of the High Court is nominated as its Executive Chairman. District Legal Services Authority is constituted in every District to implement legal aid programmes and schemes in the district. The District Judge of the district is its *ex-officio* Chairman. After the constitution of the Central Authority and the establishment of NALSA following schemes and measures have been envisaged and implemented by the Central Authority:- (a) establishing Permanent and Continuous *Lok Adalats* in all the Districts<sup>780</sup> in the country for disposal of pending matters as well as disputes at pre-litigative stage; (b) establishing separate Permanent & Continuous *Lok Adalats* for Government Departments, Statutory Authorities and Public Sector Undertakings for disposal of pending cases as well as disputes at pre-litigation stage; (c) accreditation of NGOs for Legal Literacy and Legal Awareness campaign; (d) appointment of Legal Aid Counsel in all the Courts of Magistrates in the country; (e) disposal of cases through *Lok Adalats* on

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<sup>779</sup> The amount varies from state to state and the government keeping in view the living conditions prescribes the slab from time to time.

<sup>780</sup> Recently the National Legal Services Authority has set up permanent *Lok Adalats* in all the districts.

old pattern; (f) publicity to Legal Aid Schemes and programmes to make people aware about legal aid facilities; (g) emphasis on competent and quality legal services to the aided persons; (h) legal aid facilities in jails; (i) setting up of Counselling and Conciliation Centers in all the Districts in the country;(j) sensitisation of Judicial Officers in regard to Legal Services Schemes and programmes; (k) publication of *Nyaya Deep* the official newsletter of NALSA; (l) enhancement of income ceiling to Rs.50,000/- p.a. for legal aid before Supreme Court of India and to Rs.25,000/-p.a. for legal aid up to High Courts; and (m) steps for framing rules for refund of court fees and execution of Awards passed by *Lok Adalats*.<sup>781</sup> In Delhi Permanent *Lok Adalats* is established in Delhi Vidyut Board, Delhi Development Authority, and Municipal Corporation Of Delhi, MTNL and General Insurance Corporation.

Further the Legal Services Authorities Act, 1987 (as amended by Act No. 59 of 1994) has provided a statutory base to *Lok Adalats* by conferring wide powers on *Lok Adalat* Judges in the matter of summoning and examining witnesses on oath, discovery and production of documents, reception of evidence of affidavits, requisitioning of public records or documents etc.<sup>782</sup> The Awards passed by Lok Adalat judges are now deemed to be decrees of a civil court and the court fee paid in such cases is liable to be refunded in the manner provided under the Court Fees Act,1870. These Awards are final and binding on all the parties to the dispute and no appeal lies to any court against these Awards. In some of the states including the National Capital Territory of Delhi, a scheme has been introduced under which one advocate called "Remand Advocate" is attached to every court of Magistrate and is under directions to give free legal assistance to all those who are produced in custody and have counsel to represent them because of their inability to engage one. He gives legal assistance for opposing remand applications, securing orders for bail and moving miscellaneous applications as may be required. He is under an obligation to remain present in the court assigned to him, during the remand hour and such other hours of the day as may be directed by the court.

These *Lok Adalats* are becoming popular day-by-day and it is expected that very soon a large number of disputes between public and statutory authorities would

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<sup>781</sup> NALSA issues Press Releases in almost all the leading newspapers in the country in English, Hindi and regional languages to bring awareness among the public the salient provisions of the Legal Services Authorities Act, 1987 and the important schemes introduced by NALSA for providing legal aid and the utility of *Lok Adalats*.

start getting settled at pre-litigative stage itself saving the parties from unnecessary expense and litigation inconvenience.

#### 4. STATISTICAL DATA

##### Central Administrative Tribunal:<sup>783</sup>

Year	No. of cases filed	No. of cases pending
1999	22, 944	47, 889
2000 (upto Oct)	20, 605	25,588

**Railway Claims Tribunal:** At present, the number of Benches of Railway Claims Tribunal is 21. 2 are located in Delhi, 3 in Calcutta and the remaining are located at some other major cities of the country.<sup>784</sup> Pending cases before the tribunal as on January 1998: AS on 1-2-1998, the total number of cases pending before the Claims tribunal are: 23041 out of this, 17825 were filed in the tribunal after it was set up in 1989. The remaining 5216 are transferred to it from different courts in the country to the various benches of the Railway Claims Tribunal. The maximum number of cases are pending before the Calcutta Bench, i.e., 6995 which is nearly 33 % of the total pending cases. The pendency before other benches is depicted below:<sup>785</sup>

Bench	Pendency
Chandigarh	3013
Mumbai	2049
Guwahati	1652
Chennai	1174
Ahmedabad	1144
Lucknow	1135
Patna	1166
Bhopal	1034
Gorakhpur	1010
Delhi	736
Bangalore	630

**In the remaining benches of the tribunal, the pendency cases vary from 109 to 417.**

<sup>782</sup> Legal Services Authorities Act, 1987 (as amended by Act No. 59 of 1994), Section 22

<sup>783</sup> source: Central Administrative Tribunal, Principal Bench, New Delhi. (2000).

<sup>784</sup> At Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Chandigarh, Chennai, Ernakulam, Ghaziabad, Gorakhpur, Guwahati, Jaipur, Lucknow, Mumbai, Nagpur Patna and Secunderabad.

<sup>785</sup> R.N.Saxena, *Railway Claims Tribunals of India*; 170 (AIR Journal, 1998).

**Total number of cases disposed of by various benches of railway claims tribunal from 1989 to 1998:**

<b>Bench</b>	<b>No. of cases</b>
Chandigarh	3236
Mumbai	3975
Guwahati	11580
Chennai	10246
Ahmedabad	6759
Lucknow	10539
Patna	12645
Bhopal	7103
Gorakhpur	8995
Delhi	4895
Bangalore	1104
Calcutta	61243
Jaipur	6403
Secundarabad	4786
Nagpur	4150
Ernakulam	2650
Bhubaneshwar	1170
Ghaziabad	N. A.

**Appeals filed in respective high courts against orders of different benches of Railway Claims Tribunals as on January 1998:**

Bench	No. of cases decided	No. of appeal filed	Percentage
Chandigarh	3236	78	3
Mumbai	3975	250	7
Guwahati	11580	39	Less than 1 %
Chennai	10246	83	Less than 1 %
Ahmedabad	6759	145	2
Lucknow	10539	25	Less than 1 %
Patna	12645	40	Less than 1 %
Bhopal	7103	107	2
Gorakhpur	8995	8	1
Delhi	4895	36	1
Bangalore	1104	51	5
Calcutta	61243	19	Less than 1 %
Jaipur	6403	96	Less the 2%
Secundarabad	4786	175	4
Nagpur	4150	411	10
Ernakulam	2650	48	2
Bhubaneshwar	1170	12	1
Ghaziabad	N. A.	N. A.	-

**Statement showing the number of persons benefited through legal Aid & Advice in law courts up to 31.12.1999:**

SC	3,92,365
ST	2,26,640
BC	1,03,808
Women	2,77,907
Children	9,066
In Custody (Sec. 12 (g))	8,399
General	14,26,893
Total	21,45,078



No. of Lok Adalats held	No. of cases (including MACT cases) settled	Compensation paid in MACT cases (Rs.)
49,415	97,20,289	23,06,07,32,170

**Statement showing number of Lok Adalats held, Motor Accident Claims cases settled and compensation paid by Motor Accident Claims Tribunals in cases, as on 31.12.1999. (Bases on the information provided by the State Legal Services Authorities)**

Thus up to 30.6.2000 about 31.47 lakh persons have taken benefit of legal aid through Legal Services Authorities out of whom about 5 lakhs belong to Scheduled Castes, over 2 lakhs to Scheduled Tribes, about 2.75 lakh are women and about 9,000 are children.

Up to 31.12.99 the Supreme Court Legal Services Committee has provided legal aid and assistance to 10,125 applicants.<sup>786</sup>

Madhya Pradesh Government in 1996 set up 'Village Courts' to decide civil matters pertaining to disputes involving below Rs1000 besides criminal cases involving theft, quarrel and threats.<sup>787</sup>

As per information available with NALSA office, 72,038 *Lok Adalats* have been organized throughout the country up to 30.6.2000 in which about 1.2 crore cases have been amicably settled. Out of these over 5 lakh cases pertain to Motor Accident Compensation Claims in which compensation amounting to over Rs.2, 469 crores has been awarded.

In the year 1999, 15,198 *Lok Adalats* were organized throughout the country in which over 9,67,000 cases were amicably settled.

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<sup>786</sup> Information downloaded from site of NALSA on Internet.

<sup>787</sup> One Village Court is established for a cluster of 10/ more Village *Panchayats* through a Government notification. Each Village Court consists of 7 members.