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Lok Adalats: An Instrument of Distributive Justice

LOK ADALATS: AN INSTRUMENT OF DISTRIBUTIVE JUSTICE

by

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Peace is the sine qua non for development. Disputes and conflicts dissipate valuable time, effort and money of the society. It is of utmost importance that there should not be any conflict in the society. But, in a realistic sense this is not possible. So, the next best solution is that any conflict which raises its head is nipped in the bud. With the judicial system in most of the countries being burdened with cases, any new case takes a long time to be decided. And till the time the final decision comes, there is a state of uncertainty which makes any activity almost impossible. Commerce, business, development work, administration, etc., all suffer because of long time taken in resolving disputes through litigation.¹

To get out of this maze of litigation, courts and lawyers chambers in most of the countries encourage alternative methods of disputes resolution. India has a long tradition and history of such methods being practised in the society at grassroot level. These are called panchayats and in the legal terminology, these are called arbitration. These are widely used in India for resolution of disputes-both commercial and non-commercial. Other alternative methods being used are Lok Adalat (People's court), where justice is dispensed summarily without too much emphasis on legal technicalities.²

Lok Adalat as the very name suggests means people's court. "Lok" stands for people and the vernacular meaning of the term "Adalat" is court. However, it is not a "Court" as understood by the common people though; they may call it by that name. There is hardly anything common between the law courts and the Lok Adalats, except that both are tools in the legal system to deliver justice. However, the difference between the two is that a law court sits at its premises, where the litigants come with their lawyers and witnesses to seek justice,³ whereas, Lok Adalat is a kind of forum provided to the interested parties to arrive at a compromise between them. In order to ensure that the settlement is fair and according to law, the forum



may consist of legally trained people who are respected in the community, where the Lok Adalats are constituted. Their function is not to act as a judge of law court but enable the respective parties who voluntarily seek the Adalat's intervention to understand their respective rights and obligations with reference to the disputes brought before it. They don't judge the issues. Their role is to clarify the law and by gentle persuasion convince the parties, how they stand to gain by an agreed settlement. It is thus, a forum where settlement of disputes between the parties is made through conciliatory and persuasive efforts.⁴

The admirable fact is that the institution of Lok Adalat has its origin not in any statutory law but it is a Para-judicial institution being developed by the people themselves as "*participatory instrument of democratic judicial making*" It may be termed as a child of necessity. The genesis of this institution can be said to lie in the

Reports of three different expert Committees set up by the Central Govt. and by the Govt. of Gujarat to make recommendation for improving justice delivery system and provide expeditious and cheap legal services to the poor.⁵ As a result of the recommendations of these Committees, the Central Govt. constituted a Committee in 1980 popularly known as Committee For Implementing Legal Aid Schemes (CILAS) to evolve appropriate structure and procedures with a view to achieve an equal justice for all. Thus, it was under auspices of this Committee headed by *P.N. Bhagwati*, C.J. that the unique institution of Lok Adalat was first experimented.⁶

The idea of Lok Adalat is based on the ancient panchayat system, where elders used to settle the disputes in public. It is a forum which is an another alternative to Judicial Justice or Panchayat Justice. This is a recent strategy for delivering speedy justice to the common man by way of settling the disputes which are pending in the courts and also those which have not yet reached the courts, by negotiation, conciliation, and by adopting persuasive, common sense and human approach. Here, the amicable settlements by the Lok Adalats are not necessarily according to the legal principles. It implies participatory justice in which people and judges participate and resolve their disputes by discussions and mutual consent⁷. It is an additional arm for the existing judicial system. It endeavours to restore the confidence of a common man in the judicial system and contemplates the justice where strict provisions



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of the Evidence Act, the Limitation Act, the Criminal Procedure Code and the Civil Procedure Code are not rigidly followed, and are relaxed whenever necessary for meeting the ends of justice. It hears and settles the disputes in the language of the people, in the public presence.⁸

It is evident from Indian legal history that India, even after independence followed the British system of paper justice and did not turn to real justice through our panchayat system. No civil court takes the pain of inspecting thoroughly the matter in dispute and swiftly comes to findings on the question in dispute. It is because the courts merely follow the paper based procedure, to record evidence of parties in the court, and in order to find out truth if it can be found in the heaps of false evidences of both sides recorded by them. Most of the criminals are acquitted due to non-availability of evidence. Just as paper flowers have no smell, the paper justice seldom displays real justice up to the Supreme Court, but real justice is actually buried in the paper justice. Stay orders or adinterim injunctions may be swiftly made if the courts of the original side if their look for themselves the properties in dispute; but this paper justice has occasioned corruption even in the most pious judicial system of the country.⁹

Whatever may be the cause of long delays in disposal of cases in courts, the poor persons and those who are legally or socially handicapped, have to stoop down to a compromise, since they feel that it is wise to accept an half than to loose the whole. To overcome such problems establishment of the institution of Lok Adalats proved a boon to such persons who are incapacitated to have access to the institutions of justice¹⁰.

In fact, Lok Adalat is a voluntary institution and is itself a direct outcome of an activist approach of the judiciary. It is a judge inspired, judge induced and judge aided strategy devised with an aim to provide quick and cheap justice so as to reduce the backlog of cases pending in the law courts. There is no denying the fact that the present system of administration of justice has become inadequate to meet the needs of time. It has badly failed to keep pace with the aspirations of the people. The system is cracking and is virtually on the verge of collapse¹¹. *Pandit Nehru* rightly summed the

whole situation in the following words:—

We must realise that 19th century system has passed away and has no application to present day needs..... It has to give away and be scrapped as obsolescent material¹².



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In the light of the observation made by *Pandit Nehru*, late *Rajiv Gandhi*, the former Prime Minister of India, rightly concluded that Lok Adalats are a major breakthrough in the judicial system of the country. Times have now come when the Indian judiciary must be rationalised to the tune of time and accept the reality; otherwise we are fast approaching a stage where the case load is so heavy that it will crush the present judicial system. Unless, this problem is tackled intelligently and cautiously, the litigants might be gripped with a sense of frustration and would lose confidence in the judiciary¹³.

The concept of Lok Adalat was started initially in Gujarat in March, 1982 and now it has been extended throughout the country. The reasons to create such an institution were to lower down the burden of courts and to give relief to the litigants who were in queue to get justice. Seekers of justice are in millions and it is becoming rather difficult for the courts to cope with the ever increasing cases which are pending with the present infrastructure and man power. Courts are clogged with cases. There is serious problem of overcrowding of dockets. Because of the ever increasing number of cases the court system is under great pressure. Therefore, if there, was at the threshold a permanent mechanism or machinery to settle the matters at a pre-trial stage, many matters would not find their way to the courts. Similarly, if there are permanent forums to which courts may refer cases, the load of cases could be taken off the courts. In order to reduce the burden of the courts or to reduce the heavy demand on court time, cases must be resolved by resorting to "*Alternative Dispute Resolution*" methods before they enter the portals of court¹⁴.

Here comes the performance of Lok Adalats and which have showed its significance by settling huge number of pending cases. Except matters relating to offences, which are not compoundable, a Lok Adalat has jurisdiction to deal with all matters which are pending or at pre-trial stage, provided a reference is made to it by a court or by the concerned authority or committee. Parliament enacted *the Legal Services Authorities Act, 1987*. One of the aims of this Act is to organise Lok Adalats to ensure the speedy justice on the basis of an distributive justice.

The surprising growth in the arrears of cases has compelled the members of Law Commission of India to deliberate on the revival of indigenous legal system and recommended its restructuring to provide a new model or mechanism for resolving disputes on the principles of participatory justice. A need has been felt for decentralisation of the system of administration of



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justice to reduce the volume of a work. The most glaring malady which has really afflicted the justice system is the tardy process and the inordinate delay that takes place in the disposal of cases. The former Chief Justice, *E.S. Venkataramiah* once rightly observed:

The problem of delay and backlog was likely to put the functioning of Constitutional Government in disarray¹⁵.

The alarming position of pending cases in courts at all levels lowest to the highest has really belied one's faith in the present legal system. Thus, the judicial revolution envisioned by the founding fathers is long overdue. Moreover, British-Indian Justice is modeled on English wigs and gowns and has a limited scope in the light of prevailing circumstances of Indian society. It, of course, could owe loyalty to imperial values rather than to the values of the people of India who have been nourished in the different climate from the day they took birth on the Indian soil. The intention of judicial revolution is, therefore, very much present in Article 39-A of the National Charter. It explicitly states:

State shall secure that the operation of legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislations or schemes or any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities¹⁶.

The founding-fathers of the Constitution knew it very well that people of India live in the bullock-cart age, except that the case load is so heavy that the court-cart is grinding to a halt. They thus, realised that the overhauling of judicial process is the need of the hour. *Nehru* has rightly summed up the whole situation in the following words:

We must realise that the 19th century system has passed away, and has no application to present day needs. The lawyer's view so prevalent in India of proceeding from precedent to precedent is of little use when there are no precedents. We cannot put a bullock-cart on rails and call it a railway train. It has to give way and be scrapped as obsolescent material.¹⁷

Moreover, the founding fathers of the constitution had in their mind a fear that a Government found on injustice can hardly stand. They thought that the integral Yoga of justice was basic to Swaraj. To explain their mind, one may refer a few lines of Robert G. Ingersoll. To quote him:

A Government founded upon anything except liberty and justice



cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities, and all the nations that have passed away all are warning that no nation founded upon injustice can stand. From the sand-enshrined Egypt, from the marble wilderness of Athens, and from every fallen, crumbling stone of the once might Rome, comes a wail as it were, the cry that no nation founded upon injustice can permanently stand¹⁸.

In the light of fear displayed by *Robert G. Ingersoll*, the makers of the Constitution have endeavoured to innovate the philosophy of justice to salvage the masses of victim to make "assurance doubly sure". Article 38 have been envisaged in the Charter obliging the State 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, informs all the institutions of national life. In order to accomplish the goal of imparting justice to all, the judicature has been made a paramount institution of national life and assigned a major role to work as an active member of the trinity of State instrumentalities. That is why Article 38 obligates the court to be an activist in redeeming its functional trust with the constitution which is its very creator and power-conferor¹⁹.

Moreover, the cry for equality of opportunity for the underprivileged and weaker sections of the society is being increasingly heard these days and this demonstrates the importance of the notion of distributive justice in modern consciousness.

Distributive justice embraces "the whole economic dimension of social justice, the entire question of proper distribution of goods and services within the society". It demands equality in the distribution or allotment of advantages or burdens. The advantages or burdens which are to be distributed are of numerous kinds such as wages, taxes, property, punishments, individual or social performances or rights and duties as allocated and apportioned by the legal system. Distributive justice aims to strike a balance in the socio-economic structure of the society to bring equipoise between the conflicting desires, interests and claims of the individual citizens. Justice P.N. Bhagwati succinctly explains distributive justice as under:—

When I talk of justice, I mean not commutative justice but distributive justice, justice in depth, justice which penetrates and destroys inequalities of race, sex and wealth, justice which is not confined to a fortunate few, but takes within its sweep the entire people of the country, justice which ensures



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equitable distribution of the social, material and political resources of the community. This is the kind of justice which we in India are trying to realise through the process of law and our substantive law is being, geared to this task²⁰.

Justice V.R. Krishna Iyer visualises it as a "special concern for the backward human sector of the lowliest and the lost, and activist, affirmative state action for their advancement as a democratic imperative, plus the organisation of a sensitive and creative milieu which offers, as of right, social, economic and cultural opportunities, dignity of personhood and individuality to every human, regardless of seeming or real disparities to unfold his full mental, moral and physical potential²¹".

Distributive justice means justice to all and not to a few or a favoured class. It does not introduce class conflicts, but seeks to improve and harmonise the society with a view to avoid the socio-economic imbalances. The readjustment of social claims may involve a transfer of resources from one section of the society to another, but the transfer is only an equitable reallocation of the resources and not a destruction of the structure itself. Distributive justice demands preferential treatment of the weaker sections of the society, but that is only to correct the imbalances existing in the society and not to cause unnecessary harassment or injustice to the advanced sections thereof. Thus, it seeks to remove the imbalances in the social, economic and political life of the people. There cannot be distributive justice unless the society progresses in all the directions. In short distributive justice helps to bring about a just society²².

The right to distributive justice may be defined as the right of the weak, aged, destitute, poor, women, children and other underprivileged and downtrodden segments of the society to the protection of the State against the ruthless competition of life. It seeks to give adventitious aids to the underprivileged, so that they may have an equal opportunity to compete boldly with the more advanced sections of the society. It is a bundle of rights; in one sense it is carved out of other rights; in another sense, it is a preserver of other rights. It is the balancing wheel between the haves and have-nots²³.



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The dynamics of distributive justice through the judicial process is thus, constitutional fundamental and embraces the weak and the meek, the suppressed and the repressed who are the real consumers. That is why Article 39-A brings out vividly what lay latent in the womb of Article 14 so far as the philosophy of equal justice is concerned. Gradually the emphasis has shifted from analysis of justice tout court to that of distributive justice. This is because modern social and economic developments have made it clear that individual justice, justice between the wrongdoer and the victim is only a partial and incomplete form of justice and it is in the notion of distributive justice i.e. rendering to each man his due, the essence of justice lies. The development of the welfare State is generally thought of as an application of the notion of distributive justice²⁴.

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¹ Anurag K. Agarwal, "Strengthening Lok Adalat Movement in India", AIR March (Journal Section) 33 (2006).

² Anurag K. Agarwal, "Strengthening Lok Adalat Movement in India", AIR March (Journal Section) 33 (2006).

³ N.R. Madhava Menon, "Lok Adalat: People's Programme for Speedy Justice", Indian Bar review, Vol. 13(2), 129 (1986).

⁴ Legal Aid Newsletter, Vol. X, May to August 15 (1990).

⁵ The Report on Processual Justice to the People, 15 (1973).

⁶ K.M.H. Rayappa, "Lok Adalat: Objectives, Prerequisites, Strategies and Organisation", Indian Bar review, Vol. 14, 712 (1987).

⁷ Paras Diwan, "Justice at the Door-Step of the People: The Lok Adalat System", AIR (Journal Section) 85 (1991).

⁸ M.N. Morje, "Lok Adalat", AIR (Journal Section) 68 (1984).

⁹ O.P. Tiwari, Lok Adalat, 6 (2002).

¹⁰ O.P. Tiwari, Lok Adalat, 6 (2002) at 7.

¹¹ P.N. Bhagwati. Quoted in M.G. Chitkara, Lok Adalats and the Poor, 100 (1993).

¹² P.N. Bhagwati. Quoted in M.G. Chitkara, Lok Adalats and the Poor, 100 (1993) 79.

¹³ Quoted in Nomita Aggarwal, Handbook on Lok Adalat in India, 3 (1991).

¹⁴ R.C. Lahoti, "Envisioning Justice in the 21st Century", (2004) 7 SCC J-13.

¹⁵ *Srinivas Gupta, Judicial Delays v. Right to Speedy Trial*, 32 (1992).

¹⁶ Sujan Singh, Legal Aid: Human Right to Equality, 148 (1998).

¹⁷ Quoted in V.R. Krishna Iyer, "Judicial Perestroika", Illustrated Weekly of India, 50 (1989).

¹⁸ Quoted in V.R. Krishna Iyer, Equal Justice and Forensic Process: Truth and Myth, 50 (1986).

¹⁹ Quoted in V.R. Krishna Iyer, Equal Justice and Forensic Process: Truth and Myth, 50 (1986) at 14.

²⁰ Quoted in S.K. Sharma, Distributive Justice under the Indian Constitution, 45 (1989).

²¹ S.K. Sharma, Distributive Justice under the Indian Constitution, 46.

²² S.K. Sharma, Distributive Justice under the Indian Constitution, 46 (1989).

²³ S.K. Sharma, Distributive Justice under the Indian Constitution, 46 (1989)

²⁴ Sujan Singh, Legal Aid: Human Right to Equality, 148 (1998) at 216.

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