

## **ADRS and LokAdalat in India: Genesis and Functioning**

**DrPawan Kr Mishra<sup>1</sup>**

### **I.Introduction**

In every system of government, the effective justice delivery mechanism is a permanent and necessary condition of peace, order, civilization and governance of the country. Just as pollution poisons the physical atmosphere, the poor justice system poisons the social atmosphere. Equal and fair justice is the hallmark of any civilized society. It is the primary duty of State to ensure equal and even handed justice for all by regulating the dealings of citizens with one another, by checking disorder and high handedness of one class of people over others and by maintaining all those rights which are fundamental to the existence and upliftment of common man through establishing the effective administration of justice. Administration of justice means to adjudicate the rights and duties of individuals on the basis of rules laid down by the State. It makes efforts to provide the right to access to justice to all because access to justice from an independent and impartial agency in public law as well as private law is a recognized human right. Equal access to justice to the people through efficacious justice delivery mechanism is necessary for the existence of a democratic system.

### **II.Constitutional Provisions**

The Indian Constitution as a form of social document is a significant symbol of the hopes and aspirations of the people. It is intended by the makers of the Constitution that the law must belong to all, not, to those who use the constitution for unconstitutional ends. They were quite hopeful that the poor and needy must not be at the victims end but at the consumers end. Their aim was to wipe every tear from every eye and it is expected that law must go to eye and not compel the weeper to reach the urban-based lawyer and judge. In order to achieve this holy goal, the framers of the Constitution prescribed the mandate for social, economic and political justice, in its Preamble.

The philosophy of equality enshrined in Article 14 of the constitution

---

<sup>1</sup>Associate Professor of Law, School of Law and Governance, Central University of South Bihar, Gaya, Bihar

says that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. The provision of equality contains two principles of justice viz. equality before law and equal protection of laws. In the light of the principle embodied in Article 14, it is implied that aim of equality can be achieved only when the long established phenomena of inequalities and injustices in name of creed, caste, religion, status and wealth, are weeded out from the Indian society.

The spirit of Article 38 intends to secure to all its citizens, trilogy of justice-social, economic and political. In order to achieve the goal of trilogy of justice, Article 39A has been embodied in the Constitution of India with an intention to provide free legal aid and to strengthen equal justice to weaker section of society. Another important directive of the Constitution is Article 40 which is concerned with the distribution and decentralization of powers at village level. This Article says that the State shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as unit of self-government. The objective of this article is also to dispense justice at the doorsteps of all especially of villagers. In order to achieve this objective, the Law Commission<sup>14</sup> suggested that at village level the 'Nyaya Panchayats' should be constituted with the purposes<sup>2</sup> to provide expeditious justice to the villagers as well as for decentralization of the system of administration of justice. So, these provisions of the Constitution lay down emphasis directly or indirectly on the concept of justice and need of efficient and effective justice delivery system.

### **III. Alternative Disputes Resolution (ADR)**

The main objectives of ADR system are to render economical and speedy justice to the disputants, justice delivery system less cumbersome and easily accessible to the weaker sections of the society. ADR system is not intended to replace or supplant the courts of the land but it is in addition to the traditional judicial system and supplement to it for dispensation of justice. It has some instrumental and intrinsic functions; it is instrumental in so far as it enables amicable settlement of disputes through means which are not available generally to courts and intrinsic because it enables the parties themselves to settle their disputes.<sup>3</sup> Its focus is to avoid feudalistic

---

<sup>2</sup>. Preamble, Articles 14, 21, 38, 39A and 40.

<sup>3</sup>. Nomita Aggarwal, "Alternative Dispute Resolution: Concept and Concerns," 7 Nyaya Deep, 68 (2006)

approach and to harmonize the relationship between the disputing parties for an amicable settlement which must be occurred out of court by using the methods of mediation, arbitration, conciliation, LokAdalat and negotiation as dispute resolving techniques.

The positive aspects of ADR are that firstly, it involves parties directly, and the parties themselves address their problems and needs, secondly, it helps or prepares the parties to use their energy creatively and establishes a framework for developing options for finding solutions, thirdly, it makes disputants responsible for their own decision rather than having decisions imposed upon them. Therefore, the ADR system is informal which settles the dispute amicably outside the scope of the formal legal system so it may be called as an alternative means of settlement of disputes. It enables accessibility of justice to the disputants without much cost and delay.

#### **IV.Methods of ADR System**

It is evident that the ADR is an important mechanism for settlement of the disputes which adopts the Indian traditions during its proceeding. It has various methods such as arbitration, conciliation, mediation, negotiation and lokadalat. In this disputants can get justice by using any method of ADR. Section 89 of CPC lays down that 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 comments. As per sub-section (2) of Section 89, it is stated that when a dispute is referred to arbitration or conciliation, the provisions of Arbitration and Conciliation Act, 1996 will apply. When the court refers to matter to the LokAdalat, the Legal Services Authorities Act, 1987 will be applied and when the matter is referred to mediation, the court itself shall effect a compromise between the parties and shall follow such procedure as may be prescribed by the rules. The methods of the ADR are as discussed as below:-

- Arbitration:- The term ‘Arbitration’ means a settlement of a dispute by the decision of not a regular and ordinary court of law but of one or more persons who are called arbitrators.<sup>32</sup> In India, the arbitration and conciliation proceedings are conducted in accordance with the provisions of Arbitration and Conciliation Act,

1996.<sup>4</sup> In arbitration, first of all, the disputants appoints the arbitrators oftenly those who possess the specialization in the subject matter concern and who will act impartially and fairly. The appointed arbitrators initiate the arbitral proceedings by adopting the less formal procedure or such procedural rules which may be formed by the concerned parties. The arbitral tribunal provides the opportunity to each party to present, examine and argue the evidences before it. After the hearing of the parties, the tribunal endeavors to make an agreement among them on such dispute and if no settlement is possible, in such circumstances, the tribunal is empowered to decide the matter on the basis of evidences and arguments produced before it and pass the arbitral award as per law.

- Conciliation:- In India, the conciliation is other method of ADR system which is also conducted in accordance with the provisions ofthe Arbitration and Conciliation Act, 1996. But, the Act hasalso not defined the term ‘Conciliation’. Black’s Law Dictionarydefines – Conciliation as a settlement of a dispute in anagreeable manner, is a process in which a neutral person meetswith the parties to a dispute and explores how the disputemight be resolved. According to Halsbury’s Law of England,Conciliator is described as a person persuading parties to reachan agreement.<sup>5</sup> When the parties accept the settlement agreement and sign on it then the conciliator authenticate it. Then the agreement becomes final and binding upon the parties of the dispute. The conciliator during conciliation proceeding is not bound to follow the Civil Procedure Code and the evidence law. However, it is essential for him to apply the principles of objectivity, fairness and justice.<sup>6</sup>
- Mediation:- The term ‘Mediation’ connotes the act of a third party relating to the settling of a dispute between two contending parties. It is a non-binding process in which an impartial third party, who is called as mediator, assists the disputants in searching a mutually satisfactory and agreed settlement of the dispute. Since mediation itself is an informal legal system, it is not governed by any statute

---

<sup>4</sup> . S.C. Tripathi; Arbitration and Conciliation Act, 1996 with Alternative Means of Settlement of Disputes, 344-345(2010).

<sup>5</sup> .Supra Note 5 , at 299

<sup>6</sup> .The Arbitration and Conciliation Act , 1996

as such. However, it is expected from the mediator to act honestly, fairly and impartially by following the principles of natural justice.

- Negotiation:- The term ‘negotiation’ means transecting of business rather dispute management by participation of disputants or by their representatives while preserving relationship. It constitutes sharing of ideas and information while seeking mutually accepted solution. It is a communication process used to put deals together or resolve conflicts. It is a voluntary, non-binding process in which the parties control the outcome as well as the procedures by which they will make an agreement.<sup>7</sup> It is recognized by law as one of the modes of the alternative mechanism for solution of a dispute. Even, it is non-binding process, the outcome of the negotiation in the form of mutually acceptable agreement so it can be enforced as a contract.
- LokAdalat:- The LokAdalat is a significant mode of alternative dispute resolution mechanism. It is an old form of adjudicating system prevailed in ancient India whose validity has not been taken away even in the modern days too. It is interesting to note that the LokAdalat system settles disputes by way of negotiation, persuasion, mediation and conciliation with the actively involvement of the advocates, judges, eminent social workers and concerned parties.

As, it is a known fact that the Indian courts are overburdened with the backlog of cases and the regular courts are to decide the cases involve a lengthy, expensive and tedious procedure. In such situation, the emergence of LokAdalat is a ray of hope for needy of justice. The institution of LokAdalat has multifarious advantages and people also have faith upon it as an apparatus for social change. It bears the signature of social justice. LokAdalats, therefore, devise for imparting expeditious and inexpensive justice as an alternative dispute resolution forum. Now, the LokAdalat system has got the statutory recognition under the Legal Services Authorities Act, 1987. The object of the Act is to provide free and competent legal system to the weaker section of society to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities, and to

---

<sup>7</sup>.Supra Note 5 , at 349

organise LokAdalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity. The preamble of the said Act emphasize that the LokAdalats should be constituted to provide economical and competent legal services to the weaker sections of the society to perform Constitutional obligation on behalf of the State.

#### **V.Concept of LokAdalat**

The meaning of the term ‘LokAdalat’ in literally is ‘People’s Court’ because the term comprises two words namely ‘Lok’ and ‘Adalat’, Lok stands for the people and Adalat means the court. So, it is meant people’s court. The former word of the term expressing the concept of public opinion while the latter devoting the accurate and thorough deliberation aspect of decision making.<sup>8</sup> The LokAdalat is an institution settles dispute by adopting the principles of justice, equity and fair play. These noble principles are guiding factors for decisions of the LokAdalats based on compromises to be arrived at before such Adalats. The LokAdalat is a voluntary mechanism which is mainly concerned with two-fold functions – firstly, it provides a quick, easy, accessible, non-technical, sympathetic and disputant friendly forum to the people for resolution of their disputes and secondly, it helps overcome the hazard of the docket explosion.

The LokAdalat is not a people’s court in the sense in which it is understood in some other legal system of the Soviet type, although literally translated a LokAdalat means a people's court. It may be better to call it a court for people, but almost every court of whatever description is meant for the people. The LokAdalat is not a Nyaya Panchayat or Village Nyaya Panchayat of Indian tradition. Further, it is not a Village Panchayat recognised under the Village Panchayat Acts in some States. It is not a Caste Panchayat or JatiSabba. It is neither a Bench Court nor a statutory tribunal meant to adjudicate or arbitrate. It appears to be a unique institution meant to take care of disputes as they arise between members of whatever section of society and disputes as they go before the court, that is, the pre-litigative and the post-litigative stages. It is only an institution meant to promote voluntary settlement between parties under the auspices of a set of individuals who have, to their credit, certain accomplishment necessary for playing a meaningful role in this process. The LokAdalat, in its structure

---

<sup>8</sup>.<http://www.stpl.india.com>-last visited on 14/11/2016

and memberships, is conceived in that view<sup>9</sup>. It is an amorphous crowd of concerned citizens animated by a common desire for justice and willing to experiment with consensual models of dispute resolution<sup>10</sup>. The LokAdalat being an innovative form of a voluntary efforts for amicable settlement of disputes between the parties and not akin to regularly, constituted law courts, is expected to supplement and not to supplant the existing adjudicatory machinery.

LokAdalat (LokNyayalaya), is a court for the people at their door-steps with a true spirit of conflict resolution and devoid of strict formalism of the existing judicial system. It is oriented to interpret technically the matters of conflict in the fixed premises attended by the litigants, their lawyers, judges and social workers. Adjudication in a LokAdalat is a people oriented, speedy and summary-styled for swift settlement of disputes on compromise terms<sup>11</sup>. LokAdalat is a informal forum provided by the people themselves or by interested parties including social activists, legal aiders and public spirited people belonging to every walk of life<sup>12</sup>.

Therefore, the emergence of the concept of LokAdalat as a new system of dispensation of justice is a result of social philosophy of judges, jurists and eminent scholars who are always engrossed in the thought to establish a new forum for providing inexpensive and quick justice to people. The LokAdalat implies resolution of disputes by discussion, counseling, persuasion and conciliation so that it dispenses speedy and cheap justice at the door-steps of disputants with their mutual and free consent. The LokAdalats are neither parallel to, nor meant to replace the existing court system but aimed at reducing the burden of the courts and saving the parties time, expense and trauma of litigation. It is a participatory justice system which can only survive with the actively involvement of lawyers, judges, social workers, reputed persons of the society and specially the concerned parties to the dispute.

## **VI.The Organization, Working and Procedures of LokAdalat**

The act empowers each state authority, the Supreme Court Legal Services Committee, the High Court Legal Services Committees, District Legal

---

<sup>9</sup> . K. Gupteshwar, "The Statutory LokAdalat: Its Structure and Role," 30 JILI, 174 at 177-178 (1988).

<sup>10</sup> . ShirajSidhva, "Quick, Informal, Nyaya," LEXET JURIS, 39 (1988).

<sup>11</sup> . Prabha Bhargava, LokAdalat: Justice at the Door-Steps, 5(1998)

<sup>12</sup> . Sunil Deshta, *LokAdalat in India: Gensis and Functioning*, 106(1995).

Services Authorities and the Taluk Legal Services Committees to organize LokAdalats at such places and intervals as they think fit. The concerned Authority or Committees are empowered to organize LokAdalats, and to select the members for the LokAdalat, consisting of retired or serving judges. The power to prescribe qualifications remains with the Central Authority for LokAdalats organized by the Supreme Court Legal Services Committee and with State Governments for other LokAdalats at the State Level. A LokAdalat shall have 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 any matter which is falling within the jurisdiction of, and is not brought before, any court for which the LokAdalat is organized, provided, that the LokAdalat is organized, provided, that the LokAdalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

The State Legal Aid and Advisory Boards or District Legal Aid Committees organize LokAdalats. The members of the LokAdalat are called as 'Conciliators'. The members may be drawn from serving or retired judicial officers or from other fields of life. The number of members is to be determined by the organizing authority. Likewise the qualification and experience required for the members have to be prescribed where the LokAdalat is organized by the Supreme Court Legal Services Committee, by the Central Government in consultation with the Chief Justice of India. In other cases, it has to be done by the State Governments in consultation with the Chief Justices of the High Courts.

The legal aid committee concerned announces a date for organizing a LokAdalat at least one month in advance. It also determines the cases to be taken up in the LokAdalat. 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 LokAdalat to prepare a list of pending cases which they consider suitable for negotiation. The cases may pertain to civil, revenue and compoundable criminal disputes. On the specified day of organizing the LokAdalat, 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.

During the sessions of the LokAdalats, multiple panels are set up. The number of panels may go upto 10 or 15 or even more, as the need may be. Each panel usually consists of two or three conciliators. One of them may be a retired judge or a senior retired civil servant or an advocate or an academician. The members of the panel are generally chosen by the Legal Aid and Advice boards on the basis of their record of public service, honesty and respectability among the local populace and are expected to be good conciliators and sympathetic to people's problems<sup>13</sup>.

## **VII.Advantages of LokAdalat**

- i. There is no court fee and if the court fee is already paid at the time of institution of the case such amount will be refunded to the concerned party if the dispute is resolved by the LokAdalat.
- ii. LokAdalats are empowered to settles the both kind of matters which are already pending before courts and which are at pre-litigation stage.
- iii. The procedure followed by LokAdalat is simple, flexible, non-technical and informal.
- iv. The lawyers are not essential to be appeared during the conciliation process of LokAdalat.
- v. LokAdalat provides justice speedily to the parties, generally, when it resolve the cases in a single day. In this sense it helps to reduce the huge arrears in courts of law.
- vi. The award of LokAdalat is final and binding. There are no further appeals, revisions or review applications.
- vii. The LokAdalat system helps to create awareness amongthe people about their rights and duties mentioned innumerous social and welfare legislations. In this way, it takes justice at the door-steps of the people.
- viii. The LokAdalat settles the dispute on the basis of compromise and in the spirit of 'give and take'. Thus, there is neither a victor nor a vanquished and both the contestants are gainers and winners.

---

<sup>13</sup>.National Legal Services Authority Act , 1987

### **VIII. Suggestions for Effective Implementations of LokAdalat**

- a. Legal literacy and legal aid programmes need to expand to take care of poor and ignorant by organizing awareness camps at grass-root level besides, the mass media like newspapers, television and radios can also be desirable for this purpose.
- b. To increase its utility, the concerned Legal services Authority or Committee should disseminate information to the public about the holding of various LokAdalat by it and success achieved thereby in providing speedy, equitable and inexpensive justice.
- c. There is need for improvement in quality of legal aid provided by lawyers and advocates. The remunerations offered from legal services authorities to lawyers should be revised and thus encouraged to render effective legal assistance to needy persons.
- d. It is observed that, there is need for enactment of more statutory provisions allowing justice through LokAdalat. The LokAdalat Movement can be successful only if the people participate on voluntary basis in the functioning of LokAdalat. This can be achieved by restraining themselves from invoking the jurisdiction of traditional Courts in trifling disputes.

### **IX. Conclusions**

The Legal Service Authority Act, 1987, which provides for the LokAdalat for speedy and early settlement of dispute among the parties, is a boon for Indian legal system. Majority of India population which is illiterate seek justice through regular court which is disadvantageous to both, the parties as well as to the courts as such on which an amicable settlement can be reached overburdens the courts and the procedure at the courts are expensive, ineffective and time consuming. With respect to the present condition prevailing in the society and the gap between the economic conditions of the people of the society asks for an effective and strong legal service for poor and needy people. The system of LokAdalat are no newer to the legal system of India, it has become an effective part of Indian legal system and now is the time to bring such matters under the jurisdiction of

LokAdalat which do not fall under its domain. It is high time for law makers, jurists, lawyers and judges to help modifying the current model law governing LokAdalat and include such areas under its jurisdiction like business disputes or conflicts where public at large is involved and the matters where government is involved in one or the other way.