

The principle of representation should therefore be followed in respect of judicial appointments to the Supreme Court the High

Courts and the Subordinate Courts. It should be followed in respect of the quasi-judicial institution *i.e.* the Administrative Tribunals.

## LOK ADALAT: AN INSTRUMENT OF ALTERNATIVE DISPUTE RESOLUTION

By

—Dr. Y.F. JAYAKUMAR,  
Chairman, Board of Studies,  
Faculty of Law, Osmania University,  
Hyderabad, A.P.

The legacy of Anglo-Saxon jurisprudence introduced by the British Rule in India has over the years led to an explosive growth of litigation, piling up of arrears in Courts and consequential costs and delays in dispensation of justice. In the present adversarial system of law prevailing in our country there is a preponderance for observance of legal formalities and procedures and assertion of rights of the parties rather than arriving at an amicable settlement of the disputes between the parties. This has inevitably led to long-drawn Court-room battles with each party trying to establish its supremacy over the other resulting in wastage of precious time and money to either party.

The quest for a viable and sustainable alternative to litigation which is also authoritative and enforceable as a Court decree has led to the development of Alternative Dispute Resolution (ADR) methods. ADR is a term generally used to refer to informal dispute resolution processes in which the parties meet with a professional third party who helps them resolve their disputes in a way that is less formal and often more consensual than is done in the Courts. While the most common forms of ADR are negotiation, mediation, conciliation and arbitration, there are many other forms such as mini-trial, fast track arbitration, Court annexed ADR *etc.*

ADR processes have a number of advantages. They are flexible, cost-efficient, time-effective, and give the parties more control over the process and the results. Parties who resolve their disputes through ADR are generally more satisfied because they may directly participate in working out the terms of their settlement. When appropriate settlement processes are available, many disputes can be resolved more efficiently and with greater satisfaction to all parties. Lengthy, costly litigation can be avoided and productive results achieved. According to a survey, nearly 85% of the disputes in the developed countries such as the United States of America, the United Kingdom, *etc.* are resolved by ADR methods only.

Almost all types of disputes, be it relating to business, commercial, civil, labour, family *etc.*, except non-compoundable offences and where a statute specifically mentioned, can be settled by ADR procedures in India. In the words of Dr. P.C.Rao<sup>1</sup>, “ADR techniques are extra-judicial in character. They can be used in almost all contentious matters, which are capable of being resolved, under law, by agreement between the parties. They have been employed with very encouraging results in several categories of disputes specially civil, commercial, industrial and family disputes. In particular, these techniques have been shown to work across the full business disputes: banking, contract performance and

interpretation, construction contract, intellectual property rights, insurance coverage, joint ventures, partnership difference, personal injury, product liability, professional liability, real estate and securities. ADR offers the best solution in respect of commercial disputes of an international character”<sup>1</sup>.

There is a growing awareness and popularity for the use of ADR methods the world over in view of significant saving in time and money in resolving disputes. The Indian Government and the Judiciary have also realised the importance of ADR methods in resolution of disputes and suitable laws have been enacted to strengthen the ADR mechanism. This also helps to reduce the burden on the Courts and ensure quicker delivery of justice. An important step in this direction is the establishment of the Lok Adalats under the Legal Services Authorities Act, 1987 with the Members of the Lok Adalat acting as Conciliators to facilitate the parties to reach an amicable settlement of their disputes.

### *Constitutional Basis of Lok Adalat*

The Preamble of the Indian Constitution secures to all the citizens equality of status and opportunity. The Directive Principles of State Policy brings out the ideals and objectives to be achieved by the social welfare State. The aim of the social welfare State is to provide a substantial degree of social, economic and political equality such as minimum standards of living and economic security and civilized living. Article 39A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes

or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability<sup>2</sup>.

The Law Commission has noted that unless some provision is made for assisting the poor man for payment of Court fees and lawyer's fees and other incidental costs of litigation, he is denied an equal opportunity to seek justice<sup>3</sup>. With a view to enable the poor litigants to have an easy access to a Court of law the scheme of legal aid and legal assistance to the poor has been conceived<sup>4</sup>. Now free legal aid to the poor has been held to be a mandate arising not only from Article 39A but also from Articles 14 and 21 of the Indian Constitution<sup>5</sup>. The poor, uneducated and exploited masses of India need a helping hand from the legal profession to resolve their disputes and therefore there is a social duty cast upon the legal profession to show the beacon light to them by their conduct and actions<sup>6</sup>.

### *Statutory Recognition of Lok Adalat*

The Legal Services Authorities Act, 1987 was enacted to constitute Legal Service Authorities for providing free and competent legal services to the weaker sections of the society and to organise Lok Adalats to ensure that the operation of the legal system promoted justice on the basis of equal opportunity. This Act has put Lok Adalats on a statutory footing. All the provisions of the Act have been extended to all the States and the Union Territories. The system of Lok Adalat which is an innovative mechanism for alternative dispute resolution has proved

1. P.C. Rao (Dr.), *Alternatives to Litigation in India, Alternative Dispute Resolution*, (1997), P 25. Dr. Rao was formerly Union Law Secretary, Government of India and later appointed as Judge on the International Tribunal of the Law of the Sea.

2. Article 39A was inserted in the Indian Constitution by 42nd (Amendment) Act, 1976.

3. Indian Law Commission 14th Report on Reforms of Judicial Administration, 2 v 1958.

4. *Khatri v. State of Bihar*, AIR 1981 SC 928.

5. *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.

6. *R.D.Saxena v. Balram Prasad Sharma*, 2000 (5) AILD 86 (SC) = AIR 2000 SC 2912.

effective for resolving disputes in a spirit of conciliation outside the Courts<sup>7</sup>.

### *Scope and Powers of Lok Adalat*

A Lok Adalat has the jurisdiction to settle, by way of effecting a compromise between the parties, any matter which may be pending before any Court, as well as matters at pre-litigative stage *i.e.*, disputes which have not yet been formally instituted in any Court of Law. Lok Adalats can handle a variety of cases such as civil matters of all types including service matters, revenue matters, motor accident claims, matrimonial disputes and also compoundable criminal cases. Lok Adalats can take cognizance of matters involving not only those persons who are entitled to avail free legal services but of all other persons also, be they women, men, or children and even institutions.

Anyone, or more of the parties to a dispute can move an application to the Court where their matter may be pending, or even at pre-litigative stage, for such matter being taken up in the Lok Adalat whereupon the Lok Adalat Bench constituted for the purpose shall attempt to resolve the dispute by helping the parties to arrive at an amicable solution. The Lok Adalat has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of (a) The summoning and enforcing the attendance of any witness and examining him on oath; (b) The discovery and production of any document; (c) The reception of evidence on affidavits; (d) The requisitioning of any public record or document or copy of such record or document from any Court or office; and (e) Such other matters as may be prescribed. The Lok Adalat has the requisite powers to specify its own procedure for the determination of any dispute coming before it. All proceedings before a Lok Adalat are

deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat is deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

The award passed by a Lok Adalat is final and binding upon the parties to the dispute and no appeal shall lie to any Court against the award. In an important ruling that will encourage the settlement of disputes through conciliation, a Bench of the Supreme Court observed, "In our opinion, the award passed by the Lok Adalat is the decision of the Court itself though arrived at by the simpler method of the conciliation instead of the process of arguments in Court. The effect is same<sup>8</sup>."

### *Organisation of Lok Adalat in India-Institutional Setup*

The Legal Services Authorities Act, 1987 was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th of November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. The National Legal Services Authority (NALSA)<sup>9</sup> was constituted on 5th December, 1995 to exercise the various functions under this Act and it comprises of the Chief Justice of India, as its Patron-in-Chief, a serving or retired Judge of the Supreme Court as its Executive Chairman and other Members nominated by the Central Government in consultation with the Chief Justice of India<sup>10</sup>. NALSA shall constitute a committee to be called the Supreme Court Legal Services Committee for the purposes of exercising powers and functions determined by its regulations from time to time<sup>11</sup>. NALSA shall act in co-

7. Statements of Objects and Reasons, Act No. 37 of 2002.

8. Central Chronicle Report dated 8th August 2005.

9. Section 3(1) of Legal Services Authority Act, 1987.

10. Ibid Section 3(2).

11. Ibid Section 3A.

ordination with other Governmental and non-Governmental agencies, Universities and others engaged in the work of promoting the cause of legal services to the poor<sup>12</sup>.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority comprises of the Chief Justice of the State High Court, as its Patron-in-Chief, a serving or retired Judge of the High Court as its Executive Chairman and such number of Members who are nominated by the State Government in consultation with the Chief Justice of the High Court<sup>13</sup>. The State Legal Services Authority shall constitute a committee to be called the High Court Legal Services Committee for every High Court, for the purpose of exercising powers and functions assigned by the State Authority<sup>14</sup>. District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its *ex-officio* Chairman. Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to co-ordinate the activities of legal services in the Taluk and to organise Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the committee who is its *ex-officio* Chairman.

### ***Schemes and Measures Implemented by NALSA***

After the constitution of the Central Authority and the establishment of NALSA Office towards the beginning of 1998, following schemes and measures have been

envisaged and implemented by the Central Authority<sup>15</sup>.

- (a) Establishing Permanent and Continuous Lok Adalats in all the districts in the country for disposal of pending matters as well as disputes at pre-litigative stage;
- (b) Establishing separate Permanent and Continuous Lok Adalats for Government Departments, Statutory Authorities and Public Sector Undertakings for disposal of pending cases as well as disputes at pre-litigative stage;
- (c) Accreditation of NGOs for Legal Literacy and Legal Awareness campaign;
- (d) Appointment of "Legal Aid Counsel" in all the Courts of Magistrates in the country;
- (e) Disposal of cases through Lok Adalats on old pattern;
- (f) Publicity to Legal Aid Schemes and Programmes to make people aware about legal aid facilities;
- (g) Emphasis on competent and quality legal services to the aided persons;
- (h) Legal aid facilities in Jails;
- (i) Setting up of Counselling and Conciliation Centers in all the districts in the country;
- (j) Sensitisation of Judicial Officers in regard to Legal Services Schemes and Programmes;
- (k) Publication of "Nyaya Deep", the official newsletter of NALSA;
- (l) Enhancement of Income Ceiling to Rs.50,000/- p.a. for legal aid before

12. Ibid Section 5.

13. Ibid Section 6.

14. Ibid Section 8A.

15. R.C. Chopra, Member-Secretary, NALSA - "Legal Aid Movement in India - Its development and present Status" - Causelists.nic.in/nalsa/11.htm.

Supreme Court of India and to Rs.25,000/- p.a. for legal aid upto High Courts; and

- (m) Steps for framing rules for refund of Court fees and execution of Awards passed by Lok Adalats.

As per information available with NALSA Office, 72,038 Lok Adalats have been organised throughout the country upto 30.6.2000 in which about 1.2 crore cases have been amicably settled. Out of these over 5 lakh cases pertain to Motor Accident Compensation Claims in which compensation amounting to over Rs.2,469 crores has been awarded. In the year 1999 itself 15,198 Lok Adalats were organised throughout the country in which over 9,67,000 cases were amicably settled.

### *Permanent Lok Adalats*

The major drawback in the scheme of organization of the Lok Adalats under Chapter VI of the Legal Services Authorities Act, 1987 is that the system of Lok Adalats is mainly based on compromise or settlement between the parties. If the parties do not arrive at any compromise or settlement, the case is either returned to the Court of law or the parties are advised to seek remedy in a Court of law. This causes unnecessary delay in the dispensation of justice. If Lok Adalats are given power to decide the cases on merits in case parties fails to arrive at any compromise or settlement, this problem can be tackled to a great extent. Further, the cases which arise in relation to public utility services need to be settled urgently so that people get justice without delay even at pre-litigation stage and thus most of the petty cases which ought not to go in the regular Courts would be settled at the pre-litigation stage itself which would result in reducing the workload of the regular Courts to a great extent. With this object in view, the Legal Services Authorities Act, 1987 has been amended by the Legal Services Authorities

(Amendment) Act, 2002 to set up Permanent Lok Adalats for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services.

The salient features of Legal Services Authorities (Amendment) Act, 2002<sup>16</sup> are as follows:

- (i) to provide for the establishment of Permanent Lok Adalats which shall consist of a Chairman who is or has been a District Judge or Additional District Judge or has held judicial office higher in rank than that of the District Judge and two other persons having adequate experience in public utility services to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, by the State Authority;
- (ii) the Permanent Lok Adalat shall exercise jurisdiction in respect of one or more public utility services such as transport services of passengers or goods by air, road and water, postal, telegraph or telephone services, supply of power, light or water to the public by any establishment, public conservancy or sanitation, services in hospitals or dispensaries; and insurance services;
- (iii) the pecuniary jurisdiction of the Permanent Lok Adalat shall be upto Rupees ten lakhs. However, the Central Government may increase the said pecuniary jurisdiction from time to time. It shall have no jurisdiction in respect of any matter relating to an offence not compoundable under any law;
- (iv) it also provides that before the dispute is brought before any Court, any party to the dispute may make an application

16. Supra Note 7.



to the Permanent Lok Adalat for settlement of the dispute;

- (v) where it appears to the Permanent Lok Adalat that there exist elements of a settlement, which may be acceptable to the parties, it shall formulate the terms of a possible settlement and submit them to the parties for their observations and in case the parties reach an agreement, the Permanent Lok Adalat shall pass an award in terms thereof. In case parties to the dispute fail to reach an agreement, the Permanent Lok Adalat shall decide the dispute on merits; and
- (vi) The Permanent Lok Adalat, shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the Principles of Natural Justice, objectivity, fair play, equity and other principles of justice and shall not be bound under the Code of Civil Procedure 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872);
- (vii) every award made by the Permanent Lok Adalat shall be final and binding on all the parties thereto and shall be by a majority of the persons constituting the Permanent Lok Adalat.

***Constitutional Validity of the Legal Services Authorities (Amendment) Act, 2002***

The Supreme Court of India examined the validity of the amendment made in the 1987 Act in the case of *S.N. Pandey v. Union of India*<sup>17</sup> and held that, “the constitution of the Permanent Lok Adalats mechanism contemplates the judicial officer or a retired judicial officer being there along with other persons having adequate experience in the public utility services. We do not find any

constitutional infirmity in the said litigation. The Act ensures that justice will be available to the litigant speedily and impartially. We do emphasize that the persons who are appointed on the Permanent Lok Adalats should be persons of integrity and adequate experience”.

Under Section 22D of the Legal Services Authorities (Amendment) Act, 2002, the Permanent Lok Adalat while conducting conciliation proceedings or deciding disputes on merit shall be guided by the Principle of Natural Justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

It is, therefore, planned not to review the Legal Services Authorities (Amendment) Act, 2002”.

***Lok Adalat : An Instrument of Alternative Dispute Resolution***

India is said to possess one of the fairest legal systems in the world. But the undue delay in disposal of the cases in Courts is not only causing untold hardship to the litigants seeking justice, but it has become a matter of grave concern to both the Judiciary and the Government. Several committees have been constituted by the Government of India to examine the causes for the delays in justice dispensation and suggest remedial measures to plug them. This issue was also deliberated at length in the Conferences of Law Ministers, Judges of the High Courts and Supreme Court of India held on several occasions. The Law Commission of India also made several recommendations to the Government of India in this regard. One of the remedial measures initiated by the Government to decongest the Courts, reduce delays in justice dispensation and also cost of litigation is the establishment of the Lok Adalats throughout the country. It is pertinent to note that speedy trial is a fundamental right within the meaning of Article 21 of the Indian Constitution. The Supreme Court in

17. Ministry of Law and Justice, Government of India Press release dated 6th January 2003.

*Anil Rai v. State of Bihar*<sup>18</sup> took a serious note of the delay in delivering the judgment and observed that any inordinate delay, unexplained and negligent, in pronouncing judgment by the High Court infringes the rights of the citizens under Article 21 of the Constitution.

The Lok Adalat is guided by the principles of justice, equity, fair play and other legal principles while arriving at a compromise and settlement between the parties. The Lok Adalat is required to pass an award on the basis of compromise arrived at between the parties and the award shall be final and binding on all the parties to the dispute and no appeal lies to any Court against such award<sup>19</sup>. In *Krishna Rao v. Bhidar District Legal Services Authority*<sup>20</sup> the Court observed that Section 20 of the Legal Services Authorities Act, 1987 clearly indicates that the jurisdiction of a Lok Adalat is to pass the award on the basis of settlement or compromise arrived at between all the parties to a suit. Therefore, all parties must be present before it and notices need to be issued to all the parties or it has to verify that a compromise or settlement has been arrived at between them.

In *Pushpa Suresh Bhutala and others v. Subhas Bansilal Maheswari and others*<sup>21</sup> the High Court of Bombay categorically explained that a plain reading of Section 20 of the Legal Services Authorities Act, 1987 clearly indicates that “the Court before whom the case is instituted shall refer the case to the Lok Adalat for settlement, if the parties thereto agreed to opt for redressal of the dispute before the forum. But when only one of the parties to the dispute makes an application to the Court

for referring the case to the Lok Adalat for settlement even in such a situation the Court shall refer the dispute to Lok Adalat but in this case the additional requirement is that the Court should *prima-facie* satisfy itself that there are chances of a settlement”.

In case a compromise or settlement has been arrived at in a matter referred to a Lok Adalat by any Court, the Court fee paid in such case shall be refunded in the manner provided in the Court Fees Act, 1870. All the proceedings of the Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 191, 219 and 228 of the Indian Penal Code and the Lok Adalat shall be deemed to be a civil Court for the purpose of Section 195 and Chapter VI of the Cr.P.C. The most significant feature of working of the Lok Adalat is conciliation at pre-litigation stage. The parties to pre-litigation matters shall be required to submit their respective versions before the Bench of the Lok Adalat. Likewise, compromise in compoundable criminal matters at pre-litigation stage is also likely to keep the parties at bay from resorting to legal action to keep the other party on tenterhooks.

### Conclusion

The above discussion clearly indicates that the Lok Adalat stands for the resolution of disputes of the parties by means of discussion, Counselling, persuasion, conciliation, mediation and settlement which provide speedy justice. In fact, it is a participatory justice in which the parties and Judges participate and make efforts to arrive at a mutually acceptable settlement, which will help to reduce frivolous litigation and reduce the congestion in the Courts. Another dynamic aspect of the Lok Adalat system is that in the pre-litigative stage, the local Legal Aid Committee along with local people and social workers interview the parties and explain the *pros* and *cons* of the case to the parties to the dispute and convince them about the feasibility and desirability of resolving the case

18. 2001 (2) ALD (CrL) 446 (SC) = AIR 2001 SC 3173.

19. This will not oust the jurisdiction of the High Courts and the Supreme Court under Article 226 and Article 3, 2 of the Indian Constitution respectively.

20. AIR 2001 Ker. 407

21. AIR 2002 Bom. 126

by conciliation and compromise. But this laudable object will be fruitful and successful only if the Members of the Lok Adalat have

a serious commitment and mindset to promote settlement of disputes through the ADR mechanism.

## INDIAN SECULARISM AND RELIGIOUS PHILOSOPHY

By

—P. HARI GOPAL,  
B.Com., IRPM L.L.B., L.L.M.,  
ADVOCATE, Hyderabad, A.P.

Is India a secular State and society, and can it be ? What are the forces, secular and non-secular, currently operating in the Indian polity ? Can our Constitution and Governments live upto the large secular claim made by our national leadership ! Do religion and Para-religion infiltrate into neighbouring areas of labour, education and social services corrosively ? And do our obscurantism, chronic casteism, aggressive communalism and crypto-religious politics add upto a pathological syndrome of a sick society which needs, *inter alia*, educational, administrative and legal therapy ? If secularism, adapted to Indian conditions is the means to achieve material progress unhampered by multi-religious bigotry and its by-products, what are the political omens and constitution perspective ?

A geo-secular glance reveals that Pakistan is openly Islamic in politics while Bangladesh is secular by constitutional assertion. People's China and the Soviet Union possess a flavour of anti-godism. Britain has an established religion co-existing with a democratic set-up and America has built a wall of separation between God and Caesar. India that is Bharat is a curious hybrid secular in text, with a leaning wall of State-Church separation and suffering from a constitutional solicitude for religious minorities. The paradox of liberal religious thought and communal belligerency, of constitutional commitment to a social revolution and the politics of religion which even revolutionary parties play, and the

phenomenon of two 'total' religions that regulate worldly and other-worldly affairs can this vast Indian mosaic fulfill a secular promise or should we so condition the genetic code of the nation as to ensure Indian humanity not blotted by deities and divided by Gods but spurred only science and socialism and informed by cosmic spiritualism?

What do we mean by a secular State and a secular society in the Indian context ? The former implies a national policy and the latter a social philosophy. The Church-State controversy of the West is absent here and so the role of the State *vis-à-vis* the majority and minority and minority religions is more pertinent for us. From the cultural angle, rationalism, in suppression of all religions, is currently a lost cause in India : and tactically speaking, there is a fair chance for a progressive weakening of Religion's hold on the social order only through the massive permeation of science into education and the active stimulation of the secular cells in society.

Secularism is not an end in itself, nor another 'religion; by a Specific defensive-plus offensive mechanism at the service of India's millions in their march towards the great future which modern science, socio-economic justice and ancient super-rational though promise. The desideratum-the secular core-is to vanish from the worldly affairs of man the baleful influence of wrong religion and to permit the practice of religious pluralism