including a suit for injunction. The words "the nature of the relief sought, the amount of compensation *etc.,* and the words" explicitly stating the cause of action" do not find place in Section 80 of CPC. This difference makes Section 80 of CPC applicable to suits for injunctions also, as held in 60 M.L.J. 600 at Page 606.

I also submit that the words used in Section 138-A" any act done or purporting to be done under this Act or in respect of any alleged neglect or default in the execution of the provisions of this Act or any rule, bye-law, regulation or order made under it clearly show that the act, neglect or default complained of should have been done under the provisions of A.P. Panchayat Raj Act or rules or bye-laws, regulation or order made under it. If the act complained of does not refer to or come under any of those provisions, also prior notice is not necessary. That means, if the Act, rules *etc.*, under it do not authorise the Panchayat to do the act or default complained of, prior notice is not necessary. For this proposition we can rely upon.

(1991 (II) ALT 425 (Para 13 at P.431) = AIR 1992 AP 266)

The learned Judge in Para 13 of that judgment indirectly held that only when the act complained of against the Gram Panchayat comes under the provisions of Panchayat Act, then only, prior notice is necessary.

NEED FOR REDUSING PENDENCY OF LITIGATION

By

—L. KAMALA, Advocate,
Abhyudaya Nagar Colony,
Chintalkunta, L.B. Nagar
Hyderabad, A.P.

Eminent jurist, Nani Palkhivala has reflected on the irony of the judicial system, in this fashion:

> "If longevity of litigation is made an item in Olympics, no doubt the Gold will come to India"

Introduction: A dispute has been described as a lack of compromise between the parties. There must be some issue or matter upon which the parties are unable to agree. However it is possible to resolve through an ADR procedure, issues which have yet to attain the status of an actual dispute.

The essence of ADR is to resolve conflicts, differences or disputes that exist between the parties, at the same time it will reduce costs to the parties and burden to the Courts lessen the delay in adjudication.

Backlog of Cases

Cases pending before Civil/Usual Forums

There are three crore civil cases pending in various Courts in the country.

There are 2.5 crore cases in lower Courts, 50 lakh cases in High Courts and 17,000 cases in the Supreme Court. At least 80 cases were pending a decision or hearing for the past 20 years in the Supreme Court. In addition, over five lakh cases, involving criminal and civil laws, were pending in different High Courts for over 10 years. Moreover, over eight lakh cases were

awaiting disposal by the country's Subordinate Courts in 32 States and Union Territories.

Position of Indian Judiciary

The popular belief is that law Courts are the main reason for the huge backlog of cases.

But, scientific study done by Law Commission of India as explained by His Lordship Justice *S.P. Baruacha*, Chief Justice of India (as he then was) reveals the contrary, which is as follows:

The expenditure on judiciary in terms of GNP is only 2.5 per cent and, of this, half is recovered by the State Governments through Court fees and fines. The expenditure in other countries is 4 per cent on the average...As a result of the neglect of the judiciary by the Governments, the judge-population ratio is one of the lowest in the world.

Sunday Times of India, Mumbai, July 7,2002 'Special Report', page 14

(1) Times of India, Mumbai, 26, March 2001 The Law Commission, in its 127th report made in 1988, had

(2) recommended that the ratio should be immediately raised from the then 10.5 judges per million people to at least 50 judges per million within five years. It has further commended that by 2000, the country should command at least 107 judges per million. But the present ratio is 12 or 13 judges per million. This ratio evokes disbelief among judges of other countries. The ratio 12 years ago was about 41 in Australia, 75 in Canada, 51 in England and 107 in the US. The reason why we do not have more judges across the board is that the State Governments are simply not willing to provide the finances required. In one of the cases pending in the Supreme Court, the petitioner has sought an increase in the strength of the judges all over the country. Each and every State in the country has stated in reply that it has no more money for the judiciary.

(3) Recently, the High Court of Madras has treated the letter sent by its Registry to the Tamilnadu Government for filling up vacant position of judges in the Subordinate Judiciary and the reply in the negative received from the State Government quoting lack of budgetary allocation as a writ petition.

ADR is generally classified into at least four types: negotiation, mediation, collaborative law, and arbitration. (Sometimes a fifth type, conciliation, is included as well, but for present purposes it can be regarded as a form of mediation. See conciliation for further details.) ADR can be used alongside existing legal systems such as sharia Courts within common law jurisdictions such as the UK.

ADR traditions vary somewhat by country and culture. There are significant common elements which justify a main topic, and each country or region's difference should be delegated to sub-pages.

Alternative Dispute Resolution is of two historic types. First, methods for resolving disputes outside of the official judicial mechanisms. Second, informal methods attached to or pendant to official judicial mechanisms. There are in addition free-standing and or independent methods, such as mediation programs and ombuds offices within organizations. The methods are similar, whether or not they are pendant, and generally use similar tool or skill sets, which are basically sub-sets of the skills of negotiation.

ADR includes informal tribunals, informal mediative processes, formal tribunals and formal mediative processes. The classic formal tribunal forms of ADR are arbitration (both binding and advisory or non-binding)

and private judges (either sitting alone, on panels or over summary jury trials). The classic formal mediative process is referral for mediation before a Court appointed mediator or mediation panel. Structured transformative mediation as used by the U.S. Postal Service is a formal process. Classic informal methods include social processes, referrals to non-formal authorities (such as a respected member of a trade or social group) and intercession. The major differences between formal and informal processes are (a) pendency to a Court procedure and (b) the possession or lack of a formal structure for the application of the procedure.

For example, free form negotiation is merely the use of the tools without any process. Negotiation within a labour arbitration setting is the use of the tools within a highly formalized and controlled setting.

Calling upon an organizational ombudsman's office is never a formal procedure. (Calling upon an organizational ombudsman is always voluntary; by the International Ombudsman Association Standards of practice, no one can be compelled to use an ombuds office.)

Informal referral to a co-worker known to help people work out issues is an informal procedure. Co-worker interventions are usually informal.

Conceptualizing ADR in this way makes it easy to avoid confusing tools and methods (does negotiation once a law suit is filed cease to be ADR? If it is a tool, then the question is the wrong question) (is mediation ADR unless a Court orders it? If you look at Court orders and similar things as formalism, then the answer is clear: Court annexed mediation is merely a formal ADR process).

Dividing lines in ADR processes are often provider driven rather than consumer driven. Educated consumers will often choose to use many different options depending on the needs and circumstances that they face.

Finally, it is important to realize that conflict resolution is one major goal of all the ADR processes. If a process leads to resolution, it is a dispute resolution process.[4]

The salient features of each type are as follows:

In negotiation, participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution. (NB – a third party like a chaplain or organizational ombudsperson or social worker or a skilled friend may be coaching one or both of the parties behind the scene, a process called "Helping People Help Themselves" – see Helping People Help Themselves, in Negotiation Journal July 1990, pp.239–248, which includes a section on helping someone draft a letter to someone who is perceived to have wronged them.)

In mediation, there is a third party, a mediator, who facilitates the resolution process (and may even suggest a resolution, typically known as a "mediator's proposal"), but does not impose a resolution on the parties. In some countries (for example, the United Kingdom), ADR is synonymous with what is generally referred to as mediation in other countries.

In collaborative law or collaborative divorce, each party has an attorney who facilitates the resolution process within specifically contracted terms. The parties reach agreement with support of the attorneys (who are trained in the process) and mutually-agreed experts. No one imposes a resolution on the parties. However, the process is a formalized process that is part of the litigation and Court system. Rather than being an Alternative Resolution methodology it is a litigation variant that happens to rely on ADR like attitudes and processes.

In arbitration, participation is typically voluntary, and there is a third party who, as a private judge, imposes a resolution. Arbitrations often occur because parties to contracts agree that any future dispute concerning the agreement will be resolved by arbitration. This is known as a 'Scott Avery Clause'.[5] In recent years, the enforceability of arbitration clauses, particularly in the context of consumer agreements (*e.g.*, credit card agreements), has drawn scrutiny from Courts.[6] Although parties may appeal arbitration outcomes to Courts, such appeals face an exacting standard of review.[7]

Beyond the basic types of alternative dispute resolutions there are other different forms of ADR:

Case evaluation: a non-binding process in which parties present the facts and the issues to a neutral case evaluator who advises the parties on the strengths and weaknesses of their respective positions, and assesses how the dispute is likely to be decided by a jury or other adjudicator.

Early neutral evaluation: a process that takes place soon after a case has been filed in Court. The case is referred to an expert who is asked to provide a balanced and neutral evaluation of the dispute. The evaluation of the expert can assist the parties in assessing their case and may influence them towards a settlement.

Family group conference: a meeting between members of a family and members of their extended related group. At this meeting (or often a series of meetings) the family becomes involved in learning skills for interaction and in making a plan to stop the abuse or other ill-treatment between its members.

Neutral fact-finding: a process where a neutral third party, selected either by the disputing parties or by the Court, investigates an issue and reports or testifies in Court. The neutral fact-finding process is particularly useful for resolving complex scientific and factual disputes.

Ombuds: third party selected by an institution – for example a university, hospital, corporation or Government agency – to deal with complaints by employees, clients or constituents.

An organizational ombudsman works within the institution to look into complaints independently and impartially.

"Alternative" dispute resolution is usually considered to be alternative to litigation. It also can be used as a colloquialism for allowing a dispute to drop or as an alternative to violence.

In recent years there has been more discussion about taking a systems approach in order to offer different kinds of options to people who are in conflict, and to foster "appropriate" dispute resolution.

That is, some cases and some complaints in fact ought to go to formal grievance or to Court or to the police or to a compliance officer or to a Government IG. Other conflicts could be settled by the parties if they had enough support and coaching, and yet other cases need mediation or arbitration. Thus "alternative" dispute resolution usually means a method that is not the Courts. "Appropriate" dispute resolution considers all the possible responsible options for conflict resolution that are relevant for a given issue.

ADR can increasingly be conducted online, which is known as online dispute resolution (ODR, which is mostly a buzzword and an attempt to create a distinctive product). It should be noted, however, that ODR services can be provided by Government entities, and as such may form part of the litigation process. Moreover, they can be provided on a global scale, where no effective domestic remedies are available to

disputing parties, as in the case of the UDRP and domain name disputes. In this respect, ODR might not satisfy the "alternative" element of ADR.

Benefits

ADR has been both; increasingly used alongside, and integrated formally, into legal systems internationally in order to capitalise on the typical advantages of ADR over litigation:

Suitability for multi-party disputes

Flexibility of procedure - the process is determined and controlled by the parties the dispute

Lower costs

Less complexity ("less is more")

Parties choice of neutral third party (and therefore expertise in area of dispute) to direct negotiations/adjudicate

Likelihood and speed of settlements

Practical solutions tailored to parties' interests and needs (not rights and wants, as they may perceive them)

Durability of agreements

The preservation of relationships, and the preservation of reputations.

Section 22B of the Legal Services Authorities Act, 1987, as amended in 2002, enables establishment of permanent Lok Adalats and its sub-section (1) reads as follows:

> "Notwithstanding anything contained in Section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats 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."

Permanent and continuous Lok Adalats established in every District Court's Complex provide a statutory forum to the litigants where they may go themselves before litigation and Courts may also refer to them, pending cases, for Counselling and conciliation. These permanent and continuous Lok Adalats would certainly be in a better position to try conciliatory settlements in more complicated cases arising out of matrimonial, landlord tenant, property and commercial disputes, *etc*., where repeated sittings are required for persuading and motivating the parties to settle their disputes in an atmosphere of give and take.

The disposal of legal disputes at pre-litigative stage by the permanent and continuous Lok Adalats provides expense-free justice to the citizens of this country. It also saves Courts from additional and avoidable burden of petty cases, enabling them to divert their Court-time to more contentious and old matters.

The philosophy of permanent and continuous Lok Adalats sprouts from the seeds of compassion and concern for the poor and downtrodden in the country and deserves support from all of us to make it grow as a tree giving fruit, fragrance and shade to all. 1.19 The Statement of Objects and Reasons appended to the Bill preceding the Legal Services Authorities (Amendment) Act 2002 points out that the system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the Courts.

The Delhi Legal Services Authority has set up 9 permanent Lok Adalats in Government bodies/departments and 7 MACT permanent Lok Adalats have been functioning regularly in Delhi.

Similarly, permanent Lok Adalats have also been set up in some other States. But, there is a need to establish more permanent Lok Adalats throughout the country.

Arbitration and Conciliation Act, 1996

Part I of this Act formalizes the process of Arbitration and Part III formalizes the process of Conciliation. (Part II is about Enforcement of Foreign Awards under New York and Geneva Conventions.)

Arbitration

The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute. As per Section 7, such an agreement must be in writing. The contract regarding which the dispute exists, must either contain an arbitration clause or must refer to a separate document signed by the parties containing the arbitration agreement. The existence of an arbitration agreement can also be inferred by written correspondence such as letters, talex, or telegrams which provide a record of the agreement. An exchange of statement of claim and defence in which existence of an arbitration agreement is alleged by one party and not denied by other is also considered as valid written arbitration agreement.

Any party to the dispute can start the process of appointing arbitrator and if the other party does not cooperate, the party can approach the office of Chief Justice for appointment of an arbitrator. There are only two grounds upon which a party can challenge the appointment of an arbitrator – reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or a panel of arbitrators so appointed constitute the Arbitration Tribunal.

Except for some interim measures, there is very little scope for judicial intervention in the arbitration process. The arbitration tribunal has jurisdiction over its own jurisdiction. Thus, if a party wants to challenge the jurisdiction of the arbitration tribunal, it can do so only before the tribunal itself. If the tribunal rejects the request, there is little the party can do except to approach a Court after the tribunal makes an award. Section 34 provides certain grounds upon which a party can appeal to the principal civil Court of original jurisdiction for setting aside the award.

Once the period for filing an appeal for setting aside an award is over, or if such an appeal is rejected, the award is binding on the parties and is considered as a decree of the Court.

Conciliation

Conciliation is a less formal form of arbitration. This process does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred but two or three are also allowed. In case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation.

Parties may submit statements to the conciliator describing the general nature of the dispute and the points at issue. Each party sends a copy of the statement to the other. The conciliator may request further details, may ask to meet the parties, or communicate with the parties orally or in writing. Parties may even submit suggestions for the settlement of the dispute to the conciliator.

When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it shall be final and binding on both.

Note that in USA, this process is similar to Mediation. However, in India, Mediation

is different from Conciliation and is a completely informal type of ADR mechanism.

Lok Adalat

It roughly means "people's Court". India has had a long history of resolving disputes through the mediation of village elders. The system of Lok Adalats is an improvement on that and is based on Gandhian principles. This is a non-adversarial system, whereby mock Courts (called Lok Adalats) are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee, periodically for exercising such jurisdiction as they thinks fit. These are usually presided by retired judge, social activists, or members of legal profession. It does not have jurisdiction on matters related to non-compoundable offences.

There is no Court fee and no rigid procedural requirement (*i.e.*, no need to follow process given by Civil Procedure Code or Evidence Act), which makes the process very fast. Parties can directly interact with the judge, which is not possible in regular Courts.

Cases that are pending in regular Courts can be transferred to a Lok Adalat if both the parties agree. A case can also be transferred to a Lok Adalat if one party applies to the Court and the Court sees some chance of settlement after giving an opportunity of being heard to the other party.

The focus in Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the Court. However, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil Court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 because it is a judgment by consent.

All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court.

Permanent Lok Adalat for public utility services

In order to get over the major drawback in the existing scheme of organisation of Lok Adalats under Chapter VI of the Legal Services Authorities Act, 1987, in which if the parties do not arrive at any compromise or settlement, the unsettled case is either returned to the Court of law or the parties are advised to seek remedy in a Court of law, which causes unnecessary delay in dispensation of justice, Chapter VI A was introduced in the Legal Services Authorities Act, 1987, by Act No.37/2002 with effect from 11.6.2002 providing for a Permanent Lok Adalat to deal with pre-litigation, conciliation and settlement of disputes relating to Public Utility Services, as defined under Section 22-A of the Legal Services Authorities Act, 1987, at pre-litigation stage itself, which would result in reducing the workload of the regular Courts to a great extent. Permanent Lok Adalat for Public Utility Services, Hyderabad, India

Lok Adalat (people's Courts), established by the Government, settles dispute through conciliation and compromise. The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat the land of Mahatma Gandhi. Lok Adalat accepts the cases which could be settled by conciliation and compromise, and pending in the regular Courts within their jurisdiction.

The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no Court fee. 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. The procedural laws, and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat.

Main condition of the Lok Adalat is that both parties in dispute should agree for settlement. 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.

Lok Adalat is very effective in settlement of money claims. Disputes like partition suits, damages and matrimonial cases can also be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases.

Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost.

REFERENCES:

(1) Wikipedia to ADR

(2) Case Management and ADR LAW COMMISSION (for Banking sector)

(3) Government of India regard to ADR Report No.222, April 2009.

(4) Introduction to ADR www.oup.com.

DENIAL OF TRIBAL LAND JUSTICE

By
—PALLA TRINADHA RAO,
Advocate,
Rajahmundry, A.P.

A brief overview of the legislations affecting ownership and management of land in Schedule areas is essential to appreciate the pattern of growing problem or the continued struggle for tribal rights. It is important to have a critical assessment of the laws affecting land in agency areas in historical perspective demarcating the major concerns and issues.

Historical Evolution of Land Laws in Fifth Scheduled Area

(a) *Pre independence period:*

The land alienation as a pressing problem was first recognized during the British Rule in India when the Schedule Districts Act XIV, 1874 was passed aiming to protect the tribals from the danger of further land (legal land holding) alienation and indebtedness. Exercising the power under Section 6 of the Scheduled Districts Act, 1874, local Government issued rules for the administration of the Agency Tracts and for regulation of the procedure of the Officers so appointed to administer them. Subsequently, the Agency Tracts Interest and Land Transfer Act 1917 (Act of 1917) came to be passed with the object of limiting the rate of interest and to check the transfer of lands in the Agency Tracts in Ganjam, Vizagapatnam and Godavari Districts. By a subsequent notification, the Act was extended to the taluk of Bhadrachalam in East Godavari District.

Under Section 2 of said Act, Agency Tracts are defined as meaning Scheduled Districts as defined in the Acts XIV and XV of 1874. Therefore, Scheduled Districts within the meaning of Scheduled Districts Act XIV of 1874 were treated as Agency Tracts by virtue of Section 2(a) of Act 1 of 1917. The object of Act 1 of 1917 is to limit the rate of interest and also to check the transfer of lands in the Agency Tracts. Yet, the land legislation was seldom implemented and prove effective.