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Managing the docket explosion through the mode of Lok Adalat

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Abstract

There are about 2.83 crore cases pending in the courts in India as on date as per the data available with the Arrears Committee of the Supreme Court of India. This is leading to a situation where the result of the litigation virtually loses significance to the litigants. This results in the erosion of the credibility of the justice delivery system itself. The situation calls for novel methods to counter the problem. In this paper, an attempt has been made to underline the importance of one of the such methods, the Lok Adalat system in reducing the pendency before the courts while ensuring justice.

Keywords: Lok Adalat, Pendency, Alternate Dispute Resolution, Gram Nyayalayas Act, 2008, Legal Services Authorities Act, 1987.

Introduction

The quest for the justice has always been an ideal for all the societies of the human civilization. This search has led the humans to explore various modes of the dispute resolution as appropriate for a particular socio-political and economic set up of the human civilization. In the ancient times when the society was closely knitted having greater dependence amongst the individuals on the emotional and economic levels and the interaction with the outside communities was minimal the people living in the close society excluded from the outside world and communities used to look upto the persons who were superior in terms of either the material or knowledge within their society to resolve their disputes. It is for this reason that the ancient India had the systems of the village or tribal heads who used to perform the judicial functions.

With the gradual economic, political and technological developments achieved by the human race, the interaction among the human beings across the geographical and socio-political barriers increased and they became greatly affected with the events occurring even at the far off places. This also resulted in the refining of the legal system of all the societies who were in interaction with the other societies. The close and frequent interactions of the humans of different social, political, economic and legal systems also led to the universalisation of the basic legal principles across various societies. However, this universalization still was not sufficient enough to quench the everlasting thirst of the humans for the ultimate justice. The various legal systems of the societies dispersed in temporal and spatial differences were a reflection of the political, social and economic systems around them. Thus, the tribal societies were having a justice delivery system based on the patriarchal supremacy where the person having the larger experiences in the affairs of the world was unanimously assigned the task of dispensing the justice. With the organisation of the society in a comparatively better and formal political system of the strong monarchy or the feudalism it was the king or the feudal lords who were accepted as an institution of the justice delivery. The groups who used to deal frequently amongst each other and where the kinds of the disputes were repetitive in nature developed their own adjudicatory mechanism. This was aimed at the expeditious, effective, expert and cheaper justice delivery. Thus, we had the traders organisations named as *kula*, *sreni* and *gana* which were the dedicated organisations for the disputes resolution for a particular trade. Similarly the village panchayats were entrusted for the dispute resolution arising amongst the villagers.

With the implementation of the common legal and judicial system throughout the country with the advent and consolidation of the British Empire, the traditional dispute resolution

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mechanisms endemic to the natives of India were side lined and the British system of justice delivery was proclaimed as the only scientific and the technical system. However, the blind following of this foreign system even after the independence, led to its own problems which at the present times have grown to such a large extent that they are eating away the very system from which they have arose. The large pendency of the cases in the courts, expensive courts and their procedures, ever increasing distance between a common man and the courts in terms of the physical, technical and monetary terms have called for modern methods of justice delivery. Such modern methods are termed as Alternative Dispute Resolution (ADR) as they are not in exclusion to the existing western legal system but are complementing the same. The Lok Adalats are one of the components of the ADR mechanism.

Lok Adalat

The term 'Lok Adalat' as the very name suggests, means, People's Court. "Lok" means 'people' and "adalat" standing for the 'court'. Thus it is a court of the people. The concept of Lok Adalat is nothing but a reinvention and reemphasizing the traditional concept of village panchayats. The need for the concept of Lok Adalat can be traced aptly to the phrase, *Justice delayed is Justice Denied*. There have been estimated about 3.5 crore cases which are pending in various courts and tribunals across the country and some of such cases have been argued and appealed for more than 20 years^[1]. At the end of 2008, the arrears of civil and criminal cases pending disposal in the various High Courts were 38,74,090. Out of which cases 31,03,352 are civil and 7,70,738 were criminal cases^[2]. In the subordinate courts the total pendency at the end of 2008 was 2,64,09,011. Out of which 1,88,69,163 are criminal and 75,39,848 civil cases^[3]. This overcrowding of the docket has resulted in considerable delay in dispensing of the justice and has further resulted in the erosion of the public trust and confidence in the justice delivery system. In such a scenario, the recourse to the Alternative Disputes Resolution Methods is not only logical but also prudent to upkeep the faith and trust of the citizens in the justice delivery system of India. Thus, the importance of the Lok Adalats as one of the agencies of the ADR mechanism which has many advantages over the traditional established courts. It is not the position that the British Legal System which we have adopted in the independent India has entirely altogether ignored the ADR system. In *sitanna v. Viranna*^[4], the Privy Council affirmed the decision of the Panchayat and Sir John Wallis observed that the reference to a village panchayat is the time-honoured method of deciding disputes.

Genesis of Lok Adalats

The entire system of Lok Adalats revolves around the concept of promoting justice. Justice is not an isolated term to be considered in vacuum. It has got its significance when

it is associated with its political, social and economic connotations. The latter two aspects of the justice are addressed by the Lok Adalats which, as discussed above in the paper, are aimed at the dispute resolution at the lowest cost possible and also the dispute is resolved with the consent of all the parties to the dispute, thus maintaining the social relations and putting a permanent end to the dispute in question. Access to the justice is not merely the physical ease of access to the courts of law but as observed by Prof. Upendra Baxi, it is the ability to participate in the judicial process^[5]. The Lok Adalat originated out of the failure of the Indian Legal System to provide, fast effective and affordable justice. At the time of institution of a particular case, the persons filing the same are not sure whether they will be able to live to see the final outcome of the case. Each trial involves the jugglery of the procedural and substantive law compounded by the efforts of the bar to prolong the trials for the vested interests. In such a scenario, a common person who is actually a sufferer and the victim is afraid to visit the courts. The courts become the haven of the persons who are well off in terms of money and material resources who get the premium on by filing the false and frivolous litigations and to enjoy the properties as the final disposal of the case takes years. Recently a retiring High Court Judge in his farewell speech has sadly commented that in India to get effective justice one needs feet of steel and arms of silver^[6]. This aptly summarizes the state of the Indian legal system. This delay in dispensing of the justice and difficulty in access to the justice is a serious threat not only to the Indian legal system but to the Indian democracy as well as the faith of the common man in the legal system of the country is one of the prerequisite of the democracy. In addition to its hyper technical nature in substance and the practice our legal system also suffers from its detachment from the common masses. A common man does not connect to the courts and their procedures which remain the domain of the few of the persons well versed in the law. In addition thereto, the Indian legal system is acutely overburdened and understaffed. As per a report the ratio of judges in India is merely 12-13 per one million of the population^[7]. It is this desire to get a fast, effective and affordable justice which has led the people towards the methods of the Alternative Disputes Resolution, Lok Adalats being one of them.

The beginnings

The first Lok Adalat was held in the year 1982 in the village of Una, District Junagadh, Gujarat, the land of Mahatma Gandhi^[8]. It was a remarkable success and it led to the replication and refinement of the process. The modern version of the Lok Adalats as it exists today was first held in Chennai in the year 1986. Subsequently, the Committee for Implementing Legal Aid Schemes (CILAS) constituted by the Ministry of Law and Justice, Government of India in 1980 recommended the establishment of Lok Adalat. The

⁵ Upendra Baxi "Access, Developmen and Distributive Justice-Access Problems of the Rural Population", Journal of the Indian Law Institute, July-Sept. 1976, no.3 at 376.

⁶ Farewll speech of justice V.S. Aggarwal available on <http://www.indianexpress.com/news/mp-hc-judge-says-sc-judge-got-him-moved-out-of-delhi/992931/>, last accessed on 13.09.2012 at 2:00 pm.

⁷ Committee on Reforms of the Criminal Justice System (Malimath Committee Report),at p.19 available on http://www.mha.nic.in/pdfs/criminal_justice_system.pdf, last accessed on 13.09.2012 at 4:45 pm.

⁸ Sourced from http://en.wikipedia.org/wiki/Lok_Adalat, last accessed on 13.09.2012 at 8:00 am.

¹ The speech of the Chief Justice of India over the large pendency, available at <http://timesofindia.indiatimes.com/topic/Chief-Justice-of-India/news/>, last visited on 12.09.2012 at 10:15 pm.

² Data taken from the report in the newspapers, available at <http://www.indianexpress.com/news/cji-to-discuss-resolution-of-pending-cases/502097/>, last visited on 12.09.2012 at 10:25 pm.

³ Ibid.

⁴ AIR 1934 SC 105.

system got the statutory recognition under the Legal Services Authorities Act, 1987 which was enacted and implemented to give effect to the mandate of the Directive Principles as contained in Part-IV of the Constitution of India^[9]. The beauty and specialty of this mode of ADR is that it enables a citizen to vent off his grievances at the time of the dispute resolution against the opposite party, which on many occasions is the government or the State Agency. Thereafter, the settlement is arrived at between the parties with consent of all the stakeholders and at the mutually agreeable terms. This mutuality of the terms of the settlement results in the final conclusion of the dispute as it extinguishes the possibilities of any appeal against the decision as it is the decision of all involved in the process. Thus, in addition of easing the workload of the lower and subordinate judiciary, the Lok Adalats also result in reducing the pendency in the superior/appellate courts, enabling them to attend the more serious disputes involving the interpretations of law and constitutional points.

The mode of the ADR in general has been recognized by various legislative and constitutional enactments. The ultimate law of the land that is the Constitution of India gives the direction to the State to ensure to all its citizens the social, political and economic justice^[10]. The Article 39A also mandates the operation of the legal system so as to ensure the comprehensive justice to all the citizens of India. In addition thereto, the Constitution further directs the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice – social, economic and political shall inform all the institutions of national life^[11]. It is this Constitutional mandate that has impelled the legislature to enact various legislative provisions in several legislations which signify the importance of modes of ADR to be adopted in the trial of the cases falling within the purview of these legislations. Thus, we see that the Code of Civil Procedure, 1908 as amended in 2002, has introduced conciliation, mediation and pre-trial settlement methodologies for effective resolution of disputes^[12]. Similarly, the Industrial Disputes Act, 1947 provides for conciliation and arbitration for the purpose of the settlement of disputes^[13]. The Hindu Marriage Act, 1955 mandates the duty on the Courts that before granting any relief under the Act, the Court shall in the first instance, make an endeavor to bring about reconciliation between the parties, where it is possible according to nature and circumstances of the case^[14]. The Family Courts Act, 1984 was enacted to provide for the establishment of the 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^[15]. The Gram Nyayalayas Act, 2008 provides for the establishment of the Gram Nyayalayas at the grass roots level for the purpose of

providing justice to the citizens at their doorsteps. This is another initiative from the Indian State to bring the justice to the doors of the people to ease their access to the formalized legal system.

The Formal Structuring and Functioning of the Lok Adalat System:

A separate Chapter has been incorporated and dedicated in the Legal Services Authorities Act, 1987 to deal with the organization, cognizance, power and procedures relating to Lok Adalats and the effects of the settlements arrived before the Lok Adalats. The Act empowers each State Authority, the Supreme Court Legal Services Authority, the High Court Legal Services Authority and the Taluk Legal Services Committee to organize Lok Adalats at such places and intervals as they think fit^[16]. Permanent Lok Adalats may be established at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification^[17]. The concerned Authority or Committees are empowered to organize Lok Adalats and to select the members for the Lok Adalat consisting of retiring or serving judges. The power to prescribe qualification for the members of the Lok Adalat is vested with the Central Authority for Lok Adalats organized by the Supreme Court Legal Services Committee and with the State Governments for other Lok Adalats at the State level^[18]. The jurisdiction vested with the Lok Adalat is stated in wider terms under the Act which provides that a Lok Adalat shall have the jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any case pending before or in any matter which is falling within the jurisdiction of, and is not brought before the Court for which the Lok Adalat is organized, provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence which is not compoundable under any law^[19].

It is the duty of the State Legal Aid and Advisory Boards or the District Legal Aid Committees to organize the Lok Adalats. The members of the Lok Adalats are called as 'Conciliators' who may be drawn from the serving or retired judicial officers as well as from other walks of life. The number of the members is to be determined by the organizing authorities. The qualification and experience required for being a member is to be prescribed by the Central government in consultation with the Chief Justice of India where the Lok Adalat is organized by the Supreme Court of India. Where the same is organized by the State and District Legal Authorities the qualifications and the experience are to be laid down by the State Governments with the consultation of the Chief Justices of the High Courts^[20]. The legal aid committee concerned announces a date for organizing a Lok Adalat at least one month in advance. It also determines the cases to be taken up in the Lok Adalat. The district and sessions Judge who, in most of the states, is the Chairman of the district legal aid boards, directs the subordinate judges of the area to be covered by the Lok Adalat to prepare a list of pending cases which they consider suitable for negotiation.

⁹ Article 39A of the Constitution of India as amended in February, 1987 reads: "The State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability."

¹⁰ Preamble to the Constitution of India.

¹¹ Article 38, the Constitution of India.

¹² Section 89, Code of Civil Procedure, 1908.

¹³ Section 4, 5 and 10A, Industrial Disputes Act, 1947.

¹⁴ Section 23(2), the Hindu Marriage Act, 1955.

¹⁵ Section 9, Family Courts Act, 1984.

¹⁶ Section 19, of the Legal Services Authorities Act, 1987.

¹⁷ Ibid; Section 22B (1).

¹⁸ Ibid; Section 19(2).

¹⁹ Ibid; Section 19(5).

²⁰ Ibid; Section 3.

Similarly, the District Magistrate or Deputy Commissioner or Collector, as he is known in some places instructs his subordinate officers to prepare a list of revenue and executive cases to be settled in the Lok Adalat. The cases may pertain to civil, revenue and compoundable criminal disputes. For the labour and industrial disputes, sometimes, different courts are organized since such disputes are of different nature and a camp has to be held in the town or the city where industries are located. But sometimes, such cases are also taken up along with other cases. For the selection of cases *fit for compromise*, there has been no hard and fast rule. It is the responsibility of the subordinate judges to select the cases in which a compromise is possible. After the list of cases is prepared, the cases are analyzed and consolidated under various heads to which the group of cases pertain and substance of each case is recorded in a proforma, that can be used for reference, verification and correspondence later on. Notices are then issued with the assistance of legal aid boards, social action groups and social organizations. Discussions take place and efforts are made for a negotiated settlement. The process of settlement, thus, goes on for about a month.

On the specified day of organizing the Lok Adalat, the parties to the dispute assemble at the predetermined place. The place may be in some village, or other area, a school or college or even Court Premises, where the legal aid teams are accessible to resolve the disputes of the people by reconciliation and compromise. The teams usually consist of retired judges, spirited public men and voluntary social organizations and elders of the locality, who are informed with the spirit of service and are adept in bringing about rapprochement between parties by way of appropriate guidance and persuasion.

Advantages of the Lok Adalats

The benefits that litigants derive through the Lok Adalats are many. First, there is no court fee and even if the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat.

Secondly, there is no strict application of the procedural laws and the Evidence Act while assessing the merits of the claim by the Lok Adalat. The parties to the disputes though represented by their advocate can interact with the Lok Adalat judge directly and explain their stand in the dispute and the reasons therefore, which is not possible in a regular court of law.

Thirdly, disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat.

Fourthly, the decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat whereas in the regular law courts there is always a scope to appeal to the higher forum on the decision of the trial court, which causes delay in the settlement of the dispute finally. The reason being that in a regular court, decision is that of the court but in Lok Adalat it is mutual settlement and hence no case for appeal will arise. In every respect the scheme of Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost. To conclude, the mode of Lok Adalat is a mode of Alternative Dispute Resolution which results in a faster and inexpensive remedy with legal status.

The system has received laurels from the parties involved in particular and the public and the legal functionaries, in general. It also helps in emergence of jurisprudence of peace in the larger interest of justice and wider sections of society. Its process is voluntary and works on the principle that both parties to the disputes are willing to sort out their disputes by amicable solutions. Through this mechanism, disputes can be settled in a simpler, quicker and cost-effective way at all the three stages i.e. pre-litigation, pending-litigation and post-litigation.

Overall effect of the scheme of the Lok Adalat is that the parties to the disputes sit across the table and sort out their disputes by way of conciliation in presence of the Lok Adalat Judges, who would be guiding them on technical legal aspects of the controversies.

The scheme also helps the overburdened Court to alleviate the burden of arrears of cases and as the award becomes final and binding on both the parties, no appeal is filed in the Appellate Court and, as such, the burden of the Appellate Court in hierarchy is also reduced. The scheme is not only helpful to the parties, but also to the overburdened Courts to achieve the constitutional goal of speedy disposal of the cases. About 90% of the cases filed in the developed countries are settled mutually by conciliation, mediation etc. and, as such, only 10% of the cases is decided by the Courts there. Our country has number of Judges disproportionate to the cases filed and, hence, to alleviate the accumulation of cases, the Lok Adalat is the need of the day.

Lok Adalats- A Critique on the System

The system of Lok Adalat is not without limitations. Conflicting views have been expressed on the advisability of the new institution of Lok Adalats. They are meant to supplement the judicial process and not to supplant it. Also it is being said that when conciliation becomes the norm, people's attitude to resort to court will change. On the other hand, it is being suggested that with the giving of statutory basis, the informality of Lok Adalat will disappear and every technicality that bogs down regular courts will creep into the Lok Adalats and a parallel court system under a different label may emerge. The permanent Lok Adalats are conciliation-cum-arbitration tribunals to settle disputes between selected public utility service and individuals. It appears that recourse to these tribunals in preference to civil court is unlikely. Public utility services would rather compel the private parties to have recourse to legal redress instead of, they themselves seeking it and private parties likely to prefer civil courts, to these new institutions. In consequences, these new institutions might be of very little use in reducing the burden of courts. There are many other loopholes of the system. The adjudication before a Lok Adalat is by consent, if one party does not agree, the case goes back to the court. If there is no consent, there is no decision and the entire procedure fails. The entire procedure of organising, conducting and awarding of Lok Adalat is becoming rigid especially after the enforcement of the Legal Services Authorities Act, 1987 and the initially expected and the desired flexibility in the system is missing from the entire procedure which might result in the people's disinclination towards the mode of Lok Adalat. The anxiety of the litigants to settle their disputes without the vexation of court sometimes might lead to the litigations being exploited by the opposite parties and even by some lawyers. The person who claims the compensation would have been

exhausted by the years of litigation. It might be easy to make him agree to the payment of 'contingency fee' to his lawyer and to accept an amount which is much lower than his due. After the settlement, the lawyers may take a major chunk of the amount as 'contingency fee'. Although taking contingency fee is prohibited in our country, it is being practiced by some lawyers. The goal of the Lok Adalat is to affect a compromise but in mass scale disposal of cases in Lok Adalats, it is difficult to expect that compromise settlements of mutual benefits would be searched for. The legislation has given the judiciary an almost exclusive role in the responsibility of organising Lok Adalats and directed the observance of norms the judiciary has to adhere to in adjudication. There is little role for people especially trained in negotiation, mediation and conciliation and this has resulted into the increasing belief among the common man that the Lok Adalat is just the extension of the formal justice delivery system and the same is also suffering from the maladies of the latter. Sometimes in the name of the speedy resolution of the disputes the fair interests of the parties are sacrificed. The case of *Manju Gupta v. National Insurance Company* ^[21], demonstrates the sad state of compromises and settlements in Lok Adalats denying the fair minimum claims of the petitioners. The Motor Vehicle Act, 1988 emphasis on speedy resolution of the claim but due to inordinate delay the claimants settle at the lowest compensation with the insurance companies. A major drawback of Lok Adalats is that its emphasis is on a compromise or settlement between the parties. If the parties do not arrive at any compromise, either the case is returned to the court of law or the parties are advised to seek remedy in a court of law. No future options apart from the traditional Courts of law are tried to be evolved from the process of the Lok Adalats wherein the negotiations between the parties have failed. Some sections of the society also feel that the over emphasis on this mode of dispute resolution has led to the inflation of the number of the cases which are settled through the mode of the Lok Adalat as the cases which are in fact settled through the judicial intervention or by the parties through out of the court negotiations are often referred to the Lok Adalats where nothing is done with respect to these cases just with an objective of satisfying the competition among various authorities as to which authority has a highest number of the cases settled through Lok Adalats.

Summation

The large population of India and the illiterate masses have found the regular dispensation of justice through regular courts very cumbersome and ineffective. The special conditions prevailing in the Indian society and due to the economic structure, highly sensitised legal service is required which is efficacious for the poor and ignorant masses. The *Lok Adalat* movement is no more an experiment in India. It is now a success and needs to be replicated in matters which have not yet been under the domain of *Lok Adalat*. May be some brainstorming on the part of law makers, judges, lawyers and teachers would result in some modifications so that the same model can be used effectively in business disputes. At present there is an urgent need to have an alternative dispute resolution for business disputes which is as good as the model of *Lok*

Adalats. Moreover, there is a need to use the techniques used in *Lok Adalat* in conflicts related to public issues where the number of players is quite large and in most of the matters the government is also involved in one way or the other.

Lok Adalats have to reinvent after almost six months to meet the challenges faced by the judiciary. The new branches of law will require newer tools to have decisions acceptable to the litigants. As new branches emerge aspirations are very high. Let us be hopeful that the Lok Adalat movement carried on in India with such a zeal and enthusiasm shall be able to achieve its goals and objectives in future times and be able to serve the Indian masses in their voyage for justice at an affordable price both in the term of the money and distance.

References

1. Ahmed Khan, Sarfaraz, Lok Adalat. An Effective Alternative Dispute Resolution Mechanism; A.P.H. Publishing Corporation, 5, Ansari Road, Darya Ganj, New Delhi, 110002, 2006.
2. Johari JC. The Constitution of India: A Politico-Legal Study; sterling Publishers India Ltd. A-59, Okhla Industrial Area, Phae-II, New Delhi-110020, 2004.
3. Singh Amita. Strengthening Governance through Access to Justice; PHI Learning Pvt. Ltd., M-97, Connaught Circus, New Delhi-110001, 2009.
4. Singh Mahendra P. Constitution of India; (Edt. 10); Eastern Book Company, 34, Lalbagh, Lucknow-226001, 2006.
5. Singh Ravi Kiran. Dispensation of Justice: Role and Accountabilities of Judges and Advocates; Deep and Deep Publications Pvt. Ltd. F-159, Rajouri Garden, New Delhi-110027, 2004.
6. The Fourth Annual Report. The Delhi Legal Services Authority; New Delhi; August, 2008.
7. The Hindu, (daily), New Delhi.
8. Bhatt Jitendra N. A Round Table Justice through Lok-Adalat (Peoples' Court) - A Vibrant-ADR-In India; Supreme Court Cases, 2002; (1):11.
9. Lahoti RC. (former Chief Justice of India); Envisioning justice in the 21st Century, Keynote address delivered at the Conference of the Chief Ministers of States and the Chief Justices of High Courts, Vigyan Bhavan, New Delhi on, Supreme Court Cases, 2004; (7):13.
10. Patil Dr GB. Lok Adalat: Revolutionary Evolution of Resolution of Disputes; All India Reporter; 2012; (4):49.
11. <http://books.google.co.in>
12. <http://dlsa.nic.in/>
13. <http://www.napsipag.org>
14. <http://www.scribd.com>
15. www.thehindu.com