The globalization is thus clearest and most dramatic in environmental law. As it became increasingly clear that the externalities of environmental degradation crossed national boundaries and that some of them, like ozone depletion, were truly global, parallel, developments in national environmental law accelerated, as did efforts at multi-national and/or international environmental protection law.

Conclusion:

We have been looking at the globalization of law along a number of sectors. The global distrust of hierarchical authority and concentrated public and private power generates growth in administrative law, constitutional, and other rights law, and in legal regulation of economic enterprise. The global desire to protect the individual generates growth in personal injury, consumer protection, environmental law, and even family law. The globalization of markets and business enterprise generates the growth of a worldwide law of business transactions. The global multiplication of exterior business relationships and the growth of arms-length regulatory styles fuel a growing demand for lawyers and their involvement in more and more social, economic, and political relationships. Thus in light of all the above, it may be inferred that there is an increasing need for a global mechanism of legal education, law enforcement and also harmonization of most of the transnational laws. Having stressed on the need for globalization, we need to adopt our domestic structure to be able to keep pace with the movement of globalization both in terms of legislation and in terms of legal education and practice.

WHY AGENCY COURTS PREFERRED OVER JUDICIAL COURTS

By

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This paper examines the existing redressal mechanisms in the administration of civil justice in the tribal areas and how these systems preferred over Judicial Courts.

Introduction:

The Tribal population of the country is close to 8 per cent of the total population and considered to be 23 per cent of the total indigenous population of the world. The State of Andhra Pradesh is a traditional home for 35 tribal communities, constitute of 6.59 per cent of the total population of the State as per 2001 census reports. The Tribal sub-plan Area extending over 31,485.34 Sq.kms. in the districts of Srikakulam, Vizayanagaram, Warangal, Visakhapatnam, East and West Godavari, Khammam, Adilabad and Mahaboobnagar Districts constitute the traditional habitat of nearly 31 Tribal groups. The Tribal groups *viz.*, Yerukula, Yanadi and Sugali or Lambada, Nakkala are mainly living in the plain areas, outside the Scheduled Areas. The tribal areas are mainly inhabited by tribes who by fact of their being primitive and innocence, are extremely vulnerable to exploitation by outsiders.

Evolution of Agency Courts System:

The Scheduled Areas are not governed by the same laws as in the rest of the country for more than a century. From the earliest times those areas known to be backward were excluded from the operation of the laws of the country either completely or partially and they were directly administered under laws made by the Executive similar to the orders originally resembling the orders in the council of the British Crown. The reasons for making the special provisions for the Scheduled Areas and Tribes are that their social and other customs and their way of living are different from the rest of the country and tribals being backward and not educated they were taken advantage and exploited by others. Therefore it has been felt that they should not be governed by general laws of the land and that certain safeguards have to be provided to protect them from exploitation hence several Acts and Regulations were passed from time to time.

One of the earliest of the enactment regarding agency areas is the Ganjam Vizagapatnam Act 1839. The object of this Act is to provide for the administration of justice, civil and criminal in the agency Areas and for the collection of revenue. Subsequently the Scheduled District Act 1874 was brought into force in view of the difficulty arose in determining the laws in force by then in the Scheduled Areas. The Act specified the Scheduled Tracts and the Local Governments were given the power to extend by public notification to any Scheduled District with or without modification any enactment in force in "British India".

Under Section 6 of the said Scheduled Districts Act 1874 the Governor was pleased to make the A.P. Agency Rules 1924 for the administration of the agency tracts and for the regulations of the procedures of the officers appointed to administer them in the agency areas of Andhra region. These Agency Rules were extended to Telangana Region with effect from 1.12.1963. Under the said rules it has been provided that the Collectors and District Magistrates of the districts shall be the Collectors and District Magistrates within the agency tracts under the designation of the Agent to the State Government.

Why Agency Courts system preferred over Civil Courts?

The very important principle of natural justice is that decisions should not be delivered unheard and should not be reached behind one's back. In true spirit it is not correct to say that while delivering the decisions both parties to be heard does not mean, merely giving the physical opportunity to be heard. Because in so many occasions, the parties (generally tribals) are not able to adduce evidence before the Court of law due to their simplicity. Innocence and very nature of shyness to talk. In the tribal areas most of the transaction – be it sale of land or monetary is mainly by word of mouth and there exists no system of written documentation. A decision arrived at by solely depending on the documents would put the poor and innocent tribal to great injustice.

In agency areas, the existing system of Judiciary is quite adequate and serves the interests of the tribals and the principles of natural justice is well protected as the present presiding officers of Revenue department who are entrusted with the functions of judiciary are personally well acquainted with the age old customs, habits, peculiar traditions and special circumstances prevailing in the nook and corners of the agency area, among different sub-sets of tribals because the Revenue Officers are bound to tour intensively the villages invariably to discharge their legitimate duties *viz.*, solving land disputes, for assignments of land for agriculture, to maintain law and order, to

supervise developmental works *etc*, and frequently used to make night halts in the villages which makes them practically well acquainted with the tribal traditions, customs and also superstitions. This practical knowledge, will help them while discharging judicial functions for delivering apt decisions/ judgments not only by hearing the parities but also by studying the hidden factors of the case which leads to dispute and if necessary by taking a lenient view keeping in mind the special and peculiar traditions, customs of the tribal society besides socio-economic factor, which serves largely the interest of the tribal society and by protecting the true spirit of the principles of natural justice. The Revenue Authorities will have comprehensive field knowledge about the persons who are in actual possession of lands even in some cases where the documentary evidence shows possession of land in favour of non-possessors of the land. So the existing agency Courts are manned by revenue authorities are cautious in granting injunctions suits filed by non tribals against the tribals who are in actual possession of lands based on the field inspection reports. There is sub-ordinate field level machinery for the Agency Courts which provides actual field situation based on the fact finding will help to arrive correct decision in the adjudication of civil disputes particularly land arising from tribals and non-tribals in the Scheduled Areas. In the Agency Courts the revenue authorities can summon the subordinate field personnel's to produce concerned land records in adjudication process which the tribal in the civil suits would be unable to gather the documentary evidence which are in their favour, in view of their illiteracy, poverty and inaccessibility to the Revenue Offices due to distance from their habitations and familiarity.

The tribal villages are scattered over large areas. Generally the territorial limit of a Mandal would be around 100 Km and not well connected by road. Many times the tribals walk or trek to the place of trial as they do not have transport facilities. Some of the villagers have to negotiate hills, streams, *etc.,* to reach the adjudication centers. The presiding officers of the Agency Court also conduct camp Courts as and when need arises to make more accessible to the people in the agency area. Now there is Agency Munsif Court at each Mandal head quarter which are accessible to the public.

Rule 1 of the A.P. Agency Rules 1924 makes it clear that for the trial and determination of the suits coming before them, the Agent to the State Government/ District Collector, the Agency Divisional Officer/Sub-Collector/RDO and Agency Munsif/Tehsildhar are vested with the same powers as are vested in the District and Revenue Courts in the ordinary tracts of the State of Andhra Pradesh. The Provision of Rule 3 of the Agency Rules is exactly similar to that of Section 9 of CPC. By virtue of Rule 3 of the Agency Rules, the Agency Court has the jurisdiction to try all suits of civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of Agency Court is not ousted either explicitly or impliedly by another Statue. The Agency Court is a substitute for a Civil Court in every respect in the Agency Areas. Agency Courts like Civil Courts have plenary powers to try all suits, which involve determination of any civil right. Rule 5 provides that Agency Munsiff shall have cognizance of the suits for movable or immovable property not exceeding in value of Rs.500/-. Rule 7 provides that suits of value exceeding Rs.5000/- shall be instituted in the Court of the Agent to the State Government. As per Rule 6 all other suits shall be instituted in the Court of the Agency Divisional Officer having Jurisdiction. The present Courts are accessible to the people even there is a Agency Munsif Court at Mandal level.

Therefore the provisions of the Agency Rules which are governing the administration of civil justice are very clear and do not

deprive the people to access justice. In fact the provisions of A.P. Agency Rules are much more simple than the provisions of the Civil Procedure Code (CPC).

Exclusion of Civil Courts Act to Scheduled Areas and Legal Precedents

The Constitutional Bench of the Supreme Court in *State of Nagaland v. Ratan Singh*, reported in (1966) 3 SCR 830, where reference was made to Article 244 of the Constitution of India, which make special provisions for the administration of justice in Scheduled and Tribal areas. Challenge was made to statutes and rules providing for the exclusion of the jurisdiction of Civil and Criminal Courts in the discretion of the Governor. The Supreme Court upheld the Statutes and Rules as valid observing:

"The policy and purpose may be pointed out in the section conferring the powers and may even be indicated in the preamble or elsewhere in the Act. The preamble of the Scheduled Districts Act shows that these backward tracts were never brought within, but from time to time, were removed from, the operation of general Acts and Regulations and the jurisdiction of the ordinary Courts of judicature was also excluded. It was therefore necessary to ascertain the enactments in force and to set up a machinery for making simple rules. The Act conferred on the local Governments power to appoint officers for administration of civil and criminal justice within the Scheduled Districts and empowered the local Government to regulate the procedure of the officers so appointed and to confer on them authority and jurisdiction, powers and duties incident to the administration of civil and criminal justice. These provisions afforded sufficient guide to the local Government that the administration of civil and criminal justice was to be done under their control by the officers appointed by them and the procedure which they were to follow must be laid down. This was not an instance, therefore, of excessive delegation at all.

Referring to the reference made to the Civil Procedure Code the Constitutional Bench observed:

> "How the spirit of the Code is to be applied and not its letter was considered by the Supreme Court in *Gurumayum Sakhigopal Sarma v. K. Onghi Anisija Devi*, (Civil Appeal No.659 of 1957 decided on 9th of February, 1961) in connection with the Code of Civil Procedure. With reference to a similar rule that the Courts should be guided by the spirit and should not be bound by the letter of the Code of Civil Procedure this Court explained that the reason appeared to be that the technicalities of the Code, should not trammel litigation embarked upon by a people unused to them."

The Constitutional Bench then explained why the Civil and the Criminal Courts are excluded in Para 30 of the decision as under:

> "Laws of this kind are made with an eye to simplicity. People in backward tracts cannot be expected to make themselves aware of the technicalities of a complex Code. What is important is that they should be able to present their defence effectively unhampered by the technicalities of complex laws. Throughout the past century the Criminal Procedure Code has been excluded from this area because it would be too difficult for the local people to understand it. Instead the spirit of the Criminal Procedure Code has been asked to be applied so that justice may not fail because of some technicality. The argument that this is no law is not correct. Written law is nothing more than a control of discretion. The more there is of law the less there is of discretion. In this area it is considered necessary that discretion should have greater play than technical rules and the provision that the spirit of the Code should apply is a law conceived in the

best interests of the people. The discretion of the Presiding Officer is not subjected to rigid control because of the unsatisfactory State of defences which would be offered and which might fail if they did not comply with some technical rule. The removal of technicalities, in our opinion, leads to the advancement of the cause of justice in these backward tracts."

In *Ram Kirpal Bhagat v. State of Bihar*, (1969) 3 SCC 471/(AIR 1970 SC 951), the Hon'ble Supreme Court while dealing with the Scheduled areas and the law applicable to the Scheduled Areas under Paragraph 5 of the Fifth Schedule of the Constitution held that :

"Applying laws to any area is making regulations which are laws. Application of law is one of the recognized form of legislation. Law can be made by referring to a statute or by citing a statute or by incorporating a statute or provisions or parts there of in a piece of legislation as the law which shall apply."

Therefore excluding the application of the provisions of the A.P Civil Courts Act 1972 to the Scheduled areas of Andhra Pradesh is a legislative act under the Constitution of India. Law will not permit to question the legislative wisdom nor the legislative policy laid down in a Statute by raising litigations through the Court of law.

The High Court of Andhra Pradesh held that dispute between the parties whether they are tribals or non tribals in respect of property located in the agency areas, civil Court jurisdiction is ousted and vested with agency Courts[1].

Intervention of Supreme Court in A.P. Agency Courts System

Batch of writ petitions and civil revision petitions filed by the different parties before the High Court of Andhra Pradesh raising a question whether the Civil Courts have jurisdiction in the matter of which the cause of action wholly arose in the Scheduled areas. The AP High Court passed a common judgment on 27th June 2000, in several WP Nos.15103/93 *etc* and CRPs 974/98 *etc* observing that "the State Government to take expeditious steps as early as possible to issue any notification extending the provisions of the Civil Courts Act with retrospective effect in the Scheduled Areas for the peace and good Government and for the speedy disposal of civil cases in the Scheduled areas, further declaring that the decrees passed by the Civil Courts are *null* and *void* as they have no jurisdiction to decide the matters arising out of the Scheduled Areas.

The unsuccessful non tribal parties including Nagarjuna Grammeen Bank *etc* filed a Civil Appeal Nos.5030-5036 of 2004 in the Supreme Court challenging the order of High Court of AP.

The Supreme Court passed an interim order dated 23.1.2008 as follows" "one way of resolving this problem is by either issuing a notification or by an amendment in the Act to the extent that the Civil Courts Act shall be extended to the Scheduled Areas of the State except where the dispute involved is between people of Scheduled and non Scheduled areas." At the request of the Advocate-on-Record time was granted for implementing the said direction.

While the matters stood over a tribal organization namely 'Girijan Yuvajana Samkshema Sangham" and the author of this article filed an impleading application seeking the recall of above interim order passed by the Supreme Court. The Supreme Court directed the Government to inform its decision on this matter. The High Power committee headed by the Chief Minister of Andhra Pradesh is constituted[2] by the

1. *Parameshwara Veeraju Reddi v. State of Andhra Pradesh and others*, 2006 (4) ALD p.558

2. G.O. Ms. No.4 Social Welfare Department dated 6.2.2012

Government of Andhra Pradesh to examine the issue of extension of A.P. Civil Courts Act 1972 to the Scheduled Areas in the State of Andhra Pradesh taking into consideration of certain alternatives including, the extension of Civil Courts Act to the Scheduled Areas or retention of the existing system or better alternative to the Civil Courts by bringing suitable amendments to the existing system of civil justice keeping in mind the future needs and requirements for expeditious disposal of cases. The High Power Committee has to inform its stand to the Supreme Court to pass its final orders in the matter.

The Role of Tribal Advisory Council and its decision:

An important feature of the Constitutional provisions under Fifth Schedule is that the legal and institutional frame for the tribal areas is expected to be so designed as to be in consonance with the people and the institutions in these areas. It was on this count that the legislative powers at the State level vested in the Governor in respect of Scheduled areas. The major features of the Fifth Schedule area are vested with the Tribal Advisory Council, Governor's powers to adapt laws passed by Parliament and State Legislatures and making Regulations for the Scheduled Areas having force of law and extension of the executive power of the Union Government to the giving of directions to a State for administration of Scheduled areas.

While dealing a WP No.14275/2004 filed by *Asu Nagamma* seeking the relief of entrustment of the Administration of Civil Justice to a qualified Judicial officer in tribal areas, the AP High Court dismissed it holding that "it is needless to direct that the Government shall take an appropriate decision in the matter in the light of the recommendations of the Committee and the views of the Tribes Advisory Council". In this context the Tribal Advisory Council appreciated the initiative of Tribal Welfare Department to evolve an alternative judicial procedure where in administration of justice would be much more decentralized and justice brought within the reach of the tribal community and made inexpensive and simple" as per the 96th Meeting of AP Tribal Advisory Council dated 1.7.2005.

Further in the present context of Supreme Court case in Civil Appeal Nos.5030-5036 of 2004 the APTAC has resolved that "the existing system in resolving the disputes provide relief to tribals and the notification GO Ms No.1573 dated 30.10.1972 issued by the Governor of Andhra Pradesh withholding the applicability of A.P. Civil Courts Act, 1972 to Scheduled Areas may be continued"[3].

Another Existing Forum of ADR- Traditional Tribals Panchayat System.

Traditional Panchayat system is another forum for adjudication of civil disputes continued to exist in majority of tribal areas. These Panchayats enjoy full confidence of their tribal communities with due regard and recognition. Traditional Panchayat system consists of Community Headman, Messenger and other community leaders. In most of the villages; tribals have an informal council of elders for settling of disputes and safeguarding the interest of communities. Disputes like, affecting the respect of community, extra marital relationships, causing hurt, quarrels between wife and husband, father and son, such other domestic quarrels, marriage disputes, maintenance, causing damage to the properties, *etc.*, are dealt with by these Traditional Panchayats. The Traditional Leaders are familiar with customary practices of their own community. The parties in dispute, traditional leaders and other villagers are invited at the time of settling the dispute; the parties must obey the orders of the Tribal Panchayat.

3. 102 meeting of AP Tribes Advisory Council, dated 18.3.2010, Hyderabad

The justice by Tribal Panchayat is simple and elementary and distinct from justice in urban areas which is complex, sophisticated and technical. The prevailing system of administration of justice is cluttered with dilatory procedures and is burdened with hierarchy of appeals and revisions consuming decades. The laws of Tribal Panchayat though are unwritten, traditionally been held valid for generations and are binding on Tribal Society. The Tribal Council is the authority of justice to the community. The laws based on customs and traditions of tribals are based on more equality and give the protection to the tribals. The proceedings are in open and in the language of the tribals concerned so that many villagers have an opportunity to witness the proceedings. The Council is accountable to the community and the proceedings are transparent. Article 13(3)(a) of the Constitution of India says the "law" includes any ordinance, order, bye law, rule, regulations, notification, custom or usages having in the territory of India the force of law.

The provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA Act), which also provides for the exclusion of the Civil Courts and the adjudication of disputes by the Gram Sabhas following customary law. Thus the power to resolve disputes among the people of the communities through alternative dispute resolution vest in the Gram Sabha in the Fifth Scheduled Areas.

Conclusion

The need for CPC was elaborately discussed by Supreme Court in the case of *Salem Advocates on Record v. Union of India*, (2005) where in the advocates challenged the introduction of Alternative Dispute Resolutions (ADR) by amending the Section 89 of CPC and Order X of CPC, adding Rules 1(A), 1(B) and 1(C) encouraging alternative dispute resolutions to minimize the litigation by following CPC.

The enactments like Arbitration and Conciliation Act 1996, "used as a phrase the provisions of Arbitration Act is not bound by CPC" which means the enactment wants to avoid the CPC as far as possible. It is evident from the various Tribunals like industrial Tribunal, tax Tribunal, Water Tribunal *etc.*, are constituted under different enactments to adjudicate issues arising out of that concerns with the persons qualified to preside over the Tribunals[4]. Thus there is an emerging change in the dispute resolution mechanisms observed in the light of various limitations to present day Judicial Systems in dispensation of justice.

It is also true that the Agency Courts manned by Revenue Officials in tribal areas are not disposing off cases in a speedy manner due to their involvement in multiple activities. Introduction of Judicial Courts system to address this problem is also not an apt solution. The extension of CPC to the Scheduled Area will not protect the interest of the tribals in any way better than the existing legal system. The Government may examine the establishment of Special Tribunals with the trained personnel to adjudicate civil disputes arising in the scheduled areas which will be in tune with the A.P. Agency Rules and also in consonance with the changing trend of Alternative Disputes Resolution mechanism. The Traditional Panchayat System also must be strengthened as an Alternative Dispute Resolution mechanism by invoking the provisions of PESA Act 1996.

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4. Meeting resolution of tribal activists and socially concerned advocates, dated 27.3.2012 at Commissioner of Tribal Welfare office, Government A.P. Hyderabad.