PROFESSIONAL PRACTICE, LAW AND ETHICS

UNIT 3

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ALTERNATE DISPUTE RESOLUTION (ADR)

Due to raise in the population, industries also developed significantly and as a result of it, commercial disputes also increased. To balance this, different techniques were developed to solve the disputes outside the courts. This method of resolving the disputes outside the court or without the court's involvement is called as Alternate Dispute Resolution (ADR). There are various techniques in Alternate Dispute Resolution. They are:

- Arbitration
- Mediation
- Conciliation
- Mini trial
- Mediation-arbitration etc.
- Negotiation

Due to the delay in justice by the court, some of these techniques developed significantly. One of the techniques that developed rapidly is Arbitration. The main purpose of arbitration is to provide a speedy justice to the parties.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. Arbitration, a form of alternative dispute resolution (ADR), is a way to resolve disputes outside the judiciary courts. The dispute will be decided by one or more persons (the 'arbitrators', 'arbiters' or 'arbitral tribunal'), which renders the 'arbitration award'. An arbitration decision or award is legally binding on both sides and enforceable in the courts, unless all parties stipulate that the arbitration process and decision are non-binding. Arbitration is often used for the resolution of commercial disputes, particularly in the context of international commercial transactions. In certain countries such as the United States, arbitration is also frequently employed in consumer and employment matters, where arbitration may be mandated by the terms of employment or commercial contracts and may include a waiver of the right to bring a class action claim.

Mandatory consumer and employment arbitration should be distinguished from consensual arbitration, particularly commercial arbitration.

Conciliation is an alternative dispute resolution (ADR) process whereby the parties to a dispute use a conciliator, who meets with the parties both separately and together in an attempt to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, encouraging parties to explore potential solutions and assisting parties in finding a mutually acceptable outcome. Conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award.

Definition of Arbitration:

Arbitration is a powerful means of resolving disputes between the organization and its employees. It is a process in which an independent third party analyses the bargaining situation, listens to both parties and collects necessary data and make recommendations which are binding on the parties concerned. Arbitration is proved successful in resolving disputes between labour and management. The parties themselves establish arbitration and decision is acceptable to them. The decision taken by the arbitrator is accompanied by a written opinion providing reasons supporting the decision. Further, the procedure is comparatively expeditious than courts and tribunals. However, the process is a bit expensive, and if there is a mistake in selecting an arbitrator, the judgement becomes arbitrary.

Definition of Conciliation:

Conciliation can be described as the method adopted by the parties for resolving the dispute, wherein the parties out of their free consent appoint an unbiased and disinterested third party, who attempts to persuade them to arrive at an agreement, by way of mutual discussion and dialogue. Conciliation is characterized by the voluntary will of the parties who want to conciliate the dispute. Its basic component is confidentiality in which the parties and the conciliator are not permitted to share or disclose to the external party, anything associated with the proceedings. The conciliator plays an advisory role, wherein he/she suggests potential remedies to the problem. The conciliation process completes with a settlement between the parties which is final and binding upon the parties.

Definition of Mediation:

Mediation is a form of alternate dispute resolution, wherein parties mutually appoint an independent and impartial third party, called as the mediator who helps the parties in reaching

an agreement which is mutually accepted by the parties concerned. Mediation is a systematic and interactive process, which employs negotiation techniques to assist the parties in finding the best possible solution to their problem. As a facilitator, mediator attempts to facilitate discussion and build an agreement between the parties with an aim to settle the dispute. The decision made by the mediator is not binding like an arbitral award.

Definition of Negotiation

Negotiation is a process where two parties in a conflict or disagreement try to reach a resolution together. During a negotiation, the parties or their representatives (lawyers) discuss the issues to come to a resolution. Before a negotiation, each party should consult a lawyer. Consulting a lawyer allows each party to be well aware of their rights and duties for the matter they want to resolve.

Definition of Confidentiality

Confidentiality, as a principle, has been a part of the Arbitration Act since its inception in terms of Section 75 of the Arbitration Act. However, Section 75 of the Arbitration Act only related to conciliation proceedings and not arbitration proceedings. Section 75 of the Arbitration Act provides that the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings and such confidentiality shall extend to the settlement agreement except where its disclosure is necessary for purposes of implementation and enforcement.

PRINCIPAL CHARACTERISTICS OF ARBITRATION

- **Arbitration is consensual:** Arbitration can only take place if both parties have agreed to it. In the case of future disputes arising under a contract, the parties insert an arbitration clause in the relevant contract. An existing dispute can be referred to arbitration by means of a submission agreement between the parties
- **The parties choose the arbitrator(s):** Under the Arbitration Rules, the parties can select a sole arbitrator together. If they choose to have a three-member arbitral tribunal, each party appoints one of the arbitrators; those two persons then agree on the presiding arbitrator.
- **Arbitration is neutral:** In addition to their selection of neutrals of appropriate nationality, parties are able to choose such important elements as the applicable law,

language and venue of the arbitration. This allows them to ensure that no party enjoys a home court advantage.

- **Arbitration is a confidential procedure:** The Arbitration Rules specifically protect the confidentiality of the existence of the arbitration, any disclosures made during that procedure, and the award. In certain circumstances, the Arbitration Rules allow a party to restrict access to trade secrets or other confidential information that is submitted to the arbitral tribunal or to a confidentiality advisor to the tribunal.
- **The decision of the arbitral tribunal is final and easy to enforce:** Under the Arbitration Rules, the parties agree to carry out the decision of the arbitral tribunal without delay. Parties often seek to resolve disputes through arbitration because of a number of perceived potential advantages over judicial proceedings.

ADVANTAGES OF ARBITRATION

- In contrast to litigation, where one cannot "choose the judge", arbitration allows the parties to choose their own tribunal. This is especially useful when the subject matter of the dispute is highly technical: arbitrators with an appropriate degree of expertise can be chosen.
- Arbitration is often faster than litigation in court.
- Arbitral proceedings and an arbitral award are generally non-public, and can be made confidential.
- In arbitral proceedings the language of arbitration may be chosen, whereas in judicial proceedings the official language of the country of the competent court will be automatically applied.
- Because of the provisions of the New York Convention 1958, arbitration awards are generally easier to enforce in other nations than court verdicts.
- In most legal systems there are very limited avenues for appeal of an arbitral award, which is sometimes an advantage because it limits the duration of the dispute and any associated liability.

DISADVANTAGES OF ARBITRATION:

- Arbitration agreements are sometimes contained in ancillary agreements, or in small print in other agreements, and consumers and employees often do not know in advance

that they have agreed to mandatory binding pre-dispute arbitration by purchasing a product or taking a job.

- If the arbitration is mandatory and binding, the parties waive their rights to access the courts and to have a judge or jury decide the case.
- There is sometimes a disconnect between the presumption of confidentiality and the realities of disclosure and publicity imposed by the courts, arbitrators, and even the parties themselves.[8]
- If the arbitrator or the arbitration forum depends on the corporation for repeat business, there may be an inherent incentive to rule against the consumer or employee
- There are very limited avenues for appeal, which means that an erroneous decision cannot be easily overturned.
- Although usually thought to be speedier, when there are multiple arbitrators on the panel, juggling their schedules for hearing dates in long cases can lead to delays.

Evolution of arbitration in India

- In India, arbitration was known even before the British rule but in the form of 'Panch' and 'Panchayat' which are now known as 'Arbitration' and 'Arbitrators' respectively. Panchayat means a proceeding before a person who was considered to be the head of the village and he used to adjudicate the dispute between the parties amicably and his decision was considered to final and binding upon both the parties.
- Later, the 1787 regulation provided the rules for referring a suit to arbitration if both the parties agreed to it. But those rules were vague and did not provide a clear structure to the parties on how to regulate the proceedings of arbitration. Then, a regulation was enforced in order to promote only a certain nature of dispute to arbitration and also encouraged the people to act as arbitrators under regulation XVI of 1793. Subsequently, several regulations were made in order to promote arbitration. Finally the 1996 Act was enacted and it was repealed three times to achieve its objects. The object of the 1996 act is to amend and to unite the domestic arbitration, international commercial arbitration and also to enforce the foreign arbitral awards. There were also amendments to this act in the years 2015 and 2019 in order to reduce the court's involvement in the arbitration proceedings.
- Section 89 of the code of civil procedure also gives importance to arbitration. It states that the parties can opt for the arbitration proceedings to settle a dispute, provided that

both the parties must agree to it. The award given by the arbitrator must be considered as a decree given by the court and the parties must abide by the award given by the arbitrator.

Disputes that are not arbitrable in India

Usually all the disputes in which the civil rights of a citizen are infringed and the disputes falling within the jurisdiction of civil court can be referred to arbitration. But, the disputes which are related to morality, public policy, status and religious rights are not arbitrable in India. The agreements which call for the adjudication of the following matters cannot be executed validly:

- Matters connected with conjugal rights and matrimonial matters.
- Disputes related to industries.
- Revenue matters.
- The proceedings which are of criminal in nature.
- Matters relating to the determination of guardianship or wards.
- Matters related to the testament or will under the Succession Act.
- The matters related to Indian Trust Act, trusteeship of charitable institutions, public charity.
- Matters within the purview of Restrictive Trade Practices Act and Monopolies.
- Issues related to Companies Act like Insolvency, dissolution and winding up proceedings.

Process of arbitration in India

The arbitration arises due to a dispute between the two parties. So, to start an arbitration procedure, the contract or the agreement that is executed between the parties must have an arbitration clause. The arbitration procedure will be carried on in the following manner:

Arbitration clause:

A contract or agreement that was entered by the parties must contain an arbitration clause in order to resolve the disputes through arbitration. An arbitration clause can be a separate agreement or an agreement in an agreement. That means the arbitration clause may be in the form of a separate agreement or in a contract. An arbitration clause says that when a dispute arises between the parties, it must be resolved through the process of arbitration. The parties shall also mention the seat and venue of the proceedings in the arbitration clause itself.

Notice for commencement of arbitration:

When the dispute arises and the party has opted for arbitration, the aggrieved party will send a notice to the other party for invoking the arbitration proceedings. It contains the names of the parties and their representatives, a brief description of the dispute, a statement of relief sought etc.

Appointment of arbitrator:

After the respondent receives the notice from the applicant about commencement of arbitration, both the parties will appoint an arbitrator in a manner that is described in the arbitration clause.

Statement of claim and defence:

After the commencement of arbitration and appointment of arbitrator by the parties, the claimant drafts a statement of claims which contains all the documents which they think are relevant to the case and also all the evidences proving their statements. The respondent may also submit a counter claim or a statement of defense in support of his case which shall be examined before the arbitral tribunal.

Hearings and written proceedings:

The arbitral tribunal will hear both the parties and examine the evidences. The Tribunal will decide whether the documents or the evidences produced are valid or not and proceed the case further.

Arbitral award:

After hearing the parties and examining all the issues a final award will be given by the arbitrator. This award shall be made in writing and shall be signed by all the members of the Tribunal. This award shall be final and binding on both the parties. However, an appeal cannot be filed before the Arbitral tribunal but the parties can appeal against the arbitral award before the court.

Enforcement of arbitral award:

After the award is passed by the arbitral tribunal it has to be executed.

The Arbitration Act, 1940 vs.1996 – Contrasting Scenarios

The basic difference in 1940 and 1996 Act was that in the former one a party could commence proceedings in court by moving an application under Section 20 for appointment of an arbitrator and simultaneously could also move an application for interim relief under the Schedule read with Section 41(b) of the 1940 Act. The later one does not contain any provision similar to Section 20 of the 1940 Act but the court can pass orders even before the commencement of the arbitration proceedings. Another difference was that in the former act,

there was no requirement to give reasons for an award until and unless agreed by the parties to arbitration. However, in the later Act, the award has to be given with reasons, which minimized the Court's interpretation on its own. There were changes with respect to the award passed by the arbitral tribunal in the 1940 and 1996 Act. The 1996 Act since its enactment faced many challenges and the Courts brought out what was actually intended by the Legislation, the Courts clarified the said Act and the intention by various landmark judgments. In particular, the landmark case of Bharat Aluminium Co., saw at least three phases before the Hon'ble Supreme Court of India since the year 2001 till now i.e 2016 carrying from two Hon'ble Judges to the Constitution Bench.

The **United Nations Commission on International Trade Law** (**UNCITRAL**)

Established by the UNGA in 1966, UNCITRAL's official mandate is "to promote the progressive harmonization and unification of international trade law" through conventions, model laws, and other instruments that address key areas of commerce, from dispute resolution to the procurement and sale of goods. UNCITRAL carries out its work at annual sessions held alternately in New York City and Vienna, where it is headquartered. UNCITRAL's original membership comprised 29 states, and was expanded to 36 in 1973, and again to 60 in 2004. Member states of UNCITRAL are representing different legal traditions and levels of economic development, as well as different geographic regions. States includes 12 African states, 15 Asian states, 18 European states, 6 Latin American and Caribbean states, and 1 oceanian state. The Commission member States are elected by the General Assembly. Membership is structured so as to be representative of the world's various geographic regions and its principal economic and legal systems. Members of the commission are elected for terms of six years, the terms of half the members expiring every three years.

UNCITRAL is

- Coordinating the work of active organizations and encouraging cooperation among them.
- Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws.
- Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practice, in collaboration, where appropriate, with the organizations operating in this field.

- Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade.
- Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade.
- Establishing and maintaining a close collaboration with the UN Conference on Trade and development.
- Maintaining liaison with other UN organs and specialized agencies concerned with international trade.

International commercial arbitration

International commercial arbitration is a means of resolving disputes arising under international commercial contracts. It is used as an alternative to litigation and is controlled primarily by the terms previously agreed upon by the contracting parties, rather than by national legislation or procedural rules. Most contracts contain a dispute resolution clause specifying that any disputes arising under the contract will be handled through arbitration rather than litigation. The parties can specify the forum, procedural rules, and governing law at the time of the contract.

ARBITRATION AGREEMENT

"Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Section 7 of the Arbitration and Conciliation Act of 1996 defines arbitration agreement as an agreement by the parties to refer to arbitration all or some disputes which have arisen or will arise on a future date between them with reference to a defined legal relationship, whether contractual or not. A doctor’s relationship with his patient or a lawyer’s with his client are both

examples of relations that are legal but not necessarily contractual. An Arbitration agreement is made by any two parties entering into a contract by which any disputes arising between them with regard to the contract agreement is to be resolved, without going to the Courts and with the help of an Arbitrator. The agreement should mention who should select the arbitrator, regarding what kind of dispute the Arbitrator should give decision, the place of arbitration, etc.

Essentials of Arbitration Agreement

The existence of a dispute is an essential condition for arbitration. Where parties have effectively settled their disputes, they cannot refute the settlement and invoke an arbitration clause.

- **Written Agreement:** An arbitration agreement must be in writing. As per Section 7 (4) of the Act, arbitration agreement is considered to be in writing, if it is contained in:
    - A document signed by the parties;
    - An exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
    - An exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not defined by another.
- **Intention:** Intention of the parties is of prime importance. No form has been prescribed for an arbitration agreement and nowhere has it been mentioned that terms like arbitration, arbitrator are essential prerequisites in an arbitration agreement. According to a leading case law in this subject, the intention of the parties to refer their dispute to arbitration should be clearly discernible from the arbitration agreement.
- **Signature:** An arbitration agreement needs to be signed by the parties. The agreement may be in the form of a signed document by both the parties containing all the terms or it may also be a signed document by one party which contains the terms and an acceptance signed by the other party. It will suffice if one party puts his signature in the written submission and the other party accepts it.

Attributes of an Arbitration Agreement

The Hon’ble Supreme Court in a judgment in a landmark case held that the following attributes must be present in an arbitration agreement:

1. The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement.
2. That the jurisdiction of the tribunal to decide the rights of the parties must derive from their consent, or from an order of the Court or from a statute, the terms of which make it clear that the process is to be arbitration.
3. The agreement must contemplate that substantive rights of the parties will be determined by the arbitration tribunal.
4. That the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal being fair and equal to both sides.
5. The agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law.
6. The agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.

ARBITRATION TRIBUNAL

Whenever a commercial dispute arises between two or parties, and they decide to resolve the dispute through arbitration, an arbitral tribunal is to be set up. It consists of one or more arbitrators that adjudicate and resolve the dispute and provide an arbitral award. The Indian Council of Arbitration has provided a set of rules known as the 'Rules of Arbitration' that are to be abided by the parties undergoing the arbitration process as well as the arbitrators. Arbitral Tribunal is "an arbitrator or arbitrators appointed for determining a particular dispute or difference".

Procedure for appointment of arbitrators

The procedure and appointment of arbitrators under the arbitral tribunal is specified under Section 11 of the Arbitration and Conciliation Act. It states the following:

1. **Nationality-** The parties to the dispute may, on agreement, appoint an arbitrator belonging to any nationality.
2. **Appointment by Parties-** The procedure to appoint one or more arbitrators can be decided by the parties. If the parties fail to do so, they may individually appoint an arbitrator each, and the two arbitrators, mutually decide the third one.

3. **Appointment by Court-** if the parties do not appoint an arbitrator within 30 days from the receipt of the request, the Supreme Court, the High Court, or any other official designated by the Court may appoint an arbitrator.
4. **Payment of fees-** the High Court has the authority to frame rules concerning the determination of fees of the arbitral tribunal and the manner of its payment.

Composition of the arbitral tribunal

- **Section 12. Number of arbitrators:** The parties are free to determine the number of arbitrators. Failing such determination, the number of arbitrators shall be three.
- **Section 13. Appointment of arbitrators:** The arbitrators shall be impartial and independent of the parties and shall be qualified for the office. The parties shall if possible appoint the arbitrators jointly.
- **Section 14. Grounds for challenge of arbitrators:** When a person is approached in connection with his possible appointment as an arbitrator, he shall of his own accord disclose any circumstances likely to give rise to justifiable doubts about his impartiality or independence.
- **Section 15. Challenge procedure:** Unless the parties have agreed to a different procedure, a challenge of an arbitrator shall state the reasons for the challenge and shall be submitted in writing to the arbitral tribunal within fifteen days after the party became aware of the appointment of the arbitrator and the circumstances on which the challenge is based. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- **Section 16. Failure by an arbitrator to perform his functions;** If an arbitrator becomes de jure or de facto unable to perform his functions or if an arbitrator for other reasons fails to act without undue delay, his mandate shall terminate if he withdraws from his office or if the parties agree on the termination. Otherwise, any party may ask the courts to decide by way of interlocutory order whether the mandate shall terminate for one of the said reasons. The interlocutory order shall not be subject to appeal.

Resort to arbitral or judicial proceedings

Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except

to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings.

Distinction between arbitration, conciliation, mediation

Basis for Comparison	**Arbitration**	**Conciliation**	**Mediation**
Meaning	Arbitration is a dispute settlement process in which an impartial third party is appointed to study the dispute and hear both the parties to arrive at a decision binding on both the parties.	Conciliation is a method of resolving dispute wherein an independent person helps the parties to arrive at the negotiated settlement.	Mediation is a process of resolving issues between parties wherein a third party assist them in arriving at an agreement.
Enforcement	An arbitrator has the power to enforce his decision.	A conciliator does not have the power to enforce his decision.	The decision made by the mediator is not enforceable like an arbitral award.
Regulated by	The Arbitration and Conciliation Act, 1996	Arbitration and Conciliation Act, 1996	Code of Civil Procedure, 1908
Prior Agreement	Required	Not Required	Not Required
Available for	Existing and future disputes.	Existing disputes.	Existing disputes.
Example	Damages in case of breach of contract, matters of the right to the office, time barred claims etc.	Resolving disputes between contractors and subcontractors etc.	Commercial transactions in patents, trademark licenses, Joint ventures and R & D Contracts, music and film contracts etc.

COSTS OF THE ARBITRAL TRIBUNAL

Unless otherwise agreed between the arbitral tribunal and the parties, the arbitral tribunal shall determine its own compensation and the settlement of its expenses. The determination of costs shall be included in the award or the order terminating the case. The amount falls due for payment one month after the award or order is made. Unless otherwise agreed between the arbitral tribunal and the parties, the parties are jointly and severally liable for the costs of the arbitral tribunal. The court shall determine the issue by way of interlocutory order. Any reduction of the costs of the arbitral tribunal shall also apply to the benefit of parties who did not bring the issue before the courts.

Allocation of costs

- The arbitral tribunal shall at the request of a party allocate the costs of the arbitral tribunal between the parties as it sees fit.
- The arbitral tribunal may at the request of a party order another party to pay all or part of the costs of the first-mentioned party if it sees fit.
- The allocation of costs by the arbitral tribunal shall be included in the award or in the order terminating the case. The allocation of costs by the arbitral tribunal is final.
- The parties may contract out of the provisions of this section.

Security for costs

The arbitral tribunal may order the parties to provide security for the costs of the arbitral tribunal unless otherwise agreed between the arbitral tribunal and the parties. The arbitral tribunal may terminate the arbitral proceedings in full or in part if such security is not provided. If a party fails to provide security as ordered, the other party may provide the security in full or bring the dispute before the courts for their ruling unless otherwise agreed between the parties.

DISPUTE RESOLUTION BOARD (DRB)

Dispute Resolution Board (DRB) is a concurrent mechanism for resolution of disputes before recourse to arbitration or litigation. The DRB is constituted at the very start of a construction project and consists of independent and impartial professionals. The DRB follows construction progress, encourages dispute avoidance, and assists in resolving disputes that may arise during the execution of the project. Ad hoc DRB s, which are appointed only when disputes arise,

have also been gainfully used in other types of contracts like Installation/Operation/ Supply. The objective of establishing a DRB is to foster conditions whereby the parties work together to avoid the development of disputes and to ensure that any disputes which do arise are settled as and when they arise. The DRB members have to be familiar with the contract conditions, site conditions and the circumstances under which the work is being executed. Brief status meetings and site visits are held periodically at the job site. At these meetings, the Board Members confer with Employer's, and the Contractor's Representatives, become familiar with project procedures and participants and are kept abreast of job progress and potential disputes.

- The Board usually consists of three members, acceptable to both the parties and becomes conversant with the developments of the project, gives its decision on a dispute within a prescribed time of its reference. DRB, as it is generally operated in present times, was first introduced in 1975 during construction of Eisenhower Tunnel in the United States with great success and it was recognised as a cost effective mechanism for amicable dispute resolution.
- For large projects and for projects with significant specialised works, requiring multi-disciplinary technical knowledge and expertise, more than one DB, one for each area of specialisation may be considered by the parties on case to case basis.
- In India, the system of DB (then DRB) was first introduced in 1994 in the World Bank financed projects valuing US Dollars 50 million or more.

The main reasons for delays and otherwise ineffectiveness of the DB system are –

i) Delay in constitution of DBs and loss of considerable time before the DB mechanism is put in place;

ii) Lack of requisite qualifications and expertise of the members of DB, as necessitated by the project and contract requirements and sometimes a lack of awareness about the spirit and procedures of DB operations;

iii) Long time taken by the DB in resolving disputes referred, beyond the period stipulated in the contract; and

iv) Tendency of parties to challenge the decisions of DB in Arbitration and Litigation, as DB decisions are not final and binding, unless both parties have accepted the same. There seems to be a mind-set of non-acceptance of the system and as a result, the decisions given by DBs are not implemented.

LOK ADALAT

The villages in India have followed a means of dispute resolution, unlike any practices seen in western countries. The mechanism of has a group of five people, known as the "panchayat", with a residing head ('panch'), hearing out a dispute that arose between the concerned residents of the village with a view of solving the same has been a part of the rural governance system before it was even formally recognised by law. This system of self-governance was recognised legally in the country via the 73rd Amendment, where the concept of the Panchayati Raj system was inducted in Part IX of the Indian Constitution.

The legality of Lok Adalat

The National Legal Services Authority acknowledged the benefits of Lok Adalats in a rural setting and, through its 1987 Act, provided statutory authorisation to the dispute resolution mechanism allowed every state/district authority & taluk committee to establish a Lok Adalat to resolve any pending disputes due to its inexpensiveness and time-saving. Article 40 of the Constitution of India also talks about a directive principle that encourages the establishment of village panchayats and empowers the self-governing features of the same, which further includes the concept of Lok Adalats.

The procedure of Lok Adalats

The amalgamation of the three traditional forms of alternative dispute resolution makes up the base of a Lok Adalat hearing. The thing to note is that this procedure followed the steps of these conventional measures way before they were formally recognised by law. In totality, because the purpose of a Lok Adalat meeting is to ensure dispute resolution which satisfies the purpose of all the parties to the case, hence, a means of dialogue following the steps of a mediation and conciliation procedure can be seen in this method.

Benefits of Lok Adalat-

- Extremely inexpensive in comparison to court trials and settlement fees
- The decision of a Lok Adalat is not appealable. Hence a complete attempt at a judicial decision is made.
- Eases the burden on bigger courts of the country
- Although the procedure may seem informal, maintenance of cordial relations is emphasised during the procedure.