CO-RELATION BETWEEN
MEDIATION AND CASE MANAGEMENT

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HISTORICAL PERSPECTIVE

The traditional justice system has been the prime justice delivery system in India for last about two centuries since the advent of British rule in India. Even in England it was formed during a feudal era when agrarian economy was in vogue. While India remained a colony the system thrived, prospered and deepened its roots as a prestigious and the only justice symbol. It became a vital institution recognized and adored for its integrity and independence and has gained people's confidence. Even after India's independence in 1947 the Indian judiciary has been proclaimed world over as a pride of the nation. Till the commerce, industry and trade started expanding, the system delivered justice quicker, while maintaining respect and dignity. Independence brought with it the constitution, consciousness for fundamental and individual rights, governmental participation in growth of the nation's business and commerce, establishment of State Legislatures, government corporations, financial institutions, fast growing international trade and commerce and public sector participation. State and governmental bodies became large litigants. Tremendous employment opportunities were created. Protracted multiparty complex civil litigation, expansion of business opportunities beyond local limits, voluminous records, population growth, new and more enactments creating new rights and remedies and greater popular reliance on courts to resolve community problems brought an explosion of litigation. The inadequate infrastructural facilities to meet the challenge exposed the inability of the system to handle the sheer volume of

caseloads efficiently and effectively. The clogged court houses have started becoming unpleasant compulsive forums instead of the temple of justice. Instead of waiting in queues for years and pass on the litigation by inheritance people are minded either to drop going to courts or have started resorting to extra judicial remedies in the form of violation of law and order. Commercial interests avoid doing business in places where access to efficient and cost effective justice is not readily available. Delays in quick disposal of cases have inspired ingenuity of lawyers into carving out interim remedial actions which have kept courts busy hearing pretrial motions. The society is on the verge of loosing confidence in law courts threatening their dignified existence. The filing in courts have started downward trend creating a vicious slow growth ratio under the apprehension that disposal of cases will take years.

This situation has been faced historically by most of the democratic countries world over. USA was the first to introduce drastic law reforms about 20 years back and UK has recently followed the suit. Handicapped by historical helplessness India has started late, though it has now circumstances to pick up introduction and implementation of law reforms faster than any other country of the world. This is because of the foresight, dynamism and independence of the Indian Judiciary and the respect the Indian legislature has in the visionary interpretations made by Indian Judges in developing law and social wisdom by precedents set by judicial pronouncements.

Since the inception of the economic liberalization policies in India and acceptance of law reforms world over, the legal opinion leaders have concluded that the application of vigorous mediation mechanisms to commercial and civil litigation is a critical solution to the profound problem of arrears of cases in Civil Courts in India. The former Chief Justice of Indian Supreme Court, Mr. Justice A.M. Ahmadi took a bold step forward by forming an Indo US study team which worked together, made a comprehensive study and made recommendations how reforms suitably adopted to Indian conditions can modernize the Indian

justice system. The study team consisting of Indian scholars and experienced experts from United States sponsored by **ISDLS*** made three sets of recommendations for modernizing Indian Civil Justice System : Court Administration, Case Management and Alternative Dispute Resolution. The proposal included introduction of Order IX A to include formally the concept of the case management in the Code of Civil Procedure.

Though the provisions of the Case Management are yet not formally introduced in the Code, those judges who exercise judicial control in pretrial proceedings on their own initiatives by implementing provisions of Order X, XI, XII and XIII ***[brief summary annexed at the end of this paper]*** of the Code are more successful than others in the expeditious disposal of cases. City Civil Court Rules framed by Gujarat High Court provide for summons for directions immediately after the filing of written statement, which did help in the initial years of their introduction in providing for case management concepts without so naming them. However, they were not vigorously followed in later years and have remained on statute book without being followed. Indian Parliament has taken a very bold step forward (unmatched by any country other than US and UK) by introducing ADR in its legal system. Another bold step in introducing case management procedures as a mandate of law will help in utilization of ADR procedures more effectively.

THE AHMEDABAD INDO-US EXCHANGE PROGRAMME

In a world wave of global law reforms a group of Indian faculty attended "36 Countries ISDLS Rule of Law Conference" held at University of California, Berkeley, which considered innovation in dispute resolution methods. The author of this paper made a presentation on the need for taking initiative by individual lawyers and Bar Associations. Gaining by experience of attending the

Institute for Study and Development of Legal Systems (ISDLS) is a San Francisco based non profit non governmental organization promoting law reforms world over.

conference the lawyers of Ahmedabad Bar Association were motivated to organize a conference on “Delays and their Solutions”. Some of the topics discussed at Ahmedabad Conference included “Global Objectives, problems and reform alternatives in the light of widely shared aims of democracy and economic development”, “Managing the Unmanageable”, “Basic concepts of theory and practice of case management and Alternative Dispute Resolution Methods”, “The need for discipline in law and changing the attitudes”. The conference brought awareness on the problem of delay and their solutions, and concluded that **mediation** and **case management** would help improve the civil and commercial justice system in India. It was dawned on the participants that the ancient Indian legal culture of resolving disputes with the help of a mediator, which became extinct with the advent of British Rule, needed to be revived. The conference was attended by Mr. Stephen Mayo, Executive Director of ISDLS, USA and Professor Mr. Hiram Chodosh of Case Western Reserve University, Ohio, USA. They were impressed by the conference and recommended that the Agenda of the Conference could be adopted as a model agenda for South East Asia. Two senior lawyers of Ahmedabad settled a Public Charitable Trust by name Institute for Arbitration Mediation Legal Education and Development (AMLEAD), with the objects of promoting ADR and imparting continuing legal education to lawyers, litigants and judges. With the help of ISDLS three groups of US mediation trainers visited Ahmedabad in January, April and August 2001 and imparted mediation training to about 120 lawyers. The trainers from USA included ADR administrators of US Courts, Chief Mediators of 6th and 9th US Circuit Courts, teachers, lawyers and judges who are experienced in implementing the concepts of Mediation and Case Management in US Courts. Three Indian delegations visited California in November 2000, January 2001 and February 2001 and observed how combination of Mediation and Case Management worked effectively. A meeting with the Associate Justice Ms. Sandra Day O’Connor and Associate Justice Mr. Stephen Breyer of the US Supreme Court during their Ahmedabad visit on September 13, 2001 gave a unique opportunity to

Ahmedabad lawyers to have a dialogue with them on the importance of starting a lawyer run Mediation Centre. The Ahmedabad Bar Association and AMLEAD opened the first lawyer run Mediation Centre at Ahmedabad. The Centre has published a brochure to provide guidance to litigants, lawyers and Judges. The Chief Justice of Indian Supreme Court Mr. Justice B.N. Kirpal with his dynamism, judicial activism and pragmatic leadership inaugurated the CENTRE on July 27, 2002 in presence of legal fraternity and leading citizens of Gujarat and recommended the opening of such centres at other places also. A course on Theory and Practice of Mediation is also now introduced in the Law School by AMLEAD and Gujarat Law Society. Now India is ready and prepared to supplement its conventional adversarial legal system with modern improvisation. Mediation and Case Management have now become a global phenomenon.

INDIAN LEGISLATURE'S BOLD STEP

Judicial Reforms in any country is a slow process. Compared to other countries of the world Indian Legislature, in the 53rd year of its birth, enacted the Civil Procedure Code (Amendment) Act, 1999 and introduced mandatory ADR procedures. Another amending Act was introduced and passed in 2002 which has been accepted and welcomed in the country and it has now been brought into force with effect from July 1, 2002. In the forthcoming meeting of the Chief Justices of all Indian High Courts summoned by Chief Justice of India the attention on the concept of Mediation and Case Management will be focused. Now India is on the threshold of implementing progressive law reforms – a big step forward towards modernization of its justice delivery system.

THE CONCEPT OF MEDIATION:

In the adversarial system the litigant becomes insignificant, almost a non entity. He goes to the court "to fight the battle". Resolving disputes has become less important. Litigants have become partners in the problems rather than in the

solutions. We always negotiate business deals, we negotiate property transactions, we discuss the terms of a job and in India we even negotiate a marriage. **Can we not negotiate the settlement of disputes?** Negotiating settlement of disputes is recognized as the best form of dispute resolution at the beginning of 21st Century because it gives maximum satisfaction to the parties who actively participate in the process.

It has also been now recognized that negotiated settlement becomes more effective if a neutral, skilled and trained mediator, helps the parties. Mediation or conciliation is thus a voluntary process of negotiating the resolution of a dispute with the assistance of a mediator. Conciliation and mediation are more or less synonyms, though mediation goes further than conciliation by allowing the neutral third party to suggest terms on which dispute might be resolved. The Mediation is faster than the conventional adversarial system of dispensing justice. It is flexible as there is no set formula of complicated procedure and leads to an imaginative, creative, cost efficient, convenient and lasting solution of a dispute bringing parties closure avoiding hostility and maintaining relationship.

In modern complex society mediation has acquired global acceptance and has become part and parcel of the conventional system of justice. With the growth of commerce, industry and international business, the adversarial system of justice needs to be aided by various other indigenous alternatives catering to the need and choice of the litigants. Just as different quicker transport systems have helped in reducing traffic jams, the variety of Alternative Dispute Resolution Methods have provided to the consumers of justice a choice of selecting alternatives for resolving their disputes. However, it is necessary that these alternatives are provided as a part of the same time tested system which has acquired the confidence of the people because of its integrity and impartiality. The court is like a parental institution for resolution of disputes and if ADR models are directed under the courts' supervision, at least in those cases which are referred to ADR procedures by the courts, the effort for dispensing justice

can become more coordinated. ADR agencies can become part and parcel of court system which would provide more alternative channels under its own control and supervision. This would ensure complimentary systems of justice and not competitive procedures. It is also necessary to decide which case is suitable for which ADR procedure. Who will decide this? And when? This will require a judge to adopt a managerial role. Cases pending in the Court are within the control of a judge. Traditionally a judge hears two adversaries, weighs the evidence on record and gives the judgement. This judicial role is more or less passive and takes no initiative for the progress of the case. Till the trial begins the judge almost plays no role except passing interim orders on applications moved by either side. Even for such applications progress of the case depends upon the initiative taken by lawyers of the parties. In the words of Judge Robert F. Peckham , “Mis-management or non-management of the cases can cause considerable delay leading to uncertainty in business and personal affairs and often crushing expenses to one or more of the parties”. Experience has revealed that in those cases where a judge exercises more pre-trial control, progress towards conclusion is faster. In the last decade due to the introduction of the concept of the case management in the Federal District Courts in the United States, the disposal of the cases by trial has increased. It is also found that the courts became more efficient in dealing with the cases. This new role of a judge as a case manager promises to increase judicial productivity.

CASE MANAGEMENT

The case management is a judicial process which provides effective, efficient and purposeful judicial management of a case so as to achieve a timely and qualitative resolution of a dispute. It assists in early identification of disputed issues of facts and law, establishment of a procedural calendar for the life of the case and **exploration of a possibility of a resolution of disputes through methods other than court trial**. The case management requires the early

assignment of a case to a judge who then exercises judicial control over the case immediately after it is filed and keeps its track at every stage. The judge applies judicial process to the rival contentions at the earliest stage after filing of the written statement and secures active participation and joint communication amongst the parties and the lawyers for the smooth progress of the case. It helps the parties and lawyers in identifying the real controversies and seeking early response from the other side on the questions of facts and law raised by the opponents minimizing or narrowing down the controversies. At this stage, it becomes necessary for the court to apply its mind to the facts of the case and reduce the scope of trial as far as possible by referring the case to Alternative Dispute Resolution Methods. This can be done by the judge by examining the facts of the case jointly with the lawyers of the parties. The Code of Civil Procedure, 1908 has made adequate provision in Order X to Order XIII for incorporating pretrial case management concepts. This provision requires the Judge to exercise control over the case at the first hearing. However, if the first hearing itself is delayed the judicial control will not help in expeditious conclusion of the case and therefore, it is necessary to require the judge to be seized of the matter immediately after filing of the written statement.

CASE MANAGEMENT AND MEDIATION ARE COMPLEMENTARY

With the global acceptance of the Alternative Dispute Resolution Methods, the Code of Civil Procedure, 1908 in India, as recently amended, introduced the ADR procedures which include arbitration, conciliation, mediation, judicial settlement and settlement through Lok Adalat. The arbitration is more or less adversarial and the arbitrator is required to give an award which is like a court giving a judgement. Judicial settlement has not been aggressively pursued because the judges are not left with enough time from the routine work. The Lok Adalat has proved to be successful in a few types of cases such as motor accident cases. The conciliation and mediation which are synonyms offer the maximum scope of acceptance by the litigants because they sound to be most

realistic. It is therefore necessary for the courts in pending cases to refer the cases to mediation or conciliation. Now that law has made ADR methods a part of our legal system it is necessary that while exercising judicial control a judge at the earliest stage decides if a case is having an element of settlement which can be further explored by referring the case, inter alia, to mediation. Therefore before referring a case to mediation, a judicial mind must decide whether it is capable of being resolved through any of the ADR mechanisms. It is therefore that managerial skill of a judge is a pre-requisite for referring the case to a mediator. This basic requirement is of foremost importance before the mediation process can begin. A reference of all the cases to mediation without application of mind may become an empty formality.

While referring a case to mediation after a judge sees an element of settlement in it, it is necessary to fix a time limit for completing the mediation procedures. In absence of such time limit cases are likely to be shelved. It is, therefore, necessary to exercise a further judicial control requiring to complete mediation process expeditiously. In appropriate cases the given time may not be sufficient and may be required to be extended further. If the judge is satisfied that the progress towards the settlement is not being made, he may find that the mediation is likely to fail and no further time is required to be wasted. A judge may find that the case deserves to be shuffled to any other form of ADR. A judge may even conclude that certain issues may be settled through mediation and others require a trial. Such an exercise of control by the judge will also bring the concept of the answerability by the parties and the mediator. Thus mediation process is complementary to the courts and actually furthers the court's own interest in reducing its case load to manageable levels. Rather than presenting a parallel system of justice that is competitive with courts, co-ordination between case management by a court and assisted negotiation through mediator selected by the parties, will provide additional tools by the same system which will inspire confidence and provide continuity of the process. When court considers it appropriate to refer the case to mediation and continues to have its managerial

supervision, court will remain a central institution for the system. This will also establish a public-private partnership between the courts and the community. A popular feeling that court works hand-in-hand with mediation facility will produce lawful and enforceable settlements.

The Code of Civil Procedure, 1908 and the provisions for ADR mechanisms made therein can be effectively utilized only if the managerial skills of a judge are properly understood and effectively implemented. Unless both i.e. the case management techniques and ADR procedures are properly used as a part of the same system, none of them can be effective. Whether the mediator makes the progress, parties co-operate, exchange of information takes place or whether the negotiations are likely to fail are the questions which require judicial supervision. Again, briefing the parties and their advocates in a proper manner by a judge will prepare them for accepting the procedures positively and secure their willing participation. Court will benefit administratively from resolution of many civil disputes through mediation while simultaneously retaining its vital role as the final arbiter. The Judge will appreciate that mediation is a part of the same judicial system and reference of cases to mediation will spare the judge more time for the cases which require judicial determination.

A FEW SUGGESTIONS

India has now whole hearted legislative approval for beneficial law reforms contained in the Code of Civil Procedure, 1908,The Arbitration and Conciliation Act, 1996 and the Legal Services Authorities Act, 1987. It is therefore, necessary to provide guidelines and promote the reforms extensively by utilizing the provisions made in the last mentioned Act.

- The provisions made in the Arbitration and Conciliation Act, 1996 regarding the process of conciliation are required to be made applicable to mediation also because there is no real difference between the two. The

High Courts can frame rules under Section 89 (2) (d) read with Section 122 of the Code of Civil Procedure to make mediation procedures effective immediately.

- In order to establish mediation as a viable alternative, it is crucial to provide education about benefits of the process to the community, the members of the Bar and the Courts. It will be necessary to familiarize the potential consumers of mediation services with the nature of the process, the ways mediation can benefit them and ways it differs from arbitration and trial. Equally important is to promote and encourage the managerial qualities of a judge. Coordinated efforts will have to be promptly started to effectively use the ADR provisions incorporated in the Code of Civil Procedure, 1908.
- Brochures explaining availability of mediation and other ADR methods must be published and handed over to the plaintiffs at the time of filing of the suits and to the defendants along with the summons of the suit. Directions to the Principal Judges of all courts in any acceptable modes are required to be issued to all the courts in their jurisdictions to assign the cases to specific courts and keep the track thereof from the beginning and enforce the case management techniques.
- To achieve the success in reforms' implementation, pilot projects in some selected cities can be introduced so as to utilize the experience later in other courts. A few courts can be selected to follow mediation and case management procedures on experimental basis and judges who are allotted such work can be specially selected on the basis of their aptitude and they can be specially trained for the assignments.
- Cases for the reference to mediation can be categorised initially to include cases having minimum discovery requirements and maximum settlement elements, such as cases relating to money recovery, loan default, family disputes, etc.
- A panel of mediators should be immediately formed and for the purpose, programmes for imparting basic training and orientation to the intending

mediators should be organised. Community leaders, experienced and respected businessmen, retired judges, experts in different fields, retired bureaucrats and lawyers can be persuaded to serve as mediators. Bar Councils, Bar Associations and Judicial Academies can join hands to organize workshops and conferences on the subjects.

- Retired judges, desiring to act as mediators can be persuaded to consciously address a general concern over the difference between mindset of a Judge and of a Mediator. Appointment of retired Judges as mediators can inspire great confidence in the mediation process amongst the participants with a familiarisation programme with mediation process to avoid any role confusion.
- International organizations like Asian Development Bank and World Bank, which have large funds for the developmental purposes, should be approached to provide and promote international training facilities, to set up pilot projects and specialized infrastructural facilities for exchange of knowledge and experience and also organize regional conferences and training the trainers programmes. Formation of joint Bench-Bar Committees to implement the reformative provisions of law may prove very useful.
- The courts in which the pilot projects are to work, are to be provided with computers and case tracking facilities and there shall be effective supervision of the pilot projects. Apart from that, in courts, there shall be intensive training imparted about the basic ideas to the persons who are going to be in-charge, so that the case management principles and the schedules and the ADR processes are well-administered.
- State, Municipal Corporations and Government Corporations, who are the largest litigants, should be drawn into the process of Mediation by framing appropriate schemes.
- Till Court annexed mediation programmes and proper infrastructural facilities are established it would be appropriate at least to provide mediation facilities through private reliable mediation centres run by the

Bar Associations and/or non Governmental organizations and appropriate funds or grants can be provided to them. It is advisable to provide such mediation facilities at the doorsteps of the court houses.Last, but not the least, is the importance to identify the right persons for implementation and to inculcate the sense and feeling of responsibility and alleviate the feeling of extra burden on an existing judicial officer. It is being felt that quite many new ideas fail because of the unwillingness to go that extra mile by the person, who is within the settled pay scale and unfortunately thinks that he is not going to get any incentive for that extra mile he ploughs. The system as it works today evaluates a lower court judge's work on disposal and considers more merits of the man if "disposal" is greater and if "settlements" are more in his court, he may not be looked as one being that competent. That idea of evaluation of the performance of judges and also the incentive for going that extra mile further has to be evolved within the system.

- The world is becoming smaller with the faster communication facilities. International exchange of knowledge, experience and research have widened the horizons of the people of the world. The ties between democratic countries are becoming stronger. The world is progressing towards unity of thoughts. India and USA being two largest democracies of the world can join together on long term basis to utilize mutual wealth of knowledge to evolve a Research Foundation for providing continuing legal education, which will help in promoting the economic, commercial and social welfare of their people.

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Annexure

BRIEF SUMMARY OF A FEW IMPORTANT PROVISIONS IN INDIAN CIVIL PROCEDURE CODE RE. CASE MANAGEMENT

Settlement of disputes outside the court:

Civil Procedure Code 1908 Inserted by Amendment Act 1999 Date of Implementation from 1-07-2002	S.89 (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 through Lok Adalat or (d) mediation.

(2) Where a dispute has been referred –

(a) for arbitration or conciliation, the provisions of Arbitration and conciliation Act, 1926 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of the Act;

(b) to Lok Adalat, the court shall refer the same to Lok Adalat in accordance with the provisions of sub-Section (1) of section 20 of the Legal Services Authority 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 Authority Act 1987 (39 of 1987) shall apply as if the disputes 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.

[Only description of rules. For full text, please see Civil Procedure Code, 1908]

ORDER X

EXAMINATION OF PARTIES BY THE COURT

Rules	Description
1	Ascertainment whether allegations in pleadings are admitted or denied
1A	Direction of the Court to opt for any one mode of alternative dispute resolution
1B	Appearance before the conciliatory forum or authority
1C	Appearance before the Court consequent to the failure of efforts of conciliation
2	Oral examination of party, or companion of party
3	Substance of examination to be written
4	Consequence of refusal or inability of pleader to answer

ORDER XI

DISCOVERY AND INSPECTION

Rules	Description
1	Discovery by interrogatories
2	Particular interrogatories to be submitted
3	Costs of interrogatories
4	Form of interrogatories
5	Corporations
6	Objections to interrogatories by answer
7	Setting aside and striking out interrogatories
8	Affidavit in answer, filing
9	Form of affidavit in answer
10	No exception to be taken
11	Order to answer or answer further
12	Application for discovery of documents
13	Affidavit of documents
14	Production of documents
15	Inspection of documents referred to in pleadings or affidavits
16	Notice of produce
17	Time for inspection when notice given

18	Order for inspection
19	Verified copies
20	Premature discovery
21	Non-compliance with order for discovery
22	Using answers to interrogatories at trial
23	Order to apply to minors

ORDER XII

ADMISSIONS

Rules	Description
1	Notice of admission of case
2	Notice to admit documents
2A	Documents to be deemed to admitted if not denied after service of notice to admit documents
3	Form of notice
3A	Power of Court to record admission
4	Notice to admit facts
5	Form of admissions
6	Judgement on admissions
7	Affidavit of signature
8	Notice to produce documents
9	Costs

ORDER XIII

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

Rules	Description
1	Original documents to be produced at or before the settlement of issues
2	[*Omitted*]
3	Rejection of irrelevant or inadmissible documents
4	Endorsements on documents admitted in evidence
5	Endorsements on copies of admitted entries in books, accounts and records
6	Endorsements on documents rejected as inadmissible in evidence
7	Recording of admitted and return of rejected documents
8	Court may order any document to be impounded
9	Return of admitted documents

10	Court may send for papers from its own records or from other Courts
11	Provisions as to documents applied to material objects

Relevant provisions of the Arbitration and Conciliation Act, 1986, which should be made applicable to the mediation proceedings]

S. 61. Application and scope – (1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

(2) This part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

S.62. Commencement of conciliation proceedings:-

(1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.
(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.
(3) If the other party rejects the invitation, there will be no conciliation proceedings.
(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

S.63 Number of Conciliators:-

(1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.
(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

S.64 Appointment of conciliators:-

(1) Subject to sub-section (2),-

(a) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;
(b) In conciliation proceedings with two conciliators, each party may appoint one conciliator;
(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular, -

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or
(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

S. 65 Submission of statements of conciliator:-

(1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.
(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to other party.
(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

Explanation – In this section and all the following sections of this Part, the term "Conciliator" applies to a sole conciliator, two or three conciliators, as the case may be.

S. 66. Conciliator not bound by certain enactments:- The conciliator is not bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

S.67. Role of conciliator :-

(1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

S. 68. Administrative assistance:-

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

S.69. Communication between conciliator and parties:-

(1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where the meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

S.70. Disclosure of Information:-

When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

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

S. 71. Co-operation of parties with conciliator:-

The parties shall in good faith co-operate with the conciliator and in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

S. 72. Suggestions by parties for settlement of dispute:-

Each party may, on his own initiate or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

S.73. Settlement:-

(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the

conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them separately.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

S. 74. Status and effect of settlement agreement:-

The settlement agreement shall have the same status and effect as if it is an arbitral award on the agreed terms on the substance of the dispute rendered by an arbitral tribunal under Section 30.

S. 75. Confidentiality :-

Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

S. 76. Termination of conciliation proceedings:-

The conciliation proceedings shall be terminated –

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

S. 77. Resort to arbitral or judicial proceedings:-

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

S.78. Costs:-

(1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section (1) “costs” means reasonable costs relating to

(a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(b) any expert advice requested by the conciliator with the consent of the parties;

(c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68;

(d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The cost shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by the parties shall be borne by the party.

S. 79 Deposits:-

(1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (2) of section 78 which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-sections (1) and (2) are not paid in full by both the parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

S. 80. Role of conciliator in other proceedings:-

Unless otherwise agreed by the parties.-

(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings;

(b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

S. 81. Admissibility of evidence in other proceedings:-

The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or any such proceedings relate to the dispute that is the subject of the conciliation proceedings,-

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.
