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Foreword

All must have access to justice in a society based on the rule of law. Alternative Dispute Resolution is a very important step in our aim to achieve Access to Justice for All. The advantage of ADR lies in the fact that unlike litigation, the parties themselves play an active role in the dispute resolution process. It is therefore incumbent upon all of us to endeavour to popularise ADR. Section 89 of the Code of Civil Procedure, 1908 was introduced with the aforementioned object in mind. We need to strengthen the ADR process to reduce the ever increasing burden on the courts. It is good to see that Haryana State Legal Services Authority has come up with a book on the ADR mechanisms. This book by the Haryana State Legal Services Authority explains the law on ADR mechanisms as elucidated by the Supreme Court of India in *Afcons Infrastructure Ltd. & another vs. Cherian Varkey Construction Co. Pvt. Ltd. and others*. Various mechanisms have been explained in this book lucidly. I hope this shall prove quite effectual in spreading awareness about law on ADR. It will ultimately help in enhancing access to justice. I wish great success to the legal literacy campaign of Haryana State Legal Services Authority.

(Shiavax Jal Vazifdar)



*Justice S.K.Mittal, Judge,
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Foreword

ADR methods are gaining popularity across the world. These methods are now being referred to as “Appropriate Dispute Resolution” methods. There is a need to effectively expand the use of Alternative Dispute Resolution mechanisms for resolving disputes. ADR mechanisms allow public participation. It enhances access to justice as ADR mechanisms bring in an element of cost-effectiveness, speed and voluntariness in resolving disputes. Unfortunately, ADR techniques that have proved to be effective for resolving a wide variety of conflicts remain unknown to many people. Its awareness and application is very significant. It will remove barriers to Access to Justice for All.

The Haryana State Legal Services Authority(HALSA) is committed to enhance Access to Justice for All. In this direction, HALSA is spreading awareness and promoting ADR mechanisms in the State of Haryana. This book is an effort in this direction. It is important to understand the law as elucidated by the Hon'ble Supreme Court of India in the case of Afcons Infrastructure Ltd. & another vs. Cherian Varkey Construction Co. Pvt. Ltd. and others.

I hope that this book shall prove useful in spreading awareness and promoting ADR mechanisms in a profound way.

(Satish Kumar Mittal)

**ALTERNATIVE DISPUTE
RESOLUTION MECHANISMS**

Introduction:

Alternative Disputes Resolution (ADR) refers to a variety of techniques for resolving disputes by means other than litigation. ADR system seeks to provide cheap, simple, quick and accessible justice. ADR is a process distinct from normal judicial process. Under this, disputes are settled with the assistance of third party, where proceedings are simple and are conducted, by and large, in the manner agreed to by the parties. ADR methods, in the broader and larger spectrum, supplement the court based method of resolving disputes. In India these methods are rather promoted, recognized and adopted by the judicial system itself.

In Afcons infrastructure Limited and another Versus Cherian Varkey Construction Company Private Limited and others 2010(4) CCC 756 = 2010(3) SCC 235, the Hon'ble Supreme Court observed as follows:

“Resort to alternative disputes resolution (for short 'ADR') processes is necessary to give speedy and effective relief to the litigants and to reduce the pendency in and burden upon the courts. As ADR processes were not being resorted to with the desired frequency, Parliament thought it fit to introduce Section 89 and Rules 1-A to 1-C in Order 10 in the Code, to ensure that ADR process was resorted to before the commencement of trial in suits.”

This booklet is intended to give an overview of the procedural aspects, as contained in the Code of Civil Procedure, 1908, as well as of the different methods of Alternative Disputes Resolution with special

reference to the judgement of the Hon'ble Supreme Court of India in the case of **Afcons infrastructure Limited and another Versus Cherian Varkey Construction Company Private Limited and others** 2010(4) CCC 756 = 2010(3) SCC 235.

ADR MECHANISMS AVAILABLE UNDER SECTION 89 CPC

Five ADR methods are referred to in section 89. They are: (a) Arbitration, (b) Conciliation, (c) Judicial settlement, (d) Settlement through Lok Adalat, and (e) Mediation.

Arbitration:

Arbitration is one of the modes of ADR prescribed by section 89 CPC. Section 89 CPC provides for reference of a dispute in a sub judice matter to Arbitration. S. 89(2)(a), Code of Civil Procedure, 1908 provides that for arbitration the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act.

Arbitration is a procedure in which the dispute is submitted to an arbitral tribunal which makes a decision (an "award") on the dispute that is binding on the parties. It is a private, generally informal and non-judicial trial procedure for adjudicating disputes.

Conciliation:

In conciliation, the parties seek to reach an amicable dispute settlement with the assistance of the conciliator, who acts as a neutral third party. Section 89 CPC also provides for reference of a dispute in a sub judice matter to conciliation. S. 89(2)(a), Code of Civil Procedure, 1908 provides that for conciliation the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for conciliation were referred for settlement under the provisions of that Act. The

conciliator may, at any stage of the conciliation proceeding, make proposals for a settlement of the dispute.

Mediation

In Afcons infrastructure case supra, the Hon'ble Supreme Court of India adopted the following definition of 'mediation' suggested in the model mediation rules.

'Settlement by 'mediation' means the process by which a mediator appointed by parties or by the court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasising that it is the parties' own responsibility for making decisions which affect them.'

In their celebrated book 'ADR Principles and Practice' by Henry J. Brown and Arthur L. Mariot (1997, 2nd Ed. Sweet & Maxwell, Lord on Chapter 7, p 127), the authors say that 'mediation' is a facilitative process in which “disputing parties engage the assistance of an impartial third party, the mediator, who helps them to try to arrive at an agreed resolution of their dispute. The mediator has no authority to make any decisions that are binding on them, but uses certain procedures, techniques and skills to help them to negotiate an agreed resolution of

their dispute without adjudication.”

After the Afcons judgment, the dispute for mediation is to be referred to a suitable person or institution which is to be deemed to be a Lok Adalat. The reference to mediation in terms of section 89 CPC can also be made even without the consent of the parties.

The difference between conciliation and mediation:

Under our law and the UNCITRAL model, the role of the mediator is not pro-active and is somewhat less than the role of a 'conciliator'. Under Part III of the Arbitration and Conciliation Act, the 'Conciliator's powers are larger than those of a 'mediator' as he can suggest proposals for settlement. Hence the above meaning of the role of 'mediator' in India is quite clear and can be accepted, in relation to sec. 89 of the Code of Civil Procedure also. The difference lies in the fact that the 'conciliator' can make proposals for settlement, 'formulate' or 'reformulate' the terms of a possible settlement while a 'mediator' would not do so but would merely facilitate a settlement between the parties.

Judicial Settlement:

The expression Judicial Settlement suggests that it is some sort of a judge mediated settlement of a dispute. The term judicial settlement therefore refers to a settlement of a case with the help of a judge who, has not been not assigned the duty to adjudicate upon the dispute. The expression judicial settlement, pursuant to the Afcons judgment is to be understood in the modified form as enunciated by the Supreme Court that in case of judicial settlement the court has to effect a compromise between the parties and follow such procedure as may be prescribed.

Lok Adalat

Lok Adalat is a forum where the disputes/cases pending in the court of law or at pre-litigation stage are settled/compromised amicably. Lok Adalat has been given statutory status under the Legal Services Authorities Act, 1987. An award made by the Lok Adalat is deemed to be decree of a civil court under section 21 of the Legal Services Authorities Act, 1987 and is final and binding on all parties and no appeal lies before any court against it.

Objective of section 89 CPC

The objective of Section 89 is to ensure that the court makes an endeavour to facilitate out-of-court settlements through one of the ADR processes before the trial commences.

Relevant provisions in the Code of Civil Procedure:

(1) Section 89 of CPC

Section 89 before the judgement given in *Afcons* infrastructure Limited and another Versus Cherian Varkey Construction Company Private Limited and others 2010(4) CivCC 756 stood as follows:

'89. Settlement of disputes outside the court.- (1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for-

- (a) arbitration;
- (b) conciliation;

- (c) judicial settlement including settlement through Lok Adalat; or
 - (d) mediation.
- (2) Where a dispute has been referred-
- (a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;
 - (b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authorities Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;
 - (c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
 - (d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.'

Change brought by Afcons case

Clauses (c) and (d) of Section 89(2) of the Code will read as under :

- (c) for 'mediation', the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
- (d) for 'judicial settlement', the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

As per Afcons case supra the above changes made by interpretative process shall remain in force till the legislature corrects the mistakes, so that Section 89 is not rendered meaningless and infructuous.

Other provisions in the Code of Civil Procedure

Order 10 Rule 1-A

1-A. Direction of the court to opt for any one mode of alternative dispute resolution: After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of Section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

Order 10 Rule 1-B

1-B. Appearance before the conciliatory forum or authority: Where a suit is referred under Rule 1-A, the parties shall appear

before such forum or authority for conciliation of the suit.

Order 10 Rule 1-C

1-C. Appearance before the court consequent to the failure of efforts of conciliation: Where a suit is referred under Rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.

Effect of section 89 CPC read with Order 10 Rule 1-A CPC

After the pleadings are complete and after seeking admission/denials wherever required, and before framing issues, the court will have recourse to Section 89 of the Code. Such recourse requires the court to consider and record the nature of the dispute, inform the parties about the five options available and take note of their preferences and then refer them to one of the alternative dispute resolution processes.

Can court take recourse to section 89 CPC after framing issues?

Having regard to the provisions of Section 89 and Rule 1-A of Order 10, the stage at which the court should explore whether the matter should be referred to ADR processes, is after the pleadings are complete, and before framing the issues, when the matter is taken up for preliminary hearing for examination of parties under Order 10 of the Code. However, if for any reason, **the court had missed the opportunity to consider and refer the matter to ADR processes under Section 89 before framing issues, nothing prevents the court**

from resorting to Section 89 even after framing issues. But once evidence is commenced, the court will be reluctant to refer the matter to the ADR processes lest it becomes a tool for protracting the trial.

What is the appropriate stage for considering reference to ADR processes in family disputes or matrimonial cases?

Though in civil suits the appropriate stage for considering reference to ADR processes is after the completion of pleadings. However, in family disputes or matrimonial cases, the position can be slightly different. In those cases, the relationship becomes hostile on account of the various allegations in the petition against the spouse. The hostility will be further aggravated by the counter-allegations made by the respondent in his or her written statement or objections. Therefore, as far as Family Courts are concerned, the ideal stage for mediation will be immediately after service of respondent and before the respondent files objections/written statements.

Whether recourse to ADR process under Section 89 of the Code is mandatory or not?

Section 89 starts with the words 'where it appears to the court that there exist elements of a settlement'. This clearly shows that cases which are not suited for ADR process should not be referred under Section 89 of the Code. The court has to form an opinion that a case is one that is capable of being referred to and settled through ADR process. Having regard to the tenor of the provisions of Rule 1-A of Order 10 of the Code, the civil court should invariably refer cases to ADR process. Only in certain recognized excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any

of the ADR processes, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under Section 89 of the Code. **Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under Section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory.** Where the case falls under an excluded category there need not be reference to ADR process. In all other cases reference to ADR process is a must.

CASES NOT SUITABLE FOR ADR PROCESS

The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature:

- (i) **Representative suits** under Order 1 Rule 8 Civil Procedure Code which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).
- (ii) **Disputes relating to election to public offices** (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association, etc.).
- (iii) **Cases involving grant of authority by the court after enquiry**, as for example, suits for grant of probate or letters of administration.
- (iv) **Cases involving serious and specific allegations of**

fraud, fabrication of documents, forgery, impersonation, coercion, etc.

(v) **Cases requiring protection of courts**, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.

(vi) **Cases involving prosecution for criminal offences.**

CASES SUITABLE FOR ADR PROCESSES

All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes:

(i) All cases relating to trade, commerce and contracts, including disputes arising out of contracts (including all money claims);
disputes relating to specific performance;
disputes between suppliers and customers;
disputes between bankers and customers;
disputes between developers/builders and customers;
disputes between landlords and tenants/licensor and licensees;
disputes between insurer and insured;

(ii) All cases arising from strained or soured relationships, including
disputes relating to matrimonial causes, maintenance, custody of children;
disputes relating to partition/division among family members/co-parceners/co-owners; and

disputes relating to partnership among partners.

(iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including

disputes between neighbours (relating to easementary rights, encroachments, nuisance, etc.);

disputes between employers and employees;

disputes among members of societies/associations/apartment owners' associations;

(iv) All cases relating to tortious liability, including claims for compensation in motor accidents/other accidents; and

(v) All consumer disputes, including disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.

The above enumeration of "suitable" and "unsuitable" categorization of cases is not exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or addition by the courts/ tribunals exercising its jurisdiction/discretion in referring a dispute/case to an ADR process. In spite of the categorization mentioned above, a referral judge must independently consider the suitability of each case with reference to its facts and circumstances.

Can a sub-judice matter be referred to Arbitration under section 89 CPC if there is no pre existing agreement?

Even if there was no pre-existing arbitration agreement, the parties to the suit can agree for arbitration when the choice of ADR processes is offered to them by the court under Section 89 of the Code. Such agreement can be by means of a joint memo or joint application or a joint affidavit before the court, or by record of the agreement by the court in the order-sheet signed by the parties. Once there is such an agreement in writing signed by parties, the matter can be referred to arbitration under Section 89 of the Code; and on such reference, the provisions of the Arbitration & Conciliation Act, 1996 (AC Act) will apply to the arbitration, and the case will go outside the stream of the court permanently and will not come back to the court. If there is no agreement between the parties for reference to arbitration, the court cannot refer the matter to arbitration under Section 89 of the Code.

A court has no power, authority or jurisdiction to refer unwilling parties to arbitration, if there is no arbitration agreement.

Reference to arbitration under Section 89 of the Code could only be with the consent of both sides and not otherwise.

Therefore, where there is no pre-existing arbitration agreement between the parties, the consent of all the parties to the suit will be necessary, for referring the subject-matter of the suit to arbitration under Section 89 of the Code.

Can a sub-judice matter be referred to Conciliation without the consent of the parties?

Conciliation is a non-adjudicatory ADR process, which is also governed by the provisions of the AC Act.

There can be a valid reference to conciliation only if both parties to the dispute agree to have negotiations with the help of a third party or third parties either by an agreement or by the process of invitation and acceptance provided in Section 62 of the AC Act followed by appointment of conciliator(s) as provided in Section 64 of the AC Act.

If both parties do not agree for conciliation, there can be no 'conciliation'. As a consequence, as in the case of arbitration, the court cannot refer the parties to conciliation under Section 89, in the absence of consent by all parties.

As contrasted from arbitration, when a matter is referred to conciliation, the matter does not go out of the stream of the court process permanently. If there is no settlement, the matter is returned to the court for framing issues and proceeding with the trial.

Can sub-judice matter be referred to Mediation, Lok Adalat and Judicial Settlement without the consent of the parties?

Yes, under section 89 CPC sub-judice matter can be referred to Mediation, Lok Adalat and Judicial Settlement even without the consent of the parties.

Motivating and preparing the parties for Mediation

The referral judge plays the most crucial role in motivating the parties to resolve their disputes through mediation. Even if the parties are not inclined to agree for mediation, the referral judge may try to ascertain the reason for such disinclination in order to persuade and motivate them for mediation.

The referral judge should explain the concept and process of mediation and its advantages and how settlement to mediation can satisfy underlying interest of the parties. Even when the case in its entirety is not suitable for mediation, a Referral Judge may consider whether any of the issues involved in the dispute can be referred for mediation.

Referral Order

The mediation process is initiated through a referral order. The referral judge should understand the importance of a referral order in the mediation process and should not have a casual approach in passing the order. The referral order is the foundation of a court-referred mediation. An ideal referral order should contain among other things details like name of the referral judge, case number, name of the parties, date and year of institution of the case, stage of trial, nature of the dispute, the statutory provision under which the reference is made, next date of hearing before the referral court, whether the parties have consented for mediation, name of the institution/mediator to whom the case is referred for mediation, the date and time for the parties to report before the institution/ mediator, the time limit for completing the mediation, quantum of fee/remuneration if payable and contact address and telephone numbers of the parties and their advocates.

Whether the settlement in an ADR process is binding in itself?

In Arbitration When the court refers the matter to arbitration under Section 89 of the Act, as already noticed, the case goes out of the stream of the court and becomes an independent proceeding before the Arbitral Tribunal. Arbitration being an adjudicatory process, it always

ends in a decision. There is also no question of failure of the ADR process or the matter being returned to the court with a failure report. The award of the arbitrators is binding on the parties and is executable/enforceable as if a decree of a court, having regard to Section 36 of the AC Act. If any settlement is reached in the arbitration proceedings, then the award passed by the Arbitral Tribunal on such settlement, will also be binding and executable/enforceable as if a decree of a court, under Section 30 of the AC Act.

In Conciliation

When a matter is settled through conciliation, the settlement agreement is enforceable as if it is a decree of the court having regard to Section 74 read with Section 30 of the AC Act.

In Lok Adalat

When a settlement takes place before the Lok Adalat, the Lok Adalat award is also deemed to be a decree of the civil court and executable as such under Section 21 of the Legal Services Authorities Act, 1987.

Important Point

Though the settlement agreement in a conciliation or a settlement award of a Lok Adalat may not require the seal of approval of the court for its enforcement when they are made in a direct reference by parties without the intervention of court, the position will be different if they are made on a reference by a court in a pending suit/proceedings. As the court continues to retain control

and jurisdiction over the cases which it refers to conciliations, or Lok Adalats, the settlement agreement in conciliation or the Lok Adalat award will have to be placed before the court for recording it and disposal in its terms.

In mediation and judicial settlement

Where the reference is to a neutral third party ('mediation' as defined above) on a court reference, though it will be deemed to be reference to Lok Adalat, as the court retains its control and jurisdiction over the matter, the mediation settlement will have to be placed before the court for recording the settlement and disposal.

Where the matter is referred to another Judge and settlement is arrived at before him, such settlement agreement will also have to be placed before the court which referred the matter and that court will make a decree in terms of it.

Important Point

Whenever settlements reached before non-adjudicatory ADR fora are placed before the court, the court should apply the principles of Order 23 Rule 3 of the Code and make a decree/order in terms of the settlement, in regard to the subject-matter of the suit/proceeding. In regard to matters/disputes which are not the subject-matter of the suit/proceedings, the court will have to direct that the settlement shall be governed by Section 74 of the AC Act (in respect of conciliation settlements) or Section 21 of the Legal Services Authorities Act, 1987 (in respect of

settlements by a Lok Adalat or a mediator). Only then such settlements will be effective.

Main points of AFCONS Judgement

(1) The procedure to be adopted by a court under Section 89 of the Code is as under:

- (a) When the pleadings are complete, before framing issues, the court shall fix a preliminary hearing for appearance of parties. The court should acquaint itself with the facts of the case and the nature of the dispute between the parties.
- (b) The court should first consider whether the case falls under any of the category of the cases which are required to be tried by courts and not fit to be referred to any ADR processes. If it finds that the case falls under any excluded category, it should record a brief order referring to the nature of the case and why it is not fit for reference to ADR processes. It will then proceed with the framing of issues and trial.
- (c) In other cases (that is, in cases which can be referred to ADR processes) the court should explain the choice of five ADR processes to the parties to enable them to exercise their option.
- (d) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is an adjudicatory process by a chosen private forum and reference to arbitration will permanently

take the suit outside the ambit of the court. The parties should also be informed that the cost of arbitration will have to be borne by them. Only if both parties agree for arbitration, and also agree upon the arbitrator, the matter should be referred to arbitration.

- (e) If the parties are not agreeable for arbitration, the court should ascertain whether the parties are agreeable for reference to conciliation which will be governed by the provisions of the AC Act. If all the parties agree for reference to conciliation and agree upon the conciliator(s), the court can refer the matter to conciliation in accordance with Section 64 of the AC Act.
- (f) If the parties are not agreeable for arbitration and conciliation, which is likely to happen in most of the cases for want of consensus, the court should, keeping in view the preferences/options of parties, refer the matter to any one of the other three ADR processes: (a) Lok Adalat; (b) mediation by a neutral third-party facilitator or mediator; and (c) a judicial settlement, where a Judge assists the parties to arrive at a settlement.
- (g) If the case is simple which may be completed in a single sitting, or cases relating to a matter where the legal principles are clearly settled and there is no personal animosity between the parties (as in the case of motor accident claims), the court may refer the matter to Lok Adalat. In case where the questions are complicated or

cases which may require several rounds of negotiations, the court may refer the matter to mediation. Where the facility of mediation is not available or where the parties opt for the guidance of a Judge to arrive at a settlement, the court may refer the matter to another Judge for attempting settlement.

- (h) If the reference to the ADR process fails, on receipt of the report of the ADR forum, the court shall proceed with hearing of the suit. If there is a settlement, the court shall examine the settlement and make a decree in terms of it, keeping the principles of Order 23 Rule 3 of the Code in mind.
- (i) If the settlement includes disputes which are not the subject-matter of the suit, the court may direct that the same will be governed by Section 74 of the AC Act (if it is a conciliation settlement) or Section 21 of the Legal Services Authorities Act, 1987 (if it is a settlement by a Lok Adalat or by mediation which is a deemed Lok Adalat). If the settlement is through mediation and it relates not only to disputes which are the subject-matter of the suit, but also other disputes involving persons other than the parties to the suit, the court may adopt the principle underlying Order 23 Rule 3 of the Code. This will be necessary as many settlement agreements deal with not only the disputes which are the subject-matter of the suit or proceeding in which the reference is made, but also other disputes which are not the subject-matter of the suit.

- (j) If any term of the settlement is *ex facie* illegal or unenforceable, the court should draw the attention of parties thereto to avoid further litigation and disputes about executability.

2. The court should also bear in mind the following consequential aspects, while giving effect to Section 89 of the Code:

- (i) If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent. Nothing further need be stated in the order-sheet.
- (ii) If the reference is to any other ADR process, the court should briefly record that having regard to the nature of dispute, the case deserves to be referred to Lok Adalat, or mediation or judicial settlement, as the case may be. There is no need for an elaborate order for making the reference.
- (iii) The requirement in Section 89(1) that the court should formulate or reformulate the terms of settlement would only mean that the court has to briefly refer to the nature of dispute and decide upon the appropriate ADR process.

(iv) Avoiding apprehensions of bias and prejudice.

If the Judge in charge of the case assists the parties and if settlement negotiations fail, he should not deal with the adjudication of the matter, to avoid apprehensions of bias and prejudice. It is therefore advisable to refer cases proposed for judicial settlement to another Judge.

(v) Keeping track of the matter

If the court refers the matter to an ADR process (other than arbitration), it should keep track of the matter by fixing a hearing date for the ADR report. The period allotted for the ADR process can normally vary from a week to two months (which may be extended in exceptional cases, depending upon the availability of the alternative forum, the nature of case, etc.). Under no circumstances the court should allow the ADR process to become a tool in the hands of an unscrupulous litigant intent upon dragging on the proceedings.

(vi) Not sending Original Record

Normally the court should not send the original record of the case when referring the matter to an ADR forum. It should make available only copies of relevant papers to the ADR forum. (For this purpose, when pleadings are filed the court may insist upon filing of an extra copy). However if the case is referred to a court annexed mediation centre which is under the exclusive control and supervision of a judicial officer, the original file may be made available wherever necessary.

PROCESS IN NUTSHELL

know the dispute;

exclude 'unfit' cases;

ascertain consent for arbitration or conciliation;

if there is no consent, select Lok Adalat for simple cases and mediation for all other cases, reserving reference to a Judge-assisted settlement only in exceptional or special cases.

Pre-litigative Mediation

In K. Srinivas Rao v. D.A. Deepa reported in 2013(2) CivCC 152 : 2013(2) R.C.R.(Civil) 232 : 2013(2) Recent Apex Judgments (R.A.J.) 102 , the Hon'ble Supreme Court held as follows: All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage.

Other Provisions in law

Even before the existence of Section 89 of the Civil Procedure Code (CPC), there were various provisions that gave the power to the courts to refer disputes to ADR. Such provisions, inter alia, are in the Industrial Disputes Act, the Hindu Marriage Act and the Family Courts Act and also present in a very nascent form via Section 80, Order 23 Rule 3, Order 32 A and Rule 5 B of Order 27 of the CPC.

- ✓ Industrial Disputes Act, 1947 provides the provision both for conciliation and arbitration for the purpose of settlement of disputes.
- ✓ Section 23(2) of the Hindu Marriage Act, 1955 mandates the duty on the court that before granting relief under this Act, the Court shall in the first instance, make an endeavor to bring about a reconciliation between the parties, where it is possible according to nature and circumstances of the case. For the purpose of reconciliation the Court may adjourn the proceeding for a reasonable period and refer the matter to person nominated by court or parties with the direction to report to the court as to the result of the reconciliation. section 23(3) of the Act.

- ✓ The Family Court Act, 1984 was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matter connected therewith by adopting an approach radically different from that ordinary civil proceedings. [K.A.Abdul Jalees v. T.A.Sahida (2003) 4 SCC 166].Section 9 of the Family Courts Act, 1984 lays down the duty of the family Court to assist and persuade the parties, at first instance, in arriving at a settlement in respect of subject matter. The Family Court has also been conferred with the power to adjourn the proceedings for any reasonable period to enable attempts to be made to effect settlement if there is a reasonable possibility.
- ✓ Section 80(1) of Code of Civil Procedure lays down that no suit shall be instituted against government or public officer unless a notice has been delivered at the government office stating the cause of action, name, etc. The whole object of serving notice u/s 80 is to give the government sufficient warning of the case which is of going to be instituted against it and that the government, if it so wished can settle the claim without litigation or afford restitution without recourse to a court of laws. [Ghanshyam Dass v. Domination of India, (1984) 3 SCC 46]. The object of s.80 is to give the government the opportunity to consider its or his legal position and if that course if justified to make

amends or settle the claim out of court. - [Raghunath Das v. UOIAIR 1969 SC 674]

- ✓ Order 23 Rule 3 of CPC is a provision for making an decree on any lawful agreement or compromise between the parties during the pendency of the suit by which claim is satisfied or adjusted. The scheme of Rule 3 of Order 23 provides that if the court is satisfied that a suit has been adjusted wholly or partly by and lawful agreement or compromise, the court shall pass a decree in accordance to that. Order 23, Rule 3 gives mandate to the Court to record a lawful adjustment or compromise and pass a decree in term of such compromise or adjustment.
- ✓ Order 27 Rule 5B CPC confers a duty on court in suit against the government or a public officer to assist in arriving at a settlement. In a suit where Government or public officer is a party it shall be the duty of the Court to make an endeavor at first instance, where it is possible according to the nature of the case, to assist the parties in arriving at a settlement. If it appears to the court in any stage of the proceedings that there is a reasonable possibility of a settlement, the court may adjourn the proceeding to enable attempts to be made to effect settlement.
- ✓ Order 32A of CPC lays down the provision relating to “suits relating to matter concerning the family”. It was felt that ordinary judicial procedure is not ideally suited to the sensitive area of personal relationships. Litigations

involving affairs of the family seem to require special approach in view of the serious emotional aspects involved. In this circumstances, the objective of family counseling as a method of achieving the object of preservation of family should be kept in forefront. Therefore, Order 32A seeks to highlight the need for adopting a different approach where matters concerning the family are at issue, including the need for effort to bring about amicable settlement. The provisions of this Order applies to all proceedings relating to family, like guardianship, custody of minor, maintenance, wills, succession, etc., Rule 3 imposes a duty on the Court to make an effort of settlement by way of providing assistance where it is possible to do so. The Court may also adjourns the proceeding if it thinks fit to enable attempt to be made to effect a settlement where there is a reasonable possibility of settlement. In discharge of this duty Court may take assistance of welfare expert who is engaged in promoting the welfare of the family.[Rule 4]

**LOK ADALAT
REGULATIONS 2009**

Annexure-I

**PUBLISHED IN THE GAZETTE OF INDIA
EXTRAORDINARY PART III SECTION 4**

**MINISTRY OF LAW & JUSTICE
(Department of Legal Affairs)
NATIONAL LEGAL SERVICES AUTHORITY**

NOTIFICATION

New Delhi, 10th July, 2009

S.O. (E).- In exercise of the powers conferred by Section 29 of the Legal Services Authorities Act, 1987, the Central Authority hereby makes the following regulations, namely:

- 1. Short title and commencement.** (1) These regulations may be called National Legal Services Authority (Lok Adalats) Regulations, 2009.
 - (2) They shall come into force at once.
- 2. Definitions.** - In these Regulations, unless the context otherwise requires
 - (a) 'Act' means the Legal Services Authorities Act, 1987 (39 of 1987).
 - (b) 'Central Authority' means the National Legal Services Authority constituted under Section 3 of the Act;
 - (c) 'District Legal Services Authority' means District Legal Services Authority constituted under Section 9 of the Act.
 - (d) 'High Court Legal Services Committee' means High Court Legal Services Committee constituted under Section 8A of the Act.
 - (e) 'Lok Adalats' means Lok Adalats to be organized under Section 19 of the Act.
 - (f) 'Member Secretary' means Member Secretary appointed under

sub Section (3) of Section 6 of the Act.

- (g) 'State Authority' means State Authority constituted under Section 6 of the Act.
- (h) 'Taluk Legal Services Committee' means Taluk Legal Services Committee constituted under Section 11A of the Act

3. Constitution of Lok Adalats

Lok Adalats may be organized by State Authorities/District Authorities/ Supreme Court Legal Services Committee/ High Court Legal Services Committee/ Taluk Legal Services Committees. The Lok Adalats shall be organized for a definite geographical area the aforesaid Authorities/Committees think fit. Special Lok Adalats shall be organized for all Family Courts at regular intervals.

4. Procedure for organizing Lok Adalat

- (a) The Member Secretary of the State Authority, the Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Taluk Legal Services Committee as the case may be, may convene and organize Lok Adalats at regular intervals.
- (b) The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluk Legal Services Committee, as the case may be, may associate the members of the legal profession, college students, social organizations, charitable and philanthropic institutions and other similar organizations for organizing the Lok Adalats.

5. Intimation to the State Authority

The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Taluk Legal Services Committee, as the case may be, shall inform the State Authority about the proposal to organize the Lok Adalat well before the date on which the Lok Adalat is proposed to be organized and furnish the following information to the State Authority, namely:-

- a. The place and the date on which the Lok Adalat is proposed to be organized.
- b. Whether any of the organizations as referred to in Regulation 4(b) above have agreed to associate themselves with Lok Adalat.
- c. Categories and nature of cases, viz. pending cases or pre-litigation disputes proposed to be placed before the Lok Adalat.
- d. Number of cases proposed to be brought before the Lok Adalat in each category.
- e. Any other information relevant to the convening and organizing of the Lok Adalat.

6. Notice to the parties concerned:-

The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluk Legal Services Committee, as the case may be, organizing the Lok Adalat shall inform every party concerned whose case is referred to the Adalat, well in time so as to afford him an opportunity to prepare himself for the Lok Adalat.

Provided that such notice may be dispensed with, if the court while referring the case to the Lok Adalat fixes/informs the date and time of the Lok Adalat in the presence of the parties / Advocates.

Provided further that if a party to the Lok Adalat is not willing to submit to its jurisdiction, the case may be considered on its merits by the court concerned.

7. Composition of the Lok Adalat:-

- (a) **At the State Authority Level** The Member Secretary organizing the Lok Adalat shall constitute Benches of the Lok Adalats, each Bench comprising of a sitting or retired Judge of the High Court or a serving or retired Judicial Officer and any one or both of the

following:

- i. A member of the Legal Profession;
 - ii. A Social Worker of repute who is engaged in the upliftment of the Weaker Sections of the people, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour and interested in the implementation of Legal Services Schemes and Programmes.
- (b) **At the High Court Level** The Secretary of the High Court Legal Services Committee organizing the Lok Adalat shall constitute Benches of the Lok Adalats, each Bench comprising of a sitting or retired Judge of the High Court or a serving or retired Judicial Officer and any one or both of the following:
- i. A member of the Legal Profession; and
 - ii. A Social Worker belonging to the category mentioned in Sub Para (a) above.
- (c) **At District Level** The Secretary of the District Authority organizing the Lok Adalats shall constitute Benches of the Lok Adalats, each Bench comprising of a sitting or retired Judicial Officer and any one or both of the following:
- i. A member of the Legal Profession; and
 - ii. A Social Worker belonging to the category mentioned in Sub Para (a) above or a person engaged in para-legal activities of the area, preferably a woman.
- (d) **At Taluk Level** The Chairman of the Taluk Legal Services Committee organizing the Adalat shall constitute Benches of the Lok Adalat, each Bench comprising of a sitting or retired Judicial Officer and any one or both of the following:
- i. A Member of the Legal Profession; and
 - ii. A Social Worker belonging to the category mentioned in Sub Para (a) above or a person engaged in para- legal activities of the area, preferably a woman.

8. Allotment of cases to Lok Adalat:-

- (a) The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluk Legal Services Committee, as the case may be, shall assign specific cases to each Bench of the Lok Adalat.
- (b) The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluk Legal Services Committee, as the case may be, may prepare a 'cause list' for each Bench of the Lok Adalat and intimate the same to all concerned at least two days before the date of the Lok Adalat.
- (c) Every Bench of the Lok Adalat shall make sincere efforts to bring about a conciliated settlement in every case put before it without bringing about any kind of coercion, threat, undue influence, allurement or misrepresentation.

9. Holding of Lok Adalat:-

Lok Adalat may be organized at such time and place and on such days, including holidays as State Authority, High Court Legal Services Committee, District Authority, Taluk Legal Services Committee, as the case may be, organizing the Lok Adalat deems appropriate.

10. Jurisdiction of Lok Adalats

Lok Adalat shall have powers only for helping parties to arrive at a compromise or settlement between the parties to a dispute. Lok Adalat shall have no power whatsoever to issue a 'direction' or 'order' in respect of the dispute between the parties.

11. Reference of cases and matters

Lok Adalat shall get jurisdiction to deal with a case only when a court of competent jurisdiction orders the case to be referred in the manner prescribed in Section 20 Legal Services Authorities Act, 1987, or under Section 89 of the Code of Civil Procedure, 1908.

- 12. A mechanical reference of pending cases to Lok Adalat should be

avoided. The referring court should be *prima facie* satisfied that there are chances of settlement of the case through Lok Adalat and the case is appropriate to be referred to Lok Adalat. Matters relating to divorce and criminal cases which are not compoundable under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) shall not be referred to Lok Adalat.

13. In a pending case where only one of the parties had made application to the court for referring the case to Lok Adalat, or where the court *suo motu* is satisfied that the case is appropriate to be taken cognizance of by Lok Adalat, the case shall not be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the parties.
14. **Summoning of Records and the Responsibility for its safe custody:-**
 - (a) Member Secretary, Secretary of the High Court Legal Services Committee, District Authority, Chairman of the Taluk Legal Services Committee, as the case may be, may call for the judicial records of those pending cases which are referred to the Lok Adalat under Section 20 of the Act from the courts concerned.
 - (b) If any case is referred to the Lok Adalat at the pre-litigation stage, the version of each party shall be obtained by the Member Secretary, Secretary of the High Court Legal Services Committee, District Authority, Chairman of the Taluk Legal Services Committee, as the case may be, for placing it before the Lok Adalat.
 - (c) The Officer duly authorized by the Member Secretary, Secretary of the High Court Legal Services Committee, District Authority, Chairman of the Taluk Legal Services Committee, as the case may be, shall be responsible for the safe custody of the records from the time he receives the same from the court till they are returned.
 - (d) The Judicial records shall be returned within **ten days** of the Lok Adalat irrespective of whether or not the case is settled by the Lok Adalat with an endorsement about the result of proceedings. In appropriate cases, the court concerned may permit the records to be retained beyond 10 days.

15. Every judicial authority is expected to co-operate in transmission of the Court records.
16. **Pre-Litigation matters**

In a Pre-litigation matter it may be ensured that the court for which a Lok Adalat is organized has territorial jurisdiction to adjudicate in the matter.
17. Before referring a Pre-litigation matter to Lok Adalat the Authority/Committee shall give a reasonable hearing to the parties concerned.
18. An award based on settlement between the parties can be challenged only on violation of procedure prescribed in section 20 of the Act only by filing a petition under Articles 226 and 227 of the Constitution of India.

Procedure in the Lok Adalats

19. Members of the Lok Adalat have the role of statutory conciliators only and have no judicial role. They, *mutatis mutandis*, may follow the procedure laid down in Sections 67 to 76 of the Arbitration and Conciliation Act, 1996.
20. Members of the Lok Adalat shall not pressurize or coerce any of the parties to compromise/settle cases or matters either directly or indirectly.
21. In a Lok Adalat the members shall discuss the subject matter with the parties for arriving at a just settlement or compromise. Members of the Lok Adalat shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute. If necessary the assistance of an independent person or a trained mediator also may be availed of by Lok Adalat.
22. The Members of the Lok Adalat shall be guided by principles of justice, equity, fairplay, objectivity, giving consideration to, among other things, the rights and obligations of the parties, custom and usages and the circumstances surrounding the dispute.

23. The Lok Adalat may conduct the proceedings in such a manner as it considers appropriate taking into account the circumstances of the case, the wishes the parties may express, including any request by a party to the Lok Adalat to hear oral statements, and the need for a speedy settlement of the dispute.
24. The Lok Adalat shall not determine a reference, at its own instance, but shall determine only on the basis of a compromise or settlement between the parties by making an Award in terms of the compromise or settlement arrived at. It is made clear that no Lok Adalat has the power to “Hear” parties to adjudicate the dispute as a court does.
25. The award of the Lok Adalat is not an independent verdict or opinion arrived at by any decision making process.
26. **Administrative assistance**
- Administrative assistance for facilitating Lok Adalat proceedings may be arranged by suitable institutions or persons.
27. **Formulating compromise/settlements**
- The Lok Adalat may, at any stage of the proceedings, make proposal for a settlement of the dispute. Such proposal need not be accompanied by a statement of the reasons therefore.
28. **Communication between Lok Adalat and parties**
- A Lok Adalat may invite the parties to meet it or may communicate with it orally or in writing. The Lok Adalat may meet or communicate with the parties together or with each of them separately. The factual information concerning the dispute received from a party may be disclosed to the other party in order that the other party may have the opportunity to present any explanation. If such information is desired by the party to be kept confidential, the Lok Adalat shall not disclose such information to the other party.
29. Each party may on his own initiative or at the invitation of the Lok Adalat, submit suggestions for settlement of the dispute.

30. When it appears to the Lok Adalat that there exists elements of a settlement which may be acceptable to the parties, the terms of a possible settlement may be formulated by the Lok Adalat and given to the parties for their observations. Modifications, if any, suggested by the parties can be taken into consideration and terms of a possible settlement may be reformulated by the Lok Adalat.
31. If the parties reach a compromise or settlement of the dispute the terms of such compromise or agreement may be drawn up. The Lok Adalat may draw up or assist the parties in drawing up the compromise or settlement.

AWARD

32. Drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed by parties under the guidance and assistance from Lok Adalat.
33. When both parties sign/affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an Award. (See a Model Award in Appendix-I) Every Award of the Lok Adalat shall be categorical and lucid and shall be written in regional language used in the local courts or in English. It shall also contain particulars of the case (case no, name of court and names of parties), date of receipt, Register Number assigned to the case in the permanent Register (maintained as per Regulation 44 below) and date of settlement. Wherever the parties are represented by counsel, they should also be required to sign the settlement / award before the members of the Lok Adalat affix their signature.

In cases referred to Lok Adalat from a court, it shall be mentioned in the Award that the plaintiff/ petitioner is entitled to refund of the court fees remitted.

34. Where the parties are not accompanied/represented by counsel, the members of the Lok Adalat should also verify the identity of parties, before recording the settlement.
35. Member of the Lok Adalat shall ensure that the parties affix their signatures only after fully understanding the terms of settlement

arrived at and recorded. The members of the Lok Adalat shall also satisfy themselves about the following before affixing their signatures:

- (a) That the terms of settlement are not *ex-facie* unreasonable for unconscionable or illegal or one-sided.
 - (b) That the parties have entered into the settlement voluntarily and not on account of any threat, coercion or undue influence.
36. Members of the Lok Adalat should affix their signatures only in settlement reached before them. They should avoid affixing signatures to settlement reached by the parties outside the Lok Adalat with the assistance of some third parties, to ensure that the Lok Adalats are not used by unscrupulous parties to commit fraud, forgery etc.
37. Lok Adalat shall not grant any bail or a divorce by mutual consent.
38. The original Award shall form part of the judicial records (in pre-litigation matter, the original Award may be kept with the Legal Services Authority / Committee concerned) and a copy of the Award shall be given to each of the parties [duly certifying them to be true by the officer designated by the Member Secretary, Secretary of the High Court Legal Services Committee or District Legal Services Authority, Chairman of Taluk Legal Services Committees, as the case may be, **free of charge**. The official seal of the Authority/Committee shall be affixed on all Awards.

CONFIDENTIALITY

39. The Members of the Lok Adalat and the parties shall keep confidential all matters relating to the proceedings in the Lok Adalat. The members of the Lok Adalat shall not be compelled to disclose the matters which took place in the Lok Adalat proceedings before any Court of Law, except where such disclosure is necessary for purposes of implementation and enforcement of the Award.
40. The views expressed and discussions made by parties during the

proceedings of the Lok Adalat in respect of the possible settlement of a dispute shall not be brought in evidence in any other arbitral or judicial proceedings. The proposals made by the members of the Lok Adalat or admission made by any party or the conduct of the parties in the course of the Lok Adalat proceedings shall not be made use of in other court or arbitral proceedings.

41. Members of the Lok Adalat shall not record the statement of any of the parties or record any conduct of the parties in such a manner as it would prejudice such party in any other proceedings before a court or arbitrator. The Members shall not express any opinion which may be prejudicial to any party.
42. If any Member of the Lok Adalat violates the confidentiality and the ethical concerns which are akin to any other judicial proceedings, such member shall be removed from the panel of Lok Adalat Members.

FAILURE OF LOK ADALAT PROCEEDINGS

43. If a Pre-Litigation matter is not settled in the Lok Adalat, the parties may be advised to resort to other Alternative Dispute Resolution (ADR) techniques or to approach a court of law. In appropriate cases they may be advised about the availability of legal aid.

44. Compilation of results:-

At the conclusion of session of the Lok Adalat, the Officer designated by the Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluk Legal Services Committee, as case may be, shall compile the results for submission to the State Authority in the proforma given in Appendix-II.

45. Maintenance of Panel of names of Lok Adalat Members:-

The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluk Legal Services Committee, as the case may be, shall maintain a panel of names of retired Judicial Officers, Advocates and Social

Workers to work in Lok Adalats.

46. Procedure for maintaining record of cases referred under Section 20 of the Act or otherwise:-

- a. The Officer designated by the Member Secretary, Secretary of the High Court Legal Services committee or District Authority, Chairman of the Taluk Legal Services Committee, as the case may be, shall maintain a **Permanent Register** wherein all the cases and Pre-litigation matters received by him by way of reference to the Lok Adalat shall be entered giving particulars of the:-
 - i. date of receipt;
 - ii. nature of the case/ pre-litigation matter;
 - iii. such other particulars as may be deemed necessary;
 - iv. date of compromise/settlement and the manner in which the case /matter was finally disposed of and;
 - v. date of return of the case file.
- b. A copy of the Award, if passed, duly certified in the manner stated in Regulation 33 shall be kept in the office of the Authority/ Committee as a permanent record.
- c. Records other than the original of the Awards of pre-litigation Lok Adalats may be destroyed after a period of three years from the date of disposal of the matter by Lok Adalat.

47. Appearance of Lawyers and the Procedure to be followed in the cases before Lok Adalats:-

The appearance of lawyers on behalf of the parties at the Lok Adalat is not barred. The lawyers may be advised to avoid wearing their robes and bands while before the Lok Adalat. But an effort should be made to encourage parties to be present personally.

- 48.** The above guidelines *mutatis mutandis* shall be applicable to the Lok Adalats organized by the National Legal Services Authority and Supreme Court Legal Services Committee also.

MEDIATION RULES
2015

MEDIATION RULES-2015

Rule 1: Title

These Rules shall be called the Mediation Rules, 2015.

Rule 2: Function of the Mediation Centre:

- (1) To maintain a panel of trained Mediators sufficient in number to meet the requirement of work referred to the Mediation Centre.
- (2) On receipt of the matter by way of referral for mediation, the Co-ordinator of the Mediation Centre may assign the matter to any mediator who is best suited to deal with the matter from the panel of mediators maintained by the Mediation Centre.
- (3) The Mediation shall not be limited only to the issues in the referred dispute and the Mediator may take into account the disputes between the parties to a case which are not the subject of the pending litigation, and may resolve all disputes between the parties.
- (4) During the Mediation, counsel for the parties may also participate in the mediation process.
- (5) In appropriate cases, the Mediation Centre may invite any person/persons, other than those who are involved in the pending litigation to join the Mediation for the purpose of finding comprehensive and complete solutions including an expert pertaining to any field.
- (6) If any party to the dispute referred to Mediation has any objection to the mediator assigned to it, the said party shall inform the Mediation Centre of the same and thereafter the Co-ordinator, Mediation Centre shall endeavour to appoint a Mediator who may be acceptable to all the parties.

Rule 3: Appointment of Mediator

- a) In a Court annexed mediation, the coordinator of the

mediation centre shall appoint the mediator as he may deem fit.

- B) In exceptional cases, the Court may also appoint a mediator who is not necessarily from the panel of Mediators referred to in Rule 4 nor bear the qualifications referred to in Rule 5 but should not be a person who suffers from the disqualifications referred to in Rule 6.

Rule 4: Panel of Mediators.

- a) The High Court shall empanel only those persons as mediators who have necessary qualifications as indicated in Rule 5 and a list of such mediators empanelled with the mediation centre should be prepared.
- b) The District Court shall also prepare a panel of qualified Mediators with the approval of the High Court Mediation Committee.

All the mediators as appointed under clause (a) and clause (b) shall normally be on the panel for a period of 3 years from the date of appointment and further extension of their tenure shall be at the discretion of High Court Mediation Committee.

Rule 5: Qualifications of persons to be empanelled under Rule 3:

The following persons are eligible for training as Mediators:

- a) (i) Retired Judges of the Supreme Court of India,
(ii) Retired Judges of the High Court;
(iii) Retired District and Sessions Judges or retired Judges of the Courts of equivalent status.
(iv) Judicial Officers of Higher Judicial Service.
- b) Legal practitioners with at least 10 years standing at the bar at the level of the Supreme Court or the High Court or the District Court or equivalent status;

- c) Experts or other professionals with at least fifteen years' standing; or retired senior bureaucrats or retired senior executives;

Rule 6: Disqualification of persons.

The following persons shall be deemed to be disqualified for being empanelled as mediators:

- a) any person who has been adjudged as insolvent or persons
 - (i) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending, or
 - (ii) persons who have been convicted by a criminal court for any offence involving moral turpitude.
- b) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.
- c) any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- d) Any legal practitioner who has or is appearing for any of the parties in the suit or in other proceeding(s).

Rule 7: Addition to or deletion from panel.

There shall be periodical assessment of the performance of the mediators. The High Court or the District & Sessions Judge with prior approval of the High Court Mediation Committee, may in its/his discretion, from time to time, add or delete any person in the panel of mediators.

Rule 8: Preference.

The Coordinator shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the dispute (s) involved and shall give preference to those who have proven record of successful mediation or who have special qualification or

experience in mediation.

Nomination to a mediation proceeding shall not be perceived as a right by mediators. Such nomination shall be at the discretion of the Coordinator of the Mediation Centre.

Rule 9: Duty of mediator to disclose certain facts.

- a) When a person is approached in connection with his proposed appointment as mediator, he shall disclose any circumstance likely to give rise to a reasonable doubt as to his independence or impartiality.
- b) Every Mediator shall from the time of his appointment and throughout continuance of the mediation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in Clause (a).

Rule 10: Withdrawal of appointment.

Upon information furnished by the mediator under Rule 9 or upon any other information received from the parties or other persons, if the Court, in which the suit or proceeding is pending or the coordinator of the Mediation Centre, is satisfied, that the said information has raised a reasonable doubt as to the mediator's independence or impartiality, it/he may withdraw the appointment and replace him by another mediator.

Rule 11: Mediation process.

- a) All civil and criminal compoundable matters may be referred to mediation during the course of litigation, by the Court.
- b) The mediation process will comprise of reference as well as the steps taken by the mediator to facilitate the settlement of a referred matter by following the structure usually followed, including but not limited to introduction and opening statement, joint session, separate session(s) and closing.

- c) failure to arrive at a settlement would not preclude the Court from making fresh reference of the matter for mediation.
- d) In case of failure of resolution of the referred dispute, the Mediator shall inform the Mediation Centre, by a report and the Co-ordinator of the Mediation Centre shall inform regarding the same to the Court.

Rule 12: Mediator not bound by Indian Evidence Act, 1872 or Code of Civil Procedure, 1908.

The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute(s).

Rule 13: Representation of parties.

The parties shall ordinarily be present personally or through constituted attorney at the sessions notified by the Mediator. They may also be represented by a counsel with permission of the mediator in such sessions.

Rule 14: Consequences of non-attendance of parties at sessions on due dates.

If a party fails to attend a session notified by the mediator on account of deliberate or willful act, the other party or the mediator can apply to the Court in which the suit or proceeding is pending, in that case Court may issue the appropriate directions having regard to the facts and circumstances of the case.

Rule 15: Administrative assistance.

In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Rule 16: Role of Mediator.

The mediators shall attempt to facilitate voluntary

resolution of the dispute(s) by the parties. He shall assist them in understanding the problems, identifying the underlying issues, reducing mis-understandings, generating the options and developing option which are mutually acceptable to both the parties.

Rule 17: Parties alone responsible for taking decision.

The parties shall be made to understand that the mediator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator give any assurance that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

Rule 18: Time limit for completion of mediation.

On the expiry of Ninety days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo moto, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

Rule 19: Parties to act in good faith

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute (s), if possible.

Rule 20: Confidentiality, disclosure and inadmissibility of information.

- 1) When a mediator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate.

Provided that, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose the

information to the other party.

- 2) Receipt or perusal of any document by the mediator or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the document or record or oral information nor as to what transpired during the mediation.
- 3) Parties shall maintain confidentiality in respect of events that transpired during the mediation and shall not rely on or introduce the said information in any proceeding as to :-
 - (a) views expressed by a party in the course of the mediation proceeding;
 - (b) documents produced during the mediation which were expressly required to be treated as confidential or other notes or drafts or information given by the parties to the mediators.
 - (c) proposal made or views expressed by the mediator.
 - (d) admission made by a party in the course of mediation proceeding.
 - (e) the fact that a party had or had not indicated willingness to accept a proposal.
- 4) There shall be no stenographic or audio or video recording of the mediation proceedings.
- 5) A mediator may maintain personal record regarding progress of the mediation for his personal use.

Rule 21: Privacy:

The mediation sessions shall be conducted in complete privacy; only the concerned parties or their counsels or power of attorney holders can attend, other persons may attend only with the consent of the parties and permission of the mediator.

Rule 22: Immunity:

No mediator shall be held liable for anything bonafidely

done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of Law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

Rule 23: Communication between mediator and the Court:

- (1) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in sub-rules (2) and (3) of this Rule.
- (2) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their constituted attorneys or the counsel.
- (3) All communication between the mediator and the Court shall be made only by the mediator and in respect of the following matters:
 - (a) The failure of a party or parties to attend; or
 - (b) The mediator's assessment that the case is not suited for settlement through mediation; or
 - (c) Settlement of dispute or disputes arrived at between parties.

Rule 24: Settlement agreement:

Where an agreement is reached between the parties with regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the mediator may obtain his signature also on the settlement agreement.

- (1) The agreement of the parties so signed shall be submitted to the Co-ordinator, Mediation Centre, who shall, with a covering letter signed by him forward the same to the Court

in which the suit or proceeding is pending.

- (2) Where no agreement is arrived at between the parties or where the mediator is of the view that no settlement is possible, he shall report the same in writing to the Co-ordinator, Mediation Centre, who shall, with a covering letter signed by him forward the same to the Court in which the suit or proceeding is pending.

Rule 25: Court to record settlement and pass decree:

On receipt of settlement agreement, if the Court is satisfied that the parties have settled their disputes voluntarily, the Court may pass appropriate order/decreed on the basis of settlement, if the same is not found collusive/illegal/unworkable. However if the settlement disposed of only certain issues arising in the matter, the Court may record settlement in respect of the issues settled in the mediation and may proceed to decide other issue which are not settled.

Settlement between the parties shall be final in respect of the proceedings pending before the court.

Rule 25: Fee of the Mediators:

- (a) the mediators shall be paid honorarium as under:

S. No.	Nature of case	Honorarium
1	On settlement through mediation of a matrimonial case (including criminal), custody, guardianship, probate, partition and possession.	Rs. 3000/- per case (with two or more connected cases, the maximum would be Rs. 4000/-)
2	All other matters.	Rs. 2000/- per case (with two or more connected cases, the maximum would be Rs. 3000/-)
3	Connected case	Rs. 500/- per case subject to a maximum of Rs. 1000/- (regardless of the number of connected cases)
4	In case of no settlement	No honorarium.

It is subject to revision from time to time as deemed fit by

the Hon'ble Chairman and Members of MCPC.

- (b) However, in exceptional cases the Court may fix consolidated amount as fee of the **Court nominated** mediator/Mediators.
- (c) Each party shall bear the cost for production of their witnesses and experts, as also for production of documents.

Rule 27: Ethics and code of conduct for mediator:

The Mediator shall follow and observe these Rules strictly and with due diligence.

- (1) Not indulge in conduct unbecoming of a mediator.
- (2) Uphold the integrity and fairness of the mediation process.
- (3) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the mediation process.
- (4) While communicating with the parties avoid any impropriety or appearance of impropriety.
- (5) The mediator must avoid mediating in cases where they have direct personal, professional or financial interest in the outcome of the dispute. If the mediator has any indirect interest, he is bound to disclose to the parties such indirect interest at the earliest opportunity and he shall not mediate in the case unless the parties specifically agree to accept him as mediator, despite such indirect interest.
- (6) Where the mediator is an advocate, he shall not appear for any of the parties in respect of the dispute which he had mediated.
- (7) Mediators have a duty to know the limits of their competence and ability in order to avoid taking on assignments which they are not equipped to handle.
- (8) Mediators have a duty to remain neutral throughout

the mediation.

- (9) Mediators must respect the voluntary nature of mediation and must recognize the rights of the parties to withdraw from the mediation at any stage.
- (10) Mediation being confidential in nature, a mediator shall be faithful to the confidentiality reposed in him.
- (11) Mediator has a duty to encourage the parties to make their own decisions both individually and collectively about the resolution of the dispute, rather than imposing his own ideas on the parties. Self determination is the essence of the mediation process.
- (12) Settlement of dispute must be based on informed consent.
- (13) Conduct all proceeding relating to the resolution of dispute in accordance with the law.
- (14) Mediator must refrain from promises or guarantee of results.

Rule 28: Consequences of breach of Rule 27:

It shall be open to the Coordinator to take such action with the approval of the High Court Mediation Committee as may be appropriate if the mediator violates any code of conduct expressed in Rule 27 or behaves in a manner not expected of him as a mediator”.
