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Dispute Resolution Process in India

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PREFACE

The evolution of the market-oriented economy and the increase in cross-border transactions have brought an urgent need for research and comparisons of judicial systems and the role of law in the development of Asian countries. Last year, in FY 2000, the Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) conducted legal researches in Asian countries with two main themes. The first theme was to figure out the role of law in social and economic development and the second was to survey the judicial systems and the ongoing reform process thereof. We organized joint research projects with research institutions in Asia and had a roundtable meeting entitled “Law, Development and Socio-Economic Change in Asia” in Manila. The outcomes of the joint researches and the meeting were published in March 2001 as ***IDE Asian Law Series No. 1-10***.

This year, in FY 2001, based on the last year’s achievement, we established two research committees: the Committee on “Law and Political Development in Asia” and the Committee on “Dispute Resolution Process in Asia”. The former committee focused on legal and institutional reforms following democratic movements in several Asian countries. Since late 1980s many Asian countries have experienced drastic political changes by the democratic movements with mass action, which have resulted in the reforms of political and administrative system for ensuring the transparency and accountability of the political and administrative process, human rights protection, and the participation of the people to those process. Such reforms are essential to create the stability of the democratic polity while law and legal institutions need to function effectively as designed for democracy. The latter committee conducted a comparative study on availability of the court system and out-of-court systems (namely Alternative Dispute Resolutions), with the purpose of determining underlying problems in the courts. As social and economic conditions drastically change, Asian countries face challenges to establish systems for fairly and effectively resolving the variety of disputes that arise increasingly in our societies. For dispute resolution, litigation in the court is not the only option. Mediation and arbitration proceedings outside the courts are important facilities as well. In order to capture the entire picture of dispute resolution systems, a comprehensive analysis of both the in- and out-of-court dispute resolution processes is essential.

In order to facilitate the committees' activities, IDE organized joint research projects with research institutions in seven Asian countries. This publication, titled ***IDE Asian Law Series***, is the outcome of research conducted by the respective counterparts. This series is composed of papers corresponding to the research themes of the abovementioned committees, i.e. studies on law and political development in Indonesia, the Philippines and Thailand, and studies on the dispute resolution process in China, India, Malaysia, the Philippines, Thailand and Vietnam. The former papers include constitutional issues that relate to the recent democratization process in Asia. Studies conducted by member researchers investigated the role of law under those conditions while taking up such subjects as rule of law, impeachment, Ombudsman activities, human rights commissions, and so on. The latter papers include an overview of dispute resolution mechanisms for comparative study, such as court systems and various ADRs, as well as case studies on the dispute resolution process in consumer, labor and environmental disputes.

We believe that this work is unprecedented in its scope, and we hope that this publication will make a contribution as research material and for the further understanding of the legal issues we share.

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Institute of Developing Economies

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CHAPTER I
COURT SYSTEM: HOW THE COURT SYSTEM IS USED AS DISPUTE RESOLUTION MECHANISM

1. Overview of the Court System in India

The Indian Constitution though federal in character provides for unitary judicial system. The Supreme Court is the apex court of the country. It was established on 28 January 1950 and consists of 25 judges apart from the Chief Justice of India.[1] All proceedings in the Supreme Court are conducted in English[2] and are open to the public.[3] The seat of the Supreme Court is in Delhi.[4] Except for the chamber, where the judge sits singly, benches of two or more judges hear all matters. Normally five judges hear constitutional matters but in special cases, larger benches are constituted.[5] In addition to the judicial autonomy, the Supreme Court has freedom from administrative dependence. In crisis arising out of diverse situations people approach the apex court for relief.

Below the Supreme Court, there exists high court for every state / union territory. At present, the country is divided into 29 states and 6 union territories (UT).[6] There are 21 high courts in the country, 5 having jurisdiction over more than one state/UT. In few states, due to large geographical area, benches are established outside the principal seat of a high court as shown below:

High Courts in India[7]

Name	Year of establishment	Territorial Jurisdiction	Seat
Allahabad	1866	Uttar Pradesh	Allahabad (Bench at Lucknow)
Andhra Pradesh	1954	Andhra Pradesh	Hyderabad
Bombay	1862	Maharashtra, Goa, Dadra & Nagar Haveli and Daman & diu	Bombay (Benches at Nagpur, Panaji, Goa, Aurangabad and

[1] Supreme Court (Number of Judges) Act, 1956, Sec 2.
[2] Constitution of India, Art 348.
[3] *Id.*, Art 145 (cc).
[4] *Id.*, Art 130.
[5] Supreme Court Rules 1966, Order VII.
[6] http://goidirectory.nic.in/fstateut.htm
[7] Supreme Court Bar Association, 50 Years, *SC Bar Association*, (2000), p. 810.

			Daman & diu)
Calcutta	1862	West Bengal	Calcutta (Circuit Bench at Port Blair)
Delhi	1966	Delhi	Delhi
Guwahati	1948	Assam, Manipur, Nagaland, Tripura, Mizoram & Arunachal Pradesh	Guwahati (Benches at Kohima, Aizwal, Imphal, Shilong and Agartala)
Gujarat	1960	Gujarat	Ahmedabad
Himachal Pradesh	1971	Himachal Pradesh	Shimla
Jammu &Kashmir	1928	Jammu & Kashmir	Srinagar and Jammu
Karnataka	1884	Karnataka	Bangalore
Kerala	1958	Kerala & Lakshdweep	Earnakulam
Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior& Indore)
Madras	1862	Tamil Nadu & Pondicherry	Madras
Orissa	1948	Orissa	Cuttack
Patna	1916	Bihar	Patna (Bench at Ranchi)
Punjab & Haryana	1966	Punjab, Haryana, Chandigarh	Chandigarh
Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
Sikkim	1975	Sikkim	Gangtok
Ranchi	2000	Jharkhand	Ranchi
Raipur	2000	Chattisgarh	Raipur
Nainital	2000	Uttaranchal	Nainital

In the sphere of the states, high courts have wide powers for issuing directions, writs or orders to all persons or authorities (including the governments), falling under their jurisdiction, whether original or appellate, primarily for the enforcement of fundamental rights.[8] The high court exercises administrative, judicial and disciplinary control over the members of the judicial service of the state.[9] In addition, it is a court of record.[10] Each high court comprises of a Chief Justice and other judges whose number vary from state to state.[11]

The Constitution of India has conferred on the high courts wide powers to administer justice, administer the lower courts, take necessary action when there is a miscarriage of justice, secure the rights and liberties to the people and among others ensure that the administrative machinery

[8] Constitution of India, Article 226.
[9] *Id.,* Article 235.
[10] *Id.,* Article 215.
[11] The sanctioned Judge strength for Kerala High Court is 24 permanent judges including the Chief Justice and 5 additional judges; Bombay High Court has a sanctioned strength of 60 judges; the Rajasthan High Court has 32 sanctioned posts of Judges / Additional Judges; sanctioned strength of judges of the High Court of Allahabad is 95 and so on.

functions according to law. The high court thus occupies a high position of respect, dignity and authority in the modern Indian judicial system.

Just below high courts, in each state/ UT, there are subordinate courts. These represent the first tier of the entire judicial structure. In fact, each state/ UT is divided into districts as units of administration and each district is further divided into *taluks* or *tehsils* comprising certain villages contiguously situated. These are administrative units. The court structure more or less corresponds with these administrative units except in urban areas.

On the criminal side, vertically moving downwards, the highest court is either the Sessions Court, presided over by a Sessions Judge or the court of District & Sessions Judge, who is also the administrative head. He assigns cases to the Additional Sessions Judges. Sessions Court has original, appellate and revision jurisdiction against orders passed by lower courts.

Below the Sessions Courts are the courts of the Chief Judicial Magistrate and Additional Chief Judicial Magistrates. Each of these courts has one or more police stations assigned to it. The designated court decides criminal cases from those police stations.

Below these are the courts of Judicial Magistrates. Judicial Magistrates in India are similar to Justices of the Peace in the United States of America. They deal with such things as breach of public peace, nuisance, dispute of immovable property likely to cause breach of peace.

In addition to the regular criminal courts, there are special courts to deal with cases relating to narcotics, corruption, terrorist, consumer,[12] labour[13] and environment,[14] etc.

Apart from the above, there are special courts established by many central statutes, like, the Anti-Hijacking Act, 1982; the Commission of Sati (Prevention) Act, 1987; the Immoral Traffic (Prevention) Act, 1956; the Juvenile Justice Act, 1986; the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988; the Prevention and Corruption Act, 1988; the Terrorist Affected Areas (Special Courts) Act, 1984; etc to deal with disputes on the subject matter covered by these Acts.

The special courts deals with a specific subject matter of litigation. They, follow almost the same procedure, which is followed by the regular courts with some minor differences necessary for the quicker disposal of the cases.[15]

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[12] *Infra* Chapter 3, p. 72.
[13] *Infra* Chapter 4, p. 115.
[14] *Infra* Chapter 5, p. 157.
[15] *In re The Special Courts Bill,* 1978 (1979) 1 SCC 380.

Special courts are set up not for any special policy commitment or the expertise requirement but for the purpose of speedy disposal. The judges of these courts are often drawn from the judicial services. Appeals against their decisions lie in high court and in some cases even to the Supreme Court.

On the civil side, vertically moving downwards in the hierarchy, we have at the peak, the principle civil court, called the District Court presided over by the district judge. Besides, there are courts of additional district judges to deal with the cases. Both the district judge and the additional district judges are vested with the same powers and appellate jurisdiction against the order or decree of courts subordinate to them.

Below the District Courts are the courts of Civil Judges (Senior Division) and Civil Judges (Junior Division). The "Senior" and "Junior" labels do not have anything to do with the powers of the judges but reflect the nature of the cases. These courts are vested with only original jurisdiction. Appeals against the judgment of the courts of civil judges, whether of senior or junior division lie before the district judge, who either decides the appeal himself or assign it to the court of additional district and sessions judge or additional district judge, whichever exists under him.

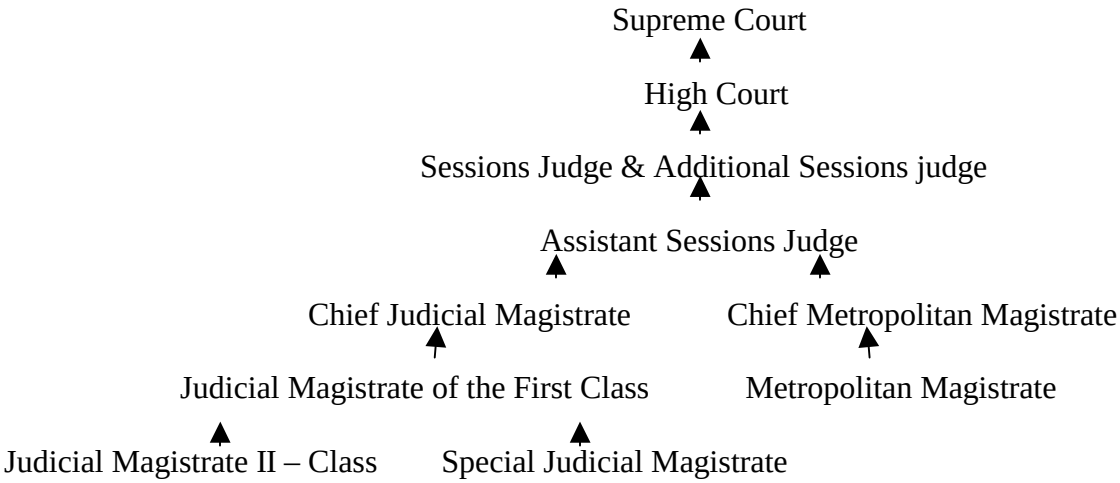
In some states / UT, a court of *munsif* / district *munsif*-cum-magistrate / subordinate judge, class-III and the sub-judge, class-II are established at a *taluk* or *tehsil* level, instead of the courts of civil judges (junior division). Immediately above the district *munsif's* court in the hierarchy is the court of subordinate civil judge, class-I instead of the courts of civil judge (senior division).[16] Steps, are being taken to bring uniformity in designation of judicial officers both on civil and criminal side.[17]

[16] 118th Report of the Law Commission of India, December 1986, at 1.

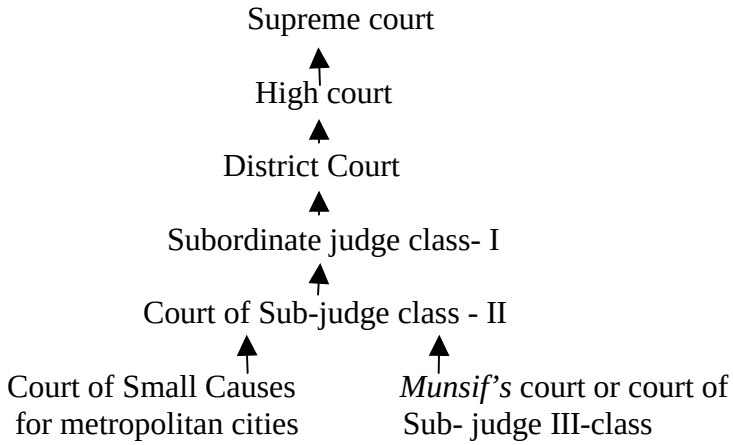
[17] *All India Judges' Association v. Union of India*, AIR 1992 SC 165. In 1989, the All India Judges' Association, filed writ petition before the Supreme Court seeking many reliefs to improve the conditions of service of subordinate Judicial Officers all over the country. The Supreme Court gave directions to Union of India to set up An All India Judicial Service and take all steps to bring about uniformity in designation of Officers both in civil and the criminal side by 31-3-1993.

The above discussed hierarchy of civil and criminal court system may be depicted as under:

Hierarchy of Criminal judicial system:



Hierarchy of Civil Judicial System :



The organization and growth of a regular hierarchy of courts of justice with the superior courts and inferior courts owes its origin to the advent of the British rule in India. Every court in this chain, subject to the usual pecuniary and territorial jurisdiction, administers the law of the country whether made by Parliament or by the State Legislature.

As a general rule, there is a separation of civil judiciary and criminal judiciary. But if workload is less, the presiding officer presides over both criminal and civil courts. For example, courts of District & Sessions Judge (DSJ) hear both civil and criminal matters. [18]

[18] *Supra* note 16.

2. Current situation regarding the use of courts

I. PENDENCY

As on November 2001, there was a huge pendency of cases in the various courts except in the Supreme Court as is evident from table below:[19]

S. No.	Name of Court	Sanctioned strength of judges	Judges in position	Pending cases
1.	Supreme Court of India	26	25	21,716 (As on 21.11.2001)
2.	High Courts	647	477	35,57.637 (As on 31.10.2001)
3.	District/Subordinate Courts	12,737	19877	2,03,25,756 (As on 31.10.2001) (Except Nagaland)

Variation in Pendency of court cases from 1991 to 1998: [20]

Supreme Court – substantially reduced from 104,936 (1991) to 19,806 (1998)

High Courts – increased from 2.65 million (1993) to 2.98 million (1995) and 3.18 million (1997)

more than 50% in only four high courts –

Allahabad High Court - (0.86 million),

Madras/Chennai High Court - (0.32 million),

Calcutta High Court - (0.28 million),

Kerala High Court - (0.25 million) .

Subordinate courts – fluctuating – 21.8 million (1995), 19.9 million (1996), 20 million (1997)

The following table gives the number of cases pending in subordinate court from 1985-1995:

Pendency in subordinate courts from 1985 to 1995: [21]

State / UT	Pendency in Sessions Courts as on 1985	Pendency in District courts & courts sub-ordinate thereto as on 1985	Pendency in Magistrate Courts as on 1985	Pendency in Sessions Courts as on 1995	Pendency in District courts & courts sub-ordinate thereto as on 1995	Pendency in Magistrate Courts as on 1995	The % of increase in pendency of cases from 1985 to 1995
Andhra Pradesh	5,321	4,44,104	1,22,560	28,438	8,01,079	2,47,281	88.26.

[19] Govt. of India, Ministry of Law, Justice & Co. Affairs, Rajya Sabha unstarred question No. 2223, answered on 10.12.2001

[20] Chapter – II, Annual Report 2000-2001, Ministry of Home Affairs; See http://mha.nic.in/contents

[21] Source: http://www.kar.nic.in/fnjpc/cwcm&adr.html

Assam	4,694	22,525	1,10,349	7,775	46,831	1,53,573	51.33
Bihar	77932	157224	636870	194547	228488	749006	34.40
Gujarat	3758	213928	975916	24995	708048	3145542	224.95
Haryana	2247	86979	104341	9142	210077	181446	106.99
Karnataka	5628	592663	336933	25489	615379	591958	31.82
Madhya Pradesh	19570	226508	665733	65371	434966	1120675	77.78
Maharashtra	20177	589543	1242462	80008	923850	2902196	110.89
Punjab	4176	101958	96712	14669	216240	94562	60.45
Tamil Nadu	6082	442711	275594	12868	472414	261027	3.03
Uttar Pradesh	62449	397202	846577	188402	880362	2048102	138.62
Delhi	3672	85169	397064	18056	118865	377140	5.79

From the above table, it is evident that from 1985 to 1995 increase in the pendency of cases by about 62.1%. The present status of pendency in the subordinate courts is given below: [22]

S. No.	Name of States/UTs	As on	Civil	Criminal	Total
1.	Andhra Pradesh	06/2000	523149	368472	891621
2.	Arunachal Pradesh	06/99	331	1469	1800
3.	Assam	06/2000	47644	114900	162544
4.	Bihar	06/2000	253782	1023614	1277396
5.	Goa	12/2000	26338	12147	38485
6.	Gujarat	06/2000	659723	2544144	3203867
7.	Haryana	06/98	201656	293145	494801
8.	Himachal Pradesh	06/2000	72470	70541	143011
9.	Jammu & Kashmir	06/99	43418	82596	126014
10.	Karnataka	06/2000	664386	400500	1064886
11.	Kerala	06/2000	223489	405020	628509
12.	Madhya Pradesh	06/2000	353745	988530	1342275
13.	Maharashtra	06/2000	862517	1867552	2730069
14.	Manipur	06/99	4524	3614	8138
15.	Meghalaya	06/99	1561	11322	12883
16.	Mizoram	12/2000	817	986	1803
17.	Nagaland	Not Available	Not Available	Not Available	Not Available
18.	Orissa	06/2000	135189	541633	676822
19.	Punjab	12/98	201118	174094	375212
20.	Rajasthan	06/2000	282988	565560	848548
21.	Sikkim	12/98	467	1352	1819
22.	Tamil Nadu	06/2000	545657	279136	824793
23.	Tripura	06/2000	6492	12428	18920
24.	Uttar Pradesh	06/2000	1083451	2397191	3480642
25.	West Bengal	12/99	473325	861754	1335079
26.	And. & Nicobar	12/99	580	26790	27370
27.	Chandigarh	12/98	12961	32206	45167
28.	Dadra & N. Haveli	06/2000	326	1238	1564
29.	Daman & Diu	12/2000	642	742	1384
30.	Delhi	12/2000	153261	392705	545966
31.	Lakshadweep	12/2000	87	104	191
32.	Pondicherry	06/2000	6306	7871	1417
	Total		6842400	13483356	2032575

Pendency in the high courts [23]

[22] *Supra* note 19.

High court of:	Total number of cases pending			
	For more than 2 years as on 31.12.1999	As on 31.12.1999	For more than 10 years as on 31.12.1999	For more than 3 years as on 30.6.2001[24]
Allahabad	6,02,292	8,15,026	2,01,460	67,536
Andhra Pradesh	7,883	1,50,222	2,823	16,622
Bombay	1,55,982	2,84,203	28,404	22,457
Calcutta	2,59,054	3,10,914	1,46,476	16,764
Delhi	1,07,427	1,78,186	33,774	13,769
Gauhati	19,790	38,702	162	1,926
Gujarat	87,753	1,43,274	18,592	9,957
Himachal Pradesh	6,367	11,928	37	1,383
Jammu & Kashmir	44,207	70,336	2,392	3,567
Karanataka	29,214	84,486	1,081	5,827
Kerala	98,512	3,08,237	533	45,631
Madhya Pradesh	56,176	1,06,293	5,050	12,404
Madras	1,29,267	3,55,382	9,655	21,924
Orissa	60,994	1,17,339	3,313	28,406
Patna	35,880	82,697	6,657	4,028
Punjab & Haryana	1,22,672	1,84,970	33,791	18,012
Rajasthan	62,453	1,22,899	6,674	14,531
Sikkim	11	206	2	16
TOTAL	18,85,934	32,04,083	5,00,876	3,04,760

The pendency of cases in the high courts, which was 2.651 million as on 31.12.1993, increased to 2.981 million as on 31.12.1995 and further increased to about 3.181 million as on 31.12.1997.[25] The pendency of cases as on 31.12.1999 was 3.365 millions. This increased to 3.557 millions as on 31.10.2001 which is evident from the above table.

II. INSTITUTION OF SUITS

No. of cases instituted in the high courts during period of one year are as under: [26]

		DURING THE YEAR 1998			DURING THE YEAR 1999			DURING THE YEAR 2000		
Sl. No.	Name of the High Court	No. of cases registered	No. of cases disposed of	No. of cases pending	No. of cases registered	No. of cases disposed of	No. of cases pending	No. of cases registered	No. of cases disposed of	No. of cases pending
1	Allahabad	183740	146579	796129	198071	179174	815026	34443	47672	818796
2	Andhra Pradesh	157007	144367	145851	137437	133066	150222	57833	63891	155351

[23] Source: Ministry of Law, Justice & Company Affairs, Government of India, New Delhi (2000).
[24] *Supra* note 19.
[25] *Pending Cases Involving Government In Delhi High Court*, Ministry of Law, Justice & Company Affairs, Department of Justice, Rajya Sabha Starred Question No 332**, a**nswered on 12.12.2000, http://164.100.24.219/rsq/quest.asp?qref=37489
[26] *ANNEXE- II*, Minister of Law, Justice & Company Affairs, Rajya Sabha Unstarred Question No 1671, answered on 12.03.2001, http://164.100.24.219/rsq/quest.asp?qref=44513

3	Bombay	99789	84881	252526	111491	79814	284203	28567	22970	289800
4	Calcutta	77543	64594	295158	67733	51977	310914	32730	25585	313172
5	Delhi	71477	61887	173020	70874	65708	178186	-	-	-
6	Gauhati	21412	17540	38037	5030	4365	38702	-	-	-
7	Gujarat	58571	56422	121532	73801	52059	143274	10959	12735	141498
8	Himachal Pradesh	10870	9665	14557	9882	9345	11928	5711	4219	13420
9	J & K	28886	34275	93256	26441	49361	70336	10710	17010	64036
10	Karnataka	75336	120653	90072	84951	90537	84486	45155	39872	89768
11	Kerala	137549	103579	284231	149302	125296	308237	84514	69021	323730
12	Madhya Pradesh	89139	78719	93551	92625	79883	106293	45499	37737	114057
13	Madras	136331	121581	341369	143551	129538	355382	36588	38402	353568
14	Orissa	54431	36926	102402	49010	34073	117339	11184	8949	119574
15	Patna	103985	105833	82818	99605	99730	82697	102045	62869	85193
16	Punjab & Haryana-	132472 -	131306	171837-	148871	135738	184970	72836	46737	211063
17	Rajasthan	61613	52764	107265	63503	47879	122899	11190	10827	123262
18	Sikkim	1076	699	472	485	751	206	332	329	209

No. of cases instituted in the Supreme Court of India during the one year period are as under:[27]

CLASSIFICATION	Registered during the period 1.1.1998 to 31.12.1998
Admission Matters	32769
Regular Matters	3790
Total	**36559**

III. CRIMINAL JUSTICE ADMINISTRATION

SNAPSHOTS – 1998

A total of 6.1 million cognizable cases[28] under the Indian Penal Code, 1860 (IPC) and the Special and Local Laws (SLL) - such as the Arms Act, 1959; the Narcotic and Psychotropic Substances Act, 1988; the Immoral Traffic (Prevention) Act, 1956; etc., - were registered by the police in India during 1998. Thus there has been 3 % decrease over the previous year, mainly due to a lower registration of SLL cases. [29]

[27] http://lawmin.nic.in/An_rep/Chapter3.htm

[28] That is, cases in which the police can arrest a suspected offender without obtaining a warrant.

[29] In most parts of the world, crime is studied in terms of the *crime rate*, which denotes diffusion of crime over blocks of population rather than over geographical areas.

Offences, under the Indian Penal Code (IPC) increased by nearly 4 %[30] whereas there was 8 % drop in respect of SLL crimes. However, there was 35 % rise in the number of murders during 1988-98. Six states, including Uttar Pradesh, Madhya Pradesh, Bihar, Maharashtra and West Bengal alone contributed two-thirds of the cases reported during 1998. Property disputes formed the single largest factor behind the crimes. Kidnapping and abduction accounted for more than 23,000 cases in 1998. This represented an almost 50 % increase during the decade. 9 % rise in robberies was also witnessed.

A 65 % rise was noted in the number of incidents of rape during the decade that ended in 1998. An average of about 15,000 rape cases are registered in India each year. At the end of 1998, more than 48,000 rape trials were pending. The more dismaying was the fact that less than 5 % of the cases disposed of by courts ended in conviction during 1997-98. [31]

SNAPSHOTS – 1999

As on July 31, 1999, out of 20,106,882 cases 13,250,329 criminal cases were pending in the subordinate courts of the country. Statistics reveal that there is almost one cognizable crime committed every seven seconds, one penal offence every twenty seconds, a property crime every minute, theft every one and half minutes, violent crime every two minutes, burglary every four minutes, riot every five minutes, robbery every fourteen minutes, murder every fifteen minutes, rape every fifty two minutes, molestation every twenty six minutes, dowry death every one hour forty two minutes, kidnapping or abduction every forty three minutes, an act of eve-teasing every fifty one minutes and an act of cruelty towards women every thirty three minutes.[32]

CRIMES UNDER SPECIAL LAWS

(1) The number of cases registered and the number of cases in which accused were convicted and acquitted after the enactment of Narcotic Drugs and Psychotropic Substances Act, 1985, i.e. with effect from 15.11.1985 to 30.11.1995 is as under**:**

Year	Case registered	Cases in which Culprits convicted	Cases in which accused acquitted	Pending cases
1985	715	65	510	140

[30] *Crime in India*, National Crime Records Bureau (NCRB), *1998,* New Delhi, at 45.
[31] R.K. Raghavan, *Crime in India*, Frontline, July, 7, 2000, at 23.
[32] Justice Sethi, Hafeezur Rehman Memorial Lecture on *'Criminal justice-problems and challenges'* AMU, The Milli Gazette, Aligarh Muslim University, India, Jan 14, 2002, Vol.1, No. 22.

1986	2290	159	1074	1057
1987	1403	160	406	837
1988	1392	213	285	894
1989	1346	160	267	919
1990	1421	227	290	904
1991	1187	106	113	968
1992	902	144	75	683
1993	761	141	14	606
1994	701	49	6	646
1995	736	63	3	670

From above table it is evident that pendency of cases, each year is increasing, while at the same time, there is a sharp decline in the conviction rate. From 9.09% of conviction in 1985, it stood at 15.99% in the year 1990. In the year 1995, it again fell and reached to 8.55%.

(2) The age-wise pendency of cases in the Supreme Court & high courts is as under: [33]

Court	**Pending for less than 5 years**	**Pending for 5-10 years**	**Pending for over more than 10 years**
Supreme Court	1083	77	na
High courts	22371	12156	56889

(3) Performance of the Central Bureau of Investigation (CBI) is as under: [34]

Number of :	**30.4.2001**	**30.4. 2001**	**30 .4. 2000**	**Whole of 1999**	**Whole of 2000**
Prosecutions launched	22		33	627	634
Public Servants involved in cases registered	43	127	307	892	934
Disproportionate Assets Cases registered	2	7	8	51	79
Trap Cases registered	14	24	13	161	179
Intelligence Reports processed relating to corruption by the agency	37	43	22	568	434
Cases registered by the Agency	68	120	70	1195	1116
Cases registered on orders of Supreme Court & high courts	7				
Pendency of Trial Cases	6160	6216	6089		
Cases Referred For RDA[35]	14		49	307	283
Disposal of RDA Cases	23	37	20		
Disposal From Investigation	52	60	49		
Disposal From Trial	42	28	32		
Cases disposed of in courts	132		130	498	509

[33] http://164.100.24.219/rsq/quest.asp?qref=15179
[34] Performance of CBI in April, 2001 - A Glance, http://cbi.nic.in/perfapr01.htm
[35] Regular Departmental Action (RDA) on various charges of misconduct.

Acquittals	31		30	197	132
Convictions by the court	76		94	249	326
Pendency of Investigation	1753				

(4) CBI cases pending trial in different courts for commission of offences under Prevention of Corruption Act, 1956are as under: [36]

S. No.	Duration of Pendency	No. of Pending Cases
1.	Less than 2 years	640
2.	2-5 Years	764
3.	5-10 Years	750
4.	10-15 Years	277
5.	15-20 Years	127
6.	20-25 Years	30
7.	25-30 Years	5
8.	Over 30 Years	0
	Total	2593

IV. FUNDING ASPECT OF COURT SYSTEM

Budgetary allocation for judiciary:[37]

For the year 2000-2001, the Ministry of Law, Justice & Company Affairs was allocated Rs. 960 million as plan-expenditure and Rs. 3389.4 million as non-plan expenditure. Out of this, the Ministry provided:

1. Rs. 351.6 million for secretariat expenditure of the departments and networking of the Department of Justice with the Supreme Court and high courts.
2. Rs. 10 million for the expenses of National Commission to review the working of the Constitution.
3. Rs. 53.6 million for carrying out translation work in the courts and for running unified litigation agency in the Supreme Court of India, responsible for conduct of cases in the Supreme Court on behalf of the central and state governments.
4. Rs. 175 million to Income Tax Appellate Tribunals set up in the country under the provisions of the Income Tax Act, 1961 to hear appeals against decisions and orders of the Chief Commissioners of Income Tax, Director General of Income Tax (Appeals) and Deputy Commissioner of Income Tax (Appeals).

[36] http://cvc.nic.in/vscvc/cbipend.htm
[37] www.indiabudget.nic.in

5. Rs. 210 million to the National Judicial Academy set up as a registered society in 1993. the provision is mainly for expenditure on computerization and networking of courts in four metropolitan cities of Chennai, Delhi, Kolkota and Mumbai.
6. Rs 25 million to the International Centre for Alternative Dispute Resolution set up to propagate, promote and popularize the settlement of domestic and international disputes by different modes of alternative dispute resolution.
7. Rs. 21.5 million to union territories for providing infrastructural facilities to judiciary.
8. Rs. 116.1 million to law officers, legal advisers, counsels engaged in legal aid to the poor and those engaged in National Judicial Pay Commission.
9. Rs. 583 million to the Centrally sponsored scheme for development of infrastructure facilities for the judiciary - under implementation since 1993-94. the scheme includes construction of buildings, both official and residential, covering high courts and district courts.
10. Rs. 60 million as grant-in-aid has been sanctioned for National Legal Service Authority (NALSA) for year 2001-2002 for allocating funds to the state and district authorities, to spread legal literacy and provide *Lok Adalats* as an alternative forum of adjudication of disputes.[38]

3. Parties' viewpoints with regard to the Court System

The parties' viewpoints with respect to the court system in India can be best reflected from the reports submitted by the Law Commission of India and other committees who are constituted annually to examine various loopholes in the law and suggest measures to meet the situation. These commissions take into account views and experiences of diverse sections of people belonging to socio-legal circles. These reports generally reflect the sentiments of general public and ordinary litigants in India. Some of the observations that mirror viewpoints of general public in India are discussed below.

In the 114th Report on *Gram Nyayalaya* (1986) the Law Commission of India examined that the judicial system suffers from inordinate delays, excessive costs, legal technicalities and even

[38] http://pib.nic.in/archieve/ppinti/ppioct2001/low_and_justice.html

uncertainty of judicial decision. The Commission added that the task of solving the problems of backlog of pending cases in law courts is stupendous.

The observations made in the report of the *Arrears Committee*[39] also reflect the general mindset regarding court system in India:

"…..Settlement of cases by mutual compromise is a much better method than seeking adjudication in the adversary system. Fighting litigation to its bitter and final end apart from generating tension and leaving a trail of bitterness, burdens the parties with heavy financial expenditure. Besides, the successful party has to wait for years before enjoying the fruits of litigation. Results in consonance with justice, equity and good conscience can sometimes be achieved by having a mutual settlement of the dispute than by inviting the court to decide a case one way or the other……."

To examine the court work methods and work environment and to suggest improvements thereof, the National Judicial Pay Commission[40] engaged the services of Indian Institute of Management, Bangalore (IIMB). The IIMB, after an in-depth study concluded that most people having stakes in the judicial work are of opinion that justice delivery system is unsatisfactory or poor. The main reason given by them is the delay in disposal of cases. IIMB ransacked the order sheets of several cases and after carefully analyzing them stated as follows:

1. The time taken to serve summons and emergency notices to defendants varied from three months to three years.
2. The time taken to file written statements ranged from six months to twenty four months.
3. Interlocutory applications caused delays ranging from four months to four years.
4. Framing of issues consumed as much as three years and six months in one case.
5. Other stages that delayed the cases were absence of advocates and, of course, innumerable adjournments given for a variety of reasons.
6. The major causes of delays were "summons not being served on time" and "witnesses not being present in court". For criminal cases, the most widely felt source of delay was "inadequate number of concerned personnel". For civil cases, it was "filing of unwarranted Interlocutory Applications".

[39] Constituted by the Government of India in 1989 on the recommendation of the Chief Justices' Conference, published by the Supreme Court of India- 1990, at p. 109.

[40] Constituted by Government of India on 1996 on the direction of the Supreme Court given in *All India Judges' Association v. Union of India*, AIR 1992 SC 165. See *Supra* note 17.

7. The delay in most of the cases is due to multiplicity of interlocutory applications, which are not dealt with by the courts promptly. [41]

The above finding concur with the views of several commissions and reinforces the felt need to introduce long over due reforms.

The National Judicial Pay Commission, in its first report submitted in 1999 examined the work methods and environment in courts and noted following difficulties faced in court system that affect the interests of litigant public:

1) The Courts are over burdened with work. The experience is that even at the stage of framing of issues, there is no assistance from advocates in most of the courts. Interrogatories are seldom resorted to and very often documents are filed after the commencement of trial with an application seeking permission.
2) Advocates produce hindrance in observing the procedure and a very insisting officer is likely to be harassed in many ways. Rules are already there but are not observed because of non-cooperation of various agencies responsible for producing witnesses.
3) Considerable long time is being wasted in securing the presence of the parties for the purpose of admission and denial and seeking reply to the interrogatories.
4) Language of the Courts: In almost all states, the judicial proceedings in lower courts, are recorded in local language of the state concerned. Proceedings, including evidences are recorded by the *Peshkar* (Reader) in vernacular while the presiding officer either in his own hand or by dictation to the steno-typist records the proceedings in English. On account of implementation of transfer policy of judges of the high courts, generally judges in a high court are from outside the state concerned. The transferee judges, who are not familiar with local language of the State, face considerable difficulty in dealing with cases when the records are only in local language. The translation of all the records into English is an enormous task besides the cost factors and even if it be done, it would cause delay in disposal

[41] Chapter 24, Report of First National Judicial Pay Commission (1999), http://www.kar.nic.in/fnjpc/cwcm&adr.html

of cases. Therefore, language is also in a way becomes a hindrance in the way to attain speedy disposal of cases. [42]

The above submissions and large pendency discussed earlier, adds substance to the fact that the common man's perception of the capacity of the judicial system to deliver is one of skepticism, if not total cynicism. And therefore, people are looking forward in developing Alternative Dispute Resolution modes, which will minimize the overall time and cost of a person, while maximizing the time available at one's disposal. This is evident from the fact that a considerable litigation burden has been shifted to the hybrid variety of ADR modes developed in the country during last five decades.[43]

4. Problems of the Court System

Various problems with which Indian court system is ailing may be summed up as under:

Overburdened judiciary: The court system in India, which is based on adversarial model of common law, is cumbersome, expensive and cumulatively disastrous. It is overburdened. It has to tackle with voluminous pending as well as fresh litigation arising everyday. The hierarchy of courts, with appeals after appeals adds to the magnitude of the problem.

Inadequacy of judiciary to meet the challenges of total population: Inadequate judge strength throughout the country is the similar biggest factor for huge backlog of cases. Added to this difficulty is sluggishness shown by the high courts and various state governments in filling up the vacancies of judges on time.[44] As on December 2001, there were 15.14 % vacancies in the subordinate courts, high courts and the Supreme Court of India out of total 13140 judge posts. [45]

State is the largest litigator: The central and state governments are the single largest litigants, abetted by government owned corporations, semi-government bodies and other statutory organizations. In Bombay High Court alone, there were as many as 1,205 writ petitions filed

[42] *Ibid.*
[43] *Infra* Chapter II, p. 26.
[44] *Needed, an internal umpire,* the Hindu, 6-8-2000, p.11
[45] *Supra* note 19.

against these bodies between January 1 to June 7, 2000- excluding those filed on the appellate side, while total number of suits filed is 2,402.[46]

Adversarial character of administration of justice: In its structure and organization, the administration of justice in India as at present in vogue has the stamp of 'Made in U.K.'. It is adversarial in character. It renders the position of a judge to a passive listener, a sort of umpire in a game of cricket, denying him active participation in unravelling the truth. And the court battle is conducted according to medieval rules of evidence.

Time taken in disposal of cases: One of the major flaws of India is the delay in its legal system. The average time taken by the Indian courts for deciding case varies between 5 to 15 years. In *The Guinness Book of Records* there is an entry, which says that the most protracted law suit ever, recorded was in India: A "Mahant", who is a keeper of a temple, filed a suit in Pune in 1205 AD and the case was decided in 1966 -761 years later! [47]

In-spite of the constitutional guarantees, judicial decisions and the reports by various high powered Committees the concept of speedy justice has remained an elusive goal. About 0.18 million under-trials are in jail because of the non-disposal of the cases in time. The Government has to spend to the tune of Rs. 3,610 million per year on this. [48]

Complex reasons for pendency: Lack of responsiveness and transparency in administration, increase in access to information and institution of cases, rise in population, radical changes in the pattern of litigation, multifarious litigation, inadequate strength of judges/judicial officers, adjournments, etc. Inadequate judge strength throughout the country is the similar biggest factor for huge backlog of cases.

Constant pressure and demoralizing of TRIAL COURTS : That the trial judges in India work under a charged atmosphere and constantly under a psychological pressure has been even judicially recognized. In *K.P. Tiwari v. State of M.P* [49], the Supreme Court observed:

" . . . . . The lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks – more correctly up to their nostrils. They do not have the benefit of

[46] Subhash Kothari, *Courting Disaster: A case for Judicial Reform*, Times of India, 28-6-2000, p.14.
[47] Manoj Mitra, Indian Express, July 26, 2001.
[48] Solipetta Ramachandra Reddy (Andhra Pradesh): Member of Parliament, PIB Release, November 08, 2001.
[49] 1994 Supp (1) SCC 540.

a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however, gross it may look, should not, therefore, be attributed to improper motive."

Another unique problem of Indian court system is that appellate courts demoralize subordinate courts by reversing judgments and decrees passed by these courts and adverse remarks in the judgment itself are made regarding propriety of subordinate judiciary. The higher judiciary looks down upon it. Appellate courts do not approach the case for the first time. The raw materials for the appellate court are already collected, assembled and focussed unlike in the trial court. The appellate court hears only the oral arguments in a tension free atmosphere and it has plenty of time to come to conclusion. There is enough time for the appellate court to think and re-think on any legal issue. There is a qualitative difference in the variety, novelty and method in the decision-making by the appellate court. Apart from that, unlike in the trial court, the appellate court generally have substantial contribution from the well-prepared lawyers. The assistance given to the appellate court generally is far better than the assistance given to the trial court. However the power of the appellate courts is used most frequently to find fault with the trial judge in each and every matter of the decision-making. Trial judges are treated with very little respect, even though it is not proper for the appellate court to make derogatory remarks against trial judge.

In *Braj Kishore Thakur v. Union of India and Others*[50], justice K.T. Thomas speaking for the Supreme Court while deprecating the caustic and severe censure made by the single judge of the Patna High Court against the Senior District and Sessions Judge of Bihar Judicial Service, observed:

"Judicial restraint is a virtue. A virtue, which shall be concomitant of every judicial disposition. It is an attribute of a Judge, which he is obliged to keep refurbished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors, which could possibly have crept in the findings or orders of courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre."

[50] (1997) 4 SCC 65, at 66 and 70.

The learned Judge added:

"No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when judges of higher courts publicly express lack of faith in the subordinate judges. It has been said, time and again, that respect for judiciary is not enhanced by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a judicial officer against whom aspersions are made in the judgment could not appear before the higher court to defend his order, judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against the lower judiciary."

In *State of Rajasthan v. Prakash Chand & others*[51], deprecating the tendency of certain judges in making disparaging and derogatory remarks in intemperate language, it was observed:

"The foundation of our system which is based on the independence and impartiality of those who man it, will be shaken if disparaging and derogatory remarks are permitted to be made against Brother Judges with impunity. It is high time that we realise that the much-cherished judicial independence has to be protected not only from outside forces but also from those who are an integral part of the system. Dangers from within have much larger and greater potential for harm than dangers from outside. We alone in the judicial family can guard against such dangers from within. One of the surer means to achieve it is by the Judges remaining circumspect and self-disciplined in the discharge of their judicial functions."

In *R.C. Sood v High Court of Judicature at Rajasthan* [52], justice B.N. Kirpal, after tracing the history of the case of the petitioner, who was a senior district judge belonging to Rajasthan Judiciary, found fault with the Rajasthan High Court for taking a decision to ruin the Petitioner's judicial career. The learned Judge observed:

" . . . . . We have no doubt that the action taken by the Court was not bona fide and amounts to victimisation. This is certainly not expected from a judicial forum, least of all the High Court, which is expected to discharge its administrative duties as fairly and objectively as it is required to discharge its judicial functions. …….The High Court acted in the manner which can only be termed as arbitrary and unwarranted, to say the least……."

[51] (1998) 1 SCC 1
[52] AIR 1999 SC 707

A pernicious practice prevails as of now, wherein some judges particularly of some high courts while hearing appeals, writ petitions, or revision petitions against the orders and judgments of the trial court, summon the trial judges to the high court to explain in open court as to why they have written the judgments in that manner. The trial judges are required to be present at their own cost before the learned judges in the open court in the midst of the bar members and public to explain their judgments. It is a great embarrassment and humiliation to the trial judges. The First National Judicial Pay Commission, has recommended for abolition of such practices altogether.[53]

Low Conviction Rate: The average conviction rate of crimes under the Indian Penal Code has been 39.02 per cent as per the information from the National Crime Records Bureau of the Ministry of Home Affairs. This rate of conviction has been constant from 1995 to 1999. The reasons for poor conviction rate are attributed to the nature of the procedural laws, practices and procedures followed by criminal courts and the inadequacies of the investigating and prosecuting agencies. [54]

5. Direction of Judicial Reform

India has a long history of dispensation of justice and consequently that of judicial reforms. In the ancient period, when religion and customary law occupied the field, reform process had been ad hoc and not institutionalized through duly constituted law reform agencies. With the advent of British rule, significant judicial developments and reforms took place. A uniform and well-organized judicial system came to be established for the whole country, which was later inherited on becoming independent on August 15, 1947. After independence, judicial reforms continued in the direction of betterment of the society. The Government has endeavored constantly to bring about improvements in the functioning of courts by simplifying procedures for delivering cost effective and speedy justice.

General reforms: Various steps taken by the Government for the speedy disposal of cases include amendment of the procedural statutes[55], increase in the number of posts of judges,

[53] *Supra* note 42.
[54] *Low Conviction Rate In Criminal Cases*, August 22, 2001, PIB Release; http://pib.nic.in/archieve/lreleng/lyr2001/raug2001/22082001/r220820012.html
[55] Civil Procedure Code, 1908 and the Code of Criminal Procedure, 1973.

judicial officers, establishment of special courts, tribunals, computerization of courts and adoption of alternative dispute resolution modes, which are discussed below one by one.

Reforms at court level: In the supreme court of India - the highest court of the country, established since January 26, 1950, reforms have taken place since last five decades - in the form of increase in the strength of judges from 13 to the present strength 26; relaxation of the rule of locus standi; recognition of class actions[56]; assumption of power to award exemplary costs;[57] etc. The Court itself has adopted reformist approach. Even in regard to appointment of judges of the Supreme Court, the Government has no freedom of choice of candidates. The Government is bound to act upon the recommendation of the Chief Justice of India, which is supported by the majority view of four senior-most puisne judges of the Supreme Court. [58] In no other country, the opinion of the Apex Court has been given such primacy in the matter of appointment of judges.[59]

The Supreme Court, by its own judge-made law and procedure, has become one of the most powerful Institutions. It is not a court of limited jurisdiction for only dispute settlement, like the Supreme Court in any democracy. Almost from the beginning, the Supreme Court has been a law maker, albeit, in Homes' expression "interstitial" law maker. Besides the role of dispute settling and interstitial law making, the Court is a problem-solver in the nebulous areas.[60] It also steps in as an intervener where the executive fails to perform its obligations.

The country moved on from 3 high courts established during the British rule to 21 high courts in 2001.

ADR Movement : In the 1970s, interest in making dispute resolution more accessible yielded the alternative dispute resolution (ADR) movement in India. Hybrid varieties of ADR have since increased, and most judicial reform projects today include mediation or arbitration programs. Besides, *Lok Adalats* have been given statutory base as supplementary forum for resolution of disputes.[61]

Legal aid: The direction of judicial reforms also includes the path traveled to attain legal aid in India. Since 1952, the Government of India started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines

[56] *S.P.Gupta v. Union of India* 1981 Suppl 87.
[57] *Rudul Sah v. Union of India* (1983) 4 SCC 141.
[58] *Special Reference No.1 of 1998: (*1998) 7 SCC 739.
[59] Felix Frankfurter,J., "Nature of Judicial Process of Supreme Court Litigation", 98 Proceedings AM Phil Society 233 (1954).
[60] *Supra* note 49.
[61] *Infra* Chapter II, p. 30, 31.

were drawn by the Government for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. 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. Provision for free legal aid was made for any person belonging to the poor section of the society having annual income of less than rupees 18,000/- or Scheduled Caste or Scheduled Tribe, or a victim of natural calamity, or a woman or child or a mentally ill or otherwise disabled person or an industrial workman, or is in custody including custody in protective home from the legal aid boards functioning in the district courts, high courts and the Supreme Court. As on 30.12.2001, about 39,91,855 persons have benefited through court-oriented legal aid progammes.[62]

Recommendations made by the Law Commission of India: The Law Commission of India's recommendations also form the basis on which judicial reforms are carried out in India. The Law Commission of India is a non-statutory body constituted by the Government from time to time. The Commission was originally constituted in 1955 and is reconstituted every three years. The Law Commissions have so far submitted 175 Reports. All 175 Reports have since been laid in the Parliament. 91 Reports have been implemented so far, and 51 Reports are presently under consideration for implementation.[63]

Besides, Law Commission, recommendations are made for improvement by other commissions also. For example, the 11th Finance Commission gave directions to the government to take specific measures to tackle backlog of cases. Accordingly the government made arrangement made arrangements for setting up the Fast Track Courts and *Lok-Adalats* at various places.[64]

Joint cooperation : The Government of India and the Government of United Arab Emirates signed an agreement on Judicial and Judicial Cooperation in civil and criminal matters on October 25, 1999, making it possible to serve summons and other judicial documents issued by the courts of one party in the territory of the other party. The courts of both the parties can also execute decrease and arbitration awards passed in each other's territory. Such co-operation is very useful in expediting criminal cases, where in accused – offender has escaped to another country and taken refuge over there. [65]

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[62] *Ibid.*
[63] http://www.nic.in/lawmin/legalcon.htm#LAW%20COMMISSION
[64] *Supra* note 61.
[65] *Supra* note 38.

Increasing the number of tribunals: At present, there is move to increase the number of tribunals as well the number of benches of the existing tribunals. This is done for reducing burden on the existing tribunals. For instance, the Appellate Tribunal for Foreign Exchange was set up at New Delhi on June 2000 and the number of Benches of Income Tax Appellate Tribunal (ITAT) has been increased from 38 to 53 in keeping with the policy of the Government to provide inexpensive, easy and quick justice at the door-steps of citizens. The creation of additional Benches is expected to bring down the pendency of cases before the Tribunal, which at present stands at 2,40,745 (as on 01.06.2001). [66]

Increasing the number of Benches of high courts : A Bench of Guwahati High Court at Itanagar in Arunachal Pradesh has been set up with effect from August 12, 2000. Similarly, a Bench of Madras High Court at Madurai and Calcutta High Court at Jalpaiguri are underway. [67]

Fast track courts: Fast Track Courts are being set up in each district of the country. These courts are taking up, on priority, Sessions cases pending for two years or more and cases involving under-trials who are in jails. It is hoped that this scheme will help in reducing the backlog of cases. As the

scheme involves construction of courtrooms and appointment of judges, States are setting up these courts in a phased manner. So far, more than 800 Fast Track Courts have been set up in the states and UT.[68] Out of 41,374 cases transferred to fast track courts 11,580 cases have been disposed of by these courts as per the information available from eight states only. [69]

Computerization of courts: The Government has launched two new plan schemes for networking of the Department of Justice in the Ministry of Law, Justice and Company Affairs with the Supreme Court and all the high courts as well as computerization of courts in four metropolitan Cities of Delhi, Kolkata, Chennai and Mumbai in the current financial year 2001-2002.[70] When the project is completed, it will give the Department of Justice online access to information of pendency and other related matters in the Supreme Court and high courts, reducing thereby the time-lag in the flow of information to a great extent. Once the courts are computerized, people would be able to file their petitions and complaints addressed to the courts

[66] http://www.nic.in/lawmin/legalcon.htm#INCOME%20TAX%20APPELLATE%20TRIBUNAL
[67] *Supra* note 38.
[68] http://pib.nic.in/archieve/lreleng/lyr2001/rnov2001/12112001/r121120011.html
[69] *Law Minister Expresses Centre's Concern Over Tardy Progress Of Fast Track Courts*, PIB Release, October 30, 2001 http://pib.nic.in/archieve/lreleng/lyr2001/roct2001/30102001/r301020012.html
[70] *Computerized Inquiry Counter in high courts*, PIB Release, November 08, 2001: http://pib.nic.in/archieve/lreleng/lyr2001/rnov2001/08112001/r081120012.html

at a central filing and facilitation counter. Notices and cause–lists would be made available by the computer. Thus, the litigant would know the date of hearing of his or her case from the computerized enquiry and facilitation counter or through e-mail on internet. Copies of orders, including interim orders would be available though the computer to the interested party on payment of fee. The entire proceedings of a case would also be on the computer network. It is expected that computerization and networking of courts would expand the capacities of the courts substantially thereby speeding up the delivery of justice to the litigating public.[71] Presently, out of 21 high courts, 11 are computerized.[72] Video linkage of courts and prisons, have been launched in the State of Andhra Pradesh to assist in early disposal of criminal cases. [73]

Recognition of class action in India, more popularly known as PIL: In India we can identify three waves of reform aimed at making the formal right to justice effective. The first wave consisted of efforts to make legal aid and advice more available to the poor; the second phase promoted representative actions and other procedures that would allow a single lawsuit to resolve a large number of claims; and the third wave addressed broad reform to the legal system, including alternative dispute resolution, small claims courts, and other procedural change.

The second wave that included the development of class action suits, liberalized rules on who can bring different kinds of representative actions to court. The public interest and social action litigation permitted greater representation of collective interests. Class action lawsuits, allow large numbers of similar claims to be aggregated. Their economic rationale is clear: group suits reduce the systemic cost of litigating multiple claims, while making awards available to individuals for whom pressing an individual claim would not be cost-effective, particularly when small sums are at stake. At the same time, relaxed criteria for legal standing in the 1980s permitted new public interest firms to raise suits on behalf of consumers, victims of environmental damage, and other groups of "diffuse interests". At present, environmental regulations are most commonly enforced by way of PILs in India.[74]

Case Management in the Courts: In an attempt to reduce the excessive cost and delay of civil litigation, courts throughout India are taking a more active role in managing their cases. The process ordinarily begins with the court requiring to the counsel for the parties to schedule a

[71] PIB Release, December 2001, http://pib.nic.in/archieve/lreleng/lyr2001/rdec2001/12122001/r121220012.html
[72] PIB Release, June 4, 2001, http://pib.nic.in/archieve/lreleng/lyr2001/rjun2001/04062001/r040620011.html
[73] http://www.andhrapradesh.com/
[74] The movement of PIL started from the case of *S. P. Gupta* case (1981 Supp SCC 87) and continues till today.

meeting with one another shortly after the lawsuit has been filed. Counsels are directed to discuss the merits of the case, identify key legal issues, explore ways in which the case can be resolved using non-traditional dispute resolution mechanisms, and explore ways in which the parties can exchange information as efficiently as possible. Counsel are then required to file a written statement summarizing the results of their meeting and to make any case management suggestions they wish to the court. [75] The case management procedures and techniques being utilized by the Supreme Court of India following are note worthy:

1) Using written motions to eliminate claims, either in whole or in part, by presenting legal issues to the judge for a decision before trial.
2) Requesting the parties to stipulate or agree on certain legal or factual issues that are not seriously in dispute, so that the trial of the case can be streamlined and future proceedings can focus on the principal disputed issues.
3) Combining a number of cases which involve the same or similar issues into a single consolidated proceeding in which those common issues can be resolved at the same time.
4) Separating a case into two or more parts, for pretrial or trial purposes, to minimize delay and expense and to facilitate settlement negotiations after the conclusion of the initial proceedings.
5) Using a court-appointed expert to assist the court in understanding technical or complex factual issues that are in dispute.**[76]**
6) Appointing a Court Master to preside over a particular portion of a case, to take evidence if appropriate, and to make proposed findings of fact to the court.[77]

The above methods have helped the Court in reducing the pendency. The above process help in resolved disputes more quickly and to the mutual satisfaction of all the parties.

[75] *Supra* note 41.
[76] Bhure Lal Committee, appointed by the Supreme Court of India, to assess viability of pollution free fuels. *Infra* Chapter –V, p. 193.
[77] As appointed by the Court in *Express Newspaper (P) Ltd. v. Union of India* (1986) 1 SCC 259; *Delhi High Court v. Atul Kumar Sharma* (2001) 9 SCC 108.

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

1. Overview of the ADR

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

What kinds of ADR are available?

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

1) Those which are applicable throughout the country &

2) Those which are available at the state / UT level to deal with specific problems arising under their jurisdiction.

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

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

1. Tribunal system in India:

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

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

[1] 42nd amendment to the Constitution in 1976.

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

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

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

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

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

2. *Lok Adalats*

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

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

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

[3] *S.C. Legal Aid Committee Representing Undertiral Prisoners* v. *Union of India* (1994) 6 SCC 731, 745.
[4] Example, Income Tax Appellate Tribunal, decides tax matters and have a bearing on the economy.
[5] G.C.Bharuka, *ICA Arbitration Quarterly*, Vol 50, No.3, Oct-Dec, 2001.

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

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

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

3. *Nyay Panchayats*

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

[6] http://pib.nic.in/archieve/ppinti/ppioct2001/low_and_justice.html
[7] *Ibid.*
[8] *Ibid.*
[9] *Public Utility Services To Be Brought Under Lok Adalats*, January 8, 2002, PIB Release, http://pib.nic.in/archieve/lreleng/lyr2002/rjan2002/08012002/r080120025.html

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

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

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

The major characteristics of *Panchayat* are as under :

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

[10] Sharma Vidya Sagar, *Panchayat Raj* (Vidya Mandir, Hoshiarpur) (1962) p.19.
[11] *Id.*, at 29.
[12] *Id*., at 79.

vi) In order to give representation to women in *Panchayats*, as provided in the 73rd Amendment of the Constitution, one-third of the total number of seats are reserved for women.

vii) *Panchayat* is required to prepare plans for economic development and social justice and implement such sachems.

viii) *Panchayat* may levy, collect and appropriate such taxes, duties, tolls and fees as specified in the law by the legislature of the state.

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

S. o.	State	*Gram Panchayats*	*Panchayat Samiti*	*Zilla Parishads*	Total
1	Andhra Pradesh	21784	1093	22	22899
2	Arunachal Pradesh	2012	78	13	2103
3.	Assam	2489	202	21	2712
4	Bihar	12181	726	55	12962
5	Goa	188	0	2	190
6	Gujarat	13547	184	19	13750
7	Haryana	5958	111	16	6085
8	Himachal Pradesh	2922	72	12	3006
9	Jammu &Kashmir	2683	0	0	2683
10	Karnataka	5673	175	27	5875
11	Kerala	990	152	14	1156
12	Madhya Pradesh	31126	459	45	31630
13	Maharashtra	27611	319	29	27959
14	Manipur	166	0	4	170
15	Meghalaya	Traditional Councils			
16	Mizoram				
17	Nagaland				
18	Orissa	5255	314	30	5599
19	Punjab	11591	138	17	11746
20	Rajasthan	9184	237	32	9453
21	Sikkim	157	0	2	159
22	Tamil Nadu	12593	385	28	13006
23	Tripura	530	16	3	549
24	Uttar Pradesh	51705	809	70	52584
25	Uttaranchal	6995	95	13	7103
26	West Bengal	3314	340	16	3670
27	A&N Islands	67	0	1	68

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

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

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

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

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

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

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

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

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

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

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

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

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

[14] Constitution of India, Articles 243-G and 243-H.
[15] Kavita Kanan, *Micro Planning: A Conceptual Framework,* 7(Participation Governance, November 2001), p.9

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

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

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

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

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

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

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

[16] Rajesh Tandon, *Grassroots Democracy*, 8 (Participation & Governance, 23 March, 2002), p 9.
[17] Law commission of India, 114th Report, (August 1986).
[18] Upendra Baxi, "Access Development and Distributive Justice: Access Problems of the "Rural" Population", 18 *Journal of the Indian Law Institute* (1976).
[19] Law Commission of India, 14th Report, p. 882.
[20] Stephen A. Mayo, *Alternative Dispute Resolution Mechanisms: A Summary of Basic Mechanisms***,** Institute for the Study & Development of Legal Systems**,** June 17, 1997, available on http://www.isdls.org/adr.htm

4. Arbitration

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

In the past, statutory provisions on arbitration were contained in three different enactments, namely, The Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Arbitration Act, 1940 laid down the framework within which domestic arbitration was conducted in India, while the other two Acts dealt with foreign awards. The Arbitration and Conciliation Act, 1996 has repealed the Arbitration Act, 1940 and also the Acts of 1937 and 1961, consolidated and amended the law relating to domestic arbitration[22], international commercial arbitration[23] and enforcement of foreign arbitral awards and also defines the law relating to conciliation, providing for matters connected therewith and incidental thereto on the basis of the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985.

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

(1) Validity of arbitration agreement

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

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

[21] Constitution of India, Article 51(d).
[22] Arbitration & Conciliation Act, 1996, sections 2(2), 2(7)
[23] *Id.*, section 2(1)(f).

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

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

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

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

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

(2) Jurisdiction of arbitrator/ arbitral tribunal

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

[24] *Id.*, section 2(3)
[25] As regards the capacity of the parties, sections 10 to 12 of the Indian Contract Act, 1872 deal with the subject.
[26] Arbitration & Conciliation Act, 1996, sections 11(3) and 11(5).

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

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

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

(3) Venue of Arbitration

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

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

(4) Law Applicable to Arbitration Proceedings

The arbitral tribunal is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.[30] The arbitral tribunal has power to determine the admissibility, relevance, materiality and weight of any evidence.

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

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[27] *Id.*, section 34
[28] *Id.*, section 20(2).
[29] *Id.*, section 20(3).
[30] *Id.*, section 19(1).

(5) The cost of arbitration

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

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

(6) Power of the Court

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

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

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

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

(7) Enforcement of domestic awards

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[31] *Id.*, sections 19(3)
[32] *Id.*, sections 33-36
[33] *Id.*, sections 34(2)(a),(b).

Subject to the provisions for setting aside the award [34] the award is enforceable in the same manner as if it were a decree of the Court. [35]

(8) Appeal

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

(9) Types of arbitration

At present, following types of arbitration are provided:

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

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

[34] *Id.*, section 34
[35] *Id.*, section 36
[36] Urea arbitration Quicktakes, Frideay, March 13, 1998 , Financial Express, Delhi ed., p.7.

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

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

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

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

[37] Arbitration & Conciliation Act, 1996, section 2(4)
[38] *Id.*, section 2(5).
[39] *Id.*, sections 2(4) and 2(5).
[40] Ministry of Labour (Government of India) Annual Report 2000-2001, p. 30.

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

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

5. Conciliation

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

The conciliation has got statutory sanction under the Arbitration and Conciliation Act, 1996. Part III of the Act consisting of Section 61 to 81 provides for method of conciliation of disputes arising out of legal relationship, whether contractual or not. It is by an independent conciliator.[45] The settlement agreement arrived at by such conciliation has the status and effect as if it is an arbitral award on agreed terms.[46]

Conciliation and Arbitration

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

[41] (DPE D.O. No.15(9)/86-BPE(Fin) dated 29th March, 1989)
[42] http://dpe.nic.in/vsdpe/anrch7.htm
[43] vide DPE OM dated 12.2.97.
[44] Chapter 24, para 24.74, Report of First National Judicial Pay Commission (1999), http://www.kar.nic.in/fnjpc/cwcm&adr.html
[45] Indian Council of Arbitration, Vol. XXXXX No. 3, Arbitration & Conciliation Law p. 11, Oct. – Dec. 2001.
[46] *Supra note* 44.

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

Scope

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

Commencement

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

Conciliators

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

Institutional Assistance

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

[47] Arbitration & Conciliation Act, 1996, section 62.
[48] *Id.,* sections 63 and 64(1).
[49] *Id.,* section 64(2) and proviso thereunder.

Stages

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

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

The conciliator shall assist the parties "in an independent and impartial manner", in their attempt to reach an amicable settlement. The conciliator is guided by the principles of "objectivity, fairness and justice". He has to give consideration to: rights and obligations of the parties;

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

Legal Effect

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

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

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[50] *Id.,* sections 67(2), 67(1).
[51] *Id.,* section 67(4).
[52] *Id.,* section 68.
[53] *Id.,* section 71.
[54] *Id.,* sections 73(1) and 73(2).
[55] *Id.,* section 73(1).
[56] *Id.,* section 73(4).
[57] *Id.,* sections 74 , 30.

Role of the Parties

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

Conciliator's Procedure

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

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

Disclosure and Secrecy

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

Admissions etc.

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

Parallel Proceedings

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

Conciliator Not to Act as Arbitrator etc.

[58] *Id.*, section 75.
[59] *Id.*, section 81.
[60] *Id.*, section 77.

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

Practical application

Conciliation is the most frequently used process for resolving industrial & family disputes. Family Courts, set up throughout the country for resolution of marital discords under the Family Courts Act 1984[62], use conciliation to resolve amicably disputes, without the help of lawyers. 85 family courts have so far been established: 7 in Andhra Pradesh; 1 each in Assam, Bihar, Manipur, Sikkim and Pondicherry; 4 in Gujarat; 3 in Jharkhand; 8 in Karnataka; 7 in Kerala 16 in Maharashtra 2 in Orissa; 6 each in Rajasthan & Tamil Nadu 14 in Uttar Pradesh; 2 each in Uttaranchal and West Bengal.

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

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

6. Ombudsman

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

(i) Setting up of grievance redressal machinery, a step in this direction.

(ii) Setting up of the offices of *Lok Ayukta*[64] at the state level.

Grievance redressal machinery

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

[61] *Id.,* section 80.
[62] *Law Minister Expresses Centre's Concern Over Tardy Progress Of Fast Track Courts*, October 30, 2001 (PIB release) http://pib.nic.in/archieve/lreleng/lyr2001/roct2001/30102001/r301020012.html
[63] http://www.nic.in/lawmin/Just.htm
[64] The synonym for Ombudsman

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

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

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

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

7. Fast Track Courts

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

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

The fast track courts are expected to serve as model courts for speedy disposal of cases pending for a long time. 793 fast courts have been set up by the end of September 2001. [67] Out of 41,374 cases

[66] Dinkar Shukla, *Fast Track Courts*; see http://cbi.nic.in/case.htm
[67] http://pib.nic.in/welcome.html

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

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

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

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

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

ADR options in the state/ UT level

These differ from one state/UT to another.

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

[68] *Supra* note 62.

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

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

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

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

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

[69] http://meghalaya.nic.in/admn/judiciary.htm
[70] http://meghalaya.nic.in/frame_f.htm
[71] http://www.orierc.org/overview.htm
[72] http://hptax.nic.in/chap11.htm

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

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

New Delhi: In **New Delhi,** Registrar, Cooperative Societies[76] has power to

(i) Settle disputes of cooperative societies through the process arbitration;

(ii) Function as an appellate court;

(iii) Enforce / Execute orders, awards and decrees of various courts.

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

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

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

(i) the complainant has exhausted the channels of redressal of his complaint as set out in the Licensee's complaint redressal procedure (duly approved by the Commission) together with adequate documentary evidence and

(ii) if known, specific references to any law, licence condition, regulation, code and/or standard that is alleged to have been violated.[79]

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

[73] http://hperc.nic.in/pages/links.html
[74] *Supra* note 44.
[75] Appendix VII, p. 175, Report of the Arrears Committee (1989-1990).
[76] http://delhigovt.nic.in/sear/welcome.html
[77] Co-operative Societies Act, 76 (1)(i)
[78] Jyotsna Bhatnagar**,** *Mayawati govt still dilly-dallying over power privatization*, 16.8.1997, Indian Express Newspapers (Bombay) Ltd.
[79] http://herc.nic.in/documents/html/chpherc.html

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

Dispute resolution between states & the states and the Union

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

2. Current Situation Regarding the Use of ADR

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

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

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

[80] http://pib.nic.in/archieve/ppinti/ppioct2001/low_and_justice.html
[81] http://indiaimage.nic.in/interstatecouncil/CHAPTER1.htm#

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

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

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

Debt Recovery Tribunal (DRT): The DRTs are set up to handle cases pertaining to bad loans of commercial banks and financial institutions by a specialised forum that disposes of the cases faster.[83] Currently, there are 22 DRTs, which are quasi-judicial forums, that tackle cases of Rs 1 million and above, and 5 debt recovery appellate tribunals in the country. The total number of cases of State Bank of India and its associate banks pending with DRT was around 8,400.[84] The government, in its budget for 2001-02, had sanctioned setting up of five more DRTs. The Pune DRT is a part of this exercise. Mumbai has 3 DRTs, which are believed to be handling cases of loans amounting to almost Rs 2,00,000 million.

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

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

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

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

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

[85] http://finmin.nic.in/cbec/

wealth tax cases disposed of by the Settlement Commission during the year decreased to 21.18 % and 22.05 % from 32.30 % and 34.97 % respectively during 1998-99. [86]

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

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

b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court[88]

c) dismiss a complaint in limini.

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

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

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

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

[86] Para 2.21, CAG Report, 2001, http://www.cagindia.org/reports/d_taxes/2001_book1/overview.htm
[87] Human Rights Act, 1993, section 12(d).
[88] Chapter III, National Human Rights Commission Annual Report For The Year 1993-94
[89] National Human Rights Commission Annual Report 1994-95
[90] http://nhrc.nic.in/vsnhrc/news_let_feb.htm

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

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

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

Foreign Exchange Regulation Appellate Board[92]**:** The Board has all India jurisdiction with its seat at New Delhi. It goes in circuit to hear appeals at places other than Delhi. During the period from 1.4.1998 to 1.12.1998 , 148 appeals were filed. Total number of appeals disposed of from 1.1.98 to 15.12.1998 is 72.The total disposal of interim application during the period i.e.,1.1.98 to till 1.12.2000, was 295.

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

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

[91] Annual Report, Ministry of Law, Justice and Co. Affairs, 2000, Chapter 2.
[92] *Ibid.*

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

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

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

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

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

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

The number of cases handled by *Nyaya Panchayats*

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

Commercial arbitration offered by the Indian Council of Arbitration:

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

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

[94] http://www.ficci.com/icanet/repo3.htm

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

Commercial arbitration offered by the World Intellectual Property Organization:

Arbitration as an ADR mechanism is also resorted to by the stock exchanges[96], WIPO[97]. The World Intellectual Property Organisation (WIPO) also provides global online arbitration service to combat cyber-squatting Already over 200 cases have been filed with the system since it was set up in December 1999. [98]

Ombudsman

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

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

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

[95] ICA Annual report 2000-2001, http://www.ficci.com/icanet/annual3a.htm
[96] *Market Briefing -- CSE member trapped in SBI counter*, Financial Express, 23.7.1997, Bombay ed.
[97] *DLF wins battle against cyber squatter*, Financial Express, 23.12. 2000, Bombay bureau.
[98] *WIPO gets 1st domain name dispute*, Briefing, Financial Express, 27.3.2000
[99] http://cvc.nic.in/vscvc/cvc3years.htm

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

3. Parties' Viewpoints With Regard To ADR

(a) The reasons for choosing or not choosing ADR

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

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

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

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

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[100] The Chief Minister Andhra Pradesh At ICADR, *Speech at the Presentation Ceremony of P.G. Diploma in Alternative Dispute Resolution*, http://www.andhrapradesh.com/
[101] Union Minister Arun Jaitly, March 14, 2001; *See* http://pib.nic.in/welcome.html
[102] *Supra* Chapter – I, Court System in India, p. 6-8.
[103] *Supra* note 20.

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

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

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

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

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

Time

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

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

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

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

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

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

Costs

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

Table of Costs

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

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

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

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

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

(f) Whether people trust ADR?

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

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

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

[104] Whitson, Sarah Leah, " 'Neither Fish, nor Flesh, nor Good Red Herring' *Lok Adalats*: an Experiment in Informal Dispute Resolution in India.", *Hastings International and Comparative Law Review* 15:391-445 (1991-1992)
[105] Electricity Regulatory Commissions, now set-up in almost every state in India.

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

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

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

4. Problems of ADRs

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

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

Problems of tribunal system:

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

[106] *Supra* note 100.

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

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

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

[107] *Supra* note *2*, p.23.
[108] (1993) 2 SCC 106.

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

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

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

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

[109] (2001) 3 SCC 397

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

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

Problems areas under the new Arbitration Act, 1996

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

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

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

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

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

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

Problems of fast track courts:

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

5. Value in ADR

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

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

Table of Benefits

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

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

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

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

CHAPTER III

DISPUTE RESOLUTION PROCESS IN CONSUMER PROTECTION

1. Outline of Consumers' Cases

Background of consumer disputes in India:

With rapid industrilisation since independence, India has joined the race in manufacturing consumer goods and providing essential services on a large scale, mainly by the Government. The public sector has monopolized many public utility services and production of consumer goods of various types. Be that as it may the well-organized sectors of manufacturers, traders and service providers with the knowledge of market and manipulative skills were exploiting the consumers, despite the existence of various laws protecting their interests. The traders or manufacturers make false representations about the quality, quantity, grade, composition, style or model of the goods offered for sale. They even make false promises to the effect that they (traders/suppliers) have a sponsorship or approval or affiliation, which they do not have. Further they make false or misleading representation concerning the need for, or the usefulness of any goods or services and in giving to the public any warranty or guarantee for the performance, efficacy or the length of life of a product or of any goods which is not based on any adequate or proper test thereof and thereby making the consumer buy, sell, hire or avail of any goods or services as a condition - precedent for buying, hiring or availing of any goods or services. By all these unfair or restrictive trade practices, the trader/manufacturer stands to gain at the expense of the consumer.[1] Rigging prices by creating artificial scarcity is another method adopted by traders to make undue profits in short periods at the expense of the consumer.

The consumers are also been exploited by public enterprises running most important services like telephone, water supply and electricity where the poor, ignorant, illetrate and unorganized consumers are the mute spectators bearing the brunt of the arbitrary and monopolistic attitudes of the officers. In this scenario the sufferers are the millions of consumers who are mostly illiterate and poor.

[1] A.Viraraghavan, *Is The Consumer Protected*?, http://pib.nic.in/feature/feyr2000/fmar2000/f020320001.html

The consumer movements has succeded in focusing the attention of policy makers and administration on the inequities and dangers of the prevailing system. The time honoured concepts of *caveat emptor,* (buyer beaware), sancity of contracts in matters which tend to deprive consumers of remedies against exploitation and unreasonable conditions in a sale contract, liability based on the principle of fault and freedom to engage in trade or profession to the detriment of unwary consumers, have been reinterpreted and applied in the context of the needs of the modern times. Earlier, occassionaly cases were coming to the courts of law under law of torts, contracts, criminal law for faulty or defective and dangerous goods or services but there was no separate forum for such cases.

Growing consumer awareness in recent years, initiated at the international level, and reinforced by media and voluntary consumer organizations, have flooded the consumer forums with complaints of all descriptions. It goes to the credit of the consumer fora quality of justice available in Consumer Disputes Redressal Agences (CDRA) is not inferior to the one given by ordinary courts. Lack of infrastructural facilities has no doubt greatly affected the speed for the disposal of the caseload. It is a matter of great satisfaction that a genuine commitment to consumer cause on the part of all concerned with the adjudicatory process, has helped to protect valuable consumer interests and in the evolution of sound jurisprudence of remedies. Remedies provided by consumer forums extend to diverse fields.

Type of consumer disputes in India:

A survey of decided cases of Consumer Redressal machinery and Courts reveal the following types of consumer disputes:

Agricultural Services –

Seeds - quality of seeds was inferior; Tractor - tractor is not fit for use; failure to issue the sale certificate

Airlines -

Carriage of Goods- Failure to keep proper custody; Rerservations - Cancellation of flight on account of technical snag; Failure to accommodate passesnger despite confirmed booking in deficiency in service; Failure to intimate change in departure timings after confirmed reservation is deficiency in service; Safety of passengers - Suffered on account of negligence of the airlines; Service - Non supply of improper supply of food

Automobiles -

Advance deposits- Dely in payment of interest; Defective Vehicles- Vehicle found defective; PRICE- Price increase on account of delay caused by the dealer; REPAIR- Unsatisfactory repairs

Banking And Financial Services -

Cash-Counter Services - Refusal to accept small currency notes; Deposits and Withdrawls - Fraud committed by the bank employee misktake made in pay-in-slip; Loss of cheque; Loss of demand draft; Inability of Bank to credit the amount of cheque dishonour of bank draft; Delay in enchashment of draft; Passing a cheque; Negligence & carelessness in Vindictive actions of bank staff; Wrongful dishonour of cheque; Interest - Illegal deduction of interest contrary to the terms of the agreement is deficiency; LOAN Transactions - Default in repayment as overdraft; Withholding maturity value of Fixed Deposits in respect of loan granted by its another branch; Witholding pledged gold if loan has been repaid failure of the bank to obtain permission from RBI - Pledged gold is sold after sufficient notice; Rejection of loan application; Miscelleneous Functions - Failure to follow special instructions; Nomination Facilities - Bank withholding dues under a valid nomination; Strikes; Non-transaction of business due to illegal strike by its employees; Travellers Cheques - Loss of cheques.

Chit Fund -

Closure of Business - Non refund of the deposit; Draws - No prior intimation of the draw;

Couriers & Carriers -

Ddelivery without documents - Delivery the goods without taking goods receipt; Privity of contract - Delivery not made within stipulated time

Education -

Consideration for services - School Authorities charge fees even for those services which they do not render; Esaminations - Delay in declaration of results; Professional Courses - Affiliation to a University is a must if the courses so requires; Non refund Full capitation fee if admission is not granted; Non refund of fee if the course is non commenced

Electricity

Billing - Getting the incorrect meter examined; Discrepency in the bill is deficiency; Imposition of Minimum charges when there is no supply; New Connections - Under delay in giving new connection; Retaining the deposit if temporary connection was not granted; Miscellaneous - Accident caused by poor fittings ; Disconnection despite payment of bills; Low voltage is being

supplied in State Electricity Board; Disconnection of Supply if no arrears are outstanding; Transfer of property entitles the tranferee to file complaint; Unreasonable drop in voltage.

Employment Benefits And Funds- Undue delay in release of provident fund; Undue delay in sending files of health record by ESI hospitals

Finance And Investment Companies- Maturity value of deposits - Non-payment; Unilateral alteration of terms

General Insurance-Loss caused by Mob

Household Goods

Clothes- Discoloration and inferior quality of cloths'; Eatables - Sale of defective Pan Parag; Machines - Supply of Defective refrigerator is to be replaced; Misrepresentation about the features of a VCR; Photography - Defective video recording; Sofa Set - Defect in sofa-set

Land And Housing

Allotment- Undue delay in attotment; Delay in issuance of letter of allotment; Cancellation - Communication sent at wrong address; Wrongful cancellation; Delivery of Possession- Delay in delivery of possession; Deliberate delay to force the allottees to pay more; Defects in construction at the time of delivery; Failure to deliver possession for want to statutory permission; Measurement - Changing for excessive super area; Giving lesser area than that which is stipulated in the agreement; Negligence - Failure to executive sale deed; Property Dealer; Pricing- Making additional demands; Customer has to pay floor-wise price fixed by the authority; Imposition of arbitrary Interest imposed arbitrarily; Pricing of flats; Provisional Allotment; Refunds - Not giving the same rate of interest which it charges from its defaulters; Refund not made within time; Customer file is misplaced; Delay in spite of orders from the High Courts; Non refund the amount within a reasonable period

Life Insurance

Service - Insurance paper list in the office; Delay in payment of insurance claim; Loan - Denial of loan to policy holder on flimsy grounds

Local Bodies And Statutory Authorities

Department of Food and Civil Supplies - Refusal to issue Rationcard; Municipal Authorities - Wrongful orders of demolition; Sewers not kept clean by the Municipality; Passport Authorities - Wrongful denial of passport by passports authorities; Registration Authorities - Non-issuance of certified copies; Water Supply - Failure to regulate proper distribution of water supply

LPG Services

Fraud and Forgery - Non-delivery or late delivery of gas cylinders; Non-supply of gas at home; Non-refund of booking amount; Leakage in the LPG Gas; Liabilities in Accident

Machines And Office Systems

Guarantee - Manufacuring defect in the machines; Supply of defective machines; Repairs and Maintenance - Improper and inadequate repair service

Medical Services

Deficiency in Service, Refusal to given complete medical records to the patients; Negligence on the part of the doctor; Professional Qualifications; Person enrolled to practice a line of medicine is not actually qualified to do so

Post And Telegraphs

Loss or Misdelivery of Articles - Due to fraudulent or willful act of the postal employee; Other reasons; National Saving Certificate - Delay in encashment of NSC on maturity; Loss of insured parcel; Loss by registered uninsured parcel; Telegrams - Delay in delivery; Non-delivery

Professional Services

Hotels - Charging high rates while services are of below standard; Lawyers - The fee wrongly charged by lawyers; Pproperty Agents - Non-refund of booking amount

Railways

Carriage of passengers and goods - Delay in running of Superfast Trains is deficiency; Railway Parking - Loss of vehicle has to be indemnified; Reservation of seats - Wrongful refusal of seats/berths against booking

Roadways

Carriage of Goods - Loss caused by his employees of transporters; Carriage of Passengers - Buses not stopped at proper stops; Not plying the bus despite having the tickets reserved; Delay in plying buses

Shares And Debentures

Allotment of Shares - Delay in allotment of shares; Defect in allotted shares; Loss of allotted share certificates in transit

Telephones

Billing - Excessive billing; Phone is out of order; Disconnection of telephone without notice; Disconnection - Disconnection without notice to the subscriber; Telephone of the spouse disconnected for non-payment of bill; New Connections - Billing cycle changed for a single new connection; STD Facility - Correct pulse rates not recorded; Failure to disconnect STD facility

immediately on request of the subscriber is deficiency; Person running an STD/PCO booth is not a consumer; Miscellenous - Non-maintenance of unmetered service

Number of cases

The following table gives the cases filed/disposed/pending in the State Commissions and District Fora in the States/UTs. and National Commission as reported by National Commission[2]

State/UT	State Commissions			District Fora			
	Cases filed since inception	Cases disposed of since inception	Cases Pending	Cases Filed Since inception	Cases Disposed of since inception	Cases Pending	Period of Reporting
1	2	3	4	5	6	7	
A&N Island	26	16(62%)	10	217	194(89%)	23	Mar.01
Andhra Pradesh	12370	10125(82%)	2245	123886	108563(87%)	16041	Apl.01
Arunachal Pradesh	19	13(68%)	6	189	160(85%)	29	Mar.00
Assam	1332	656(50%)	676	7285	6260(86%)	1025	Sep.00
Bihar	6712	2678(40%)	4034	51593	35373(69%)	16220	Sep.00
Chandigarh Adm.	2690	2375(88%)	315	18841	15609(83%)	3232	Apl.01
D&N Haveli	0	0(0%)	0	33	23(70%)	10	Sep.00
Daman & Diu	5	0(0%)	5	62	37(60%)	25	Dec.99
N.C.T. of Delhi	12205	7791(64%)	4414	88843	66908(75%)	18593	Mar.00
Goa	1247	1059(85%)	188	3894	3198(82%)	696	Apl.01
Gujarat	8067	4672(58%)	3395	65212	45960((71%)	19252	Sep.00
Haryana	12268	9088(74%)	3180	88963	68594(77%)	20369	Mar.01
Himachal Pradesh	4867	3576(72%)	1396	23846	19223(81%)	4623	Mar.01
Jammu & Kashmir	3232	2610(81%)	622	10436	8247(80%)	2189	Dec.99
Karnataka	10008	7425(74%)	2583	61671	55801(90%)	5870	Mar.01
Kerala	14577	12875(88%	1702	114457	108305(95%)	6152	Apl.01
Lakhsadweep	9	9(100%)	0	35	35(100%)	0	Mar.01
Madhya Pradesh	11499	8295(72%)	3204	71981	64599(90%)	7382	Mar.01
Maharashtra	17979	10157(56%	7822	98407	77892(79%)	20515	Dec.99
Manipur	62	41(66%)	21	803	774(96%)	29	May.00
Meghalaya	84	60(71%)	24	242	199(82%)	43	Jun.99
Mizoram	51	24(47%)	27	1099	911(83%)	188	Mar.01

[2] http://fcamin.nic.in/stg_stat.htm

Nagaland	40	15(38%)	25	60	21(35%)	39	Mar.00
Orissa	8513	4255(50%)	4258	37893	32073(85%)	5820	Sep.00
Pondicherry	577	546(95%)	31	1782	1746(98%)	36	Mar.01
Punjab	8392	6225(74%)	2167	48119	42810(89%)	5309	Mar.01
Rajasthan	20063	7752(39%)	12311	153117	137398(90%)	15719	Mar.01
Sikkim	18	16(89%)	2	113	105(93%)	8	Mar.01
Tamil Nadu	12522	9551(76%)	2971	58686	51899((88%)	6787	Mar.01
Tripura	494	196(40%)	298	882	785(89%)	97	Sep.00
Uttar Pradesh	29982	6785(23%)	23197	242776	176897(73%)	65879	Mar.00
West Bengal	6877	4628(67%)	2249	35639	32040(90%)	3599	Mar.00
Total	229162	136168(59%	82317	1411062	1162639(82%)	248423	

National Commission	22275	12659 56.8%	9616		Mar.01
Grand total (NC+SC+DF)	1662499	1311466 78.9%	351033		

2. Organization/institutions for dispute resolution

The Consumer Protection Act, 1986 (CPA) envisages three-tier machinery at the district, state and national level to settle consumer disputes, as follows:

A. District Forum

Each district shall have a Consumer Disputes Redressal Forum known as a 'District Forum'. The District Forum shall be located at the headquarter of the district which shall consist of a president and two members (one of whom shall be woman). The District Forum can entertain the complaints where the total claim including compensation does not exceed *rupees five lakhs* (Rs. 5,00,000). Any appeal from the order of the District Forum shall lie to the State Commission within 30 days from the date of the order. [3]

B. State Commission

Every State shall have a Consumer Disputes Redressal Commission, which shall consist of a president and two members (one of whom shall be a woman). The State Commission can entertain the complaints where the total claim *exceeds rupees five lakhs* (Rs. 5,00,000) *but does not exceed rupees twenty lakhs* (Rs. 20,00,000). It can also entertain an appeal from the District

[3] CPA, 1986, sections 9 to 15.

Forum within the State. An appeal from the order of the State Commission shall lie to the National Commission within a period of 30 days from the date of the order.[4]

C. National Commission

At the central level there is a National Consumer Disputes Redressal Commission known as the National Commission. The National Commission is located at New Delhi which shall consist of a President and four members (one of whom shall be a woman). The National Commission can entertain complaints where the total claim *exceeds rupees twenty lakhs* (Rs. 20,00,000). It can also entertain an appeal against the order of the State Commission. An appeal from the order of the National Commission shall lie to the Supreme Court of India within a period of 30 days from the date of the order.[5]

D. Appeals to Supreme Court

Under section 23 of the Consumer Protection Act, 1986 any person aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21 may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order: The Supreme Court may entertain an appeal even after the expiry of the said period if it is satisfied that there was a sufficient cause for not filing it within that period.

Apart from the above, following Administrative / Institutional set-up for administration of the Consumer Law exist in the country:

Department of Consumer Affairs

Government has accorded a very high priority to the consumer protection programme. Ministry of Food & Consumer Affairs, Department of Consumer Affairs in the Central (Union) Government has been designated as the nodal Department to deal with the subject of consumer protection. Since 1986, the Department has taken a number of measures to promote a strong and broad based consumer movement in the country. Some of such measures include - enactment and enforcement of the Consumer Protection Act, 1986; amendment of various legislations such as Prevention of Food Adulteration Act, 1954 etc.; empowerment of the consumers and registered consumer organisations to file complaints in the courts; institution of national awards for

[4] *Id.*, sections 16 to 19.
[5] *Id.*, sections 20 to 24.

consumer organisations; grant of financial assistance to consumer organisations; preparation of audio visual material to create awareness about the consumer rights; publishing quarterly magazine " *Upbhokta Jagaran*[6]"; publishing of printed material and its free distribution, etc. [7]

The various measures taken by the Government has aroused a lot of expectation amongst the consumers. In the last few years, a major thrust has been given to the consumer protection programme and a number of additional steps have been taken to protect the interests of the consumers. [8] This includes also the proposed amendment of the Consumer Protection Act.

The Department of Consumer Affairs, alongwith the Department of Administrative Reforms and Public Grievances, has brought out 62 Citizens' Charters in Ministries/Departments having public contacts.[9] The Department regularly monitors retail prices, wholesale prices of essential commodities as part of its monitoring activity[10] to safeguard the interests of the consumers.

Consumer Protection Councils

The Consumer Protection Act, 1986 provides for establishment of central consumer protection council and the state consumer protection councils for the purpose of spreading consumer awareness.[11] Central protection consumer council is headed by the Minister, incharge of the Consumer Affairs in the central government and in the state, it is the Minister incharge of the Consumer Affairs in the state government who heads state council. [12] The Central Government constituted the first Central Consumer Protection Council on 1.6.1987. This Council has since been reconstituted w.e.f. 18.4.2000 for a period of 3 years. So far, 20 meetings of the Council have been held. The main object of these Councils is to protect and promote the rights of consumers such as the right to safety, the right to information, the right to choose, the right to be heard, the right to seek redressal and the right to consumer education.[13]

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[6] meaning consumer awareness
[7] http://fcamin.nic.in/top
[8] http://fcamin.nic.in/top
[9] Ministry of Consumer Affairs & Public Distribution, GOI,, http://pib.nic.in/archieve/factsheet/fs2000/caffairs.html
[10] *Ibid.*
[11] CPA, 1986, section 4.
[12] *Ibid.*
[13] *Id.*, section 6 and 8.

3. Fact Finding regarding the organizations/Institutions

(a) Statutory bases

Until the advent of independence there was hardly any legislation enacted primarily to protect consumer intrest. Legislative enactment which protected public interest (non necessarily the consumer interest) were the Indian Penal Code, 1860, the Indian Contract Act, 1872, the Code of Civil Procedure, 1908, the Sale of Goods Act, 1930, the Drugs and Comestics Act, 1954; the Prevention of Food Adulteration Act, 1954, the Essential Commodities Act, 1955, the Protection of Civil Rights Act, 1955; the Trade and Merchandise Marks Act, 1958, the Monopolies and Restrictive Trade Practices Act, 1969, the Marks Act, 1958, the Monopolies and Restrictive Trade Practices Act, 1969, the Code of Criminal Procedure, 1973, the Water (Prevention and Control of Pollution) Act, 1974; the Motor Vehicles Act, 1988; Drugs (Control) Act, 1950, Industries Development and Regulation) Act, 1951; Indian Standards Institution (Certification Marks) Act, 1952; Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, Essential Commodities Act, 1955; Specific Relief Act, 1963; Hire Purchase Act, 1972; Code of Criminal Procedure, 1973; Cigrettes (Regulation of Production, Supply and Distribuation) Act, 1975; Standards of Weights and Measures Act, 1976; Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980; Essential Commodities (Special Provisions) Act, 1981; Monopolies and Restrictive Trade Practices (Amendment) Act, 1984; and Narcotics Drugs and Psychotropic Substances Act, 1985. However, these legislation could hardly protect the interest of consumer further they lack enforcement. In order to protect the interest of a consumer, the Consumer Protection Act, 1986 was enacted. The Act seeks to promote the interest of consumer by enabling them to participate directly in the market economy. “It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, ‘a network of rackets’ or a society in which ‘producers have secured power’ to ‘rob the rest’ and the might of the public bodies whch are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining

and fighting for it, is accepting it as part of life."[14] The Act is a milestone in history of socio-economic legislation and is directed towards achieving public benefit.

Nature and Scope of the Consumer Protection Act, 1986 (CPA):

1) The CPA applies to all goods and services.
2) The CPA provides a framework for speedy disposal of consumer disputes and seeks to remove the evils of the ordinary court system.
3) The CPA gives a comprehensive definition of "consumer", who is the principal beneficiary of the legislation.

Objects of the Consumer Protection Act: The twin objects of the CPA are:

1) to provide better protection of the interests of consumers, and
2) for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

The basic rights of consumers : The Consumer Protection Act, 1986 confers the following rights upon the consumer:

i) the right to be protected against marketing of goods and services which are hazardous to life and property
ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, or services so as to protect the consumer against unfair trade practices
iii) the right to be assured, wherever possible, access to variety of goods and services at competitive prices
iv) the right to be heard and be assured that consumers' interests will receive due consideration at appropriate forums
v) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulsous exploitation of consumers
vi) the right to consumer education

The Act extends to the whole of India except the State of Jammu & Kashmir and applies to all goods and services unless otherwise notified by the Central Government.[15] The provisions of the

[14] *Lucknow Development Authority v. M.K. Gupta,* AIR 1994 SC 787 at 790.
[15] CPA, 1986, Section 1(2).

Consumer Protection Act are in addition to and not in derogation of the provisions of the other laws.[16]

(b) Running cost

Grant-in-aid is provided every year to voluntary consumer organizations for generating consumer awareness among masses. Assistance is being ordinarily given for specific projects and programs of action and not for general upkeep of an organization. The following items are eligible for assistance:-

i) Creating and strengthening infrastructure:- for promotion of consumer movement in slums and rural areas. Provision for film projectors, public address system, testing kit, library books, etc.

ii) Organizing consumer education programs - both in urban and rural areas by exhibition, talks, film shows, demonstrations and advertisements through mass media etc.

iii) To undertake research and investigation into consumer problems;

iv) To undertake testing and standardization programs on quality and quantity of various consumer products.

Awards: Under the scheme of National Consumer Awards, Government of India, Ministry of Consumer Affairs gives prizes under three categories, viz., a) women, b) youth and c) voluntary organizations, for generating awareness among masses. Government of NCT of Delhi has also instituted an award under the scheme *'State Youth Award'* awarded to winners of art competition organized every year on topics relevant to consumer movement. [17]

The government has also set-up a Consumer Welfare Fund (CWF) for creating consumer awareness at grass-root level, and is extending support to voluntary consumer organizations and non-governmental organizations. A consumer can simply file a complaint on plain paper requesting compensation.

Under a scheme for granting one-time financial assistance to strengthen infrastructure facilities of redressal agencies, the Department of Consumer Affairs has disbursed Rs. 61.8 crore during the period 1995-1999. [18]

[16] *Id.*, section 3.
[17] http://delhigovt.nic.in/dept/food/fca3.htm
[18] *Supra* note 9.

The table 2 enlists the one-time-grant financial assistance released to the States/UTs, @ Rs. 50 lakhs for State Commission and Rs 10 lakhs for each District Forum, and its utilization reported by the States/UTs till 30.6.01.[19]

State/UT	No. of DFs grant was given	Grand given Rs. (in lakhs)	Grant Utilised Rs. (in lakhs).	% of Utilisation	Period of reporting
1	2	3	5	6	4
Andhra Pradesh	22	270.0	117.64	43.6%	Jun-00
Arunachal Pradesh	12	170.0	122.50	72.1%	Sep-00
Assam	23	280.0	24.00	8.6%	Sep-00
Bihar	39	440.0	200.48	45.6%	Mar-98
Goa	2	70.0	64.56	92.2%	Sep-00
Gujrat	20	250.0	129.00	51.6%	Jun-00
Haryana	16	210.0	54.23	25.8%	Sep-00
Himachal Pradesh.	12	170.0	170.00	100%	Sep-00
Jammu & Kashmir	2	70.0	16.70	23.9%	Mar-00
Karnataka	20	250.0	42.59	17.0%	Mar-01
Kerala	14	190.0	99.06	52.1%	Jun-00
Madhya Pradesh.	45	500.0	480.00	96.0%	Sep-00
Maharashtra	31	360.0	346.00	96.1%	Jun-00
Manipur	8	130.0	81.56	62.7%	Jun-00
Meghalaya	7	120.0	23.10	19.3%	Jun-00
Mizoram	3	80.0	57.74	72.2%	Sep-00
Nagaland	7	120.0	120.00	100%	Sep-00
Orissa	13	180.0	173.19	96.2%	Sep-00
Punjab	13	180.0	153.20	85.1%	Sep-00
Rajasthan	30	350.0	325.60	93.0%	Sep-99
Sikkim	4	90.0	69.42	77.1%	Sep-00
Tamil Nadu	22	270.0	59.64	22.1%	Mar-01
Tripura	3	80.0	40.78	51.0%	Mar-01
Uttar Pradesh.	63	680.0	421.93	62.0%	Sep-00
West Bengal	17	220.0	55.00	25.0%	Sep-99
A&N Island	2	70.0	30.97	44.2%	Mar-00
Chandigarh Adm.	1	60.0	20.96	34.9%	Jun-00
D&N Haveli	1	60.0	6.14	10.2%	Sep-00
Daman & Diu	2	70.0	11.21	16.0%	Sep-99
Delhi	2	70.0	70.00	100%	Sep-00
Lakhsdweep	1	60.0	20.36	33.9%	Mar-01
Pondicherry	1	60.0	60.00	100%	Mar-01
Total:	458	6180.0	3667.56	59.3%	
National Commission	22275	12659 56.8%	9616		Mar.01

[19] http://fcamin.nic.in/otg.htm

Grand total (NC+SC+DF)	1662499	1311466 78.9%	351033		

Consumer Welfare Fund

The Central Excise and Salt Act, 1944 was amended in 1991 to enable the Central Government to create the consumer welfare fund where the money which is not refundable to the manufacturers etc. shall be credited. The money credited to the Fund is to be utilised by the Central Government for the welfare of the consumers in accordance with the Rules framed. Under the Consumer Welfare Fund Rules which were notified on 25th November, 1992, any agency/ organisation which is engaged in the consumer welfare activities for a period of 3 years and is registered under any law for the time being in force; village/ mandal/ samitit level cooperatives of consumers, industries; state governments etc. are eligible for seeking financial assistance from the Fund. The financial assistance is given mainly for preparation of publicity materials; setting up of facilities for training, research; community based rural awareness projects; setting up of consumer product testing laboratories etc. The total quantum of assistance on an individual application does not exceed Rs. 5 lakhs (Rs. 5,00,000) (assistance will be limited to 90% of the approved cost). However, in exceptional cases, 100% assistance can be considered. So far, the Ministry sanctioned more than rupees three crores from this Fund to 360 applicants. More than 3500 applications have been received for this purpose. The Ministry has a scheme for giving financial assistance to voluntary consumer organisations where financial assistance to a maximum of Rs. 25,000 (on 75% grant basis) is given. In 1990-91 and 1991-92 approximately Rs. 1.80 lakhs and Rs. 1.6 lakhs were distributed. In 1993-94, more than Rs. 8 lakhs were given. In addition, it is also giving them financial assistance for specific projects.[20]

(c) Status

The Consumer Protection Act, 1986 has assumed the shape of practically the most important legislation enacted in the country during the last few years. It has become the tool to enable people to secure speedy and inexpensive redressal of their grievances. With the enactment of this law, consumers now feel that they are in a position to declare *sellers be aware* whereas previously the consumers were at the receiving end and generally told *buyers be aware*.[21]

[20] http://fcamin.nic.in/cons_cwf.htm
[21] http://ncdrc.nic.in/

Initially, the progress in the establishment of state commissions and district fora was slow. However, after constant persuasion of the Central Government and the Supreme Court, the position has improved. 32 state commissions, 569 district forums are functioning in the country, including a state commission and two divisional forums set up under the Jammu & Kashmir Consumer Protection Act. [22]

A backlog of some 200,000 unsettled cases pending before various consumer courts is evidence enough that, in India, the consumer is anything but king.

Traders, manufacturers and service providers have become more accountable owing to the possibility of being taken to the consumer court. There have been a growing compensation claims against doctors, hospitals since the medical profession was brought under CPA by a Supreme Court decision in November 1995 [23]

(d) Qualifications of Presiding Officers of Consumer Redressal Fora

The district forum is headed by a president not below the rank of district sessions judge who is assisted by two other members, one of whom should be a woman.[24] A person who is or has been a judge of the high court heads the state commission and two other members assist him.[25] The National Commission is headed by a sitting or retired judge of the Supreme Court of India and four members (one of whom is a woman).[26]

Except for the President in the district and state forums who are district or high court judges, the rest of the members are drawn mainly from persons having a background in economics, law, commerce, industry and public affairs. They are thus better equipped to understand the problems of the consumer.

(e) Substantive rules applicable to dispute resolution

Rights of Consumers against unfair trade practices

The Monopolies & Restrictive Trade Practices Act, 1969 (in short, MRTP Act) came into force with effect from 1st June, 1970, to ensure that trade growth is channelised for the public good, to prevent the concentration of economic power to the common detriment and to control and

[22] http://fcamin.nic.in/top
[23] See *Indian Medical Association v. U.P. Shanta* AIR 1996 SC 550.
[24] CPA, 1986, Section 10.
[25] *Id.*, section 16.
[26] *Id.*, section 20.

remove unfair trade practices. The MRTP Commission is established by Central Government at New Delhi in pursuance of section 5 of the Act to inquire into any restrictive trade practice, either upon receiving a complaint from consumer or upon receiving a reference from the Union or state government.[27] The Commission has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of: the summoning and enforcing the attendance of any witness and examining him on oath; the discovery and production of any document or any other evidence; the reception of evidence on affidavits; the requisitioning of any public record from any court or office; the issuing of any commission for the examination of witnesses.[28] Besides, the Commission is empowered to grant temporary injunction with / without giving notice to the opposite party.[29] The MRTP Commission has power to award compensation, where as a result of the trade practice carried on by any undertaking or any person, any loss or damage is caused to the Central Government/ State Government / any trader/traders or any consumer. The Commission has powers to cause investigation to find out whether or not orders made by it have been complied with.[30]

Under the MRTP Act, *unfair trade practice* means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or deceptive practice including any of the following practices, namely: (i) false representation; (ii) false offer of bargain price; (iii) schemes offering gifts, prizes etc.; (iv) non-compliance of prescribed standards; (v) hoarding, destruction or refusal; (vi) defective goods and deficient services), has been prohibited.

The trader has to maintain his promised standards of quality, quantity, etc. The MRTP Act gives discretion to the MRTP Commission to hear or not to hear an individual consumer aggrieved by restrictive or unfair trade practice. The Act confers an important right on an individual consumer and a voluntary consumers' association to file a complaint before the Commission. On receipt of a complaint, the Commission institutes regular inquiry into any restrictive of unfair trade practice alleged by such individual consumer or voluntary consumers' association.[31] And if it is found that the practice is prejudicial to the public interest, or to the interest of any consumer or consumers generally, it directs the discontinuance of such practice or makes agreement relating

[27] The Monopolies & Restrictive Trade Practices Act, 1969, section 10.
[28] *Id.*, section 12
[29] *Id.*, section 12A
[30] *Id.*, section 13A
[31] *Id.*, section 36D, inserted by Gaz. of Ind., 8.12.1986, Ext., Pt.II, section 2, p.22 (No.58).

to such unfair trade practice as void.[32] The person aggrieved by any decision of the Commission, within 60 days from the date of the order can prefer an appeal to the Supreme Court of India.[33]

Rights of Consumers under the Sale of Goods Act

The Sale of Goods Act, 1930 enables the buyer to reject goods if they do not correspond with their description, or which are not fit for the buyer's purpose or which are not of merchantable quality or which do not in their bulk agree with the sample. But the Sale of Goods Act defines only the substantive rights of the parties. It does not provide any special forum for redressal of consumer grievances, which the Consumer Protection Act provides.

The remedies provided by the Sale of Goods Act enable the buyer to sue his immediate seller, whether he is a manufacturer or not. The buyer has no right to proceed against any person who is not a party to the sale transaction. He cannot sue the producer, manufacturer or wholesaler from whom the seller may have acquired his stock, he being a third party (doctrine of 'privity of contract'). Further, no person other than the buyer himself could sue the seller, he being not a party to the transaction, even if he was injured by the use of goods.

The Sale of Goods Act contains protective clauses in favour of the buyer in the shape of implied terms and conditions. But the Act also enables the sellers to exclude such implied terms and conditions either by an express or implied contract or by a course of dealing, prevailing customs and usages of the particular market. The Sale of Goods Act is also not applicable to rendering of services.

Rights of Consumers under the Consumer Protection Act

The Consumer Protection Act was passed in 1986 with a view to provide for better protection of the interest of the consumers. This Act recognizes the right of the user other than the buyer also to sue the manufacturer by defining the word consumer to include the user also. The Act empowers an individual consumer or a recognized consumer association whether the consumer is a member of such association or not to file a complaint in respect of defective goods or deficient services. The Consumer Protection Act, 1986 covers not only goods as defined under the Sale of Goods Act 1930 but also services including services provided by Public Sector Undertakings and Government Departments such as banking, financing, insurance, transport, processing, supply of electrical or other energy, etc.

[32] *Id.,* section 36D(1)(a),(b).
[33] *Id.,* section 55

Section 13 of the Act provides for the procedure to be followed by the District Forum on receipt of complaint. The first step on receiving a complaint is to refer a copy of the complaint to the opposite party directing him to give his version of the case within a period of 30 days. Such period may be extended by a maximum of 15 days by the District Forum.

When the opposite party denies or disputes the allegations contained in the complaint or omits or fails to take any action to represent his case within the above time-period, a dispute arises.

The District Forum, for the purpose of settling the dispute, has the same powers as are vested in the civil court under the Code of Civil Procedure, 1908. Every proceeding before the District Forum is a judicial proceeding. The validity of proceeding cannot be questioned on the ground that the principles of natural justice have not been complied with. However, it may be noted that the District Forum does not have all the powers as are vested in the civil court. A District Forum is quasi-legal and, thus, do not enjoy the inherent powers of the civil courts.

Where the complainant alleges a defect in the goods, which cannot be determined without proper analysis or test, it is mandatory for the District Forum to have the goods analyzed in an appropriate laboratory, after taking a sample of goods from the complainant.

Section 14 provides that if the forum is convinced that the goods were really defective or that the complaint about the deficiency in service is proved, the forum may order the opposite party:

(a) to remove the defect which has been pointed out by the laboratory,
(b) to replace the goods,
(c) to return to the complainant the price of the goods or the charges for services,
(d) to pay to the complainant a sum of money (compensation) for any loss/injury suffered by the consumer due to the negligence of opposite party,
(e) to remove the defects/deficiencies in the services,
(f) to discontinue the unfair/deficiencies in the services,
(g) to discontinue the unfair/restrictive trade practice or not to repeat them,
(h) not to offer the hazardous goods from being offered for sale,
(i) to provide for adequate costs of parties.

Under the Consumer Protection Act, 1986 the consumer can sue in his own hometown the distant manufacturer with whom he had no direct contract relationship. The Act covers all kinds of services. It also covers all kinds of consumer dealings whether for cash or in kind.

The Act protects the consumer from the burden of restrictive and unfair trade practices. It enables the District Consumer Forum, State Consumer Dispute Redressal Commission and National Consumer Dispute Redressal Commission to award compensation for not only the amount lost in purchasing defective material or in hiring deficient services but also for mental pain, suffering and harassment caused by defective goods or services.

Under the Consumer Protection Act, 1986 principal substantive rules applicable to dispute resolution are discussed hereinbelow:

(i) Who can file a complaint - Under Section 2(b) of the Act, a complaint can be filed generally by any of the following:

- Consumer; or
- Any voluntary consumer association registered under the Societies Registration Act or under any law for the time being in force; or
- The Central Government or any State Government;
- One or more consumers where there are numerous consumers having the same interest.

(ii) Who is a consumer? - Section 2 (d) (ii) defines 'Consumer' to mean any one who hires or avails of any services for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed with the approval of the first mentioned person.

(iii) Consumer Dispute - Section 2(e) defines a 'consumer dispute' to mean a dispute where the person against whom a complaint has been made or disputes the allegations contained in the complaint.

(iv) Defect - 'Defect' has been defined in Section 2(f) to mean any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;

(v) Deficiency - The term 'deficiency' has been defined in section 2(g) to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been

undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

(vi) Service - Section 2(o) defines service to mean a 'service' which is made available to potential users, includes the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the service free of charge or under a contract of personal service.

(f) Proceedings

Procedure on receipt of complaint

Under the Consumer Protection Act, 1986[34] the District Forum shall, on receipt of a complaint, if it relates to any goods-

(a) refer to copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be the District Forum;

(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) and (g);

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to appropriate laboratory alongwith a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or suffer from any other defect and to report its findings thereon to the District Forum within a period of forty five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the forum such

[34] CPA, 1986, Section 13.

fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report alongwith such remarks as the District Forum may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes of the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complaint to submit in writing his objectsions in regard to the report made by the appropriate laboratory;

(g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under Section 14.

Finality of Orders

Every order of a District Forum, the State Commission or the National Commission shall if no appeal has been preferred against such order under the provisions of this Act, be final.[35]

Consequences of filing frivolous or vexatious complaints

Where a complaint is found to be frivolous or vexatious, it shall be dismissed for the reasons to be recorded in writing by the concerned Forum/Commission. It may also pass an order that the complaint shall pay to the opposite party such cost, not exceeding ten thousand ruppes as may be specified in the order.

Procedure for disposal of complaints

1) Cases filed by the complainants are decided on the affidavits filed by them. Evidence is allowed, but the lengthy procedures adopted by the civil courts are not normally prevalent in these forums as the complainants themselves, who are laymen, appear before the forums and

[35] *Id.,* section 24.

present their cases without the need to employ lawyers. The remedies normally granted in these forums are to remove/replace the defects or defective goods; return to the complainant the price or charges paid by them; award compensation for loss or injury suffered by the consumer; discontinue any unfair trade practice indulged in by the trader; and award costs to parties. [36]

2) To encourage and safeguard, their rights, in consumer litigation, no court fee is charged, no lawyer need to be engaged. Consumer forum can be approached even if arbitration agreement exists. The Madras High Court has held that it is permissible for the districts consumer disputes redressal forum to entertain a complaint seeking refund and compensation, although there was an agreement between the parties to refer the matter to arbitration in case of a dispute.[37]
3) Complaint before the consumer courts, i.e district fora / state commission / National Commission, in relation to a product or in respect of a service, does not include rendering of any service free of cost or under a contract of personal service. [38]
4) In order to attain the objects of the CPA, the National Commission has also been conferred with the powers of administrative control over all the state commissions by calling for periodical returns regarding the institution, disposal and pendency of cases. National Commission is empowered to issue instructions regarding, (1) adoption of uniform procedure in the hearing of the matters; (2) prior service of copies of documents produced by one party to the opposite parties; (3) speedy grant of copies of documents; and (4) over-seeing the functioning of the state commissions or the district forums to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom. [39]

Nature of proceedings

Proceedings are summary in nature and endeavour is made to grant relief to the parties in the quickest possible time keeping in mind the spirit of the Act, which provides for disposal of the cases within possible time schedule prescribed under the Act.

[36] A.Viraraghavan, *Is The Consumer Protected*?, http://pib.nic.in/feature/feyr2000/fmar2000/f020320001.html
[37] *Kasi Housing and Development Ltd. v. M.M. Kalaiselvi* AIR 2000 Madras 90
[38] CPA, 1986, Section 2(d).
[39] *Supra* note 21.

Functioning of district forum, state commission and National Commission is consumer friendly, and consumer can file complaint and address arguments in person. In genuine cases where the parties are unable to engage the services of an advocate Bar Association of NCDRC also provides legal aid to needy. [40]

The complaints relating to following consumer grievances are allowed to be made under the CPA:

(i) restrictive trade practice adopted by the trader;

(ii) defective goods;

(iii) deficiency in service;

(iv) excess price charged by the trader;

(v) sale of unsafe goods, which are hazardous to life and safety when used.

Consumer Courts may grant one or more of the following reliefs:

(i) Repair of defective goods;

(ii) Replacement of defective goods;

(iii) Refund of price paid for the defective goods or services;

(iv) Removal of deficiency in service;

(v) Refund of extra money charged;

(vi) Withdrawal of goods hazardous to life and safety;

(vii) Compensation for the loss or injury suffered by a consumer due to negligence of the opposite party; adequate cost of filing and pursuing the complaint. [41]

(g) Drafting the Agreements

Since there is no arbitration or conciliation agreement provided under the Acts / Statutes regulating consumer laws and parties can directly proceed in the court/ special forums provided for expeditious disposal of cases, the question of drafting the agreement is not statutorily dealt with. Though the parties are not prohibited by the law to draft any agreement as to delivery of services or goods, payment to be made thereof and in cases of dispute the mode of resolution of

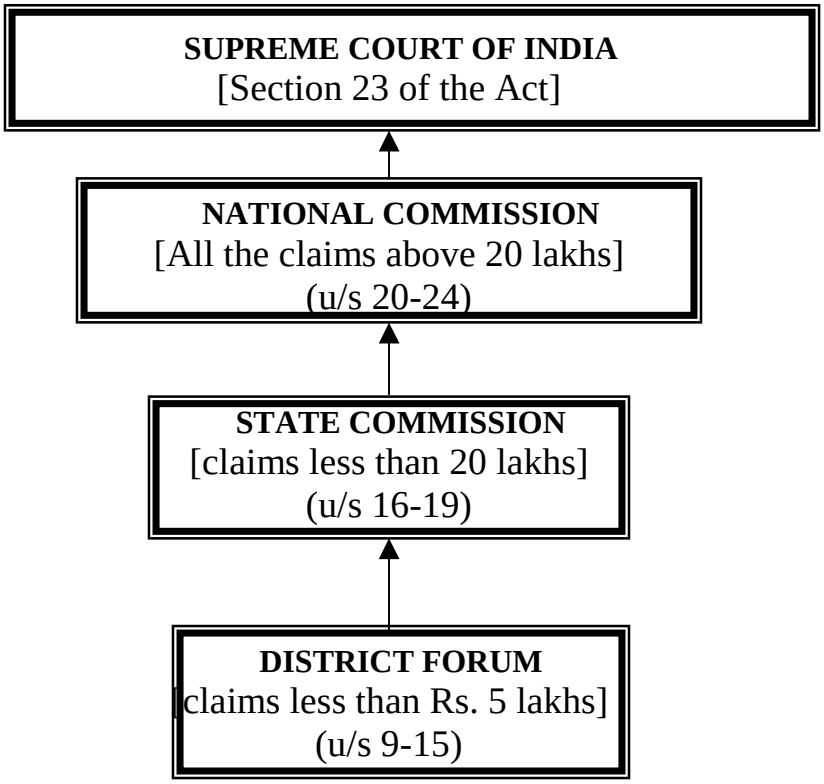
[40] *Ibid.*
[41] *Supra* note 17.

the same, there is nothing on the record on the basis of which empirical study can be made as to manner of the drafting of these agreements or the number of such agreements entered into.

(h) Relationship to the court system in terms of proceeding

Legal Structure Under The Consumer Protection Act, 1986 (CPA)

The following is the structure of the legal system under the CPA:



(i) Cost owned by parties (fees, including lawyer's fees)

A complaint can be filed free of cost before the district forum, the state commission or the National Commission, by the complainant or any of his/her authorised agents. It is not obligatory to engage a lawyer. Even a consumer organisation can be authorised to represent the case. The complaint can be sent by post to the appropriate Forum/Commission [42] but the lawyers will represent the case.

[42] *An alert consumer is a protected consumer*, http://www.consumerindia.com/articlesnew.html#analert

The CPA is an alternative and cheapest remedy available to the aggrieved persons / consumers other than civil suit. In the complaint/appeal/petition submitted under the Act, a consumer is not required to pay any court fees or even process fee, [43] except in the Supreme Court.

There is no fee for filing appeals in the National and state commissions. Procedure is the same as that of filing complaint except that the application has to be accompanied by the copies of the orders appealed against with reasons for filing appeals. [44]

(j) Time (consumed for the closing of cases and the number of meetings)

The state governments are mostly involved in the effective functioning of the district consumer forums. But considering the large number of cases, which are already pending disposal, and the continuous flow of cases due to increased awareness of consumers as to their rights, it seems they are not bestowing sufficient attention. There is need to establish more such forums in the various states and union territories. Though the framers of CPA hoped that the consumer would find a quick and speedy justice in these forums, the average time for disposal of a case ranges from 2 to 3 years against the stipulated time of 90 days. The reasons for such delays are not far to seek. Firstly, many of these district/state forums do not have the full members for long periods, as the vacancies are not filled up on a regular basis. Secondly, there is a lack of infrastructure i.e., these courts are not given adequate secretarial assistance and many times even proper accommodation is not provided to house these forums. Unless remedial steps are taken to meet these shortcomings, this Act would remain just as one more legislation on the statute book.[45]

Time limit for filing the complaint

Under Section 24 A of CPA the District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. However, a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period. But the District Forum, the State Commission or the National Commission, as the case may be must records its reasons for condoning such delay.

Time limit for deciding complaints

[43] *Supra* note 21.
[44] CPA, 1986, sections 15,19, and 23.
[45] See ILI, *Legal Framework for Health Care in India*, Butterworths (2002).

Where a complaint does not require analysis or testing of the goods, it should be decided as far as possible within a period of three months from the date of receipt of notice by oppisite party, and within five months of it requires analysis or testing of the goods.

(k) Statistical data

At present, there are 569 District Forums, 33 State Commissions with apex body as a National Consumer Disputes Redressal Commission (NCDRC) having its office at Janpath Bhawan, A Wing, 5th Floor, Janpath, New Delhi. [46]

The following tables give the number of consumer courts, number of cases filed, resolved and pending and the list of consumer courts at State and District level[47] :

[46] *Supra* note 21.
[47] http://164.100.9.14/cons/cons_det.asp

Table 1- **the number of consumer courts**

State / UT	Number of state commission	Number of district forums	Total consumer courts
Andaman and Nicober	1	2	3
Andhra Pradesh	1	25	26
Assam	1	28	29
Bihar	1	55	56
Chandigarh	1	2	3
Dadra and Nagar Haveli	1	1	2
Goa	1	2	3
Gujarat	1	20	21
Haryana	1	17	
Himachal Pradesh	1	36	37
Karnataka	1	21	22
Kerala	1	14	15
Lakshyadeep	1	2	3
Madhya Pradesh	1	34	35
Maharastra	1	8	9
Manipur	1	7	8
Meghalaya	1	3	4
Mizoram	1	42	43
NCT of Delhi	1	7	8
Nagaland	1	8	9
Orissa	1	31	32
Punjab	1	17	18
Rajasthan	1	33	34
Sikkim	1	4	5
Tamil Nadu	1	24	25
Tripura	1	4	5
Uttar Pradesh	1	101	102
West Bengal	1	19	20
Arunachal Pradesh	1	13	14
Uttarakhand	NA	NA	NA
Jharkhand	1	NA	NA
Pondicherry	1	NA	NA

Table 2 - the Consumer cases filed/disposed/pending in the state commissions & National Commission. Table 5 provides at District level.

Name of the State	Cases filed since inception	Cases disposed of since inception	Cases Pending	% of Disposal	As on
National Commission	**23632**	**16184**	**8448**	**64.25**	**30.9.2001**
Andhra Pradesh	12776	10408	2368	81.47	30.8.2001
Arunachal Pradesh	19	13	6	68.42	31.3.2000
Assam	1332	656	676	49.25	30.9.2000
Bihar	7548	2932	4616	38.84	30.9.2001
Goa	1270	1075	195	84.65	30.9.2001
Gujarat	8067	4672	3395	57.91	30.9.2000
Haryana	15260	9810	5450	64.29	30.9.2001
Himachal Pradesh	7967	3571	1396	71.89	31.3.2001
Jammu & Kashmir	3232	2610	622	80.75	31.3.1999
Karnataka	10530	8174	2356	77.63	30.9.2001
Kerala	15158	13226	1932	87.25	18.10.2001
Madhya Pradesh	12112	8721	3391	72.00	30.6.2001
Maharashtra	17979	10157	7822	56.49	31.3.2000
Manipur	62.	41	21	66.13	31.5.2000
Meghalaya	84	60	24	71.43	30.9.2000
Mizoram	51	24	27	47.06	31.12.2000
Nagaland	40	15	25	37.50	31.3.2000
Orissa	7369	5061	2308	68.68	31.10.2001
Punjab	9252	6828	2424	73.80	30.9.2001
Rajasthan	20520	8190	12330	39.91	30.6.2001
Sikkim	18	18	0	100.00	30.9.2001
Tamil Nadu	13003	9817	3186	75.50	30.9.2001
Tripura	513	202	311	39.38	30.9.2001
Uttar Pradesh	31920	7617	24303	23.86	30.9.2001
West Bengal	7369	5061	2308	68.68	13.10.2001
A&N Island	26	16	10	61.54	31.3.2000
Chandigarh Adm.	2869	2540	329	88.53	30.9.2001
D&N Haveli	0	0	0	0.00	
Daman & Diu	5	0	5	0.00	30.9.2000
Delhi	12205	7791	4414	63.83	31.3.2000
Lakhsadweep	9	9	0	100.00	30.9.2001
Pondicherry	591	546	45	92.39	30.9.2001
Total	**239788**	**145045**	**94743**	**60.49**	

Statement of Consumer cases filed/disposed/pending in District fora

Name of the State	Cases filed since inception	Cases disposed of since inception	Cases Pending	% of Disposal	As on
Andhra Pradesh	125491	110298	15193	87.89	30.8.2001
Arunachal Pradesh	189	160	29	84.66	31.3.2000
Assam	7285	6260	1025	85.93	30.9.2000
Bihar	44406	32269	12137	72.67	30.9.2001
Goa	3972	3239	710	81.55	30.9.2001
Gujarat	65212	45960	19252	70.48	30.9.2000
Haryana	95754	73795	21959	77.07	30.9.2001
Himachal Pradesh	23846	19223	4623	80.61	31.3.2001
Jammu & Kashmir	10436	8247	2189	79.02	31.3.1999
Karnataka	64289	58210	6079	90.54	30.9.2001
Kerala	117530	111466	6064	94.84	18.10.2001
Madhya Pradesh	74910	66618	8292	88.93	30.6.2001
Maharashtra	98407	77892	20515	79.15	31.12.1999
Manipur	803	774	29	96.39	31.5.2000
Meghalaya	242	199	43	82.23	30.6.1999
Mizoram	1099	911	188	82.89	31.3.2001
Nagaland	60	21	39	35.00	31.3.2000
Orissa	46095	40688	5407	88.27	30.9.2001
Punjab	53079	47245	5834	89.01	30.9.2001
Rajasthan	155516	139894	15622	89.95	30.6.2001
Sikkim	122	115	7	94.26	30.9.2001
Tamil Nadu	61254	54463	6791	88.91	30.9.2001
Tripura	882	785	97	89.00	30.9.2000
Uttar Pradesh	242776	176897	65879	72.86	31.3.2000
West Bengal	35639	32040	3599	89.90	31.3.2000
A&N Island	217	194	23	89.40	31.3.2000
Chandigarh Adm.	19818	16582	3236	83.67	30.9.2001
D&N Haveli	33	23	10	69.70	31.12.1999
Daman & Diu	62	37	25	59.68	30.9.2000
Delhi	88843	66908	21935	75.31	31.3.2000
Lakhsadweep	38	35	3	92.11	30.9.2001
Pondicherry	1850	1803	47	97.46	30.9.2001
Total	**1440155**	**1193251**	**246881**	**82.86**	

It must be clearly stated that though there are number of laws for the redressal of consumer grievances and to settle the disputes, but the CPA is important piece of legislation earning goods

and services and the protion of the study is mainly based on data and information collected thereto.

Consumer Affairs in few selected States

1) Delhi [48]

At present one State Commission and 9 District Fora are functional in NCT of Delhi. The jurisdiction of the latter is co-terminus with the police districts of Delhi.

Name of Consumer Court	Address
National Commission	V Floor, Tel Bhawan, Janpath, New Delhi.
State Commission	A-Block, Vikaas Bhawan, I.P. Estate, New Delhi.
Distt. Forum (North)	Room No. 2 & 3, Old Civil Supplies Bldg., Tis Hazari, Delhi.
Distt. Forum (South)	C-22, 23, Udyog Sadan, Institutional Area, Behind Qutab Hotel, Mehrauli, Delhi.
Distt. Forum (West)	C-Block, Community Centre, Pankha Road, Janak Puri, Delhi.
Distt. Forum (North-East)	Bunkar Vihar, Nand Nagri, Delhi.
Distt.Forum (North-West)	CSC, Block-C, Pocket-C, Shalimar Bagh, New Delhi.
Distt. Forum (New Delhi)	Barracks, K.G. Marg, New Delhi.
Distt. Forum (South-West)	L.S.C., Phase-II, Sheikh Sarai, New Delhi.
Distt. Forum (Central)	Mezannine Floor, ISBT, Kasmere Gate, New Delhi.
Distt. Forum (East)	CSC, Saini Enclave, New Delhi.[49]

2) Haryana

For the State of Haryana,[50] a full-fledged state consumer disputes redressal Commission at Chandigarh is functioning since 1.7.1989. At the district level, full time district consumer disputes redressal forums have been set-up in all the 19 districts of the State.

The State of Haryana has taken a number of steps in promoting awareness amongst consumers towards their rights. In this direction, state consumer protection council has also been set-up in Haryana to promote and protect the rights of the consumers within the state. The details of institution of cases and their disposal by the state commission and district forums since their inception are as under: ***[51]***

[48] *Supra* note 17.
[49] http://delhigovt.nic.in/sear/welcome.html
[50] Consumers Protection rules,1988 which were notified vide notification dated 25.4.88.
[51] http://haryanafood.nic.in/consumer.html

		Since inception to 31.12.2000	1.10.2000 to 31.12.2000	Total
STATE COMMISSION				
A	No. of Cases	11352	426	11770
B	No. of cases disposed off	8414	374	8788
C	No. of cases Pending.	2938	52	2990
DISTRICT FORUMS				
A	No. of Cases	81064	2479	83543
B	No. of cases disposed off	62457	1863	64320
C	No. of cases Pending.	18607	616	19223

3) Chandigarh

In Chandigarh two district forums and one state commission are functioning. When the value of the goods or services and the compensation claimed do not exceed Rs 5 lakh, the complaint is filed in a District Forum. When value or compensation exceeds this limit, the case is filed straightaway in the State Commission. The State Commission has appellate jurisdiction over the matters decided by the District Forum. From the State Commission, the case goes to the National Commission.[52]

4) Punjab

In Punjab, the Punjab State Consumer Disputes Redressal Commission and 17 Districts Consumer Disputes Redressal Forums (one for each district of the state) exist. Also, there are 70 voluntary Consumer Protection Organizations working for the welfare of the consumers. These voluntary organizations have an important role to strengthen and to spread the consumer movement in the rural areas. These associations are given financial assistance by the government of India for showing better performance in the consumer protection activities out of the "Consumer Welfare Fund". [53]

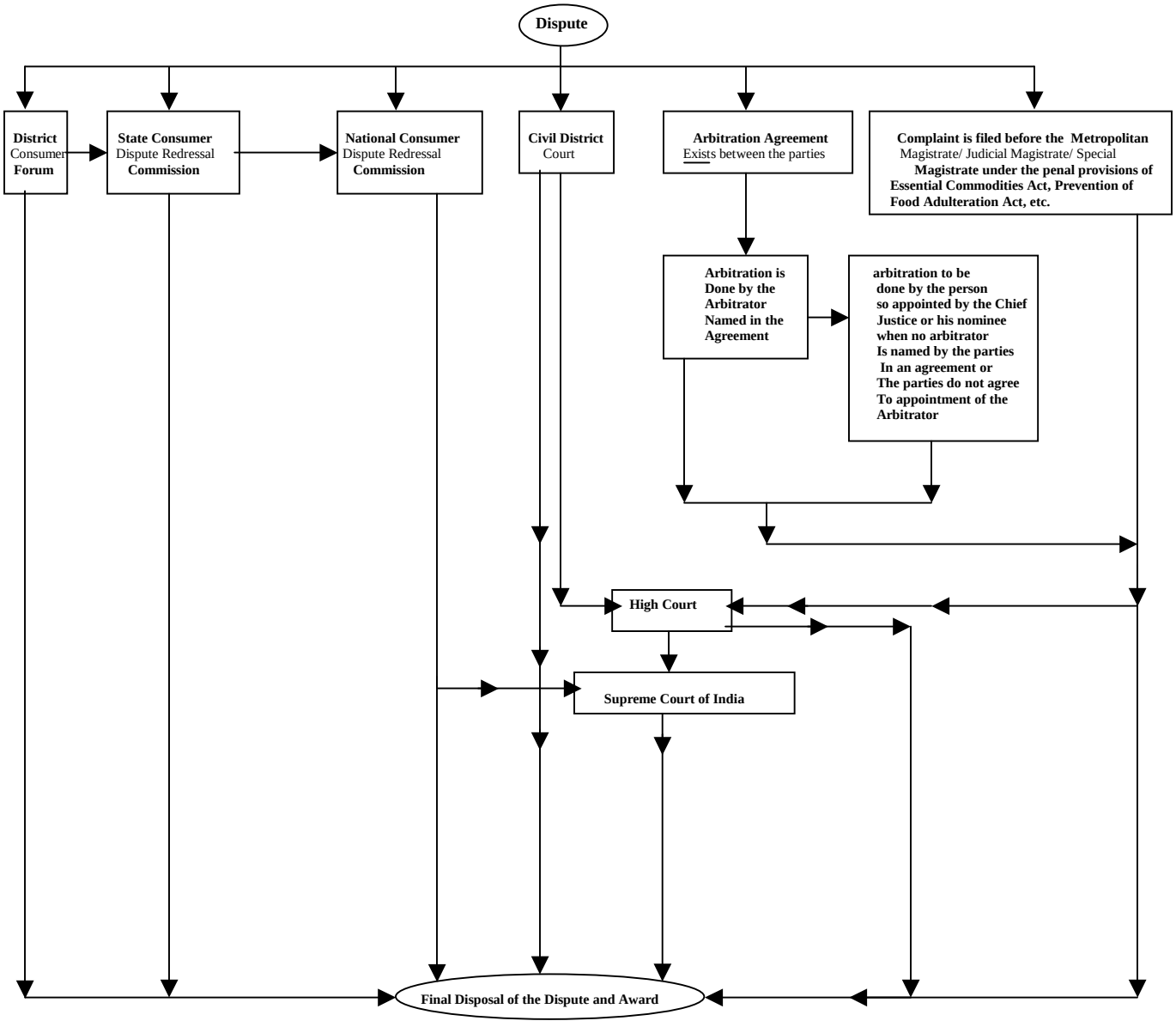
[52] http://chandigarh.nic.in/jud.htm
[53] http://foodsuppb.nic.in/top

Since inception till now, 16,02,706 cases have been filed in these three-tier agencies. Out of them 12,63,399 (78.8 per cent) of cases have been disposed off. [54]

[54] *Supra* note 42.

4. Institutional Routes from the Outbreak to the Resolution of Disputes

All the possible institutional routes available to the aggrieved consumer against the defective goods and services are depicted with the help of a flowchart given below:



5. Choices of Routes for Dispute Resolution

(a) Trend in People's Choice and Factors that Influence in the Process

Prior to 1986, consumers used to resort civil remedies through an action under the law of torts & contract. Quite apart from this, they sought remedies by filing a complaint under relevant statutes such as, Sale of Goods Act, 1930; Essential Commodities Act, 1955; Prevention of Food Adulteration Act, 1954; Drugs & Cosmetics Act, 1954; Monopolies & Restrictive Trade Practices Act, 1969; Standards of Weights & Measures Act, 1976, etc., which provided for penal provisions.

However, these remedies were found by the consumers not only time consuming and expensive, but also involving complicated and lengthy procedures. After the enactment of Consumer Protection Act, 1986, there has been a remarkable shift in the attitude of the parties. They prefer consumer fora for complaining about deficiency in services, defective goods, unfair trade practices, etc.

(a) Parties' Viewpoint – How and why do they make a choice the way to settle their problems?

Three factors are mainly responsible for the preference shown by the people to consumer fora set up under the Consumer Protection Act, 1986. These are:

(i) the procedure is simple

(ii) no court fee is required for filing the case in the consumer for a

(iii) consumer fora are special courts to deal with consumer cases only and therefore the proceedings before it are less time consuming than the proceedings before the regular courts.

Be that as it may, the parties feel that the consumer fora suffers from three main defects:

(i) There is heavy volume of cases pending before the consumer fora leading to delay in disposal of complaints.

(ii) The parties generally file appeal in the higher fora / the Supreme Court of India from National Commission.

(iii) The consumer fora sometimes lack the technical competence to investigate the case in depth.

In India there is very little awareness amongst the people about the rights of the consumers. Some people accept 'defect' or deficiency as a part of their liege and bother very little for eradication of this menace or evil from the society. [55]

(b) The role of the lawyers

A burning issue is whether or not lawyers be allowed to argue in consumer courts and use their skills and contacts in securing the adjournments, which have been the bane of the regular courts. Many consumers are forced to hire a lawyer after they found themselves not matching up to the slick lawyers of the opposite party, who manage to drag the case.[56]

6. Case Study

The provisions of the CPA cover 'products' as well as 'services'. The products are those, which are manufactured or produced and sold to consumers through wholesalers and retailers. The services are of the nature of transport, telephones, electricity, constructions, banking, insurance, medical treatment etc. etc. The services, by and large, include those provided by professionals such as doctors, engineers, architects, lawyers, etc. [57] Examples of some decisions taken by consumer courts are given here below. These are clear-cut verdicts and serve as illustrative examples.

Housing

In *Akhilesh Verma v. Skipper Builders Pvt. Ltd.*[58] the National Commission took serious note of the escalation of real estate prices day by day. In granting compensation it made the observation that "a consumer cannot be allowed to be swindled by an unscrupulous builder".

General Insurance

Consumer fora at all levels have been flooded with complaints relating to general insurance. In *B. Nagaraju v. Oriental Insurance Co.*[59], the Supreme Court disapproved the reasoning of the National Commission that extra passengers carried in a goods vehicle in violation of the terms of

[55] Mr. Mohinder Singh (President, Patiala consumers, Patiala**,** *Consumer should not grumble instead must make a complaint*, http://www.consumerindia.com/articles.html
[56] R. Dev Raj, ***Consumer Courts Slowing Down***, http://www.consumerindia.com/articlesnew.html#india
[57] *Supra* note 21.
[58] I (1996) CPJ 51 (NC).
[59] II (1996) CPJ 18 (SC).

the policy constituted such a fundamental breach as to afford ground to the insurer to eschew liability altogether. The court held that the exclusion term of policy of insurance must be read down to subserve the main purpose of the policy, which is to indemnify the damage caused to the vehicle. This judgment is a contrast to the order of the National Commission that liability of the insurer to compensate the insured for any loss occurring to the vehicle is conditional or the driver of vehicle possessing an effective license at the time of occurrence of the loss.[60]

Air Service

The National Commission came down heavily on Air India for having lost eight out of 12 cartons containing *sarees* to be displayed at an exhibition in Mauritius. It delivered the remaining four cartons after the exhibition was over. The declared value of the consignment was $10,659.58. Holding the opposite party guilty of gross negligence, the commission ordered payment of two-thirds of $10,659.58 i.e. Rs. 1,89,286/- and two-thirds of freight charges amounting to Rs. 2110.66. It compensated the complainant by awarding Rs. 0.3 million of mental tension caused due to non-participation in the exhibition.[61]

Medical

The Supreme Court in *Indian Medical Association v. P. Shantha* ruled out that:

(i) service rendered to a patient by a medical practitioner except where the doctors renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, are covered by the Consumer Protection Act, 1986;

(ii) the fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils would not exclude the service rendered by them from the ambit of the Consumer Protection Act, 1986;

(iii) all the consumer dispute redressal agencies established under the Consumer Protection Act, 1986 are suitable for adjudicating issues arising out of medical mal-practice or negligence. Only in complicated issues requiring rendering of evidence of experts, complainant can be directed by the consumer dispute redressal agency to approach the civil court.

[60] *New India Assurance Co. v. Jadav Narendrabhai*, I (1996) CPJ 230 (NC).
[61] *Shobha Global v. Air India*, O P No. 256/1993 order dated 23.02.1995.

In *Poonam Verma v. Ashwini Patel*[62], a person registered as a medical practitioner for homoeopathic practice only, without finding the necessity of conducting pathological tests, treated Pramod Verma for an ailment "prevalent" at that time in the locality in question, by prescribing allopathic medicines. As a result of this patient died. The Maharashtra State Commission did not provide relief to the Complaint, the wife of the diseased. The Supreme Court held that the respondent, by virtue of his registration, was unde a statutory duty not to enter the filed of any other system of medicine. By practising in allopathy he had "trespassed into a prohibited filed and was liable to be prosecuted under section 15(3) of the Indian Medical Council Act, 1956." Having practiced in allopathy, without being qualified in that system, observed the court, "the respondent was guilty of negligence per se". The petitioner was granted a compensation of Rs. 0.3 million and costs of Rs. 30,000.

Missing baggage from airplane

In *Capt. Satish Chandra Sharma v. K.L.M. Royal Dutch Airlines*[63] complainant's baggage was declared as missing from the airplane, he boarded. Later on the same was delivered to him by the airline authorities, but in damaged conditions. Delhi State Consumer Redressal Commission held airlines cannot take benefit of normal free limits of 6- kgs. And it is liable to pay $20 for 61kgs- and replacement of two bags under section 14(1)(d) of CPA.

In *Aeroflot Russian International Airlines v. Inderjit Singh Jaijee*[64] the complainant boarded Aeroflot Russian International Airlines to go to London. On reaching London, he was intimated by the airline authorities that his six suit case luggage was left behind by carrier in India and will be soon delivered to him via next flight. However, next flight could not take for 3-days as plague, epidemic in certain part of India was spreading. All this while, complainant had to stay at London, had to bear boarding and lodging and also purchase wollens. District forum awarded compensation to the complainant alongwith 18% interest. In appeal upheld the order. The Chandigarh State Consumer Dispute Redressal Commission.

Delay in delivery of articles/goods

In *Karur Knitting co. v. Translanka Air Travels P. Ltd* [65] complainant entrusted consignments of knitted cotton wear with opposite party on categorical assurance for timely delivery. Cargo

[62] II (1996) CPJ 1 (SC).
[63] Delhi S.C.D.R.C. 685
[64] Chandigarh S.C.D.R.C. 155
[65] Tamil Nadu S.C.D.R.C. 609

reached destination after considerable delay. Consignee refused to take delivery but later on agreed to take delivery after negotiation subject to 30% trade discount. Delay in delivery resulted in loss to the complainant. Tamil Nadu State Consumer Redressal Commission awarded complainant under section 14(1)(d) compensation along with interest.

In *Giri Trading Agency v. M/s. East West Airlines*[66] it was held that in absence of evidence of booking through the agency, non-transporting and non-delivering of baggages by it cannot be held as deficiency in service under the section 2(1)(c)(iii) of the CPA.

Non-fulfilment of Contract

In *Jagdish Singh v. Jagmohan Ka Asli Lahore Band*[67] complainant booked band for marriage of his son. But the Band Party did not reach. On complaint to the district forum, opposite party was directed to refund advance of Rs.800/- only. In an appeal for enhancement of compensation, the Punjab state commission held that the complainant is entitled to more than mere return of advance and granted Rs. 1000/- as compensation under section 14(d) of CPA.

In *Inturi Venkaiah v. General Manager P.D.C.C. Bank Ltd*[68] by the Andhra Pradesh State Consumer Commission held that no deficiency in service under section 2(1)(c)(iii) of CPA is proved on account of the bank when balance amount of loan was not released by it as complainant did not fulfill the condition of filing utilization certificates as agreed by him for release of balance instalment.

In *T.K. Soundararajan v. Secretary, Chenagalpattu Co-op Urban Bank*[69] it was ruled that the collection of service charges fom the complainant who received loan by pledging jewels, by the bank is not illegal and does not amount to deficiency in service on the part of bank under the section 2(1)(c)(iii) of the CPA.

Delay in clearance of cheque

In *S.P.K. Gupta v. ANZ Grindlays Bank*[70] instructions from London to Bombay received next day in the bank. It took 9 days to transfer from Bombay to Delhi. Bank, instead of seeking clarification caused further delay of 4 days. Cheque ultimately received by SBI after delay of 37 days. Delhi State Commission held this delay as deficiency in service under section 2(1)(c)(iii) of the CPA. It directed bank to compensate for delay.

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[66] Tamil Nadu S.C.D.R.C.328
[67] Punjab S.C.D.R.C 385
[68] Andhra Pradesh S.C.D.R.C 511
[69] Tamilnadu S.C.D.R.C 524
[70] PLC Delhi S.C.D.R.C. 717

Enhancement of rent of locker by the Bank without notice

In *Giridharilal Chawla v. Corporation Bank*[71] Andhra Pradesh Consumer Commission laid down that enhancement of rent without prior intimation by the bank of locker services it provides to the consumers, amounts to deficiency in service under sections 2(1)(c)(iii), 14(1)(d) of the CPA. It directed the bank to compensate the complainant for the same.

Non-sanction of loan by the Bank

In *Manager, Syndicate Bank v. Brahmananda Kumar*[72] Andhra Pradesh State Consumer Commission made it clear that non-sanctioning of loan does not amount to deficiency in service. In this case, complainant, an unemployed graduate, was selected under Prime Minister's Rozgar Yojana Scheme and was directed to approach bank for loan. He applied for loan, furnished security thereon. But bank refused to sanction the loan. District forum awarded Rs. 10,000/- towards compensation. In appeal against the order of district forum, state commission set aside the order of district forum and held that the bank has considerable discretion to sanction loan keeping in view the viability of Scheme. As the scheme found not viable owing to existing competition, bank rejected loan application. But this does not amount to deficiency on the part of the bank.

Loss by Carrier

In *Lucky Forwarding Agency v. Smt. Binder Devi & Anr*[73]. , goods were sent through the truck of Agency. Driver disappeared with goods. Madhya Pradesh State Consumer Commission held carrier liable for loss.

Defective Car

In *Techno Aids & Associates v. Tata Electric Locomotive Co., Ltd.*[74] complainant, a partnership firm, purchased car for commercial purpose. This car was found to be defective. But Tamil Nadu State Consumer Commission held that complainant is not a consumer within the meaning of section 2(1)(d)(1) of CPA and therefore, cannot claim replacement or value thereof.

Defective diesel generators

[71] Andhra Pradesh S.C.D.R.C.44
[72] Andhra Pradesh S.C.D.R.C 489
[73] Madhya Pradesh, S.C.D.R.C 400
[74] Tamil Nadu S.C.D.R.C 291

Similarly, in *Vasanthi Medical Centre v. Captipower Engineers (P) Ltd.*,[75] when it was found that complainant of defective diesal generator, purchased for the hospital, was a company, no compensation or replacement thereof was ordered by the state commission as complainant could not be held as consumer within meaning of section 2(1)(d)(1) of the CPA.

In *Chandrika v. Ms. Shashi Jain*[76] on account of defect in fixing marble during the construction, compensation was granted.

Delay in payment of salary by schools

In *Principal, R.S.M. Inter College v. Smt. Rekha & Ors.*[77] - Complainants of arrears of salary due were teachers in Inter College, employed in government - aided schools / colleges. Uttar Pradesh State Consumer Commission overruled the decision of district forum that held these teachers as consumers within meaning of section 2(1)(d) of the CPA. It held that district forum erred and it has no jurisdiction to adjudicate.

Non-refund of tution fee by school

In *Vivek Garg v. Rajeev Kumar & Ors.*[78] Consumer commission ordered refund of tuition fee alongwith 15% interest towards compensation to the complainant who for doing diploma Course in Computer Application deposited Rs.6,900/. The amount collected for imparting was not implemented by the organization. The organization was transferred without informing complainant.

Dealy in Delivery of possession

Shakuntla Devi v. Chief Administrator, HUDA[79] Haryana State Commission directed HUDA to deliver possession and pay interest of 12% on amount deposited by the complainant for escalation in cost, monetary loss and mental harassment caused by deficiency in service on its part. In this case, plot was allotted to complainant, but vacant physical possession not delivered for another 5 years.

Negligence by health providers

In *A.Ravi v. Dr.(Mrs.) Usha Rani & Ors.*[80] compensation of Rs.4,00,000/- alongwith 18% interest was awarded for negligence in family planning operation in which a patient lost her life.

[75] Tamilnadu S.C.D.R.C. 658
[76] Chandigarh S.C.D.R.C. 330
[77] Uttar Pradesh S.C.D.R.C. 478
[78] Chandigarh S.C.D.R.C. 172
[79] Harayana S.C.D.R.C. 495
[80] Tamil Nadu S.C.D.R.C. 581

In *D.Venkateshwarlu v. Dr. P. Sudarshan Reddy*[81] district forum awarded Rs.10,00,000/- towards compensation on account of negligence that resulted in death of 2 years' old child. The same was declared by the state commission as absurdly exorbitant. It returned the complaint to district forum having pecuniary jurisdiction with the directions that the award must be much below Rs.5,00,000/ for the death of 2 years' old child.

In *Calcutta Medical Research Institute v. Bimalesh Chatterjee & Ors.*[82] the National Consumer Commission set aside order of State Commission awarding Rs.2,00,000/- towards compensation on account of wrong blood transfusion. It held that as the patient survived 4 years after treatment and no evidence is adduced to link blood transfusion with any resultant complications, onus of proving negligence lies on complainant, which was not discharged. Hence, no negligence/deficiency is proved so as to award compensation.

Delivery of damaged car

In *Jasbir Singh Grewal v. Mahindra ford India Ltd.*[83] the complainant booked 'Ford Escort' car. However, he was delivered accidented and repainted car in damaged condition. On these facts the Chandigarh State Redressal Commission held that respondents was expected delivery of brand new car without any defect. Hence, deficiency well established under section 2(1)(c)(iii) of the CPA. It therefore, ordered refund of the amount paid alongwith 18% interest to the respondents.

Delivery of defective scooter

Delhi State Consumer Redressal Commission in *L.M.L. Ltd.v. Mr.B.P. Tyagi*[84] directed refund of price paid along with 18% interest in a case wherein complainant purchased scooter, which started giving trouble from third day of purchase. His genuine grievances were not attended by the dealer's workshop for which complainant visited a number of times.

Delay in delivery of parcel by post office

In *Union of India v. Anwar Ahemad Qureshi* [85] complainant, a literary figure in Urdu Literature, sent books by post parcel under speed post on 8.1.1999 to U.P. Urdu Academy. Parcel was delivered on 22.1.1996. Academy refused to accept the same. District forum awarded Rs. 5,000/- towards compensation alongwith 18% interest to the complainant. In appeal, contention was

[81] Andhra Pradesh S.C.D.R.C. 472
[82] National C.D.R.C 13
[83] Chandigarh S.C.D.R.C. 48
[84] *Delhi S.C.D.R.C. 219*
[85] Maharashtra S.C.D.R.C. 373

raised by the postal authorities that address was not proper. Appeal turned down such contention holding that the contention is dishonest and address clear enough to locate Urdu Academy. It held the award of compensation by district forum quite proper.

Delay in payment of money on maturity of bond

In *Sub-post Master & Ors. v. M.V. Satyanarayana*[86] delayed payment by the opposite party to the complainant on account of maturing *Indira Vikas Patras*[87] was held as amounting to deficiency in service. Complainant was awarded 15% interest from 1.12.1995, as compensation.

Supply of defective seeds

In *National Forum for Consumer Education v. Sanjay Krishi Seva Kendra & Ors*[88] defective seeds were planted and sown. It was later found out that the majority of the plants were sterile. Evidence of defective seeds supported by grievance committee was adduced before the district forum. Extensive inspection of various fields was carried out and sterility percentage was recorded to be 65-70%. It was also proved that true type of plants were only 10%. But district forum, guided by technicalities rejected complaints. On appeal, such decision by the district forum was held to be unfortunate. The Maharashtra State Consumer Commission ruled out that committee has no reason to tender false report detrimental to producer's interest. Defective seeds were sold without legal warranty and therefore, dealers and producers equally liable. They were directed to compensate the complainants.

Non payment of sale proceeds of shares

In *Pulomaja Misra v. Kailash Chand Gupta*[89] In this case, complainant hired opposite party's service for sale of shares on payment of brokerage. Shares were sold and sale proceeds amounting to Rs. 2,50,119/- was received. Amount was not paid by the opposite party to the complainant. Delhi State Consumer Commission directed the opposite party to return Rs. 2,43,810/- after deducting brokerage alongwith 18% interest. Such an act amounted to deficiency in service under section 2(1)(g) of the Consumer Protection Act.

Wrong Message delivered by telegraph office

[86] Andhra Pradesh S.C.D.R.C. 222
[87] money securities
[88] Maharashtra S.C.D.R.C. 451
[89] Delhi S.C.D.R.C. 56

In *Superintendent of Telegraphic Office Tuticorin v. K. Andi Dhevar*[90] Tamil Nadu State Consumer Commission set aside order of compensation awarded by district forum to the complainant on account of wrong message delivered by the telegrah office saying that as wrong message was not intentional but by mistake and such errors/mistake being covered under Rule 5 of Indian Telegraph Act. The Commission therefore, held that it cannot be made liable for any compensation.

Again Tamil Nadu State Consumer Commission set aside order of compensation awarded by district forum to the complainant on account of delay in delivering message by the telegaram office, holding that no deficiency in service could be claimed when delay was because of insufficiency in address. In this case, door number was not given.[91]

Excessive telephone bill

In *Sub-Divisional Officer (Telecom) Department v. Gurbachan Singh*[92] the Himachal Pradesh State Consumer Commission ruled that when complaint is made regarding excessive telephone bill, onus lies on the telecommunication department to prove that metering equipment was not defective. In the case before it, the department failed to establish the same. The commission cancelled the complainant and held that reasonable amount has to be paid for the period in dispute. It upheld the order of the district forum, wherein it was held, that the amount of Rs. 8,516/- deposited by complainant, should be refunded alongwith 12% interest.

In *Junior Sub-Divisional Officer v. Abdu.K. Rehna Manzil*[93] a complaint was made reading highly inflated telephone bills. District forum asked the opposite party to produce computer print out of calls. The same was not produced by the telephone authorities. The district forum held that subscriber has every right to know the basis on which these bills were prepared. The forum after taking account of 10 previous bills, produced by the complainant, took average charges of those 10 bills, and ordered for payment of Rs. 393/ (an average of 10 previous bills produced by the complainant). On appeal, Kerala State Consumer Commission upheld the order of district forum as it found no ground to interfere with the order.

Omission of name in telephone directory

[90] Tamil Nadu S.C.D.R.C. 422
[91] *Asstt. Supdt. of Telegraph Traffic v. Sakthivel Tamil Nadu S.C.D.R.C. 382*
[92] Himachal Pradesh S.C.D.R.C. 17
[93] Kerala S.C.D.R.C. 59

In *M&N Publications Ltd. v. Dr. (Mrs.) Athurrinissa Begum*[94] Delhi Consumer Redressal Commission, granted compensation to the complainant whose name from the telephone directory was omitted for the year 1994. The omission was held to be deficiency in service in this case.

Non-delivery of goods for safe carriage

In *Gujarat Co-operative Milk Marketing Federation v. Trans Continental*[95] Complainant entrusted goods to opposite party for safe carriage. Those goods were not delivered at destination and opposite party contended that driver was murdered and the goods were taken away. It was held that opposite party not absolved by his liability and has to make up for the loss incurred by the complainant.

U.T.I. matured but amount did not reach to the complainant. Held to be deficiency in service under Section 2(1)(g) of CPA and the Unit Trust of India was directed to pay the amount to the complainant.[96]

Under Invoice

In *Tribhuvandas Bhimji Zaveri v. Rajesh Gupta* Complainant purchased gold ornaments in September 1991 alleging Rs. 390/- per gram as purchase price. The re-sale price was paid at Rs. 370/- per gram. He complainant alleged under paying the price. It was held that the opposite party did not indulge in unfair trade practice.[97]

Non payment of entry tax

In *G. Sadanandan Pillai v. S. Babu & Ors. Kerala* complainant purchased autorickshaw from the opposite party. The opposite party did not disclose the fact that entry tax was not paid. The autorickshaw was seized by police and complainant had to pay the tax. The Kerala State Consumer Dispute Redressal Commission held it amounts to unfair trade practice.[98]

In *Hira Moti Spices Pvt. Ltd., & Anr. v. Amar Chand & Anr. Himachal Pradesh* lucky draw scheme floated by manufacturer of spices announced that on purchase of 20 kgs spices at a stretch, lucky coupon would be given. Maruti car was announced against coupon issued to the complainant. But car was not delivered. Held, unfair trade practice is established under section

[94] Delhi S.C.D.R.C. 135
[95] Gujarat S.C.D.R.C. 361
[96] *Unit Trust of India v. S. Subramaniam & Ors.* Tamil Nadu S.C.D.R.C. 459
[97] *Tribhuvandas Bhimji Zaveri v. Rajesh Gupta* National C.D.R.C. 40
[98] *G. Sadanandan Pillai v. S. Babu & Ors. Kerala* S.C.D.R.C. 696

2(1) (r) of the CPA and complaint is entitled to new 800 Maruti car irrespective of market value.[99]

[99] *Hira Moti Spices Pvt. Ltd., & Anr. v. Amar Chand & Anr. Himachal Pradesh* S.C.D.R.C. 40

CHAPTER IV

DISPUTE RESOLUTION PROCESS IN LABOUR DISPUTES

1. Outline of Labour Disputes Cases

Background of Disputes

The rise of large scale industries in India dates back only from the latter half of the 19th century. The first cotton mills in India was set up in 1851 in Bombay and the first jute mills in 1855 in Bengal. Thereafter the number of industries began to increase both in Bombay and Bengal. The industrial set up has brought in its wake problems of employment, non-employment, terms of employment and conditions of service of the workmen employed therein, which ultimately led to disputes between labour and management. However, until 1926 no on legislative attempt was made to delineate the contour of the expression "trade dispute" or any of its synonyms. It was only in 1926 that section 2(g) of the Trade Unions Act, 1926 defined "trade dispute" to mean:

> "any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment or the terms of employment or the conditions of labour of any persons."

Three years later the Trade Dispute Act, 1929, used the expression "trade dispute." Thus Section 2 (f) of the Trade Dispute Act, 1929 defined "trade dispute" to mean:

> "any dispute or difference between employers and workmen and workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

The aforesaid definition was borrowed from Section 8 of the (English) Industrial Courts Act, 1919.

The scope of Section 2 (f) attracted the attention of the Royal Commission of labour. The Commission suggested widening the coverage of the definition. The Trade Dispute (Amendment) Act, 1938, accordingly amended the definition of the Trade Dispute Act, 1929 to include disputes between employers and employers and at the same time provided for the omission of the following words between an employer and any of his workmen from Section 3 of the Trade Dispute Act, 1929. The amended definition of the "trade dispute" was incorporated in the Industrial Disputes Act, 1947.

In 1947 Section 2 (k) of the Industrial Disputes Act, 1947, defines "industrial dispute" to mean:

> any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

The dimensions of the aforesaid definition determine the permissible area of both community intervention in industrial relations as well as labour activity.

Stated broadly, the definition of "industrial dispute" contains two limitations. (i) The adjective "Industrial" relates to the dispute of an industry as defined in the Act, and (ii) it expressly states that not all sorts of dispute and differences but only those which bear upon the relationship of employers and workmen regarding employment, non-employment, terms of employment and conditions of labour are contemplated.

Types of Disputes

Broadly speaking dispute may be classified into three broad categories, namely, (i) interest disputes and rights dispute (ii) collective and individual dispute and (iii) dispute relating to formation and recognition of trade union.

1) Interest Disputes and Rights Disputes

Interest disputes are related with collective labour interest or what is also referred to as community of interest. They are raised for securing benefits for labour as a class. By espousing

these disputes, the union or a group of persons attempt to establish such rights which are not yet in existence, or they want to increase the magnitude of some existing rights. From this point of view, disputes relating to, for example, revision of pay scales, dearness allowance, bonus, holidays, compensatory allowance, etc. can be classified as interest disputes are of collective nature, even as they may not always benefit all employees of the organisation concerned.

Rights disputes, on the other hand, usually related to existing rights of disputant parties. For example, disputes relating to interpretation of collective agreement or individual employment contract or any law, etc. are rights disputes. These disputes can be expressed in the form of making of money claims, complaints against unlawful dismissals or other disciplinary actions, non-implementation or partial implementation of existing collective agreement, etc. Such claims may be based in a settlement, court award, law, or even a custom. It is thus noticeable that, rights disputes related to existing standards and stipulations in contracts on which the employees have been employed.[1]

2) Collective and Industrial Disputes

The alignment of parties determine whether a dispute is "individual" or collective. Where both the parties are composed of single individuals, the case falls into the category of "industrial dispute". Where one, or both, of the parties include more than one person the dispute is "collective". The emphasis is on the parties to the dispute, and not on the nature of rights involved. A "collective dispute" may either relate to "collective rights", e.g., wages, bonus, holidays and the like, or to "individual disputes" generally relate to "individual rights", but the theoretical possibility of its being concerned with "collective rights" is not ruled out.

(a) "Collective disputes"

i. Both the parties include more than one person:
   Employers and Workman
   Employers and Employers
   Workmen and Workmen

ii. Only one of the parties include more than one person
   Employer and Workman

[1] Debi S. Saini, *Redressal of Labour Grievances, Claims and disputes* Oxford & IBH Publishing Ltd., Bombay (1994) p.45.

Employer and Employer

Workman and Employers

Workman and Workmen

(b) "Individual Disputes"

Employer and Workman

Employer and Employers

Workman and Workman

This categorization raises a basic question, namely are "individual disputes" "industrial disputes?" The question has evoked considerable conflict of opinion.

3) Disputes Relating to Formation and/or Recognition of Unions

In cases of weak labour power or powerful employers, the management does not allow formation of a union in the organisation. It may resort to unfair labour practices for ensuring this. Sometimes, a union may be allowed to be formed, but the employer may refuse to recognize it for collective bargaining. Also, the employer may "resort to the use of various repressive measures to weaken a union." Interestingly, the Indian Law provides for formation of a union but has yet to make legal provisions for union recognition by employers. This may related to one union as well as multi-union situations. Often it also happens that, the management prefers to negotiate with a particular union of its choice and not with the other or others. Disputes which arise from this situation are referred to as recognition disputes. Recognition disputes, technically speaking, are not considered as industrial disputes under the Industrial Disputes Act 1947 (IDA). For this reason, such disputes can be contested between labour and management only at a moral level; or they may involve making of complaint against unfair labour practices by one party against the other party. For the processing of such disputes, it is necessary that workmen remain united, alert, and also make use of legal provisions to strengthen their position.[2]

[2] *Id*., at 5-6.

2. Organization/Institutions for Dispute Resolution

Courts, in-court mediation, special courts, arbitration, mediation, administrative mechanism, others (industrial association, consumers' association, legal aid association, bar association, senior members of the society, community and native agreements, etc.)

(i) Works Committee[3]

The institutions of work committee were introduced in 1947 under the Industrial Disputes Act, 1947 (IDA), to promote measures for securing good relations between employers and workmen.[4] It is concerned with problems arising in day-to-day working of the establishment and to ascertain grievances of the workmen. The determinative decision of works committee is neither agreement nor compromise nor arbitration. Further, it is neither binding on the parties nor enforceable under the Act.[5]

(ii) Conciliation officers

The appropriate government is empowered under Industrial Disputes Act, 1947 to appoint any number of conciliation officers, for mediating in and promoting the settlement of industrial disputes.[6] A conciliation officer is appointed for a specified area; or for specified industries in a specified area; or for one or more specified industries; either permanently; or for a limited period.[7]

(iii) Board of Conciliation

This is a higher forum which is constituted for a specific dispute. It is not a permanent institution like the Conciliation Officer. The Government may, as occasion arises, constitute a Board of Conciliation for settlement of an industrial dispute with an independent chairman and equal representatives of the parties concerned as its members. The chairman who is appointed by the Government, is to be a person unconnected with the dispute or with any industry directly affected by such dispute. Other members are to be appointed on the recommendations of the parties concerned, and if any party fails to make recommendations, the Government

[3] IDA, 1947, Section 3.
[4] *Id.,* Section 3(2).
[5] *North Brook Jute Co. Ltd. v Their Workmen* (1960) 1 LLJ 580 (SC); *See,* S.C.Srivastava, *Industrial Relations Machinery*, 25. (1983, Deep & Deep, New Delhi).
[6] IDA, 1947, Section 4(1).
[7] *Id.,* Section 4(2).

shall appoint such persons as it thinks fit to represent that party. The Board cannot admit a dispute in conciliation on its own. It can act only when reference is made to it by the Government.[8]

The Boards of conciliation are however, rarely constituted by the Government these days. The original intention was that major disputes should be referred to a Board and minor disputes should be handled by the conciliation officers. In practice, however, it was found that when the parties to the dispute could not come to an agreement between themselves, their representatives on the Board in association with independent chairman (unless latter had the role of an umpire or arbitrator), could rarely arrive at a settlement. The much more flexible procedure followed by the conciliation officer is found to be more acceptable. This is more so when disputes relate to a whole industry, or important issues, and a senior officer of the Industrial Relations Machinery, i.e. a senior officer of the Directorate of Labour, is entrusted with the work of conciliation. The Chief Labour Commissioner (Central) or Labour Commissioner of the State Government generally intervene themselves in conciliation when important issues form the subject matters of the dispute.

(iv) Court of Inquiry

Under the Industrial Disputes Act, 1947, Court of Inquiry may be constituted by the appropriate Government for inquiring about matter appearing to be connected with or relevant to an Industrial Dispute. The court may consist of one or more independent persons. It has to submit its report within six months on the matter referred to Units.[9]

(1) The appropriate Government may be ocassion arises, by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with a relevant to an industrial dispute.

(2) A court may consist of one independent person or of such numbe of independent person as the appropriate Government may think fit and where a court consists of two or more members, one of them shall be appointed as the Chairman.

[8] *Id.,* Section 5.
[9] *Id.,* Section 6.

(v) Voluntary Arbitration

When Conciliation Officer or Board of Conciliation fail to resolve conflict/dispute, parties may voluntary arbitration for settling their dispute. For settlement of differences or conflicts between two parties, arbitration is an age old practice in India.

Section 10-A of the Industrial Disputes Act, 1947 provides for the settlement of industrial disputes by voluntary reference of dispute to arbitrators and to achieve this purpose, this section makes following provisions:

Where any industrial dispute exists or in apprehended and the same has not yet been referred for adjudication to Labour court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, for the arbitration of specified arbitration or arbitrators. The presiding officer of a Labour Court of Tribunal or National Tribunal can also be named by the parties as arbitrator.

Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.

The Government of India has also been emphasizing the importance of voluntary arbitration for settlement of disputes in the labour policy chapter in the first three plan documents, and has also been advocating this step as an essential feature of collective bargaining. This was also incorporated in the Code of Discipline in Industry adopted at the 15th Indian Labour Conference in 1958. Parties were enjoined to adopt voluntary arbitration without any reservation. The position was reviewed in 1962 at the session of the Indian Labour Conference where it was agreed that this step would be the normal method after conciliation effort fails, except when the employer feels that for some reason he would prefer adjudication. In the Industrial Trade Resolution also which was adopted at the time of Chinese aggression, voluntary arbitration was accepted as a must in all matters of disputes. The Government had thereafter set up a National Arbitration Board for making the measure popular in all the states, and all efforts are being made to sell this idea of management and employees and their unions.

In 1956 the Government decided to place voluntary arbitration as one of the measures for settlement of a dispute through third party intervention under the law. Sec. 10A was added to the Industrial Disputes Act, and it was enforced from 10th March, 1957.

(vi) Adjudication

Unlike conciliation and voluntary arbitration, adjudication is compulsory method of resolving conflict. The Industrial Disputes Act, 1947 provides the machinery for adjudication, namely, Labour Courts, Industrial Tribunals and National Tribunals.

(a) Labour Courts:

(i) The appropriate Government is authorized under the Industrial Disputes Act to set up one or more labour courts for the adjudication of industrial disputes relating to any of the following matter:[10]

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement / grant of relief to workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out.[11]

(ii) The Labour Court consist of one person who is known as presiding officer.

(b) Industrial tribunals

(i) The appropriate Government is empowered under the Industrial Disputes Act, 1947 to constitute one or more industrial tribunals for the adjudication of industrial disputes relating to: [12]

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;

[10] *Id.*, Section 7(1)
[11] *Id.*, Second Schedule.
[12] *Id.*, Section 7A(1).

6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment.[13]

(ii) The Tribunal shall consist of one person knows as Presiding officer. The Government may also appoint two assessors to advise the Presiding Officer in the proceedings.

(iii) Central Government has set up Industrial Tribunals - cum – Labour Courts (here in after referred to as CGIT) on the basis of concentration of industries in a region and the number of disputes arising in the region. At present, there are 17 CGIT-cum-Labour courts set up in the country.

(iv) Like Central Government, State Government and the administrations of the union territories have also a number of Industrial tribunals and Labour courts as on 31.10.1998 was 333.[14] There is a plan to set up 15 more CGIT-cum-Labour Courts during the IX Five Year Plan, where considered necessary and feasible.[15] This need arose due to year wise increase in the pendency before the existing CGIT-cum-labour courts.

(c) National Tribunals:

(i) The Central Government is authorized under the Industrial Disputes Act, 1947 to constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, involve questions of national importance or are of such a nature that industrial establishments situated in more than one states are likely to be interested in, or affected by, such disputes.[16]

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[13] *Id.,* Schedule III.
[14] Annual Report 2000-2001, Ministry of Labour, Government of India.
[15] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 820, Answered On 02.03.2000, *Disputes Pending For Adjudication*; See http://164.100.24.219/rsq/quest.asp?qref=10405
[16] IDA, 1947, Section 7B(1).

(ii) It shall consist of one person, known as presiding officer. He may also be assisted by two assessors appointed by the Central Government to advise him in adjudicating disputes.

(vii) Grievance Settlement Authorities

Under Section 9C of Industrial Disputes Act, 1947 (which has not yet been enforced) it has been provided that an employer in an industrial establishment with 50 or more employees should provide for a grievance settlement authority for the settlement of industrial disputes with individual employees.[17] These bodies are made up of representatives of workers and employers. No reference can be made under the Act to Boards of Conciliation, Labour courts or Industrial tribunals, unless the dispute has first been the subject of a decision of a grievance settlement authority.[18]

(viii) *Lok Adalats*

The Labour *Lok Adalats* in India to bring down the pendency of cases in labour courts are being held. Thus in Punjab in order to reduce [19] a backlog of about 18,000 cases some of even more than five years old,[20] Labour *Lok Adalats* were organized. *Lok Adalat* relating to labour disputes was held at Ludhiana. Up to May, 2001, about 6,600 cases were settled by the *Lok Adalats* held in Punjab.[21] Like Punjab in Delhi also in order to reduce the pendency of cases, a *Lok-Adalat* was organized on 9th November, 2001 in the CGIT-cum-Labour Court and 69 cases have been settled. [22] In the Employees Provident Fund Organization, a system of ventilation and redressal of grievances from employees, employers, trade unions, subscribers of provident fund has been introduced. For the same, *Lok Adalats* are held on 10th of every month. During 2000-2001 915 Lok Adalats were organized at various field offices of the Employees Provident Fund Organization, in which 5758 out of 6423 cases were disposed of during 2000-2001. [23]

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[17] *Id*., Section 9C.
[18] http://www.ilo.org/public/english/employment/gems/eeo/law/india/c_all.htm
[19] *Set up Lok Adalats for labour disputes*, The Hindu, New Delhi, Sunday, may 27, 2001.
[20] Mr. A Sivananthiran, Senior Specialist, ILO-SAAT and officials of Ministry of Labour, Government of Punjab, http://www.iira-india.com/news3.htm
[21] *Supra* note 19.
[22] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 541**,** Answered On 22.11.2001, *Pending Cases In Labour Courts And Industrial Tribunals* ; See http://164.100.24.219/rsq/quest.asp?qref=58848
[23] *Supra* note 14.

(ix) Central Industrial Relations Machinery (CIRM)

In pursuance of the recommendation of the Royal Commission on Labour in India for prevention and settlement of industrial disputes, enforcement of labour laws and to promote welfare of workers in the undertakings of the Central Government the Organization of the Chief Labour Commissioner known as Central Industrial Relations Machinery (CIRM) was set up in April, 1945. The CIRM is headed by the Chief Labour Commissioner. The machinery has a complement of 253 officers and their establishments are spread over in different parts of the country with zonal, regional and unit level formations. At present there are 18 regions each headed by Regional Labour Commissioner with headquarters at Ajmer, Ahmedabad, Asansol, Bangalore, Mumbai, Bhubaneshwar, Chandigarh, Cochin, Calcutta, Guwahati, Hyderabad, Jabalpur, Chennai, New Delhi, Patna, Nagpur, Dhanbad and Kanpur. Our of these, 14 regions have been placed under the supervision of field/zonal Deputy Chief Labour Commissioners and 4 regional offices are supervised directly by headquarters office of Chief Labour Commissioner.

The quasi-judicial functions of CIRM broadly consist of (i) promotion of peaceful and harmonious industrial relations through investigation, prevention and settlement of industrial disputes in the industries for which the Central Government is the appropriate Government under the Industrial Disputes Act, (ii) enforcement of Awards and settlements in the Central Sphere.[24] The Officers of the CIRM also persuade the parties to accept voluntary arbitration for settlement of disputes, which are not otherwise settled. As a result, few disputes are settled by the parties through voluntary arbitration offered by the officers of the CIRM, either under the Code of Discipline or under Section 10-A of the Industrial Disputes Act. [25]

Quite apart from the aforesaid statutory mechanisms there are following non-statutory mechanisms for preventing and settling industrial disputes:

(i) Code of Discipline,

(ii) Joint Management Council,

(iii) Tripartite Machinery and

(iv) Joint Consultative Machinery .[26]

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[24] *Ibid.*

[25] Govt. of India, Ministry of Labour, Office of Chief Labour Commissioner, New Delhi. Standard reference note on the working of CIRM for the year 1999-00, No. 7(1)/2000-Coord.

[26] S.C.Srivastava, *Industrial Relations and Labour Laws,* Vikas Publishing House (2000).

(x) Non-governmental organizations (NGOs)

There are several NGOs registered in India, which deal with labour problems, espouse their cause, fight for their rights even up to the Supreme Court. The following are some of the prominent NGO's in the filed:

1) *DISHA* a NGO (a registered body) is working in the state of Gujarat and deal with organized labourers working under the Forest Department. It was able to raise the labourers' employment related issues at various levels of the Forest bureaucracy, as well as in the court of law. It also filed cases regarding regularization of employment of those labourers who have completed the stipulated period of service in Forest Department.[27]

2) *BANDHUA MUKTI MORCHA* has also done commendable area in the field of labour welfare. In 1984, it filed public interest litigation, wherein the practice of magistrates and judicial officers of letting off employers violating labour welfare legislations with small fines was condemned.[28] It was because of the efforts of this organization, that in 1991, the Supreme Court of India, constituted Committee, to identify bonded labourers and to collect all material in respect of them so that further directions could be issued in terms of the requirement of a scheme to rehabilitate them.[29]

3. Fact Finding regarding the Organizations/Institutions

(a) Statutory bases (laws or regulations on the establishment and procedures of the organization / institutions)

Article 246(4) of the Constitution of India empowers the Union and the states to legislate on the labour matters. In pursuance to this 165 legislation has been enacted; both at

[27] http://www.disha-india.org/forest.htm
[28] *BMM v Union of India*, (1984) 3 SCC 161.
[29] *Bandhua Mukti Morcha v Union of India*, (1991) 4 SCC 174.

Central and State levels to deal with various aspects of labour. These labour legislations are in conformity with the conventions of International Labour Organization (ILO), Indian Government has been enacting number of labour related legislations in conformity with the conventions, which are accepted as international standards for labour all over the world.

At present there are 59 Central legislation affecting labour. Quite apart from this States have also enacted various labour legislation which are applicable to only within those states. Central government controls the legal jurisdiction of applying labour laws in establishments like railways, defence and other industries which are of national importance. Some of prominent Central statutes are the Workmen's Compensation Act, 1923; Indian Trade Unions Act, 1926; The Payment of Wages Act, 1936; Minimum Wages Act, 1948; Weekly Holidays Act 1942; Industrial Employment (Standing Orders Act) 1946; Industrial Disputes Act 1947; Factories Act, 1948; Employees State Insurance Act, 1948; Employees Provident Funds Scheme, 1952; Employees Provident Funds & Miscellaneous Provisions Act, 1952; Working Journalists & Other Newspaper Employees Conditions of Service & Miscellaneous Provisions Act, 1955; Employment Exchange (Compulsory Notification of Vacancies) Act, 1959; Apprentices Act, 1961; Maternity Benefit Act, 1962; Contract Labour (Regulation & Abolition) Act, 1970; Employees Family Pension Scheme, 1971; Payment of Gratuity Act, 1972; Employees Deposit Linked Insurance Scheme, 1976; Equal Remuneration Act, 1976; Administrative Tribunal Act, 1985; Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979; Payment of Bonus Act, 1965; Labour Laws (Exemption From Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988; Merchant Shipping Act, 1958; Children (Pledging of Labour) Act 1933; Child Labour (Prohibition & Regulation) Act, 1951; Beedi & Cigar Workers (Conditions of Employment) Act, 1966; Plantation Labour Act, 1951; Mines Act, 1952 and the Indian Railways Act, 1989, Quite apart from these Central enactments some states have enacted special legislations, which suit their industrial environment. Thus, Maharashtra has enacted the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971; the Maharashtra Workmen' Minimum House-Rent Allowance Act 1983; and the Maharashtra Mathadi, Hamal, and other Manual Workers (Regulation, Employment & Welfare) Act, 1969; etc.

(b) Running cost

The cost of running dispute resolution mechanism involves not only the regular payment wages and allowances (including social security benefit to the Presiding Officers and supporting staff but also include the maintenance cost of physical structures and physical facilities to run these offices in smooth manner and every ancillary and incidental cost that helps in reducing social tension, by creating social welfare funds. Some of these costs are enumerated below:

1) Rs 10 million is sanctioned by the State of Karnataka to construct a new Labour court complex in the Bangalore City, which will house all the labour courts and tribunals.[30]
2) A budget provision of Rs. 5 million is made by the Employees Provident Fund Organisation and a provision of Rs.1.8 million by the Employee State Insurance Corporation, to publicize the programmes and achievements in the areas of provident fund, pension, medical care and cash benefits and other important decisions/developments in the field of social security for the benefit of the provident fund subscribers and insured persons and also for information of the general public.[31]
3) Under the scheme of National Child Labour Project financial assistance is given directly to the Districts Child Labour Projects Societies instead of routing it through the state governments. During the first year of the 9th five- year plan i.e. 1997-98, grants amounting to Rs. 189.3 million have been sanctioned to the 70 Districts Child Labour Projects Societies in 10 states. The details regarding sanction of funds (state-wise) are: [32]

S.No.	State	Grants Sanctioned
1.	Andhra Pradesh	Rs. 5,55,00,000
2.	Bihar	Rs. 1,89,00,000
3.	Karnataka	Rs. 27,00,000
4.	Maharashtra	Rs. 25,00,000
5.	Madhya Pradesh	Rs. 1,10,00,000
6.	Orissa	Rs. 3,42,00,000

[30] *ILO official moots revamp of labour courts*, Deccan Herald, Thursday, july 12, 2001. Bangalore ed.
[31] Government of India, Ministry of Labour, Rajya Sabha, Starred Question No 369**,** Answered On 14.12.2000, *Expenditure On Publicity*.
[32] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 243**,** Answered On 20.11.1997, *Central Assistance For Rehabilitation of Child Bonded Labour*; See Http://164.100.24.219/Rsq/Quest.Asp?Qref=7080

7.	Rajasthan	Rs. 55,00,000
8.	Tamil Nadu	Rs. 2,60,00,000
9.	West Bengal	Rs. 2,00,00,000
10.	Uttar Pradesh	Rs. 1,30,00,000
	Total	Rs. 18,93,00,000

4) The expenditure incurred on establishment of E.D.P Centres, purchase of computer hardware, software, peripherals and payments for data entry work are debited to Budget Head of Computerization in the EPF Organization. The information relating to total expenditure in this regard, region-wise and year- wise, during the last 3 years is given below: [33]

S No.	**Region**	**Amount spent Rs.(In`000) during**		
		1993-94	1994-95	1995-96
1.	Andhra Pradesh	1199.83	1707.37	1426.19
2	Bihar	-	847.76	192.08
3	Delhi	193.09	2081.98	575.37
4	Gujarat	1407.16	-	
5	Haryana	-	789.69	-
6	Karnataka	261.04	1115.02	1759.66
7	Kerala	123.50	1557.32	364.56
8	Madhya Pradesh	978.51	547.40	529.11
9	Maharashtra	2661.75	3319.04	2666.84
10	N.E Region	36.57	1060.59	131.83
11	Orissa	181.08	674.55	71.03
12	Punjab	1038.09	1236.62	34.44
13	Rajasthan	430.41	920.35	80.91
14	Tamil Nadu	1089.46	897.00	669.68
15	Uttar Pradesh	-	795.27	40.76
16	West Bengal	929.38	1715.02	899.63
17	Central Office	76.97	5566.26	437.43
18	NATRSS	874.13	-	-

(c) Status

1. Every Board, court, Labour Court, Industrial Tribunal, National Tribunal and any other authority, constituted under the IDA, like, conciliation officer, have the same powers as are vested in a civil court under the Civil Procedure Code, 1908 when trying a suit, in

[33] Government of India, Ministry of Labour, Rajya Sabha Starred Question No 352, Answered On 16.12.1996, *Total Expenditure Incurred on Computerisation In EPF Organisation*, See http://164.100.24.219/rsq/quest.asp?qref=24770

respect of the matters, namely (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; (c) issuing commissions for the examination of witnesses; (d) in respect of such other matters as may be prescribed.

2. Every inquiry or investigation by the above mentioned authorities is deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. [34]

(d) Persons in charge of resolution (qualification, requirement of legal education/ knowledge and appointment)

Labour Court: A person cannot be appointment as the presiding officer of a Labour Court, unless:

(i) he is, or has been, a judge of a high court;[35] or

(ii) he has, for a period of not less than 3 years, been a district judge or an additional district judge;[36] or

(iii) he has held any judicial office in India for not less than seven years;[37] or

(iv) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.[38]

Industrial tribunal: A person cannot be appointed as the presiding officer of a Tribunal unless:-

(i) he is, or has been, a Judge of a high court; [39] or

(ii) he has, for a period of not less than 3-years, been a district judge or an additional district judge.[40]

National Tribunal: A person is not qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a judge of a high court. [41]

Disqualifications for the presiding officers of Labour Courts, Tribunals: No person can

[34] IDA, 1947, Section 11(3).
[35] *Id.*, section 7(3)(a).
[36] *Id.*, section 7(3)(b).
[37] *Id.*, section 7(3)(d).
[38] *Id.*, section 7(3)(e).
[39] *Id.*, section 7A(3)(a).
[40] *Id.*, section 7(3)(aa).
[41] *Id.*, Section 7B(3).

be appointed to the office of the presiding officer of a Labour Court, Tribunal or National Tribunal, if:

(a) he is not an independent person; or

(b) he has attained the age of sixty-five years.[42]

(e) Substantive rules applicable to dispute resolution

In India, Industrial Disputes Act 1947 and other state legislation and the rules framed there under generally govern the dispute resolution. Many laws passed before independence remain on the statute books, and new pieces of legislation, occasionally take contemporary English legislation as their inspiration. The judiciary plays a key constitutional role. Foreign judgements are recognized in India, except in cases where misconduct or misinterpretation are deemed to have occurred, or where such judgment sustains a claim, which is in breach of any Indian law.

(f) Proceedings

The Industrial Disputes Act, 1947 authorizes the Conciliation Officer, Board, Court of Inquiry, an arbitrator, Labour Court, Industrial Tribunal or National Tribunal to follow such procedure as they deem fit.[43]

Proceedings before the conciliation officers[44]

Under the Industrial Disputes Act, 1947 conciliation proceedings before a conciliation officer involves the following processes:

(1) Where any industrial dispute exists or is apprehended, the conciliation officer is authorized to hold conciliation proceedings in the prescribed manner.[45]

(2) The conciliation officer is under an obligation, for the purpose of bringing about a settlement of the dispute, without delay, to investigate the dispute and all matters affecting the merits and the right settlement thereof and do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

[42] *Id.,* Section 7C.
[43] *Id.,* Section 73(1).
[44] *Id.,* Section 12.
[45] *Ibid*.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer has to send a report thereof to the appropriate government together with a memorandum of the settlement signed by the parties to the dispute.[46]

(4) If no such settlement is arrived at, the conciliation officer, as soon as practicable, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report send by the Conciliation officer, the appropriate government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal[47], it may make such reference. Where the appropriate government does not make such a reference it shall record and communicate to the parties concerned its reasons there for.

(6) A report by the Conciliation officer is to be submitted within 14days from the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate government.[48]

Proceedings before the Board of Conciliation[49]: (1) Where a dispute has been referred to a Board under the Industrial Disputes Act, 1947 Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merit and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matter in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate government together with a memorandum of the settlement signed by the parties to the dispute.

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[46] *Id.*, Section 12(3).
[47] *Id.*, Section 12(5)
[48] *Id.*, Section 12(6).
[49] *Id.*, Section 13.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report by the Board, in respect of a dispute relating to a public utility service, the appropriate government does not make a reference to a Labour Court, Tribunal or National Tribunal it records and communicates to the parties concerned its reasons therefor.[50]

(5) The Board is required to submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate government.[51]

Proceedings before the courts of inquiry: A court shall inquire into the matters referred to it and report thereon to the appropriate government ordinarily within a period of 6-months from the commencement of its inquiry.[52]

Proceedings before the Labour Courts, and Tribunals

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall within the period specified in the order referring such industrial dispute or the further extended period submit its award to the appropriate government.[53]

Form of report or award:

(i) The report of a Board or court or tribunal should be in writing,

(ii) It should be signed by all the members of the Board or court or presiding officer of a Labour Court or Tribunal or National Tribunal.[54]

(iii) Every report of a Board or court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or

[50] *Id.*, sections 13(4).
[51] *Id.*, Sections 13(5).
[52] *Id.*, section 14.
[53] *Id.*, Sections 15(1).
[54] *Id.*, Section 16.

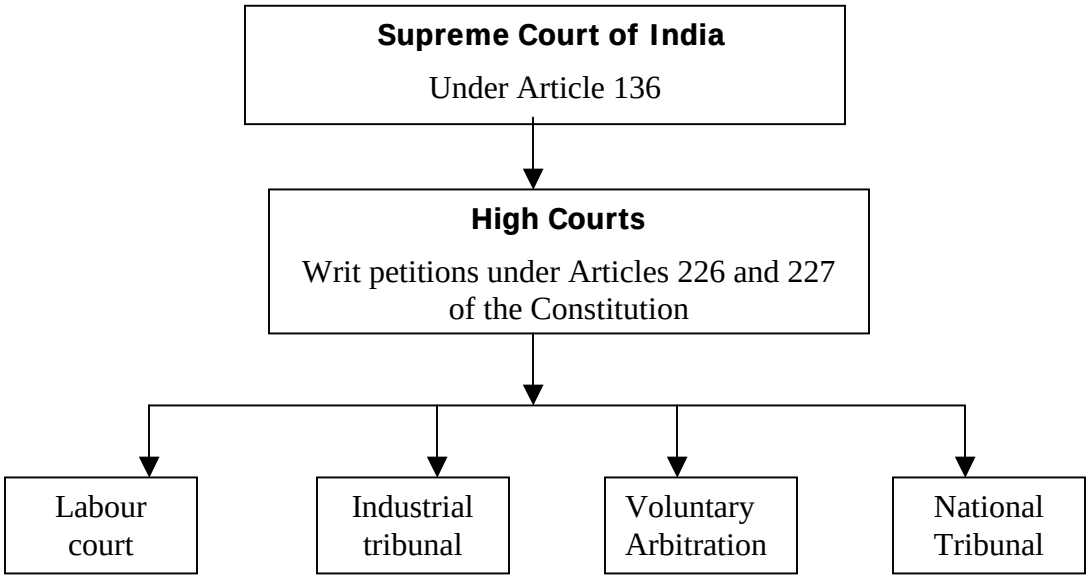
National Tribunal shall, within period of 30 days from the date of its receipt by the appropriate government, is published by notification in the Official Gazette.

(iv) The appropriate government may within 90- days from the date of publication of the award make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a state government, or before Parliament, if the order has been made by the Central Government. [55]

(g) Relationship of the court system in terms of proceedings

Under Article 32 and 226 of the Constitution, the Supreme Court and High Courts are empowered to issue writs, orders and directions in respect to the orders issued by labour courts, Tribunals and National Tribunals and under Article 136 a special leave may lie in the Supreme Court against the orders of Labour Court, Tribunals and National Tribunal.

Labour Adjudication System In India



[55] *Id.*, section 17A(2).

(h) Time

Under the Industrial Disputes Acts, 1947 the Labour Court required to dispose of cases relating to individual workmen within a period of 3 months. In other cases the appropriate government is required to specify the period within which an award must be submitted by the labour court or tribunal.[56] Similarly Labour court is required to decide an application for computation of monetary benefits to a workman within a period of 3 months.[57]

The following Table gives the number of cases pending in three different and successive years:

Pending cases with the various CGIT-cum-labour courts:[58]

As on 31.12.97	As on 31.12.98	As on 31.12.99
6793	7302	8468

The rate of disposal over the years was declining, as evident from the following statement of cases disposed for three successive years:

Number of cases disposed by the CGIT- cum- labour courts during: [59]

1-1-96 to 31-12-96	1-1-97 to 31-12-97	1-1-98 to 31-10-98
1149	977	724

The main reasons for increasing pendency and lower disposal rate are as follows:

(i) Almost all the disputes are now required to be referred to the Industrial Tribunal-cum-Labour Courts in conformity with the direction of the Supreme Court;

(ii) Vacancies in the post of Presiding Officers arise from time to time;

(iii) Procedural impediments;

(iv) Shortage of labour courts in states / union territories;[60]

(v) Adjournments sought by parties to file documents, etc.[61]

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[56] *Id.*, Section 10(2A).
[57] *Id.*, Section 33C(2).
[58] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 2995**,** Answered On 20.04.2000, *Cases Pending In Labour Courts*, http://164.100.24.219/rsq/quest.asp?qref=13815
[59] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 2105, Answered On 15.03.1999, *Disputes Pending In Labour Courts High Courts*; See http://164.100.24.219/rsq/quest.asp?qref=1664
[60] Government of India, Ministry of Labour, Rajya Sabha Starred Question No 254, Answered On 09.12.1996, *Pending Cases In The Central Government Industrial Tribunal Cum Labour Court And State Level Labour* ; See http://164.100.24.219/rsq/quest.asp?qref=27743

(i) Statistical data (the number of organizations / institutions, the number of parties involved and the number of disputes resolved, pending or unresolved)

Central Government Industrial Tribunal - As on January 2002, 17 Central Government Industrial Tribunal-cum- Labour Court (CGIT) have been set up.[62] The following table gives the number of Central Government Industrial Tribunal-cum- Labour Court (CGIT)-cum-Labour Court located at different places.

Sl. No	Location	No. of CGIT-cum-Labour court
1	Mumbai	2
2	Dhanbad	2
3	Asansol	1
4	Bangalore	1
5	Calcutta	1
6	Chandigarh	1
7	Jabalpur	1
8	New Delhi	1
9	Kanpur	1
10	Lucknow	1
11	Jaipur	1
12	Nagpur	1
13	Bhubaneshwar	1
14	Chennai	1
15	Hyderabad	1
	Total	17

Pendancy of cases before CGIT cum Labour Courts - The total number of cases pending between 5 to 10 years with Central Government Industrial Tribunal cum labour courts during 1998 and 1999 are given below:

S. No.	Name of the CGIT-cum-Labour Court	Total No. of cases as on 31. 12. 1999[63]	Total No. of cases as on 31. 12. 1998[64]	Pending between 2 to 5 years	Pending between 5 to 10 years	Remarks
1	Asansol	309	167	6	1	
2	Bangalore	441	587	109	94	
3	Calcutta	184	231	32	51	
4	Chandigarh	1372	1237	454	415	
5	Dhanbad-I	1286	1112	375	180	
6	Dhanbad-II	1138	980	393	138	As on

[61] Government of India, Ministry of Labour, Rajya Sabha Unstarred Question No 2825, Answered On 13.07.1998, *Disputes Pending At Industrial Tribunals Dhanbad*; See http://164.100.24.219/rsq/quest.asp?qref=47124

[62] http://labour.nic.in/cgit/welcome.htm

[63] Government of India, Ministry of Labour, Rajya Sabha Starred Question No 206**,** Answered On 09.03.2000, *Cases Pending With Labour Courts* ; See http://164.100.24.219/rsq/quest.asp?qref=11106

[64] *Supra* note 59.

						Feb.2000
7	Jabalpur	1229	1598	350	224	
8	@Jaipur	177				@ Has started functioning from 1-9-98.
9	Kanpur	724	231	68	46	
10	#Lucknow	18				# Has started functioning from 15-6-99
11	$Nagpur	52				$ Has started functioning from 1-7-99.
12	New Delhi	1057	846	201	120	
13	Mumbai-I	189	204	78	32	
14	Mumbai-II	292	190	10	5	
	Total	8468	7483	2076	1306.	

As on 30.9.1996, 6, 049 Industrial disputes and 4833 applications were pending before CGIT-cum-Labour Courts.

As on 31.12.1995, in Andhra Pradesh, Rajasthan, Pondicherry, Manipur, Punjab, Haryana and Daman & Diu - 42,181 industrial disputes and applications were pending.[65]

Grievance settlement authorities - The grievances received from the Cabinet Secretariat, Department of Administrative Reforms, PMO, etc., are referred to the field officers in labour department for redressal and on receipt of the action taken report from the field formations, the petitioner is informed about the action taken on his /her grievances. Out of 2,01,732 grievance cases received during 1999-2000, in the EPF offices, 1,93,055 cases were settled.[66] The type of grievances and number of grievances handled and settled by the Labour Welfare Commissioners during the year 1999 is as under: [67]

[65] *Supra* note 60.
[66] *Supra* note 14.
[67] *Supra* note 25.

s. no.	Type of grievance	Number of grievances
1	Individual Grievances (Handled)	28242
2	Individual Grievances (Settled)	26975
3	Collective Grievances (Handled)	5829
4	Collective Grievances (Settled)	5286
5	Total Grievances Handled i.e., total of S. No. 1 & 3	34071
6	Total Grievances Settled i.e., total of S. No. 2 & 4	32261
7	Grievances relating to terms & conditions of service or others concerning the establishments (Handled)	20907
8	Grievances relating to terms & conditions of service or others concerning the establishments (Settled)	19563
9	Other Grievances (Pvt. & Domestic) (Handled)	13164
10	Other Grievances (Pvt. & Domestic) (Settled)	12698
11	Total Grievances Handled i.e., total of S. No. 7 & 9	34071
12	Total Grievances Handled i.e., total of S. No. 8 & 10	32261

Central Industries and Relations Machinery

During 1959-66 the percentage of disputes settled by conciliation machinery varied from 57 to 83 in the Central sphere. During 1988, 10,106 disputes were referred to conciliation out of which the number of failure report received was 3,183[68] in the Central sphere. The failure report of conciliation was 2691 referred in Karnataka, 4471 out of 9918 referred in Punjab, 4430 out of 4530 in Delhi and 22 out of 230 cases referred to conciliation in Goa. During 1997, CIRM intervened in 783 cases of threatened strikes and its conciliatory efforts succeeded in averting 696 strikes, which represents a success rate of 88.88%.[69]

Year wise industrial disputes handled by the CIRM in Central Sphere[70] is given below:

[68] See Government of India, Ministry of Labour, *Annual Report*, 1988-89 (Vol. 1), p. 69 (1989).
[69] See Government of India Ministry o f Labour, *Annual Report*, 1997-98 1.16 (1998).
[70] *Supra* note 25.

Year	No.of disputes referred to CIRM during the year	No.of disputes considered unfit for intervention by CIRM	No. of disputes settled without holding formal conciliation proceedings	No. of disputes in which formal conciliation proceedings were held	No. of disputes in which Conciliation proceedings led to the settlement of disputes	No. of disputes in which conciliation proceeding ended in failure	No. of dispute pending with CIRM of the close of the year
1990	12850	9	4083	4787	1497	3290	3971
1991	12508	132	3972	4214	1142	3072	4190
1992	11950	47	3292	3878	919	2959	4733
1993	12958	319	3091	3839	775	3064	5709
1994	13037	20	3124	4488	914	3574	5405
1995	12181	5	2978	3938	772	3223	5260
1996	12064	3	3289	4165	914	3251	4607
1997	12889	95	3286	4586	1364	3222	4922
1998	13895	18	3174	5526	1618	3908	5177
1999	13642	7	2929	-	840	4497	5283
2000	7613	0	729	-	230	1487	-

Disposal of the Industrial Disputes by CIRM - The following table tabulates the number of disputes handled by CIRM, and the time for disposal of cases

Year	No. of Disputes handled by CIRM (Including B.F.)	Disputes Disposed Off				Total No. of Disputes of (Excepting those not considered fit for intervention)
		Within One Month	Between 1 to 2 Months	Between 2 to 4 Months	Beyond 4 Months	
1994	13037	1073 (14.06)	1932 (25.31)	2274 (29.79)	2333 (30.64)	7612
1995	12110	945 (13.70)	1953 (28.30)	2180 (31.58)	1824 (26.42)	6902
1996	12064	845 (11.33)	1895 (25.41)	2032 (27.25)	2685 (36.01)	7457
1997	12889	1209 (15.18)	2259 (28.35)	2165 (27.17)	2334 (29.30)	7963
1998	13895	1240 (14.25)	2290 (26.32)	2840 (32.64)	2330 (26.79)	8700
1999	12472	1190 (17.6)	2108 (30.21)	1815 (26.01)	1864 (26.72)	6977

Voluntary Arbitration - The following table gives the number of disputes referred to voluntary arbitration under CIRM during 1994 to 1999: [71]

[71] *Ibid.*

Year	Number of disputes Under the Code of Discipline	Referred to voluntary Under Section 10-A of the I.D. Act.	Arbitration Total
1994	-	5	5
1995	-	11	11
1996	-	3	3
1997	-	1	1
1998	-	1	1
1999	-	1	1

Position of implementation of tribunal awards and conciliation settlements by CIRM from 1994 to1999[72] - The following tables states the position in respect of Implementation of Tribunal Awards and implementation of conciliation settlement:

Year	No. of Awards Received during the year (Including B.F.)	No. of Awards Implemented	No. of Awards Implementation was in progress at end of the Year		No. of Awards not implemented due to due to Stay other order reasons
1994	1082	260	331	186	305
1995	1194	302	577	244	71
1996	1135	196	535	160	244
1997	1618	238	855	232	293
1998	951	171	188	173	596
1999	1493	201	292	803	404

Implementation of Conciliation Settlements:

Year	No. of Settlements Registered with (CIRM) (Including Pending at the end of Previous Year)	No. of Settlements fully implemented	No. of Settlements in the Course of the Implementation at the end of the Year	No. of Settlements which have been willfully neglected.
1994	802	679	118	5
1995	829	753	71	5
1996	992	888	103	3
1997	1030	917	113	-

[72] *Ibid.*

1998	1276	913	-	363
1999	806	400	-	007

State –wise information regarding pendency of industrial disputes

1. Bihar

The number of Industrial dispute pending at the two CGIT-cum-Labour Court in Dhanbad, tribunals-wise and period wise as on 31.03.1998 is: [73]

Name of CGIT-cum-LabourCourt	**More than 3 months**	**More than 6 months**	**Above 1 year**	**Total**
No. 1, Dhanbad	38	184	791	1013
No. 2, Dhanbad	488	250	141	879
Total	526	434	932	1892

In the State of Bihar at present 2 industrial tribunals and 9 labour courts are functioning in different parts of the State. Industrial tribunals are located at Patna & Muzaffarpur, while labour courts are at Patna, Bhagalpur, Chapra,Dalmianagar, Begusarai & Motihari.

2. Delhi

As on date there are 3 Industrial Tribunals and 10 labour Courts at state level and one CGIT-cum-Labour Court are functioning in Delhi. Number of cases pending before each of these [74]

Name of the Tribunal/Labour Court	**Category of the cases**	**No. of cases pending**	**Pending for 2 years**	**Pending for 3 years**	**Pending for 5 years**
Central Level CGIT-cum-Labour Court	Disputes	703	211	132	52
	Applications	1175	359	214	129
	Total	1878	570	346	181
Industrial Tribunal-I	Disputes	1044	58	94	175
	Applications	123	17	16	27
Industrial Tribunal-II	Disputes	1519	170	115	155

[73] *Supra* note 61.
[74] Government of India, Ministry of Labour, Rajya Sabha, Unstarred Question No 1405, Answered On 11.12.1995, *Labour Courts And Industrial Tribunals In Delhi*; See http://164.100.24.219/rsq/quest.asp?qref=36066

	Applications	1322	409	79	78
Industrial Tribunal-III	Disputes	1136	270	160	147
	Applications	109	18	12	13
Labour Court-I	Disputes	1799	351	424	448
	Applications	1890	337	536	492
Labour Court-II	Disputes	1873	350	288	369
	Applications	2231	308	305	663
Labour Court-III	Disputes	1957	174	226	94
	Applications	1609	165	160	70
Labour Court-IV	Disputes	1977	82	86	295
	Applications	1541	393	32	73
Labour Court-V	Disputes	1304	136	191	60
	Applications	1631	91	164	268
Labour Court-VI	Disputes	536	1	-	25
	Applications	1109	-	-	32
Labour Court-VII	Disputes	1109	327	100	23
	Applications	1268	240	315	94
Labour Court-VIII	Disputes	1347	69	49	64
	Applications	2140	113	104	78
Labour Court-IX	Disputes	1939	80	45	473
	Applications	7	4	-	-
Labour Court-X	Disputes	2302	312	380	560
	Applications	920	71	115	513
TOTAL	Disputes	19842	2380	2158	2888
	Applications	15900	2166	1838	2401

3. Tamil Nadu

As on 31.12.2000, 63 cases were pending in CGIT-cum-Labour Court, Chennai in Tamil Nadu and 25328 (13280 under Industrial Disputes Act and 12048 Claim Petitions) were pending in the State Labour Courts of Tamil Nadu. The CGIT-cum-Labour Court, Chennai has started functioning with effect from 15.03.2000. No case more than five years old is pending in the CGIT-cum-Labour Court, Chennai.[75]

The conciliation machinery of the Tamil Nadu Labour Department had handled and settled a broad spectrum of labour disputes ranging from alleged violation of working hours to serious misconducts. During the year 1999, out of a total of 11,816 disputes 6910 disputes were settled. In almost 18 industries, major issues were involved and were solved by the Conciliation Officers of the Labour Department. [76]

4. Punjab

The State of Punjab is divided into 23 zones/circles depending upon the density/dispersion of industrial units. Each circle is headed by Labour Conciliation Officers (LCOs)/Assistant Labour Commissioners (ALC) assisted by Labour Inspector Grade-I and Labour Inspector Grade-II in the implementation/enforcement of labour legislations. Adjudication machinery consists of one Industrial tribunal at Chandigarh and six labour courts one each at Jalandhar, Ludhiana, Amritsar, Patiala, Bathinda and Gurdaspur. [77]

The following table tabulates number of industrial disputes raised and settled through conciliation, withdrawn by workers/unions, rejected and referred to industrial tribunal in Punjab during 1996.

Number of Industrial Disputes-in state of Punjab in 1996:[78]

Raised	Settled through conciliation	Withdrawn by workers / unions	Rejected/filled	Referred to Industrial tribunal
7,820	1,439	2,498	716	2,827

[75] Government of India, Ministry of Labour, Rajya Sabha Starred Question No 107, Answered On 01.03.2001, *Cases Pending In Labour Courts In Tamil Nadu*; See http://164.100.24.219/rsq/quest.asp?qref=44874

[76] http://www.tidco.com/tn_policies/tn_policies/labour_policy1.asp

[77] http://www.mgsipap.org/tna/labour.htm

[78] http://punjabgovt.nic.in/government/government.htm

The following table provides the status in regard to Implementation of awards / settlements in 1998 in the state of Punjab[79]

	Pending	Received	Disposed	Pending
Awards Under Section 10	305	598	624	279
Order U/s33 (2	78	260	269	69
Settlements	7	83	81	9

Prosecutions launched under *various* labour lawsin 1998 in the state of Punjab[80] are given below:

Number	Disposed	Amount of fine imposed
7,620	6,039	Rs.14,89,180

Labour department of Punjab had conducted a total number of 7405 inspections during the year 1995. By virtue of these inspections, which is a regular feature, the rate of accidents in the State has come down from 2.96 in the year 1994 to 2.80 in the year 1995 per one thousand workers. To monitor the health of the workers 7887 medical examination of the workers were conducted and 493 suspected cases having symptoms of occupational diseases were detected.[81]

Removal of Grievances Department of state of Punjab[82]: During the year 2000, the progress of disposal of complaints by the removal of grievances department of Punjab is as follows:-

Complaints received from	No. of complaints received	No. of complaints disposed off.
Administrative Departments.	418	343
Heads of Departments	81014	79002
Deputy Commissioners	17906	17269

[79] *Ibid.*
[80] *Ibid.*
[81] *Ibid.*
[82] *Ibid.*

5. Karnataka:

There are about 15,000 labour cases pending in the labour courts and tribunals in the State of Karnataka. [83]

6. Himachal Pradesh:

The following table tablulates the cases pending before Labour court/ Industrial tribunal in Shimla in the year 1999-2000[84] :

S.NO	ITEM	REFERENCE	APPLICATION	TOTAL
1.	Pending Cases as on 1.4.99	460	424	884
2.	Cases received during 1.4.99-31.3.2000	140	187	327
3.	Cases dealt with during 1.4.99-31.3.200	140	209	349
4.	Pending cases as on 31.3.2000	460	402	862

The inspections carried by the Labour Wing in the year 1999-2000 are detailed hereunder[85]:

Name Of The Act	Inspections From 1.4.99- 31.3.2000	Challans Lodged In Courts	Cases Decided By Courts	Fines Imposed (Rs).
Shops & Commercial Act, 1969	7,822	2,455	2,171	3,29,339
Payment of Wages Act, 1936	2,565	21	5	5,400
Minimum Wages Act, 1948	3,530	235	124	69,540
Factories Act, 1948	665	9	1	3,000
Contractual Labour Act, 1979	387	13	7	9,000
Equal Remuneration	166	-	-	-

[83] *Supra* note 30.
[84] http://himachal.nic.in/labemp/court.htm
[85] *Ibid.*

Act, 1976				
Payment of Bonus Act, 1965	267	-	-	-
Upadan Payment Act, 1972	449	-	-	1,000
Delivery Benefit Act, 1961	81	-	-	-
HP Industrial Establishment (national, casual and sickness Holidays) Act,1969	592	-	-	-
Tea Plantation Act,1951	28	-	-	-
Inter State Migrant Workers Act, 1979	54	9	5	5,100
Child Labour (Prohibition) Act,1986	2963	13	-	-
IDA, 1947	6	-	-	-

4. Institutional Routes from the Outbreak to the Resolution of Disputes

Under the Industrial Disputes Act, 1947 the following steps must be taken for dispute resolution.

1. The parties to an industrial dispute may apply to the appropriate government, in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Labour court, Labour Court, Tribunal or National Tribunal.[86]

[86] IDA,1947, Section 68.

2. If the government forms the opinion that any industrial dispute exists, it may at any time, by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or
(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or Labour Court for adjudication; or to a Tribunal for adjudication or to a National Tribunal for adjudication.

3. An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal has to specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award.[87]

4. Where any industrial dispute exists or is apprehended and the employer and the workman agree to refer the dispute to arbitration, they may, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons as an arbitrator or arbitrators as may be specified in the arbitration agreement. [88]

5. The arbitrator or arbitrators shall investigate the dispute and submit the arbitration award signed by the arbitrator or all the arbitrators, to the appropriate government.[89]

6. Governmental Intervention in Voluntary Labour Arbitration - Even though under the IDA, the government has no role to play in the choice of dispute settlement machinery after the receipt of a copy of valid arbitration agreement under section 10A, it is empowered to regulate the process of settlement of industrial dispute by voluntary arbitration in the following manner: Publication of arbitration agreement; Issuance of notification under section 10A(3A); Prohibition of continuance of strikes and lock-outs during arbitration proceedings; Publication of arbitration award; Operation of arbitration award; Enforcement of arbitration award.

7. No reference can be made under the Act to Boards of Concilliation, Labour courts or Industrial tribunals, unless the dispute has first been the subject of a decision of a Grievance Settlement Authority.[90]

[87] *Id.*, Section 29(2A).
[88] *Id.*, Section 10 A.
[89] *Id.*, Section 10A(4).
[90] http://www.ilo.org/public/english/employment/gems/eeo/law/india/c_all.htm

5. Choices of Routes for Dispute Resolution

In India the parties may choose the following modes for resolution of industrial dispute:

(i) Bipartite settlement

(ii) Settlement through intervention of conciliation officer and Board of Conciliation

(iii) Voluntary Arbitration

(iv) Compulsory Adjudication

in one of the following forums

(a) Labour Court

(b) Tribunal

(c) National Tribunal

Factors that influence the choices

Problems in operation of Conciliation Machinery

A survey of the conciliation personnel in Centre as well as states and union territories reveals that the number of conciliation personnel varies from state to state. Further, the conciliation machinery is not adequately staffed.

The statistics of the working of the conciliation machinery, from the past decade, reveals that it has made no remarkable success in India. Several factors may be accounted for the same:

(i) failure of conciliation proceeding may lead to the reference to adjudicating authorities under the IDA;

(ii) lack of proper personnel, inadequate training and low status enjoyed by conciliation officers and too frequent transfer;

(iii) undue emphasis on legal and formal requirements also lead to the failure of conciliation.

(iv) considerable delay in conclusion of conciliation proceedings also makes the conciliation machinery ineffective.

(v) lack of adequate powers of conciliation authorities.

(vi) in some states the conciliation officers have also been entrusted with enforcement of labour laws in their respective jurisdiction.[91]

Problems in operation of Labour Adjudication and Arbitration Machinery

The response to arbitration machinery under section 10A is not encouraging. Some of the factors, which are responsible for this trend, are:

(i) the lack of proper atmosphere

(ii) the reluctant of the parties to resort to arbitration machinery

(iii) lack of persons who enjoy the confidence of both the parties, and

(iv) the question of bearing the cost of arbitration.

Despite setting up of conciliation machinery and other number of alternatives for resolution of labour disputes, the number of cases is increasing day by day in the Labour courts and the Industrial tribunal.[92] Many reasons can be attributed for the same:

Quality of Personnel

The practice of appointing retired personnel or which are likely to be retired or who are uninterested in adjudication of labour disputes or who have no aptitude or background of labour legislation are some of the reasons accounted for the undue delay in disposal of cases.

Procedural delay

The complicated procedure laid down under the IDA is responsible for the delay in the labour adjudication.

Interference by the High courts and stay of Proceedings

A survey of reported cases reveals that generally delay exceeding more than one year (and particularly the delay exceeding three years) occurs due to stay order of the high court through its writ jurisdiction. With the pace of industrialization, numerous Labour courts and Industrial tribunals had to be set up throughout the country. Inherent in the situation was the conflict in the awards, decisions, and approaches of these adjudicatory authorities. High courts, inter se differ and no finality is attached to the adjudication of any important question relating to the labour jurisprudence until the matter was taken to the Supreme

[91] S.C.Srivastava, *Industrial Relations Machinery*, 25. (1983, Deep & Deep, New Delhi) and S.C. Srivastava, *Industrial Relations and Labour Laws*, Vikas Publishing House, (2000).

[92] *Supra* note 20.

Court. This exercise proves to be expensive and time consuming.[93] Till the time, the high courts continue to have writ jurisdiction against decisions of such ultimate forums there would be no finality and the present malaise of huge errors would continue to exist. [94]

Attitude of the Parties

The unhelpful attitude of the parties towards adjudication and the delay in producing witnesses and documents also affect the speedy disposal of the case.

Problem of adjournments

Another factor for delay is indiscriminate adjournment, granted by the Presiding Officer of Labour court or Tribunal. This is so because the IDA does not prescribe the number of adjournments which may be granted.

Constraints of Enforcements Machinery:

Through the industrial activity and the volume of trade and business as also the number of laws on the statute book have increased considerably, the enforcement machinery has not kept pace with the same. Numerically, the enforcement machinery is too inadequate. There are 125-130 Labour Enforcement Officers effectively available at a given point of time for enforcement work. They (along with few inspections each every month by Assistant Labour Commissioners) are able to carry out about 30,000 to 33,000 inspections in a year. They are provided with very poor infrastructural back up e.g. no vehicle or modern communication system though each LEO is required to cover 5 to 6 districts. They have been assigned multifarious functions e.g. conciliation work (in some of the cases), verification of membership of trade unions and enquiries into complaints, representations, VIP references etc. The problems gets compounded as after the inspections they are also required to file as well as conduct the prosecution/claim cases before the appropriate courts/authorities. There are several instances where cases in courts situated in different directions were fixed for hearing on the same day and cases were dismissed in default on account of non-appearance of Inspecting Officer. Inspite of the observations and advice of the apex court in various cases that the judicial magistrate should take the labour cases more seriously, these cases continue to get least priority. Inspecting Officers are summoned

[93] para 8.41, chapter 8, Report of the Arrears Committee, (GOI 1989-1990), p. 105
[94] *Ibid.*

for producing evidence even after they are transferred to other places or after their superannuation/retirement from service.

In most of cases the punishment prescribed for infringements of labour legislation are fines and that too are very low. All this does not create any deterrent effect and only emboldens the offending employers to continue to violate the provisions of law, as complying with the same is costlier alternative than paying a paltry sum as fine.[95]

It is generally conceded that works committees have failed to deliver the goods. Several factors are responsible for the same. In the absence of strong industry-wide labour organizations, the politically oriented plant trade unions consider works committee to be just another rival. Although the courts have time and again favoured the decisions of the works committees, the fact remains that there is no machinery to enforce the decisions of these committees and there is nothing to prevent by-passing works committees.[96]

6. Case Study

Pendency of Conciliation proceedings and inordinate delay in disposal of case

In *Sapan Kumar Pandit v. U.P. SEB*[97], the appellant was appointed as a clerk under the U.P. State Electricity Board on 1.1.1974. His services together with 10 others were terminated on 17.7.1975. The union raised the dispute of the termination of the said 10 workmen, which was later referred by the state government to the industrial tribunal. Although the appellant had not raised any industrial dispute by then, the Board assured him that if the 10 workmen won, their case, the same benefit would be extended to him. However, the Board reabsorbed two of them and the rest 8, although did not succeed fully before industrial tribunal, were directed by the high court to be reinstated. The high court's decision dated 28.4.1988 was upheld by the Supreme Court in 1989. Relying on the Board's assurance, the appellant requested the Board to treat him on a par with the 8 workmen but his turn was rejected. The appellant applied for condonation of the delay in initiating the conciliation

[95] *Supra* note 14, p. 20-21.
[96] S.C.Srivastava, *Industrial Relations Machinery,*. (1983, Deep & Deep, New Delhi). 30.
[97] (2001) 6 SCC 222.

proceedings. However, on 28.1.1992 the Deputy Labour Commissioner condoned the delay and the conciliation proceedings were revived. Thereafter, the state government made the reference for adjudication on 29.3.1993. The high court quashed the reference on account of 15 years' delay in making it. The appellant then went to the Supreme Court. The Supreme Court allowed the appeal and held it is of no consequence that conciliation proceedings were commenced after a long period. But such conciliation proceedings are evidence of the existence of the industrial dispute. Admittedly, on the date of reference, the conciliation proceedings were not concluded. If so, it cannot be said that the dispute did not exist on that day. The High Court has obviously gone wrong in axing down the order of reference made by the government for adjudication. The appellant got justice, in the form of decision of the Supreme Court on 24.7.2001, almost, after 26 years from the date on which cause of action arose, i.e., 17.7.1995.

Conciliation proceedings on holiday

In *National Engg. Industries Ltd. v. State of Rajasthan*[98], the appellant was a company having its registered office at Calcutta. One of its factories was located at Jaipur in Rajasthan. There were three unions of its workers: (1) National Engineering Industries Labour Union (for short "the Labour Union"); (2) National Engineering Staff Union (for short "the Staff Union"); and (3) the National Engineering Industries Workers' Union (for short " the Workers' Union"). The Labour Union had majority of the workers on its roll, was recognized, and was registered as a representative union under the provisions of the Industrial Disputes Act (IDA). A settlement, in respect of the demands of union raised in 1983 operated till September 1986. All the three unions made fresh charters of demands in 1986, which were identical in almost all respects. Conciliation proceedings were initiated and the Conciliation Officer in respect of the proceedings regarding the Workers' Union submitted the failure report. Conciliation settlement was arrived at with the Labour Union and the Staff Union. It was to be in operation for a period of three years ending 30.9.1989. All the employees of the appellant including the members of the Workers' Union filed a writ petition in the high court seeking the state government to refer their disputes to the

[98] (2000) 1 SCC 371

industrial tribunal. By its judgment dated 23.3.1989 the Rajasthan High Court directed the state government to take a decision within the specified time, after hearing the parties, on the question whether to make or not to make a reference. However, just about a week before the High Court's decision the State Government issued a notification on 17.3.1989 for reference of the disputes relating to the demands raised by the Workers Union to the Industrial Tribunal but failed to bring this fact to the notice of the High Court. The appellant, thereafter unsuccessfully made a representation to the State Government to withdraw the said notification and take a fresh decision after hearing the appellant. After unsuccessfully challenging the validity of the said notification before the High Court, the appellant filed the instant appeal. The appellant contended that in view of the tripartite settlement and the workers' union itself having taken the advantage of the benefits, there was no dispute pending which could be the subject-matter of reference and therefore the State Government had no jurisdiction to make the reference. The Workers Union on the other hand contended, inter alia, that the tripartite settlement, having been entered into on a Sunday, was invalid. Supreme Court allowing the appeal held a settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Workers' Union as laid down by Section 18 (3) (d) of the Act. It would *ipso facto* bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12 (3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. The court even went to the extent of holding that there is no bar in having conciliation proceedings on a holiday and to arrive at a settlement. A holiday atmosphere is rather more relaxed.

This case shows the extent to which conciliation proceedings are given finality by the courts.

Binding nature of Conciliation proceedings

In *Virudhachalam v. Lotus Mills*[99], a textile mill run by the respondent remained closed from 8.8.1976 to 31.1.1978. The matter was referred to the conciliation officer who held negotiations. Different unions representing various categories of workmen took part in the said negotiations. Ultimately a settlement was arrived at during the conciliation proceedings as per Section 12 (3) of the IDA. Four out of the five unions signed the settlement but the union representing the appellants refused to do so. The appellants did not belong to any category of workmen excluded from the purview of the settlement. However, on the ground of their union's refusal to sign the settlement, they filed an application under Section 33-C(2) of the Act for computing the appropriate lay-off compensation payable to them as per Section 25-C of the Act. The High Court held the settlement under Section 12(3) to be binding under Section 18 (3) even on the applicants. Therefore, holding them to be disentitled to relief under Section 25-C, dismissed their application under Section 33-C(2). Before the Supreme Court the appellants contended that Section 25-C, being in Chapter V-A of the ID Act, was a complete code in itself and could not be whittled down except by an agreement entered into between the workmen concerned and the employer as provided by the first proviso to Section 25-C. that such an agreement was independent of any settlement contemplated under Section 12(3) which could have any binding effect under Section 18(3). That in view of Section 25-J, any inconsistent provision found in any other law including in any other part of the Act itself would not whittle down the workman's right to lay-off compensation under Section 25-C. Supreme Court rejected these contentions and dismissed the appeal, in 1998, almost 20 years after the cause of action arose. It ruled out that the IDA is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Consequently, settlements arrived at by the unions with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members.

The above case is also proof of the extent to which settlements arrived between the parties are given recognition by the highest court of the land.

[99] (1998) 1 SCC 650

Date of the commencement of the award

In *Sarva Shramik Sangh v. Indian Hume Pipe Co. Ltd*[100], the demand of appellant union for payment of dearness allowance to the daily-wage workmen employed by the respondent's factory at the same rate as paid to monthly-rated employees w.e.f. January 1, 1964 was placed before the Conciliation Officer on November 15, 1965 and thereafter before the Conciliation Board. The Conciliation Board submitted its failure report. On April 26, 1968 the appellant-union submitted a memorandum before the Government reiterating the said demand and claiming the benefit w.e.f. November 15, 1965. On July 5, 1968 the Government referred the said dispute to Industrial Tribunal. The respondent challenged the validity of the order of reference by filing a writ petition before High Court in November 1968. The High Court passed an order setting aside the order of reference by consent without prejudice to the rights of the Government 'to refer fresh dispute in respect of the same demands according to law'. On March 19, 1973 the appellant submitted a demand to the management claiming the very same relief w.e.f. November 15, 1965. On that basis the Government made a reference to the Industrial Tribunal on March 26, 1973. The Tribunal made an award on January 3, 1977 directing that all the daily-rated workmen of the respondent's factory should be paid DA at the rate of 15% of the revised textile rate w.e.f. January 1, 1968. Allowing the appeal of the Labour Union Supreme Court decided in 1993 that the Industrial Tribunal/Labour Court has jurisdiction to grant relief from a date anterior to the date on which the dispute is raised if it is found to be warranted by the facts and circumstances of the case. The Industrial/Labour Court is not bound by technical rules of procedure which bind the civil court. Therefore, the order of the High Court cannot be read as imposing or implying any restriction upon the workmen to limit the benefit claimed by them only from the date of the raising of the fresh demand. It was perfectly open to them to raise a demand, subsequent to the said order, claiming the benefit with effect from a date anterior to the date of raising the demand.

The above mentioned decision goes to prove that highest court of the land does give value to the decisions of the labour courts and industrial tribunals.

[100] (1993) 2 SCC 386

The Supreme Court in *Bharat Bank Ltd. v. Employees*[101] is an epoch-making judgment on the nature of industrial tribunal. In this case, Kania, C.J., decided that the functions and duties of the industrial tribunal are very much like those of a body discharging judicial functions, although it is not a court and Justice Mahajan, held :

> "The Industrial Tribunal has all the necessary attributes of a Court of justice. It has no other function except that of adjudicating on a dispute. It is not doubt true that by reason of the nature of the dispute that they have to adjudicate the law gives them wider powers than are possessed by ordinary Court of law, but powers of such a nature do not effect the question that they are exercising judicial power. Statutes like the Relief of Indebtedness Act, or the Encumbered Estates Act have conferred powers on Courts which are not ordinarily known to law and which effect contractual rights. That circumstance does not make them anything else but Tribunals exercising judicial power of the State though in a degree different from the ordinary Courts and to an extent which is also different from that enjoyed by an ordinary Courts of law. They may rightly be described as quasi-judicial bodies because they are out of the hierarchy of the ordinary judicial system but that circumstance cannot affect the question of their being within the ambit of Art. 136. The Fact that the Government has to make a declaration after the final decision of the Tribunal is not in any way inconsistent with the view that the Tribunal acts judicially. It may also be pointed out that within the statute itself a clue has been provided which shows that the circumstance that that the award has to be declared by an order of Government to be binding does not affect the question of its appealability."

[101] AIR 1950 SC 188.

CHAPTER V

DISPUTE RESOLUTION PROCESS IN ENVIRONMENT PROBLEMS

1. Outline of Environmental Cases

Background of disputes:

The very serious threats posed to environment in the country as a result of rapid population growth and urbanization, expanding infrastructure, industrial pollution, trans-boundary air pollution, water pollution, trans-boundary transport of hazardous waste, unsustainable tourism, depletion of natural resources including over-fishing, desertification and loss of biodiversity, which under current circumstances are exceeding the carrying capacity of the environment, has led to the voluminous litigations pending in all courts of the country. Most of the litigation is pending before the Supreme Court of India to get rid of polluted environment or to make the bureaucracy to pay heed to the problems faced by citizens in the country.

Types of disputes:

The courts are confronted with various types of disputes, which depend upon the types of environment problems that erupt. These may be pertaining to:

(i) *Urbanization in India*: There is an evident deterioration in physical environment and quality of life in the urban areas aggravated by widening gap between demand and supply of essential services and infrastructure and increasing population pressure on urban centers. The worst sufferers are the poor, whose access to the basic services like drinking water, sanitation, education and basic health services is shrinking. Many disputes are pending on this aspect.[1]

(ii) *Municipal Management*: In the urban areas the municipalities and municipal corporations are made responsible for providing essential services. The services provided by these local bodies, generally, are far from satisfactory. Growing costs, shortage of funds, indiscipline among the

[1] *General Public of Saproon Valley & others v. State of Himachal Pradesh*, AIR 1993 H.P. 52.

work force, etc. is making the situation worse with the passage of time and has become a cause of litigation.[2]

(iii) Pollution of rivers by letting out the trade effluents into them.[3]

(iv) *Conflict between development & conservation***:** Large number of development projects are challenged in the courts by environment conscious citizens, which do not maintain balance between development and ecological conservation.[4]

(v) *Solid Waste Management*: Due importance has not been given to the subject of solid waste management in the country. On account of low priority given, the solid waste management practices have continued to remain inefficient and outdated.[5]

(vi) *Sanitary conditions***:** The laws governing the urban local bodies make it obligatory to ensure regular cleaning of public streets and disposal of wastes collected there from. In absence of adequate legal provision, even the citizens in general do not organize themselves for the proper storage of wastes at source, for its community collection and for its disposal in to the municipal system.[6]

(vii) Industrial and other commercial activities carried out at residential places, that are injurious to health and physical comfort of residents of the locality, has been subject matter of disputes in good number of cases.[7]

(viii) Air pollution causing substantial injury and special damage has been subject matter of disputes raised both under the specific law dealing with air pollution as well as civil suits filed for permanent injunction.[8]

2. Organizations/Institutions for Dispute Resolution

The following organizations are available at present for environment dispute resolution in India:

1. Courts

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[2] *Municipal Council, Ratlam v. Vardhichand,* AIR 1980 SC 1622; *M.C.Mehta v. Union of India,* AIR 1988 SC 1117; *T. Damodar Rao v. S.O. Municipal Corporation, Hyderabad,* AIR 1987 A.P. 171.

[3] *M.C.Mehta v. Union of India* AIR 1988 SC 1037

[4] *Rural Litigation & Entitlement Kendra v. State of U.P.* AIR 1985 SC 652; *Kinkari Devi v. State of H.P.* AIR 1988 H.P. 4.

[5] *Good Urban Governance Campaign*, 4-6 September, 2001, New Delhi, UNCHS Press Release, See http://pib.nic.in/urban_governance/release04.html

[6] *Municipal Council, Ratlam v. Vardhichand,* AIR 1980 SC 1622

[7] *Krishna Gopal v. State of M.P.*, 1986 Cr. L.J. 396; *Smt. Ajeet Mehta v. State of Rajasthan,* 1990 Cr. L. J. 1596

[8] *Ram Baj Singh v. Babulal,* AIR 1982 All. 285.

2. Administrative bodies
3. Tribunals
4. National environment appellate authority
5. Mediation –conciliation
6. NGOs and other institutions

1. Courts

(i) *Courts of subordinate judge* can be approached for the grant of permanent injunction and compensation in cases of:

- unauthorized industries located in residential areas discharging harmful gases and hazardous effluents in the immediate neighbourhood;
- environmental degradation due to mismanagement of civic amenities like location of waste dump, water logging, etc;
- commercial establishments operating illegally in the residential buildings causing nuisance to people living in the immediate vicinity.[9]

(ii) *Courts of Sub –Divisional Magistrate or District Magistrate* on receiving a police report or other information and on taking such evidence as is necessary, can restrain polluter or pass any order directing the authority to do what is necessary in given circumstances of the case, by making conditional order to that effect.[10]

(iii) *Environment Courts*: Special courts or environmental courts are constituted at state level, preferably only to try cases arising under the special laws on environment, namely, the Water (Prevention & Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Air (Prevention and Control of Pollution) and the Environment (Protection) Act, 1986. Two special Environment Courts have been established in Haryana State i.e., one at Faridabad and other at Hissar for the expeditious disposal of court cases. In Uttar Pradesh, special court for the speedy trial of the pollution cases has been established. [11]

(iv) *High courts:* These may be approached by way of appeal from the orders of above mentioned courts or directly under Article 226 of the Constitution for protection of statutory or

[9] Civil Procedure Code, 1908, sections 16, 17, 20.
[10] Criminal Procedure Code, 1898, section 133(1).
[11] Government of India, Ministry of Environment & Forests, *Pending Pollution Related Cases in Gujarat Courts*, Rajya Sabha Unstarred Question No 1133, 28.11.1997, http://164.100.24.219/rsq/quest.asp?qref=8610

common law rights, praying for issuing writs against administrative machinery of the state, which has failed in its duty imposed on it by various environment regulations. Besides writ petition, high courts are approached by way of public interest litigation (here-in-after referred as PIL). PIL can be filed in the high court on behalf of person / group / class thereof, who on account of poverty, ignorance of law, or any other disability, cannot bring an action in the court for the harm caused to them or their environment. In some states, 'Green Benches' have been created in the high courts to dispose off environmental cases expeditiously.[12]

(v) *The Supreme Court of India* is often approached for resolving environment disputes involving huge human and financial interests either as a court of final appeal from the orders of the high courts or directly under Article 32 of the Constitution under writ jurisdiction of the Court or by way of PIL.

2. Administrative bodies

(i) *Public Grievances Cell***:** Grievance Cell was constituted in October 1991, by the Ministry of Environment & Forests to attend the complaints of public regarding environmental problems. Joint Secretary (Administration) (JS) has been nominated as Public Grievance Officer of this Ministry. [13] The general public can meet the above Public Grievances Officer on every Wednesday from 10:00 A.M. to 1.00 P.M. and put forward their complaints.

During 1999-2000, 169 complaints were received from the general public. Majority of these complaints / grievances related to pollution control. [14]

(ii) *Central Pollution Control Board (CPCB), State Pollution Control Boards (SPCB) & Pollution Control Committees (PCC):* Environment legislation particularly those like the Water or Air Acts of early 1970s and 1980s have provided for an elaborate administrative machinery to deal with matter pertaining to environmental pollution. These being CPCB, SPCB and Pollution control committees (PCC). In exercise of powers under Sections 4 and 6 of the Water Act and Air Act respectively, the CPCB has delegated all powers of the board to all the PCC constituted for union territories. These are responsible for taking legal action against polluting units in their respective states under the Water and Air Acts. The CPCB, SPCBs and PCCs are responsible for implementing the legislations relating to prevention and control of pollution; they also develop

[12] *Evolution of Pollution Control Mechanism in India*, Para 1.1.7, Chapter 1, http://planningcommission.nic.in/spcbchap1.pdf

[13] Government of India, Ministry of Environment & Forests, Annual Report, 1999-2000; http://envfor.nic.in/report/9900/chap11.html

[14] *Ibid.*

rules and regulations, which describe the standards for emissions and effluents of air and water pollutants and noise levels. The CPCB advises the Central Government on all matters concerning the prevention and control or air, water and noise pollution and provides technical services to the Ministry of Environment & Forests for implementing the provisions of the Environment (Protection) Act, 1986. [15] At present there are 25 SPCBs set up in the country.[16]

3. National Tribunals

To lesson the burden of environment litigation on the regular courts, the Parliament enacted the National Environment Tribunal Act, 1995. This Act provides for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising out of accidents caused due to handling of hazardous substances, with a view to give relief and compensation to victims for damage to person, property and the environment and for matters connected therewith or incidental thereto. The Central Government is authorized to set-up the tribunal and its benches at different places, when it feels appropriate. However, till date, not a single tribunal has so far been set-up. Till these environment tribunals come to exist, mechanisms and procedures for the adjudication of environment disputes related to hazardous substances and hazardous processes will remain unsatisfactory, due to inadequacy or insufficiency of the fora available for consideration of these matters.

4. National Environment Appellate Authority

The National Environment Appellate Authority was constituted under the National Environment Appellate Authority Act, 1997. [17] It hears appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, are in operations and for matters connected therewith or incidental thereto. Section 11(1) of the Act provides that any person aggrieved by an order granting "environmental clearance" in the areas in which industries, operations or processors shall not be carried out or shall be carried out subject to certain safeguards, may within 30 days appeal to the Authority mentioned above.

5. Mediation – conciliation

There is no statutory provision for mediation/ conciliation for environmental disputes. There are, however, certain initiatives taken outside the formal systems. For example, the Council of State

[15] David Shaman, World Bank Study, *India's Pollution Regulatory Structure and Background*, 1996, http://www.worldbank.org/nipr/india/india-back.htm#1
[16] *Evolution of Pollution Control Mechanism in India*, Preface, http://planningcommission.nic.in/spcbchap1.pdf
[17] The Act received presidential assent on 26th March 1997. It came into force from 9.4.1997.

Governments (CSG) of the US, in collaboration with the US-AEP (US Asia Environment Partnership), a public-private initiative, has launched a court-annexed mediation-conciliation programme in Chennai (Tamil Nadu), under the aegis of the Madras High Court, to help resolve pending environment cases. The CSG, which represented all the 50 States of the US, has evolved the ADR programme to counter the limitations of the traditional methods of dispute resolution, which rely heavily on the confrontational format. ADR methods, through use of a neutral third party, as an adjunct to the court process, are ideally suited for environment disputes.

Under the project, a CSG team of experts will be working closely with the Green-Bench set-up by the Madras High Court for resolving environment-related disputes through the process of mediation-conciliation. A comprehensive programme is being developed for the High Court, under which CSG would be training a core team of mediators for the Green Bench cases. The programme is intended to correct the lack of technical understanding of the procedure of mediation – conciliation, while dealing with environmental disputes. Once the mediation proceedings reach an effective stage, the Bench would be able to write out an order, which may be construed as the verdict of the High Court. [18]

Besides above arrangement, the Environment Board is constituted by the Chief Justice of the Madras High Court comprising of one judge, counsel for the Tamil Nadu Pollution Control Board, a city NGO, a High Court lawyer and Registrar of the High Court. The Board will use the experience that National Institute of Conciliation Machinery (NICM) has had in the area of ADR and develop a mechanism that can help sort out many of the environmental disputes and prevent them from coming to the Green Bench and clogging the judicial system. The system aims at bringing all the stakeholders to the discussion table to sort out their differences without taking the matter to the courts. The project, which would last around two years, has a cost outlay of $354,000. The Indian partner for the project is the Industrial Consultancy of Tamil Nadu (ITCOT). The two workshops on ADR were held during the early months of this year, which led to the crystallization of the concept for setting up the Board for the Green Bench. After having covered thrust areas for environment protection in the textile and tannery industry, it has started work on the distilleries and foundries.[19] If this experience succeeds, it can be introduced in other states.

[18] Business Line, Financial Daily from THE HINDU group of publications, Friday, August 10, 2001
[19] *Green Bench gets down to business*, Business Line, Saturday, June 23, 2001

However, the response and attitude of the parties to the above mode of resolving dispute is not enthusiastic. As on May 31, 2001, as many as 217 cases were pending before the High Court, and none of the parties to the dispute was willing to volunteer for mediation-conciliation proceedings.

6. Role-played by NGOs, legal aid associations, lawyers

The role of NGOs has become another dimension in the evolution of public activism in environment litigation / resolution of disputes. In the early 1960's only a handful NGOs existed. By 1983 about 250 environmental NGO's had registered with the government. Their numbers and influence continue to grow into the 1990's. [20]

Besides, NGOs, there are institutions affiliated to WWF - India[21] who are very active in the area of environment. These support financially legal interventions in judicial cases for nature conservation and environmental protection. For example, Centre for Environment Law, file cases in the court in the form of PIL, after it has failed to persuade the concerned industries or the Government to stop violation of operative laws. [22] Then there are people like M.C. Mehta. Mehta has won additional precedent-setting suits against industries which generate hazardous waste and succeeded in obtaining a court order to make lead-free gasoline available. He has also been working to ban intensive shrimp farming and other damaging activities along India's 7,000-kilometer coast. He has succeeded in getting new environmental policies initiated and has brought environmental protection into India's constitutional framework. He has almost single handedly obtained about 40 landmark judgements and numerous orders from the Supreme Court against polluters, a record that may be unequaled by any other environmental lawyer in the world.[23]

The Delhi Legal Aid & Active Board and the Delhi Bar Association too are active in initiating court actions against government inaction on the threats posed to the environment.[24]

Belinda Wright, also a lawyer at *Tis Hazari*[25] is very active in fighting poaching of endangered species. She runs Wildlife Protection Society and litigates on behalf of animal lovers throughout the country.[26]

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[20] *Supra* note 15.
[21] World Wildlife Fund
[22] http://www.wwfindia.org/programs/envlaw/liti.jsp?prm=29
[23] http://www.goldmanprize.org/recipients/recipientProfile.cfm?recipientID=34
[24] *M.C. Mehta v. Union of India* AIR 1987 SC 1086: In this case Board and association filed applications for award of compensation to persons who suffered harm on account of escape of oleum gas from the factory of Sriram Food & Fertilizers Ltd. – a private enterprise.

3. Fact Finding regarding the Organizations/Institutions

(a) Statutory bases

India has had a long history of environmental laws with the passage and codification of acts such as the Indian Penal Code, the Criminal Procedure Code, the Bengal Smoke Nuisance Act of 1905, the Indian Motor Vehicle Act, the Factories Act, the Indian Forest Act, the Mines and Minerals (Regulation and Development) Act, the Industries (Development and Regulation) Act, the Forest (Conservation) Act, the Merchant Shipping Act, etc.

The Indian Penal Code, passed in 1860, penalizes person(s) responsible for causing defilement of water of a public spring or reservoir with imprisonment or fines.[27] However, punishment and fines imposed under this Code may be characterized as meager. In addition, fouling a "public spring" has not, by definition, included a "public river", which is where most pollution occurs. Finally, the specific language of the code places the burden of proof on the prosecution. Prosecution has to establish *mens rea* on the part of polluter,[28] making successful prosecution problematic in a court of law.[29]

The Indian Forest Act, 1927 was a product of British rule. The legislation granted the government uncontested rights over natural resources, with state governments authorized to grant licenses to contractors and oversee protection of the forests. Even at this early stage, awareness of man's destructive tendencies was emerging.[30]

The Factories Act, 1948 also addressed public safety and health issues. Section 7-A gives general duties of the occupier in respect of health and safety of the workers. Section 7-B imposes similar duties on manufacturer with regards to manufacturing of articles and process. Section 31 of the Act delineates about the atmospheric pressure at which any plant can be operated inside the factory. Sections 41-A to 41-H, give provisions relating to handling of hazardous processes in the factory.

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[25] District court at Delhi.
[26] **TIME,** September 20, 1999 Vol. 154, No. 11**.**
[27] Indian Penal Code, 1860, section 277.
[28] *Polluters must "voluntarily", "with intent", or "knowingly" discharge damaging effluents.*
[29] Bharat Desai, "Water Pollution in India, Law and Enforcement", *Environmental Laws of India* (1994, South Asia Books), p. 45.
[30] Renu Khator, *Environment, Development and Politics in India*, (1991, University Press of America, ISBN: 0819181897), p. 53

The watershed event in the environmental movement in India, was the **Stockholm Conference on Human Environment** in June, 1972. Stockholm served as the genesis for the series of environmental measures India took in the years to come. It has also been suggested that international events such as Stockholm provided the cover to the Indian officials needed to implement national environment policy without the vitriolic backlash normally expected from industry.[31] Soon thereafter, event after event strengthened environment movement in the country got strengthened. The Constitution of India was amended to give due place to environment and Articles 48A, 51A(g) and 243G were added.[32] As a result, the language of the Directive Principles of State Policy requires not only a protectionist stance by the state but also compels the state to seek the improvement of polluted environments.[33] This allows the government to impose restrictions on potentially harmful entities such as polluting industries. [34]

Enactment of **Water (Prevention & Control of Pollution) Act, 1974,** marked the true commitment of India to environment movement. In environmental matters, the Constitution of India provides for a distribution of legislative powers between the Union and the States. In the case of "water", Constitution empowers the state legislature to enact laws. However, the Central Government can be empowered by the state legislatures to pass water-related legislation.[35] The legislation established both a Central Pollution Control Board, and the State Pollution Control Boards. Some of the main responsibilities of the Central Board, include: coordinating activities of state boards and resolving disputes among them; providing technical assistance; conducting investigations; opening laboratories for analysis of samples; establishing fees for different types of sample testing; researching issues and problems; training personnel; conducting media and public awareness campaigns; collecting and disseminating data on water pollution; and working with state boards to set standards for stream or well.[36]

The state boards have similar responsibilities under the Water Act. They play an important subsidiary role of doing plant-level inspections and monitoring, and advising the Central Board

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[31] *Supra* note 15.
[32] 42nd Amendment to the Constitution of India, in 1976.
[33] Constitution of India, Article 47.
[34] *Supra* note 29.
[35] Constitution of India, Article 252
[36] The language of the bill specifically mentions "streams and wells" as the Central Board's area of oversight. With regard to other bodies of water, such as rivers, lakes and oceans, the legislation is silent. With this in mind, its authors do appear to imply that the Central Board may play a role with the state boards in setting standards for specific, or individual, streams or wells.

of the problems and trends at the local level. In situations where a state board believes immediate action is necessary, it has the authority to prevent further discharges, and can also apply to a Judicial Magistrate for a restraining order. In the case of an emergency, state boards are empowered to take whatever measures they deem necessary. The legislation also sets out specific penalties (prison sentences and fines) for violations of the Act. As an additional deterrent, if a person convicted of an offense under this Act commits a similar offense afterwards, the court can have the offender's name, violation and penalties published in newspapers, with the expense of the publication recoverable as a fine.

The Water (Prevention and Control of Pollution) Rules of 1975, delineates the terms and conditions of service for members of the Central Board.

Water (Prevention & Control of Pollution) Cess Act, 1977 provides the Central and state boards with the authority to levy and collect a tax on industries using water. It covers all the states except the State of Jammu & Kashmir. The tax is calculated on the basis of how much water is being consumed.

The Air (Prevention & Control of Pollution) Act, 1981 is another important legislation, which designated the Central Board and state boards, which governed water pollution and empowered with the same authority and administrative functions as under the Water Act. In addition, the Central Board sets permissible air standards and the state boards have the power to petition local magistrates to restrain polluters from exceeding specified standards.

In 1986, following Bhopal tragedy, Parliament was motivated to address all environmental pollutants. In about six months, with only casual resistance from powerful industry and business interests, the government enacted the **Environment (Protection) Act**. Under this Act, the Central Government has a responsibility for deciding standards, restricting industrial sites, laying down procedures and safeguards for accident prevention and handling of hazardous waste, oversight of investigations and research on pollution issues, on-site inspections, establishment of laboratories, and collection and dissemination of information. Samples collected by Central Government officials are admissible in court. This Act, made public hearings, as pre-requisite for project clearance. The measure also delineates a system where a manufactured product can receive certification as environmentally friendly or compatible.

The rules on hazardous waste management and their handling have also been laid down.[37] The Act defines the responsibilities of handlers, circumstances for granting authorization, conditions of disposal sites, rules for importing hazardous wastes, reporting of accidents, packaging and labeling requirements and an appeal process for potential handlers who have been denied authorization. This legislation had another interesting component. For the first time, private citizens were given the right to file cases against non-complying factories. A private citizen may file a complaint, however, only after giving notice of at least 60 days to the concerned authority of his/her intentions to file.

In 1991, **the Public Liability Insurance Act** was enacted, which provided public liability insurance for persons injured by accidents caused by hazardous materials. The measure mandates that business owners operating with hazardous waste take out insurance policies. An *Environmental Relief Fund* has also been established under the Act to provide relief to victims of the accidents caused by hazardous material and processes.

The landmark legislations, mentioned above, are not the only remedies. **Criminal Procedure Code,** too vests powers in the Magistracy for removal of a "public nuisance".[38]

During the intervening years, other laws have been passed to address specific issues, including the Wild Life Protection Act, 1972 and the Atomic Energy Act, 1962.

(b) Running cost

In the aftermath of the Water Act and constitutional amendment,[39] the government moved to enact a series of environmental measures. The Department of Environment was created in 1980, in the Government, to essentially serve as an advisory body with few enforcement powers. In 1985, the Ministry of Environment and Forests (MoEF) was created. It had 18 new divisions, including the Division of Pollution Control. By 1989, it had 1,171 personnel and is still expanding.[40] Its budget changed radically as well. In 1982-83, the agency had a total budget of Rs. 138.643 million, with Rs. 21.5 million designated for the Pollution Control Division. Its funding covered the Central Board's expenses, cess reimbursements to the state boards, the budget for the Clean Ganga Project, laboratories and other pollution control schemes. By 1988-

[37] Hazardous Wastes (Management and Handling) Rules, 1989; The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989; Hazardous Wastes (Management & Handling) Amendment Rules 2000.
[38] Criminal Procedure Code, sections 133 and 144.
[39] *Supra* note 32.
[40] *Supra* note 15.

89, the overall budget stood at Rs. 18.2 million. And by 1984-85, the pollution control budget had jumped to Rs. 169 million, more than Rs. 30 million more than the entire budget for the agency two years earlier.[41]

The Central Pollution Control Board: Funding from the central government has increased steadily since the Board's inception in 1977. By 1987, its budget had increased more than ten-fold from its original allocation of Rs. 2 million to Rs. 21.2 million. Administrative expenses accounted for Rs. 5.63 million in 1987-88. Litigation costs rose from Rs. 30,000 in 1984-85 to Rs. 89,000 in 1987-88. [42]

State Pollution Control Boards: The primary source of funding for the state boards is from the Central Board and state government.[43] Under the Water Cess Act any fees levied by a state board are sent to the central government in the Consolidated Fund of India. The central government reimburses the funds to the state government, which is expected to pass it back to the state board. While state boards, collectively, have increased revenues through the water cess, from Rs. 30.59 million in 1983-84 to Rs. 54.49 million in 1986-87, there have been numerous complaints of state governments failing to adequately return those revenues back to the boards. The resulting effect on enforcement and monitoring has been noticeable.[44]

The Gujarat Pollution Control Board: The GPCB started in October 1974 with a staff of 25. By 1994, the board had 349 personnel, of which 39 were engineers and 78 were scientists and analysts, a headquarters, three regional offices, two sub-regional offices, and a laboratory at each facility.[45]

The board's annual income in 1993-94, including grants, was Rs. 37 million. Its expenditures were Rs. 28 million. The state government provided Rs. 14.5 million. Cess collection improved dramatically, rising from Rs. 6 million in 1991-92 to Rs. 13 million in 1993-94. Total arrears in cess collection through March, 1994 was Rs. 47 million. Most of this was due from Municipal Corporations and local bodies.[46]

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[41] *Ibid.*
[42] *Ibid.*
[43] Anil Agarwal, Ravi Chopra and Kalpana Sharma, The State of India's Environment, 1982: A Citizen's Report, Centre for Science and Environment, 17(1982).
[44] Central Pollution Control Board, Sixty First Report, New Delhi, 1988
[45] Gujarat Pollution Control Board, Annual Report, 1993-94
[46] World Bank, ASTEN, Water Vergara, Back To Office Report, India Industrial Pollution Control and Industrial Pollution Prevention Projects, September, 1994

The Maharashtra Pollution Control Board: In 1970, the MPCB became the first state pollution control board in India to begin operating. By 1993, the MPCB had a staff of 445. There were 167 inspectors, 51 analytical staffers, and 227 administrative personnel. The collection of the water cess had increased from Rs. 21 million in 1991-92 to Rs. 56 million in 1993-94. Similar consent and other fees increased from Rs. 7 million to Rs. 17.5 million during the same time span. Outlay for capital expenditures through 1998-99 were at Rs. 5.5 million for applied research, Rs. 10 million for a Pollution Control Action Plan, and Rs. 39.5 million for a training center. Annual projected costs for the ongoing research, action plan, and training center are estimated at Rs. 10 million. With adjustments for pay raises and pension increases, total board expenditures went from Rs. 40 million in 1994-95 to Rs. 59 million by 1998-99. [47]

The Tamil Nadu Pollution Control Board: The TNPCB started operations in 1982 with 17 people. By 1994, it had a staff of 638, of which 147 were technical and 73 were scientific personnel. The board has five regional offices, 16 district offices, three advanced labs to analyze effluents, ambient air quality and stack emissions surveys, another three district labs to conduct pollutant analysis, and six mobile labs. The board is financially self-sufficient. Between 1989 and 1994, 60% to 70% of the board's revenues came from consent fees, 10% to 15% from analysis fees and the final 10% to 15% from water cess reimbursements. In 1990-91, total expenditures were Rs. 43.22 million. By 1993-94, they were projected to be Rs. 130.396 million.[48]

The Uttar Pradesh Pollution Control Board: The UPPCB has 450 personnel, of which 85 are inspectors and 43 are analytical staff. The regional labs, at a cost of Rs. 28 million for land acquisition and construction, were completed in late 1994. The board is almost entirely self-sufficient, raising almost 90% of its revenues through water cess reimbursements and consent fees.[49]

The West Bengal Pollution Control Board : The WBPCB, with headquarters in Calcutta, began operations in September, 1974. Like all the boards, the WBPCB's costs have risen significantly since the late 1980's. In 1987-88, the board received Rs. 4,582,656 in central and state government funding, along with fees derived from consents and certifications. By 1994-95, the

[47] *Supra* note 15.
[48] *Ibid.*
[49] *Ibid.*

total was Rs. 14.646 million. Expenditures followed a similar pattern. In 1987-88, expenditures, including salaries and rents, were Rs. 3.818 million. [50]

Under the scheme of ***Assistance for Abatement of Pollution***, the Central Government provides financial assistance to the SPCBs and to the State/UT Departments of Environment for procurement of scientific equipment and for specific studies and projects that are required to be completed within a specific time frame to meet the objectives of the Policy Statement for Abatement of Pollution. An amount of Rs. 8 millions has been provided to the SPCBs and the State Departments of Environment under this scheme in 1998.[51]

(c) Status

As the status of civil and criminal courts is elucidated in Chapter –1 "The Court System In India", here the inquiry will be related to status of administrative authorities, tribunals and the appellate authority constituted to resolve environment disputes.

However, it is noteworthy to mention the judgement of the Supreme Court of India in *Ratlam Municipality v. Vardhichand*[52] wherein it laid down that the nature of judicial process adopted by trial courts in environment related matters is not purely adjudicatory nor is it functionally- that of an umpire only. The magistrate, if need arises, should take affirmative action to make the remedy effective.

Pollution control boards:

The CPCB is a body corporate with all requisites of legal person.[53] It is established in Delhi. It has the power to acquire, hold and dispose of property and to contract, and may, by the aforesaid name, sue or be sued.

SPCBs are set up by state governments under a notification to exercise powers and perform functions assigned under the Act.[54] Every State Board is also a body corporate which can sue or be sued.[55]

The most obvious tool available to the pollution control boards is to apply to the Judicial Magistrate to restrain or prevent facilities from continuing to violate existing pollution laws.

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[50] West Bengal Pollution Control Board, Annual Report, 1994-95
[51] MoEF Annual Report, 1997-98, See http://envfor.nic.in/report/9798/legis.html
[52] AIR 1980 SC 1622
[53] Water (Prevention and Control of Pollution) Act, 1974.Section 3(3)
[54] *Id.*, Section 4(1)
[55] *Id*., Section 4(3)

Should the court agree with the board that an enterprise / factory's activities are in violation of the law and issue a restraining order to prevent further violations, it is quite possible the enterprise / factory could no longer continue to function and would have to close. One of the chief criticisms of the Water Act was its prohibition on the public to initiate litigation against polluters. As a result, individual state boards are simply overburdened.[56]

The tenure of a Member of Board, other than a member secretary, is for three years, which on expiration of term can continue until the successor enters upon office.[57] Essentially all these authorities who are appointed or nominated in CPCB/ SPCBs / PCC, are government officials. There is no direct involvement of people or environmental group or activities in any of the authorities constituted. Scope for active participation of citizens in effective implementation of the measures under the respective enactments of pollution control ought to be devised and encouraged.

(d) Persons in charge of resolution (qualification, requirement of legal education/ knowledge and appointment)

The following are the qualifications of the persons in charge of resolution of disputes outside the purview of the courts.

(i) Composition of CPCB

The Central Board consists of the following members, namely:-

(a) a full-time chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;

(b) such number of officials, not exceeding five to be nominated by the Central Government to represent that Government;

(c) such number of persons, not exceeding five to be nominated by the Central Government, from amongst the members of the State Boards;

(d) such number of non-officials, not exceeding three] to be nominated by the Central Government, to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the Central Government, ought to be represented;

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[56] *Supra* note 15.

[57] Water (Prevention and Control of Pollution) Act, 1974, Section 5(1)

(e) two persons to represent the companies or corporations owned, controlled or managed by the Central Government, to be nominated by that Government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.[58]

(ii) Composition of SPCB

A state board consists of:

(a) a chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the state government.

(b) such number of officials, not exceeding five, to be nominated by the state government to represent that government;

(c) such number of persons, not exceeding five to be nominated by the state government from amongst the members of the local authorities functioning within the state;

(d) such number of non-officials, not exceeding three to be nominated by the state government to represent the interest of agriculture, fishery or industry or trade or any other interest which, in the opinion of the state government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the state government, to be nominated by that government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the state government. [59]

Disqualifications for CPCB / SPCBs: No person shall be a member of a Board, who-

(a) is, or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent court, or

(c) is, or has been, convicted of an offence which, in the opinion of the Central Government or, as the case may be, of the State Government, involves moral turpitude, or

[58] *Id.*, section 3(2).
[59] *Id.*, section 4(2).

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has directly or indirectly by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents, or

(f) is a director or a secretary, manager or other salaried officer or employee of any company or firm having any contract with the Board, or with the Government constituting the Board, or with a local authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the carrying out of sewerage schemes or for the installation of plants for the treatment of sewage or trade effluents, or

(g) has so abused, in the opinion of the Central Government or as the case may be, of the State Government, his position as a member, as to render his continuance on the Board detrimental to the interest of the general public.[60]

(iii) Pollution Control Committee

The Committee consists of an official at the level of the Secretary and such officials as may have concerned with the problems of environment. There has been variations in the office of the chairman. It is the Secretary, Ministry of Environment & Forests as Chairman in Delhi and Pondicherry while in Chandigarh the Finance Secretary is a Chairman. In Daman Diu & Nagar Haveli, and Lakshwadweep Committee has got the collector-cum-development commissioner as chairman. By and large the composition of committees consist of senior government officers.[61]

(iv) National environment appellate authority

The Authority consists of a Chairperson, a Vice-Chairperson and such other members not exceeding 3, as the central government appoints.[62]

A person is not qualified for appointment as a Chairperson unless he has been a Judge of the Supreme Court or the Chief Justice of a high court.[63]

A person is not appointed as a Vice-Chairperson unless he has-

(a) for at least two years held the post of a Secretary to the Government of India or any other post under the Central or State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; and

[60] *Id.*, section 6.
[61] *Id.*, section 9.
[62] The National Environment Appellate Authority Act, 1997, section 4.
[63] *Id.*, section 5(1).

(b) expertise or experience in administrative, legal, managerial or technical aspects of problems relating to environment.[64]

A person is not appointed as a member unless he has professional knowledge or practical experience in the areas pertaining to conservation, environmental management, law or planning and development.[65]

Thus, it is evident that apart from the National Environment Appellate Authority, most of the administrative bodies (example, CPCB, SPCB, PCC) monitoring environment matters consist of officials and legal education for them is not necessary. However, if the case goes to the court, the presiding officer with the legal background will adjudicate the matter.

(e) Substantive rules applicable to dispute resolution

At present there are 8 Central Acts, 18 sets of Rules and 31 notifications in force to regulate environment related problems in the country.[66] This voluminous amount of legislation reflects a strong legislative urge to control pollution and create balance in the ecological system.

Besides, English cases form authority for decided cases in many litigations before the Supreme Court of India. They are often referred to in granting relief. For example, *Ryland v. Fletcher*[67] was discussed at length in *M. C. Mehta v. Union of India.*[68]

In *M. C. Mehta v. Union of India,*[69] the Supreme Court relying on an English case, *Pride of Derby v. British Celanese Ltd*.,[70] to grant remedy to petitioner who was not a riparian owner.

The Supreme Court of India, in environment related cases, has established trend of appointing committees consisting of experts to get critical, analytical and independent opinion on technical matters. For instance, in *Rural Litigation & Entitlement Kendra, Dehradun & Ors. v. State of U.P.*[71] the Supreme Court while making final order relied on the report of *Bhargav Committee*, appointed by it by an order dated 11. 8. 1983, for inspecting conditions of lime stone quarries at Dehradun.

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[64] *Id.,* section 5(2).
[65] *Id.,* section 5(3).
[66] INDIAN ENVIRONMENTAL LEGISLATIONS, See http://envfor.delhi.nic.in/
[67] 1868 (19) LT 220
[68] AIR 1987 SC 1086.
[69] AIR 1988 SC 1117
[70] (1953) Ch. 149
[71] AIR 1985 SC 652

In *Research Foundation for Science Technology and Natural Resource Policy v. UOI,*[72] the Supreme Court, constituted a high powered committee under the Chairmanship of Prof. M.G.K. Menon to oversee the strict and faithful implementation of relevant rules and regulations on management of hazardous wastes. The final report (in 3 volumes) was submitted on 25-1-2001.

The Supreme Court has set up *Bhure Lal Committee* (an expert committee constituted under the environment protection law) to examine the existing standards for CNG vehicles including conversion to CNG fuel mode and for CNG refilling stations in Delhi and asked it to submit a report.[73]

(f) Proceedings

Proceedings under the Code of Criminal Procedure, 1973

Section 133 to 144 of the Code of Criminal Procedure of 1973, provide independent, speedy and summary remedy against public nuisance. Section 133 empowers a magistrate to pass a "conditional order" for the removal of a public nuisance within a fixed period of time. The magistrate may act on information received from a police report or any other source including a complaint made by a citizen. The magistrate's power to issue a conditional order under Section 133 is now been interpreted to be of mandatory nature. Once a magistrate has before him evidence of a public nuisance, he must order removal of the nuisance within a fixed time. The party directed to remove nuisance either has to comply with the order or show cause against it. An enquiry may be initiated and to assist the inquiry, the magistrate may direct a local investigation to ascertain facts or summon expert witnesses. The court may also issue an injunction pending an enquiry. Failure to comply with the order is punishable under section 188 of the Indian Penal Code. The court may even carry out the order and recover costs from a defaulter with power to prohibit repetition or continuance of a public nuisance.

Civil proceedings

A common law tort action against the polluter is one of the major and among the oldest of the legal remedies to abate pollution. Most pollution cases in tort law fall under the categories of nuisance, negligence and strict liability. Section 91 of the Code of Civil Procedure, 1908 provides the procedure for removal of nuisance. Accordingly, either the Advocate –General or

[72] Public Interest Litigation W.P. No. 657/95
[73] *SC direction to examine CNG stand*, 5.4.2001, the Hindu, p. 3

2 or more persons, with the permission of the court, even though no special damage has been caused to them, can file a suit for a declaration and the injunction or for such other relief as may be appropriate in the circumstances of the case.

A plaintiff in a tort action sues for damages or an injunction or both. An injunction order can either be *temporary* or *perpetual*. Temporary injunction maintains the state of things at a given date and is regulated by Sections 94 and 95 as well as Order 39 of the Code of Civil Procedure of 1908. Three well established principles govern the injunctive process. These are- the existence of a prima facie case, the likelihood of irreparable injury that cannot be adequately compensated for in damages; and that the balance of convenience requires the issue of the injunction. Whereas perpetual injunctions are regulated by Sections 37 to 42 of the Specific Relief Act, 1963. A perpetual injunction permanently restrains the defendant from doing the act complained of. It is granted at the court's discretion after judging the merits of the suit. A perpetual injunction is intended to protect the plaintiff indefinitely to put into check successive actions in respect of every infringement and avoid multiplicity of proceedings.

Citizens Suit Provision under Environment Protection Act, Water and Air Acts

Before the enactment of the Environment Protection Act, the power to prosecute under Indian Environment laws belonged exclusively to the government. Section 19 of the Environment Protection Act 1986 allows citizen to prosecute an offender before a magistrate. Prior to complaining, however, he or she must give the government 60 days notice of his or her intention to complain. This notice is intended to alert the government to the offence so that it may itself take appropriate remedial action. Likewise, the citizen participation in the enforcement of pollution laws are now found in Section 43 of the Air Act as amended in 1987 and in Section 49 of the Water Act as amended in 1988.

Proceedings Under the Public Liability Insurance Act, 1991

With the increase in number of hazardous industries and accidents, the Parliament enacted the Public Liability Insurance Act in 1991. The Act has provided for ‘compulsory insurance’ and the formation of an ‘Environment Relief Fund.’ The collector is empowered to grant compensation on the basis of ‘no fault liability’. The claimant need not establish that ‘death’, ‘injury’ or

'damage' having the jurisdiction over the area in which the accident occurs.[74] The collector has to follow such summary procedure for conduct in an enquiry on an application for relief under the Act as he thinks fit.[75] Under rule 5(2) of Public Liability of Insurance Rules the collector shall have all the powers of a civil court for purposes of summoning and enforcing the attendance of any person and examining him on oath, and requiring the discovery and production of documents besides receiving evidence on affidavits. Subject to the provisions of Section 123 and 124 of the Indian Evidence Act 1872, requisitioning any public record or documents or copy of such record or document from any office is within his powers. He can also issue commissions for the examination of witness or documents and he has inherent powers of a civil court as saved under section 151 of the Civil Procedure Code, 1908. An appeal against the award of the collector has not been provided for. If a victim feels he is entitled to larger compensation, he is free to initiate action in time in a proper forum. In any case, rank injustice can always be rectified within, the writ jurisdiction of the high court. Under the Public Liability Insurance Act, 1991, the owner, having control over the affairs of handling, has to pay specified amount of money to victims by way of interim relief for which an insurance policy is taken.[76] For implementation of this Act a number of agencies have been assigned definite roles. The major role is of the Collector. The collector on having received notice of accident acts to provide relief to victims. Applications in prescribed forms accompanied by supporting documents are called and the Collector may follow summary procedure for giving relief. He is under an obligation to maintain an application register and awards and payments made there under. An enquiry is held after hearing parties for payment of sum awarded as relief. The Collector is responsible for disbursement of the funds to be drawn upon the Insurance Companies or the Emergency Relief Fund.

Writ Petitions

The extra ordinary jurisdiction under Articles 32 and 226 of the Constitution of India to the Supreme Court and high courts, respectively, to issue directions or orders or writs, including writs of *habeas croups, mandamus, prohibition, quo warranto* and *certiorari* provide a wider canvas to act in environmental matters. The writ remedy is efficacious and speedy. It takes

[74] Public Liability Insurance Act 1991, section 2 (b).
[75] Public Liability Insurance Rules, 1991, Rule 5 (1).
[76] The list of chemicals for which insurance has to be taken under this Act is given in Schedule 3, Part I and II of Manufacture, Storage and Import of Hazardous Chemicals Rules 1989.

lesser time than time required to obtain a decree in a suit.[77] The filing fee and expenses do not relate to advalorem court fees[78] paid in an ordinary civil suit. The affidavits of the parties are enough to proceed in a matter. It cuts the delay as also the inconveniences.

The writ is an extraordinary remedy, and the courts are reluctant to encourage petitioners who circumvent prescribed statutory procedure for correcting administrative action. This rule is waived by court in suitable cases, where, for instance, the impugned action violated the principles of natural justice, or where a government authority has exceeded its jurisdiction.

Proceedings under the Public Interest Litigation

During the last 15 years, an interesting development has taken place in the legal system of India. The cases related to environmental damages are brought before superior courts with relative ease in the form of Public Interest Litigation (PIL) based upon extremely liberal rules of *Locus Standi*. If the courts found themselves not equipped to deal with lengthy and technical questions of discovery and evidence, they appoint an expert committee to determine the questions of facts, to access environmental damage, and to make recommendations as to remedial measures and restitution. The expert committees typically consist of both government and independent experts appointed by the courts, normally in consultation with the parties. The judges have normally restrained from considering the technical evidence in court, preferring on the whole to validate the committee's findings with a constitution order. Matters of a scientific nature are not made subject to adversarial testing. The use of expert committee allows the courts to import technical expertise while leaving judges free to consider the questions of law. The doctrine of *laches* is often relaxed in environmental actions brought in the public interest. The court is usually aware of the financial constraints and obstacles that environmentalists face in obtaining authentic information and documentation.

Proceedings before the National Environment Appellate Authority

The National Environment Appellate Authority was set up under the National Environment Appellate Authority Act, 1997, which received Presidential assent on 26th March 1997. The main object behind setting up of this authority is to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, shall or shall not be

[77] For example, in the Bombay High Court the delay in a writ petition is 6 years compared to over 15 years for a suit.
[78] Fees related to the value of suit.

carried out under the Environment (Protection) Act, 1986 and for matters connected there with or incidental thereto. Section 11(1) of the Act provides that any person aggrieve by an order granting "environmental clearance" in the areas in which industries, operations or processors shall not be carried out or shall be carried out subject to certain safeguards, may within 30 days appeal to the Authority mentioned above. It is presumed that the expression "environmental clearance" is intended to mean a clearance required by or under the Environment (Protection) Act, 1986. An appeal can be filed before the appellate Authority under sub-section (1) of section 11 of the National Appellate Tribunal Authority Act, 1997 by a person/appellant or his authorized representative.[79] A format for appeal is prescribed in Form-A specified in the rules. The Appeal shall contain the particulars required and shall be either in English or Hindi setting forth concisely and under distinct heads, the grounds of appeal to be numbered consecutively.[80]

A Memorandum of appeal can be presented by the appellant in person or any one of the appellants/authorized representatives before the Registrar or designated officer. The mode of sending by registered post with endorsement of date of receipt is available for filling of appeal. Condonation of delay with the application and supporting affidavit is also provided for five sets of copies of appeal and documents are to be submitted for the Authority and one set of copies for each of the respondents. The competent authority, which passed the order appealed against, is impleaded as one of the respondents.[81]

The appellant or his representative are informed by the Registrar within 15 days of the receipt of the appeal for removal of defects, if any, which have to be rectified within 30 days. The appeal then is registered and numbered and intimation is given. Notices are then issued to every respondent. Default by the parties may result in dismissal of appeal or be decided *ex parte*. Similarly when the respondent or his representative does not appear at the hearing of the appeal, the appeal may be heard *ex parte* and decided finally.[95]

The Authority shall dispose of the appeal provided that the authority may for reasons to be recorded in writing, extend it by a further period of thirty days - otherwise the unanimous view in the matters puts a seal to the final order. In case of difference of opinion amongst members on any point, the point shall be decided according to the opinion of the majority. The

[79] National Environment Appellate Authority Rules, Rule 2.
[80] *Id.,* Rules 4 & 5(a).
[81] *Id.,* Rules 5(2) to (6).

chairperson of the Authority determines the finality in case of the division of opinion is equal. No order of the authority shall be questioned on the ground merely of the existence of any vacancy or defect in the constitution of the Authority or any defect in the appointment of a person acting as a member of the authority. [96] If at any stage of hearing of the appeal, the Authority considers that additional evidence needs to be taken by it for a proper disposal of the appeal, it can either take on record such evidence directly or obtain the same from the authority against the order of which the appeal is filed. When there are no specific rules governing the hearing of the appeal, Principles of Natural Justice have to be observed.

(g) Drafting The Agreements

None of the laws regulating environment in India provide for agreement in the sense of arbitration and conciliation agreements and the parties facing problems relating to or covered under the environment laws are free to directly proceed in the courts. Unlike, labour field where, there is scope of drafting the agreement between the employer and employee, in environment field, no such agreement can be contemplated between polluter and the general public.

(h) Relationship of the court system in terms of proceedings

One of the chief criticisms of the Water Act and Air Act has been its prohibition on the public from initiating litigation against polluters.[82] Even the amendment carried out in 1988 to these Acts, allowed person to prosecute for water or air pollution only if he/she gives a prior notice of 60 days to the boards of his/her intention to institute a complaint before the judicial magistrate.[83]

(i) Cost Owed By The Parties

In civil cases, parties are required to bear the cost of engaging lawyer and payment of stamp duty/ court fees. However, in a public interest litigation, no court fee or stamp duty is required to be paid. Likewise, in citizen's suit instituted under the Environment Protection Act, 1986 or in complaint against public nuisance, under the Code of Criminal Procedure, the parties are not required to pay any fees. In such cases, the public prosecutor (i.e., Government Advocate) acts

[82] Water (Prevention and Control of Pollution) Act, section 49.
[83] *Id.*, section 49(1)(b).

on behalf of the complainant. The complainant is not required to bear any expenses in regard to the continuance of the proceedings.

(j) Time

Sections 91 to 95 of the Code of Civil Procedure, 1908, prescribe the procedure followed by the courts in civil suits brought for prevention and removal of public nuisance or for the issuance of the injunction. However, neither these sections nor anywhere else in the Code, any time limit is prescribed within which suit may be brought before the court or the court conducts the proceedings and passes the decree.

Sections 133 to 144 of the Code of Criminal Procedure, 1973 prescribes the procedure of filing of the complaint before the magistrate and the conduct of the proceedings. These sections, do not specify time limit within which magistrate has to dispose of the complaint. However, discretion is given to the magistrate to specify time limit in his order within which nuisance has to be removed by the accused party.

Similarly, under the Environment Protection Act, 1986, a duty is imposed on the general public to give 2 months' notice in advance to the Central Government before filing complaint in the court. But the Act is silent as to the time limit within which the court has to act on the complaint or proceedings are to be conducted in the court.

Articles 32 and 226 of the Constitution, most frequently resorted to by the general public in India either to file writ petitions or to institute public interest litigation, also does not mention time limit for the disposal of the case.

Under Water (Prevention & Control of Pollution) Act, 1974, section 28 of the Act, prescribes time limit of 30 days from the date of communication of the order, within which person aggrieved by the order of the state board, can file appeal before the appellate authority. But it is silent on the time limit within which appellate authority is to dispose of this appeal or conduct appellate proceedings. Same is the case with Air (Control & Prevention of Pollution) Act, 1981.

However, the National Environment Appellate Authority Act, 1997, under section 11(4) and proviso thereto imposes duty on the National Environment Appellate Authority to dispose of the appeal within time period of 90 days from the date of filing the appeal and on sufficient reasons, this time period can be extended to further period of 30 days.

The Public Liability Insurance Act, 1991, under section 6 imposes duty to file application for claim for relief within 5 years of the occurrence of the accident. Section 7(7) imposes duty on the collector to dispose of the claim as expeditiously as possible and make endeavour to dispose of the claim within 3 month of the receipt of the application for relief.

(k) Statistical data

The status of court cases under Water Act and Air Act, up to the year – 2000, revealed that out of total number of 6811 cases instituted in the courts only 3310 (48.6%) were finally disposed of and the remaining 3501 (51.4%) were pending. This figure has slightly improved over a period of one year. As the table on page 22 reveals that out of total number of 6862 cases instituted in the courts 3484 (50.772%) have been finally disposed of and the remaining 3378 (49.227%) are pending.

The status of pending cases on environment as on year 1999 is given below: [84]

Sl. No	Name of the State	Total No. of cases pending
1	ASSAM	
2	ARUNACHAL PRADESH	
3	ANDHRA PRADESH	2
4	BIHAR	212
5	GOA	
6	GUJARAT	1747
7	HARYANA	460
8	HIMACHAL PRADESH	35
9	JAMMU & KASHMIR	39
10	KERALA	4
11	KARNATAKA	85
12	MAHARASHTRA	120
13	MADHYA PRADESH	137
14	MEGHALAYA	

[84] *Pending Cases In Environmental Courts,* Government of India, Ministry of Environment & Forests, **Rajya Sabha Starred Question No 260** Answered on 12.03.1999, http://164.100.24.219/rsq/quest.asp?qref=1406

15	MANIPUR	
16	MIZORAM	
17	NAGALAND	
18	ORISSA	75
19	PUNJAB	296
20	RAJASTHAN	239
21	SIKKIM	
22-	TAMILNADU	140
2,3	TRIPURA	
24	UTTER PRADESH	57
25	WEST BENGAL ————	2
26	CHANDIGARH	
27	DELHI	1
28	ANDAMAN & NICOBAR	
29	DAMAN, DIU &DNH	
30	LAKSHADEEP	
31	PONDICHERY	
	TOTAL PENDING CASES	3651

Number of sanitation cases: The laws concerning environment do not give primitive power to local bodies to punish the offenders. The local bodies have to file complaints in the courts where the legal process is very slow for various reasons. The amount of fine that can be imposed is also very small. Thus, there is no fear of punishment. In Ahmedabad alone, in the year 1995, more than 1,50,000 cases were pending in courts for sanitation offences accumulated over a period of 10 years leaving no incentive for supervisors to file new cases. [85]

Industrial Pollution Complaints: During the year 2001, Ministry received more than 300 complaints from various individuals/organizations/NGOs etc. regarding pollution being caused by certain industries. These complaints mostly related to air, water, land and noise pollution, resulting in degradation of the eco-system. Some of the complaints were also related to discharge

[85] P. U. Asnani, *Municipal Solid Waste Management In India*, Waste Management Workshop, 24-28 June 1996, Nicosia, Cyprus.

of untreated or partly treated effluent thereby contaminating water bodies, land and ground water.[86]

Performance of the Central Pollution Control Board & State Boards: Through its first ten years in operation, the Central Board's efforts at litigation were lethargic as it filed only 181 cases, and eventually dropped charges in 16 of those. For most of those years, only a few cases were filed annually. 104 cases were filed in 1986-87, marking a change in the Board's enforcement strategy.[87]

By 1987-88, all the state boards had filed a total of only 1,602 cases for prosecution under the Water Act. Of these, 288 had been decided and 1,314 cases were pending.[88]

As on 31.10.1997 the SPCBs/CPCB under the Water and Air Acts filed a total of 6624 cases. Out of these, 2947 were decided and 3677 cases were pending in various courts.[89] The number of cases, as on 30.9.2001 filed by CPCB/ SPCBc are given as below:

[86] MoEF Annual Report 2000-01.
[87] *Supra* note 15.
[88] Central Pollution Control Board, Sixty First Report, New Delhi, 1988
[89] MoEF Annual Report, 1997-98, See http://envfor.nic.in/report/9798/legis.html

CENTRAL POLLUTION CONTROL BOARD
STATUS OF COURT CASES AS ON 30.9.2001

S. No.	Name Of the Board	Cases filed Under Water Act	Cases filed under Air Act	Total Cases Under both acts	UNDER WATER ACT								UNDER AIR ACT								Total No.of decision under both Acts	Total No.of cases pending under both Act	Remarks /Inf. Received on
					No. of Decision	In Favour of the Board	Against the Board	Imprisonment	Fine	Restrain Order	No. of cases pending	No.of cases dismissed or withdrawn	No. of Decision	In Favour of the Board	Against the Board	Imprisonment	Fine	Restrain Order	No.of cases pending	No.of cases dismissed or withdrawn			
1	Assam	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	17.12.92
2	Arunachal Predesh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	26.09.01
3	A.P.	15	1	16	13	10	3	1	-	-	2	1	1	1	-	-	-	-	-	-	14	2	
4	Bihar	163	98	261	38	35	3	1 R. ON Prob.	-	7	125	3	3	-	3	-	-	-	95	-	41	220	17.10.01
5	Chattisgarh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	I.N.A.
6	Goa	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	19.4.96
7	Gujrat	2407	340	2747	1051	163	888	5	12	146	1356	4	199	48	151	3	44	1	141	1	1250	1497	25.06.01
8	Haryana	447	271	718	213	181	32	9	-	2	234	149	45	45	-	18	-	-	226	25	258	460	19.5.95
9	H.P.	53	25	78	27	19	8	1	-	-	26	-	16	14	2	-	-	-	9	-	43	35	20.7.93
10	J& K *1	87	-	87	1	1	-	1	-	-	86	-	-	-	-	-	-	-	-	-	1	86	10.2.2 K
11	Kerala	68	3	71	60	49	11	2	4	30	8	13	3	3	-	-	1	-	-	2	63	8	1.3.01
12	Karnataka	144	71	215	76	43	33	-	-	22	68	-	23	13	10	-	2	5	48	-	99	116	5.1.2K
13	Maharashtra	358	148	506	244	125	119	46	-	-	114	-	142	113	29	-	112	1	6	-	386	120	2.2.98
14	M.P.	115	63	178	30	21	9	-			85	1	14	7	7	5	-	-	49	-	44	134	23.1.01
15	Meghalaya	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	13.2.01
16	Manipur	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10.09.01
17	Mizoram	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7.4.97
18	Nagaland	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12.12.95
19	Orissa	97	33	130	35	31	4	1	1	4	62	26	12	10	2	-	-	-	21	10	47	83	2.7.01
20	Punjab	495	144	639	308	212	96	44	28	2	187	147	35	28	7	2	4	-	109	22	343	296	19.4.94
21	Rajasthan	235	69	304	63	27	36	-	-	-	172	-	2	2	-	1	-	-	67	-	65	239	7.12.92
22	Sikkim *2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	I.N.A.
23	TamilNadu	321	134	455	273	140	133	74	-	-	48	66	120	84	36	79	-	-	14	5	393	62	15.1.01
24	Tripura	2	2	4	-	-	-	-	-	-	2	-	-	-	-	-	-	-	2	-	-	4	31.1.01
25	U.P.	216	8	224	202	177	25	1	8	135	14	-	7	6	1	1	6	1	1	-	209	15	31.1.01
26	Uttranchal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	I.N.A.

27	West Bengal *3	38	1	39	38	38	-	-	-	-	-	38	1	1	-	-	-	-	-	1	39	-	23.1.01
CASES FILED BY CPCB BEFORE DELEGATION																							
	Delhi	184	2	186	183	155	28	3	-	-	1	70	2	1	1	-	-	-	-	-	185	1	30.9.01
CASES FILED BY POLLUTION CONTROL COMMITTEES																							
1	Andaman & Nikobar	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	19.4.93
2	Daman, Dio & Dnh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	19.2.01
3		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	05.2.01
4	Delhi	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	I.N.A.
5	Chandigarh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	23.2.2 K
6	Pondicheri	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	13.4.98
	Grand Total	5445	1413	6858	2855	1427	1428	189	53	348	2590	518	625	376	249	109	169	8	788	66	3480	3378	

Note *1: In the State of J & K, 86 cases have been shown as pending under both the Acts as composite complaint have been preferred. One case has been shown as conviction.
Note *2: INA stands for information not available.
Note *3: Cases shown as withdrawn because Pollution Control system has been installed or the cause of pollution is eradicated and the purpose of Acts achieved. Therefore, case withdrawn taken as in favour of the Board.

4. Institutional Routes from the Outbreak to the resolution of disputes

The procedural options available under the various statutory provisions relating to environmental litigation can be described as falling under the category of civil proceedings, criminal proceedings, constitutional remedies and administrative measures, as discussed below.

(1) Civil Suits: Common law remedies of nuisance, negligence and strict liability are available to a plaintiff in a tort action. These can be enforced by instituting an action in subordinate civil judiciary. An action may be brought by suing for damages or an injunction, or both. Damages awarded may be "substantial" or "exemplary". The former is awarded to compensate the plaintiff in order to restore him to a position in which one would have been in, had no wrong been committed. The quantum of damages correspond to a fair and reasonable compensation for the injury caused. Exemplary damages are punitive in nature to mend an outrageous nature of conduct, as for instance, persistent causing of nuisance after being convicted and being fined for if the wrong is repeated.[90]

Tort actions in India have been few wherein the damages awarded have been quite low which pose no deterrence to a polluter.

Although in theory damages are the principal relief in tort action yet, injunctive reliefs prove more efficacious in abating pollution.[91] A perpetual injunction permanently restrains the defendant from doing the act complained of. It is granted at the court's discretion after judging the merits of the suit. A perpetual injunction is intended to protect the plaintiff indefinitely to put into check successive actions in respect of every infringement and avoid multiplicity of proceedings. Perpetual injunctions are regulated by sections 37 to 42 of the Specific Reliefs Act of 1963.

(ii) Criminal Complaints: Section 268 of the Indian Penal Code of 1860 provides penal consequences for public nuisance. Section 133 to 144 of the Code of Criminal Procedure of 1973, provide independent, speedy and summary remedy against public nuisance.[92] Section 133

[90] *J. C. Gulstan* v. *Dunia Lal Seal,* (1905) 9 CW N 612 at 616.
[91] Armin Rosencranz , *Environmental Law and Policy in India* Chapter 10 & 11 (1991).
[92] A magistrate has not jurisdiction under S. 133 to entertain private disputes between neighbour. For example, a flour mill that only disturbed a neighbouring family but no other residents in locality, constituted a *private* nuisance actionable in tort and not a *public* nuisance; *Dhaseppa Ballapa Goudej* v. S*ub Divisional Magistrate* 1984 (2) Ker. L. J. 444, at 449 -450.

empowers a magistrate to pass a "conditional order" for the removal of a public nuisance within a fixed period of time.[93] The magistrate may act on information received from a police report or any other source including a complaint made by a citizen.[94] The magistrate's power to issue a conditional order under section 133 has now been interpreted to be mandatory[95] in nature. Once a magistrate has before him evidence of a public nuisance, he must order removal of the nuisance within a fixed time.[96]

(iii) Writ Petitions to the Supreme Court of India and to the high courts: The extra ordinary jurisdiction under Articles 32 and 226 of the Constitution of India to the Supreme Court and high courts respectively, to issue directions or orders or writs, including writs of *habeas croups, mandamus, prohibition, quo warranto and ceriorari* provide a wider canvas to act in environmental matters. The writ remedy is efficacious and speedy. It takes lesser time than that required to obtain a decree in a suit,[97] The filing fee and expenses do not relate to *ad valorem* court fees[98] paid in an ordinary civil suit. The affidavits of the parties are enough to proceed in a matter. It cuts the delay as also the inconveniences.

(iv) Citizens Suit Provision: Under section 19 of the Environment (Protection) Act 1986, a citizen may prosecute an offender before a magistrate. Prior to prosecuting, however, he or she must give the government 60 days notice of his or her intention to prosecute. This notice is intended to alert the government to the offence so that it may itself take appropriate remedial action. Likewise, the citizen participation in the enforcement of pollution laws are now found in section 43 of the Air Act as amended in 1987 and in section 49 of the Water Act as amended in 1988.

(v) Public Interest Litigation: Public interest litigation has a major thrust in the field of environmental protection in India. Most of the cases in India arose due to PIL initiated by public-spirited citizens[99] or public interest groups.[100]

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[93] The order is conditional because it is only preliminary order. The order may be made absolute (final) only after giving the appoint party sufficient opportunity to be heard.

[94] For example, in *K. Ramachander Mayya* v. *District Magistrate,* 1985 (2) Ker L. J. 2899 the H.C. approved of the magistrate's order shutting down a stone quarry, where the magistrate acted on complaints from neighbouring residents that the blasting of rocks at the quarry caused damage from flying stone chips.

[95] *Municipal Council Ratlam v. Vardhichand*, AIR 1986 SC 1622.

[96] In urgent cases, a magistrate may direct the *immediate* removal of a nuisance. *Supra* note 29 at 295. Also see Section 145 of Cr. P. C. of 1973.

[97] For example, in the Bombay High Court the delay in a writ petition is 6 years compared to over 15 years for a suit.

[98] Fees related to the value of suit.

[99] AIR 1987 SC 982; AIR 1988 SC 1037; AIR 1987 SC 1115; AIR 1987 SC 1086.

(vi) Collector Under Public Liability Insurance Act: The Public Liability Insurance Act authorizes the collector having the jurisdiction over the area in which the accident occurs to grant compensation.[101] The collector is empowered under the Act to follow such summary procedure for conduct in an enquiry on an application for relief under the Act as he thinks fit.[102] Under rule 5 (2) of Public Liability of Insurance Rules, the collector has all the powers of a civil court for the purposes of summoning and enforcing the attendance of any person and examining him on oath, and requiring the discovery and production of documents besides receiving evidence on affidavits. An appeal against the award of the collector has not been provided for. However, if a victim feels he is entitled to larger compensation, he/she is free to initiate action in time in a proper forum. In any case, the writ jurisdiction of the high court is always possible.[103]

(vii) National Environment Appellate Authority: This authority is empowered to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processors shall not be / shall be carried out subject to certain under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto. The National Appellate Authority shall, after giving an opportunity of being heard, dispose off the case within a period of ninety days from filing and can be further extended thirty days more. The authority has power to regulate its own procedure including the fixing of places and times of its enquiry. The chairperson shall exercise such financial and administrative powers as may be vested in him under the Rules. He may delegate powers to vice-chairperson or any other officer subject to the control and supervision of the chairperson. The exclusion of civil court jurisdiction to entertain any appeal in respect of any matter with which National Appellate Authority is empowered under this Act is expressly laid down. The penal provision for noncompliance of the order made by the Authority is severe. It may either be in the form of imprisonment up to 7 years or in fine up to 0.1 million rupees or both. [104]

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[100] AIR 1985 SC 652.
[101] Public Liability Insurance Act 1991, section 2 (b).
[102] Public Liability Insurance Rules, 1991, Rule 5 (1).
[103] K. Srinivasan, *Handbook on Public Liability Insurance*, Chapter 3, 12 (1992).
[104] S.O. 775 (E) 11.11.1997 II 3 (ii) Extra *Sl.* 629.

5. Choices of Routes for Dispute Resolution

In order to sue in Indian courts, the injured person must first be able to afford an attorney. In this country, a lawyer may charge a contingent fee; that is, taking a portion of the recovery as a fee rather than payment upfront. Furthermore, in India, a person must pay a percentage of the claimed recovery into court before bringing a suit.[105]

It has been observed that the cases filed before the courts, which are not inferior to that of Metropolitan Magistrate or Judicial Magistrate First Class,[106] could not be taken up for hearing at least for 3 years on account of pendency of earlier cases. The cases are to be filed before the various courts throughout the area under the jurisdiction of the Regional officer/Sub-Regional officer and therefore, they have to attend various courts at remote places at *Taluka* level and therefore it becomes very difficult for the officers of the Board (complainant) to pursue the cases at such places and attend day to day hearing. It has also been observed that after 3 to 5 years, when cases are matured for hearing, in most of cases, the management has changed and the respective accused persons have left their jobs and have joined some other organization, without giving details of their jobs to the earlier company or Pollution Control Board. In some cases, the persons in charge are even found to have left the state/country, wherein, it is not possible to procure their attendance for years together. In such cases either for want of service or procurement of attendance of such accused persons, the court has either discharged the accused or stayed the prosecution indefinitely. It has also been observed that after every 3 years, the concerned officers/complainants and witnesses are transferred and therefore, it becomes very difficult to procure attendance of such transferred persons from another region. The transfer of judges also hampers the progress of cases. Since, all the cases are warrant trials, it requires elaborate recording of evidence before change and after change. The accused prefers appeal/revision even against not only issue of process, but also against framing of charges, convictions etc. and therefore, the decisions are delayed. Since, punishment involved is minimum 18 months imprisonment and fine and a maximum 6 years of imprisonment, the courts insists on detailed procedure as well as substantial evidence. Because of technical nature of

[105] http://www.landskroner.com/bhopal-hz.html
[106] *Supra* Chapter 1.

offences under the above Environmental Laws, it becomes very difficult for the local advocates to acquaint themselves with the evidence and likewise to apprise the judge with the evidence.[107]

Despite the regulatory framework and oversight authority of the Central and state boards, enforcement is remarkably lax. Boards have been historically lenient towards the discharge of polluting effluents by allowing industries to procure the "consent" required by the Water Act. When violations have become too obvious to ignore, the Central Board has moved sporadically, often lethargically, to launch prosecutions. State boards have also been lax. From 1974, when the Water Act became law, till 1988, state boards started only 1,600 prosecutions. Responsibility for failing to successfully prosecute polluting industries falls squarely on the boards.

The SPCBs, do not have the power to impose on-the-spot-fines on persistently non-complying units. In the absence of such power, the State Boards either hope for the non-complying unit to abide by their directions or file a case with the Court of Justice against the said unit and wait for the court verdict. The Court is entitled to impose stringent punishments ranging from imprisonment of 18 months to 6 years plus fine. Courts are generally busy with day-today criminal and civil cases and that leads to environmental cases, pending for years together. The pendancy problem is particularly alarming in states like Madhya Pradesh, Orissa, Gujarat, Punjab and Assam.

The growing disillusionment with the efficacy of litigation as a control mechanism felt by some of the State Boards, especially those of Madhya Pradesh, Tamil Nadu, Punjab, Orissa and Gujarat is evidenced by the negligible number of environmental cases (compared with the preceding years) filed by them during 1997-98:[108]

State	Year of constitution	No. of cases filed upto 31.3.98	No. of cases disposed upto 31.3.98	No. of cases pending as % of cases filed	No. of cases filed in 1997-98	No. of cases disposed in 1997-98
Andhra Pradesh	1976	156	120	23.08	48	29
Assam	1975	5	0	100	1	0
Gujarat	1974	2961	1181	60.11	20	76
Karnataka	1974	158	95	39.87	17	7
Kerala	1974	66	63	4.55	0	0
Maharashtra	1970	524	389	25.76	38	15

[107] *Supra* note 11.

[108] Information collected from Central Pollution Control Board in 1998.

MP	1974	164	38	76.83	3	8
Orissa	1982	109	11	89.91	6	0
Punjab	1975	848	482	43.16	1	26
Tamil Nadu	1982	454	299	34.14	0	9
UP	1975	444	329	25.9	24	39

Some State Boards complain that when the cases are finally decided, the verdicts often go against them, for the courts are reluctant to punish the recalcitrant units. The pollution control Acts (Water, Air Acts, Noise pollution regulations, etc.) do not provide for the constitution of special courts to try environmental cases. No jail sentences, on record, have been meted out, and fines imposed are of not such nature as to deter accused - polluter.[109]

And finally, the significant drawback of current environmental laws is language that puts the burden of proof on the pollution control boards, rather than the polluters. The Water Act states that to enact punitive measures, the pollution of a water body must be done "knowingly" rather than "negligently".

To provide a context for the behavior of the central and state pollution control efforts, some have argued a possible explanation as the general philosophy of an environmental agency within a developing country.

Public activism is also worth noting. Public protests have concentrated on two subjects: the local industry whose pollution has affected nearby residents; and deforestation by the lumber industry. Interestingly, the genesis of most demonstrations have come from rural residents. One observation which can be drawn from the public awareness burgeoning throughout the 1970's and 1980's is that the public perceived the government, not as stewards, protecting the environment, but as allies of industry's interests. The results were often public demonstrations against state and central government officials. [110]

In the matters of environment, Indians show immense faith in the Apex Court, whose judicial activism in this field is quite well known. The courts in India by their beneficial interpretations have given citizens fundamental right to clean & pollution free environment. This has resulted in shooting up of environmental legal action. Also, relaxing the general rule of *locus standi,* has further given impetus to litigants. They are encouraged and bring before the court all kinds of

[109] Source: Pollution Control Board, survey of cases from 1976- 2001.
[110] *Supra* note 15.

environmental violations to the notice of the court, even by simple letter addressed to it. This over-excitement over the environment cause has, however, overburdened the judiciary.

6. Case Study

During the 1980's, public sentiment, and critically, the Indian Supreme Court, took an increasingly sympathetic stance toward environmental security. The outcome was a series of important PIL decisions. The Union Carbide disaster in Bhopal not withstanding, the ***Doon Valley Case***[111] marked a clear watershed. The court ordered the closure of eight sizable limestone quarries because the facilities had adversely affected local water springs and the health of nearby residents.

In the ***Delhi Gas Leakage Case***[112], the court took an unusual step by taking an active role in the environmental debate by suggesting the set up of **Environmental Courts.**

The Court in the ***Ganga Pollution Case***,[113] ordered the closure of a cluster of tanneries, till they established primary treatment facilities within a few months

Narayan Sarover Case[114]**:** was filed to prevent the destruction of the sole habitat of the Chinkara and one of the last remaining mangrove wetlands on the western coast from mining, factories, thermal power stations, jetties, groundwater pollution from salinization due to mining, to stop the process of desertification of western India. Historic judgment delivered wherein the court order squashed two notifications restoring the area of the sanctuary to its pristine glory. The court has taken away the power of the state government to denotify a protected area. The court also upheld the 1991 amendment of the Wildlife (Protection) Act, 1972.

Church of God (Full Gospel) in India v K K R Majestic Colony Welfare Association[115] In this case, related to noise pollution, peculiar question came up before the Supreme Court of India, demanding its decision on the question whether a particular community can claim right to add to noise pollution on the ground of religion? Whether beating of drums or reciting of prayers by use

[111] *Rural litigation & entitlement Kendra v Union of India,* AIR 1985 SC 652
[112] *M.C.Mehta v. Union of India,* AIR 1987 SC 1086
[113] *M.C.Mehta v. Union of India,* AIR 1988 SC 1037
[114] *Consumer Education-Research Society v. Union of India,* (2000) 2 SCC 599.
[115] Criminal Appeal No. 732 of 2000 Decided on 30th August, 2000

of microphones and loudspeakers so as to disturb the peace or tranquility of neighborhood should be permitted? The court did balancing act between two fundamental rights guaranteed under the Constitution of India one upholding religious right and other recognizing right to stay in pollution free environment flowing from right to life guaranteed under Article 21 of the Constitution. The Court held that in a civilized society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during day-time or other persons carrying on other activities cannot be permitted. The court in strongest terms came to the rescue of victims of noise pollution and recognized their right over the religious rights.

The existing environmental laws do not create alternative forums for dispute resolution or the redress of public grievances. Though the provision for setting up of special environment tribunals have been made under the National Environment Tribunal Act, 1995, it is yet to be set up for resolving environmental disputes. Hence, the cases are mostly resolved by the Supreme Court of India and the high courts in exercise of their writ jurisdiction. Some of these cases pertaining to air, water and noise pollution are mentioned below:

Air Pollution

In *A P Pollution Control Board II* v. *Prof. M V Nayudu(Retd.)*[116], the Supreme Court has observed that no objection certificate should not have been granted by Andhra Pradesh Pollution Control Board in case of the storage of serious hazardous materials under the Environment Protection Act, 1986. On 7th December 2000, the Supreme Court ordered for closure of all the polluting units in non-conforming / residential areas.

In *M.C. Mehta v. Union of India*[117] the Supreme Court directed the closure of 168 hazardous industries in Delhi with effect from November 30, 1996. The Court, however, permitted these industries to relocate or shift themselves to any other industrial estate in the National Capital Region. In a subsequent order, in *M.C. Mehta v. Union of India*[118] the Supreme Court brought 513 more industries under hazardous category and ordered for the stoppage of their functioning in Delhi with effect from January 31, 1997.

Conversion of buses into CNG mode – The Supreme Court on 28.7.98 gave direction for conversion of all the buses to CNG mode by 31.3.2001 in the National Capital Region of Delhi.

[116] 2000 (8) SCALE 23.
[117] 1996(5) SCALE 21
[118] 2000(8) SCALE 386

A three judge bench[119] of the Supreme Court in *M.C. Mehta v. Union of India*[120] while implementing these directions given earlier remarked that neither the Government authorities nor private bus operators acted seriously in taking steps for complying with the aforesaid directions. The court, taking into consideration the plea by the State Government, bus operators and most importantly the problems being faced by the common public (including school children), granted conditional extension and directed the owners of the commercial vehicles (including autos), who have placed firm orders for new CNG vehicles or for conversion to CNG mode to furnish affidavits by 31st March, 2001 about their existing vehicles, and the details of order placed by them for new CNG vehicles or for conversion to CNG mode. On these affidavits being filed, they were permitted to operate provided the vehicle was not more than eight years old, on 30th September, 2001. The court ruled out that after 1st April, 2001, no commercial vehicle would be registered in Delhi which does not conform to the Court's order dated 28.7.1998. It directed the *Bhure Lal* Committee to examine the treating of usage of low sulpher diesel as clean fuel for granting exemption by inviting comments.[121]

In *Animal Feeds Dairies and Chemicals Ltd. v Orissa State Pollution Control Board*[122] the petitioner challenged the direction issued by the Orissa State Pollution Control Board under section 31A of the Air Act, 1981, requiring them to close down the industry and shift it to a new location, on account of air pollution. The court held that Air Pollution as defined under the Air Act, 1981 means the presence of any air pollutant in the atmosphere. Possibility of emission of foul odour would not clothe the jurisdiction with the Board to issue any direction

Water Pollution

In *Mandu Distilleries Pvt. Ltd. v M.P. Pradushan Niwaran Mandal*[123] the petitioners filed writ petition challenging the order passed by the repondent – Madhya Pradesh State Pollution Control Board, directing stoppage of production. The petitioners had constructed lagooning system of effluent treatment plant along with the distillery. The repondent issued show cause notice objecting to discharge of polluted water in Pankhedi Nala reaching rivers Mohini, Chambal, etc. the notice was replied. The Government of India, through respondent Board required setting up of Anaerobic Methane Gas Disaster Plant. Construction of the same was started but delay was

[119] comprising Dr. A.S. Anand CJI, B.N. Kirpal and V.N. Khare, JJ.
[120] JT 2001 (4) 201.
[121] *M.C. Mehta v. Union of India* JT 2001 (4) 201.
[122] AIR 1995 ORI 84
[123] AIR 1995 M.P. 57

caused due to cancellation of the permission. The respondent Board passed an adverse order. The sme was challenged before the high court. The high court of Madhya Pradesh held that:

"The Water Act, 1974, a beneficial legislation permits preventive measures in case of industries to be established and remedial measures in case of industries already established. The focus has to be on the remedial measures. The state board has onerous task to perform and should be left little free where problem threatens the very existence of mankind. However, some basic requirements of natural justice has to be fulfilled, viz., the person accused should know the nature of the accusation made, he should be given an opportunity to state his case, and the Board should act in good faith."

In this case, the court directed that the Respondent – Board should issue fresh show cause notice stating all grounds specifically, like absence of consent or renewal, limit of production types of pollution controls, objectionable discharge of effluents, etc., and remedial measures necessary to incinerate pollution and shall give reasonable opportunity to them to represent their cases and then decide the question afresh within a period of 35 days. The petitioners till then, shall remain restrained from discharging trade effluents through any stream channel or other source reaching rivers Mohini, Chambal, etc.

In *M.C. Mehta v. Kamal Nath & Others*[124] -the Court took notice of an article which appeared in the newpaper – the Indian Express stating that a private company "Span Motels Pvt. Ltd.", to which the family of Kamal Nath, a former Minister of Environment and Forests, had a direct link, had built a motel on the bank of the River Beas on land leased by the Indian Government in 1981. Span Motels had also encroached upon an additional area of land adjoining this leasehold area, and this area was later leased out to Span Motels when Kamal Nath was Minister in 1994. The motel used earthmovers and bulldozers to turn the course of the River Beas, create a new channel and divert the river's flow. The course of the river was diverted to save the motel from future floods. The Supreme Court of India held:

(a) prior approval for the additional leasehold land, given in 1994, is quashed
(b) the Government shall take over the area and restore it to its original condition.
(c) Span Motels will pay compensation to restore the environment,
(d) the various constructions on the bank of the River Beas must be removed and reversed.

[124] (1997)1 Supreme Court Cases 388

(e) Span motels must show why a pollution fine should not be imposed, pursuant to the polluter pays principle.

(f) Regarding the land covered by the 1981 lease, Span Motels shall construct a boundary wall around the area covered by this lease, and Span Motels shall not encroach upon any part of the river basin. In addition, this motel shall not discharge untreated effluents into the river.

In *Attakoya Thangal* v. *Union of India*[125], a public interest litigation challenging the environmental imbalance likely to be caused by the implementation of the new water scheme in Lakshadweep Islets, the Kerala High Court said:

"Right to life is much more than the right to animal existence and its attributes are manifold, as life itself. A prioritisation of human needs and a new value system has been recognised in these areas. The right to sweet water and the right to free air are the attributes of the right to life. These are the basic elements which sustain life itself."

Noise Pollution

In *Rabin Mukherjee v State of West Bengal*[126] - a writ application was moved by the petitioners for protection of their own rights and also in public interest being aggrieved by the nuisance and noise pollution which are being created in the impunity by the transport operators by indiscriminate installation and use of electric and artificially generated air horns. They prayed for a writ in the nature of *mandamus* commanding the respondents to enforce the provisions of Rule 114 of the Bengal Motor Vehicles Rules, 1940 and to enforce the restrictions against the use of such horns. The Calcutta High Court allowed the application and directed the respondents to enforce strictly the provisions of Rule 114(d). the court directed the State Government to issue notice and or notifications immediately notifying to all the transport vehicle operators about the restrictions provided in section 114(d) and directing them to remove the electric, air and other loud and shrill horn forthwith and to use only bulb horn, giving the operators 15 days time to change the horn, with the warning that failure to change the horn would attract penal action.

In *Radhey Shyam v Gur Prasad Serma*[127] the plaintiffs filed a suit for permanent injunction restraining the defendant from installing and running flour mill in the premises occupied by the

[125] 1990 (1) KLT 580.
[126] AIR 1985 CAL 222
[127] AIR 1978 ALL 86

defendant. The residential portion of the plaintiff was just above the shop wherein impugned machine is installed. The trial court found that the running of flour mill was not an actionable nuisance and against this decision, the plaintiff filed civil appeal. The appellate court found that if palm of the hand was placed on the walls of plaintiff's room, vibrations could be noticed because of running of the oil expeller machine. Also, there was monotonous and continuous feeling of slight tremor or 'zoom' sound because of the running of the machine. It was contended by the defendant that there are two other flour mills in the area, and a flour mill is situated in the same premises. Thus, the plaintiff who is a tent in the premises in question has to put with certain amount of noise which is caused by the running of oil machine. The Allahabad High Court found that there was no residential portion over those flour mills and observed that the principles relating to private nuisance are by now well settled. The court observed:

"It is manifest that a person can claim injunction to stop nuisance if in a noisy locality there is substantial addition to the noise by introducing of some machine, instrument or performance at defendant's premises which materially affects the physical comforts of the occupants of the plaintiff's house. The running of impugned machine would seriously interfere with the physical comfort of the plaintiff and therefore, he is entitled to the injunction as claimed by him.

From the above case study, it is clear that the notions of supreme authority of the courts make parties reluctant to submit to the alternative dispute resolution forums, which may or may not conclude matters deemed by the litigants to be of paramount interest to them in their favor.

Summary

From the above discussion the following conclusions emerge:

The Court System in India

The court system in India, which is based on adversarial model of common law, is cumbersome, expensive and too technical. The Supreme Court and the high courts form one single integrated independent judiciary. Below the high courts in each state, there are subordinate courts. The subordinate courts represent the first tier of the entire judicial structure. As a general rule, civil cases are dealt by with one set of hierarchy of courts known as civil courts and criminal cases by another set known as criminal courts. The organization and growth of the present hierarchy of courts of justice with the superior court at the apex and inferior courts at the base owes its origin to the British rule in India. There is a single set of procedural laws and to a great extent, the substantive law enacted by the Parliament. Because of the inherent drawbacks in the procedural laws, there has been a huge pendency of cases in the courts at different levels. Although as a result of the various initiatives taken by the Supreme Court of India, the pendency of cases in the Supreme Court, which was 1,04,936 on 1st January 1992, has come down to 21,716 (i.e., twenty one thousand seven hundred sixteen only) [1] as on October 30, 2001. The situation in the high courts and lower courts is almost static and dismal. The high courts and lower courts are overburdened and have to tackle with voluminous pending and fresh litigation arising everyday. The number of cases pending before High Court and Subordinate Courts as on 31st October, 2001 were 35,57,637 and 2,03,25,756 in High Courts and Subordinate Courts respectively. [2]

The delays are perennial because of the loopholes in the procedural laws, viz., Code of Criminal Procedure, Code of Civil Procedure and the Indian Evidence Act. On the other hand in criminal cases, conviction rate is also very dismal, which has shaken the faith of people in the judicial system. The backlog in the disposal of cases has always remained a big problem,

[1] Govt. of India, Ministry of Law, Justice & Co. Affairs, Rajya Sabha unstarred question No. 2223, answered on 10.12.2001
[2] *Ibid.*

which is not conducive to meet the challenges of globalisation, liberalisation of economy and achievement of welfare state ideals. To tackle the pendency of cases at the sub-ordinate courts, the government, in 2001 envisaged setting up of 1734 Fast Track Courts at various places, out of which 830 have been set-up till October 30, 2001 and permanent *Lok-Adalats* in all the districts of the country. Recent Press Report reveals that Sessions judges and magistrates will now be rewarded for disposing of cases which have been pending for seven years or more. Every month, judicial officers are given units for deciding cases. The units matter when the high court frames its reports card on their performances. The system has yet to put in practice.

Alternative Dispute Resolution

In order to tackle the mounting pressure of litigation and to clear the backlog, the Government through an Amendment of the Constitution in 1976 set-up numerous tribunals, commissions, boards and special courts. Side-by-side the system of Alternative Dispute Resolutions (ADRs) also took shape. The most common forms of ADRs are arbitration, mediation, conciliation, *Lok Adalats, Nyay Panchayats*, and the new emerging ADR of Ombudsman.

Arbitration remains the preferable means of determining a wide range of disputes, involving technical and commercial issues. The major variables in arbitration are the degree of informality in the proceedings and the extent of appeal rights, compared to court adjudication. Prior to the enactment of the Arbitration & Conciliation Act, 1996, the law of arbitration was governed by the Arbitration Act of 1940, the Arbitration (Protocol and Convention) Act 1937 and the Foreign Awards (Recognition and Enforcement) Act 1961. The Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961 provided for the enforcement of foreign arbitral awards mainly in commercial disputes in India.

The Arbitration and Conciliation Act, 1996 made a significant change in the law relating to domestic arbitration. The Act, apart from updating the law of arbitration has provided statutory frame-work for conciliation. Arbitration and conciliation, under the new legislation are independent and autonomous procedures, which derive support from the courts, though they do not require constant supervision and control from courts.

The arbitration, however, is not without problems in India. The law does not prescribe any specific time-frame or procedure to complete/conduct the arbitration. The long delays that take place in the completion of the arbitration proceedings, the number of adjournments sought either by consent of the parties or through the intervention of the court and the enormous expenses incurred by way of fees payable both to the arbitrators and the counsel are some of the problems that are faced by those who opt for arbitration.

Conciliation and mediation are frequently used for resolving labour and family disputes. Counseling plays a crucial role in settlement of these disputes. The Government, keeping in view the long pendency of cases and resultant inconvenience caused to the parties and also in pursuance of the 59th Report of the Law Commission of India, has enacted the Family Courts Act, 1984. It is a court managed conciliation under the Act. It has done away the requirement of lawyers. At present these are 85 (upto October 30, 2001) Family Courts functioning in the country. Because the strong opposition from the lawyers lobby, they have not become so popular.

The *Nyaya Panchayats,* on the other hand, received constitutional recognition with the enactment of the Constitution 73 and 74 (Amendment) Acts. The Acts provided for creation of village *Panchayats* and reservation of 33% of seats for women in the election for members and chairman of these *Panchayats*. There are the direct involvement of people at the grass-root level in the dispensation of justice at the doorsteps of the litigants. The system has been 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. This is an informal means of settlement of disputes. However, eexperience has shown that these *Panchayats* have not succeeded in bringing the desired result. The major problem is that there is no mechanism to ensure compliance with the decisions of the Panchayats, though in reality they are invariably followed. This does not rule out access to courts and thus does not provide any solace from the acute problem of monitoring pendency of cases.

In contrast to the above modes, where the courts intervention/access cannot be completely ruled out, the *Lok Adalats* give a finality to the settlement of a case. *Lok Adalat* (people's court) has been developed as an alternative to dispute resolution mechanism. This is

in conformity with Article 39-A of the Constitution of India, which requires the state to take measures for speedy disposal of disputes and provide legal assistance to parties who are in need of it. The Legal Services Authorities Act, 1987 has institutionalised the concept of *Lok Adalats*. Prior to the enactment of the Legal Services Authorities Act, 1987, the Committee for Implementing Legal Aid Schemes (CILAS) used to organize *Lok Adalats*.

A *Lok Adalat* has jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute in respect of not only disputes pending before a court but also in respect of any matter which is falling within the jurisdiction of and is not brought before any court for which the *Lok Adalat* is organized. But *Lok Adalat* has no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

In recent years, institution of Ombudsman has come up in various public/private sector business houses for settlement of disputes arising against them. This serves valuable resources of these institutions and quick disposal of cases help to maintain their high profiles. At state level office of *Lok Ayukta* have been set up to act as ombudsman whereas, at the Union level, there is a proposal to set up *Lok Pal*. For the same, a Bill is pending before the Parliament. Quite apart from this, the Department of Administrative Reforms and Public Grievances in the Ministry of Personnel; the Department of Pensions; and the Directorate of Public Grievances in the Cabinet Secretariat also acts as an ombudsman to prevent and control mal-administration as well as to settle grievances of aggrieved members of the public. Besides, the Central Vigilance Commission acts as a central ombudsman to deal with corruption among the public servants.

It is to be noted that these bodies can only make recommendations and their recommendations are not binding on the Government.

Dispute Resource Process in Consumer Protection

The enactment of the Consumer Protection Act, 1986 is a historic milestone in the history of the consumer movement in the country. Prior to that, the remedies in this area were available under the common law, viz., law of torts and contract alongwith other piece meal legislations. The Consumer Protection Act is a benevolent pieces of legislation intended to protect the consumers from exploitation. The Act provides an alternative system of consumer justice by summary trial. The Act applies to all goods and services. It provides a framework for

speedy disposal of consumer disputes and seeks to remove the evils of the ordinary court system. The Act provides for a three-tier consumer disputes redressal machinery (consumer forums) at the national, state and district levels, which provides inexpensive and speedy redressal for consumer disputes/complaints against defective goods, deficiency in services, unfair and restrictive trade practices, or a matter of charging excessive prices etc. However, the Act does not cover breach of contract of potential consumers, i.e., a person who has entered into an agreement for purchase of goods or hiring of any service or provider of a service. In this manner a person suffers harm or damage but such potential consumer is not covered by definition of "consumer" under the Act.

The functioning of the Consumer Forums reveals that in majority of cases there is a prolonged litigation on account of recurrent delays. In most of the cases, the time taken for final resolution went beyond the stipulated period of 90 days. Moreover there are no existing guidelines, which govern the damages to be awarded. The premise of the Act is "fault liability". It does not deal with the "product liability" concept based on "strict liability" as implemented in many jurisdictions.

Dispute Resolution Process in Labour Matters

The Industrial Disputes Act, 1947 provides for the constitution of various authorities for the resolution of industrial disputes. At the lowest level is the work committee. The various methods involved for settlement of industrial disputes under the Act are (i) conciliation; (ii) court of enquiry; (iii) adjudication; and (iv) voluntary arbitration.

Quite apart from the aforesaid statutory machinery, several non-statutory machineries such as Code of Discipline, Joint Management Council, Tripartite Machinery and Joint Consultative Machinery play an important role in the process of preventing and settling industrial disputes.

A survey of the time taken by Labour Court and Industrial Tribunal reveals that it is a time consuming. The following reasons may be attributed for delays in disposal of cases (i) poor quality of personnel; (ii) low status and pay; (iii) procedural delay; (iv) interference by the high courts and stay of proceedings; (v) indifferent attitude of the parties; (vi) indiscriminate adjournment granted by the Presiding Officer of Labour Court or Tribunal.

Apart from the above, there is also the provision for voluntary labour arbitration. But unlike the early 60's, the number of disputes referred to voluntary arbitrators is generally declining after 1990's with the evolution of new foras for redressal of labour disputes. Some of the factors for this trend have already been referred to. Others which are responsible for this trend are: (i) the lack of proper atmosphere; (ii) the reluctance of the parties to resort to arbitration machinery; (iii) lack of persons who enjoy the confidence of both the parties; and (v) the question of bearing the cost of arbitration.

Dispute Resolution Process in Environment Matters

At present there exist 41 legislations to regulate environmental pollution in India. A survey of decided cases reveals that the prosecutions launched in ordinary criminal courts under the provisions of the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981 and the Environment Protection Act, 1986 never reach their conclusion either because of the work-load in those courts or because there is no proper appreciation of the significance of the environment matters on the part of those in-charge of conducting those cases. Moreover, any orders passed by the authorities under Water and Air Acts and the Environment Act are immediately questioned by the industries in courts. These proceedings take years to reach conclusion. Very often, *interim orders* are granted, disabling thereby the authorities from ensuring the implementation of their orders.

India has an extensive framework of environmental laws. Its legislative commitment to environmental policy objectives is highlighted by the inclusion of provisions in the Constitution. This represents an extent of legislative commitment rare in international experience. The Supreme Court of India also, in a series of cases, have recognized the right to environment as an inherent part of the right to life under the Constitution.

Prior to 1986 laws were not exhaustive even in respect of control of pollution. The scope of the Water (Prevention and Control of Pollution) Act 1974 and the Air (Prevention and Control of Pollution) Act 1981 limited to air and water pollution. The Environment Protection Act, 1986 has widened the scope to cover other kinds of pollution such as by solid waste, hazardous substance and perhaps even by noise. However one may have a doubt as to whether the definition of 'environmental pollutant' is comprehensive enough to cover all species of

pollutants. It covers only solid, liquid or gaseous substances. Pollution is caused by heat, radiation, and vibration, which do not come within the ambit. It may well be that the measure for protecting and improving the quality of environment may relate to any kind of pollution impacting on the environment. Although the objective of the Environment Protection Act is wider than control of pollution and extends to protection of improvement and environment, no positive measures of mechanisms of the purpose are envisaged in the Act.

However, the environmental regime, as exists presently, needs to be reoriented and strengthened with more expert mechanisms to deal with the larger spectrum of problems hitherto unattended by law. It is primarily meant as a guiding principle for the administrative process to prevent adverse effects on the environment. There is a need of precautionary approach to be adopted by expert environmental agencies at the initial decision making as well as at appellate and reviewing levels.

Although there are issues that remain to be addressed relating to adequacy of the substantive coverage of laws and the coordination among existing laws and regulations, the key issue to be addressed at this times how to strengthen the implementation of the existing laws. It is unfortunate that the National Environment Tribunal Act, 1995 has not yet be enforced and the Constitution of Tribunal is awaited. A comprehensive legislation on environment known as the National Environmental Laws (Amendment) Bill, 1999 is under consideration of the Ministry of Environment and Forest, Government of India. It is hoped that the proposed Bill when passed would become a milestone in this direction.

Despite this impressive array of ADRs in different forms, the workload of the courts have in no way has lessened. It also noticeable that these ADRs, except for *lok adalats,* have not ruled out the access to law courts. This situation has, thus, in no way has affected the attitude of the litigants and the general public towards the judicial system in general and towards courts in particulars. Be that as it may notions of supreme authority of the courts make parties reluctant to submit to the alternative dispute resolution forums, which may or may not conclude matters deemed by the litigants to be of paramount interest to them to their in their favor.

In order to make ADRs really effective their cost effectiveness, time frame, for settling the dispute, the knowledge and status of the presiding officer, and simplification of the procedure etc. must be kept in mind.

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