CHAPTER-VII

LOK ADALAT IN INDIA AND ITS LEGAL REGIME

The genesis of lok adalats to a large extent can be traced to the inability of the long established legal system to provide effective, inexpensive and timely justice to the large number of litigants knocking at the doors of justice. There were large numbers of cases, where the litigants were found waiting for justice for years together. It may not be wrong to say that many litigants were there who just wished and desired for mere conclusion of the case. The judicial system that we have got today is clogged by different tiers of courts, where there are different for a of appeal after appeal, revisions, reviews, where the end result is not only the success or failure of one of the parties, but, what remains is a permanent bitterness between the parties and a non-satisfactory resolution of the disputes. It never results in a win-win situation, but, invariably in all cases it's a win-lose or lose-lose situation.

I would like to respect a story where a wife filed a divorce suit against her husband. The matter ultimately went to the apex court. The Hon'ble supreme court of India after many years of litigation between the parties finally decided the matter. The parties who had started young ended up being old, at the conclusion of the trial. The wife, who apparently had emerged as a victor, said to her now divorced husband, look there is only one winner in this long running soap and that happens to be our lawyers.

Certainly, touched and deeply disturbed by the sight of large number of poor, downtrodden and indigent litigants cherishing hope for justice, with great preparation but with the stamp of remarkable simplicity the late Chief Justice of Gujarat High Court Justice M.P. Thakkar organized the first Lok Adalat on March 14, 1982 at Junagarh, Gujarat. The concept of Lok Adalat is an innovative Indian contribution to the legal system. "Lok" stands for "people" and the vernacular meaning of the term "Adalat" is "Court". Thus, the Lok Adalats refer to the 'People's Court'. One can say that Lok Adalats are an innovative evolution of the 'Nyaya Panchayats' which for long have been the part of the Indian jurisprudence.

I as a young lawyer but first as a person, who had deep love for my country and concern for its poor people, saw in the Lok Adalats the potential to grow into genuine
Justice—courts of the people and for the people. Perhaps, it was providence that from
the land of Gujarat the realization of the dream of the greatest son of India, who was
born in Gujarat. As the 'Father of the Nation' had long back remarked, "it was the
function of the democracy to make justice cheap and expeditious and to ensure all
possible purity in the administration". On these principles, Justice Thakkar intended
and did turn Lok Adalats to "less expensive, less speculative, less glamorized, more
participatory, negotiatory, more result oriented or dispute solving mechanisms that
work to serve the purpose of justice with humanity in mind".

Lok Adalat system is not visualized as a supplant to court system but
supplementary machinery to resolve pending cases in the court of law as also settled
through the pre-litigation Lok Adalats. Resolution of cases through the Lok Adalats is
a. composite endeavour. It implies resolution of people's disputes by discussion,
counselling, persuasion and conciliation so that it gives speedy and cheap justice with
the mutual and free consent of the parties. In short, concept of Lok Adalats implies
speedy and' cheap justice to common man on his doorstep. It is participatory justice in
which people and judges participate and resolve their disputes by discussion and
mutual consent. The Lok Adalat system is basically meant for the resolution by
conciliatory technique and voluntary actions. It also has helps in creating awareness
among the people of their rights and obligations, by providing legal literacy in laws
with which common man is in contact in day-to-day life, in involving them in judicial
processes in the grass-root level and by educating social workers to work as Paralegals
to enable them to give first in law to the people on the spot.

7.1 Relation between Legal Aid and Lok Adalat

Observed form a superficial plank one may say that legal aid and the
mechanism of Lok Adalat are not related to each other, But a close scrutiny, taking the
overall objective of these, one is forced to think otherwise. To me both lead to the
same goal i.e. ensuring access to justice. The Lok Adalats which have been constituted
for the summary disposal through the process of arbitration, conciliation and
settlement between parties, if a large number of cases are disposed expeditiously and
with lesser costs, where the parties get an opportunity to interact directly with the
judicial officers or judges, the faith of the people in the capacity of the system to settle
their disputes expeditiously and with lesser costs is resurrected, which shall ultimately lead to access to justice for a large section of the society, which otherwise perhaps might have been denied. This shall ultimately lead to more and more people coming to the courts in the quest of justice. As I have pointed out earlier, the objective of both the legal aid and the Lok Adalat is to ultimately ensure access to justice. Here both these principles meet and flow in unison.

7.2 The scheme of Legal Services Authorities Act, 1987

The statement of object and reason which led to the creation of Lok Adalats with statutory bearings reads:

For some time now, Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of arbitration and settlement between the parties, of a large number of cases expeditiously and with lesser courts. The institution of Lok Adalat is at present functioning as a voluntary conciliatory agency without any statutory backing for its decisions. It has proved to be very popular in providing for a speedier system of administration of justice. View of its growing popularity, there has been a demand for providing a statutory backing to this institution and the awards given by Lok Adalat. It is felt that such a statutory support would not only reduce the burden of arrears of work in regular Courts, but would also take justice to the door-steps of the poor and the needy and make justice quicker and less expensive.

The Legal Services Authority Act, 1987 envisages creation of Lok Adalats at different levels right from the Subordinate Courts in the districts to the Hon'ble Supreme Court of India. For the purpose of facilitating the smooth functioning of the scheme of organizing the Lok Adalats as also for giving legal services in the form of free legal aid to persons who satisfy the criteria laid down under the Act, different legal services institutions have been created and made functional. This includes the National Legal Services Authority which are constituted by the Central Government; every State Government constitute the State Legal Services Authority, the District Legal Service Authority for every district in the state and the Taluk Legal Services Committee for each Taluks or Mandals or for group of Taluks or Mandals.
Deliberating on the constitutionality of the Permanent Lok Adalat, set up under Chapter VIA(Section 22A to 22E) of the Legal Services Authorities Act, 1987, the EIon'ble Supreme Court of India in S.N. Pandey Vs. Union of India(2012) 8 SCC 261 held as under-

*It is quite obvious that the effort of the legislature is to decrease the workload in the courts by resorting to alternative dispute resolution. Lok Adalat is mode of dispute resolution which has been in vogue since over two decades. Hundreds of thousands of cases have been settled through this mechanism and is undisputedly a fast means of dispensation of justice. The litigation is brought to a quick end with no further appeals or anguish to the litigants. The constitution of the permanent Lok Adalat 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 uphold the validity of the said Act and hope that the Permanent Lok Adalats will be set up at an early date... the Lok Adalats shall perform their duties and will Junction, even if the members of the Bar choose not to appear."

In addition to the regular Lok Adalat and the Permanent Lok Adalat under section 19 of the Act, through the Act 37 of 2002, a new chapter VIA IM been inserted under the 1987 Act, to include Permanent Lok Adalats established under section 22B for 6 distinct 'Public Utility Services'. The Permanent Lok Adalats for Public Utility Services created under section 22B, in addition to the distinct conciliatory efforts that should be tried by them on priority, as a last resort if the parties fail to reach at an agreement, if the dispute does not relate to any offence, shall decide the dispute. Thus, those Lok Adalats have been assigned also with adjudicatory functions.

The other Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. Lok Adalats determine a' reference on the basis of compromise or settlement between the parties at their instance. No Lok Adalat has the power to hear parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. In Their conciliatory role, the Lok Adalats are guided by principles of justice, equity and fair
play. When the Legal Services Authorities Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the Said Act does not contemplate nor require any adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement agreed at by the parties, with guidance and assistance from the Lok Adalat. The 'award' of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by the parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play, to compromise and settle the disputes by explaining the pros and cons strength and weakness, advantages and disadvantages of their respective claims. Lok Adalats should resist their temptation to play the part of Judges and constantly strive to function as conciliators.

Where an award is made by Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by the parties and annexed to the award of the Lok Adalat), it becomes final and binding, on the parties to the settlement & becomes executable as if it is a decree of civil court, and no appeal lies against it to any Court. If any party wants to challenge such an award based on settlement, it, can be done only by filing a petition under Article 226 of the Constitution, that too on very limited grounds. The Hon'ble Supreme Court in K.N. Govindan Kutty Menon Vs. C.D. Shaji (CivilAppeal No. 10209 of 2011) has held that section 21 of the Legal Services Authorities Act contemplates a deeming provision and therefore it is a legal fiction that the award of Lok Adalat is a decree of civil court. The Hon’ble Court also took this opportunity to preface the objectives of the Act thus:

Free legal aid to the poor and marginalized members of the society is now viewed as a tool to empower them to use the power of the law to advance their rights and interests as citizens and as economic actors.. Parliament enacted the

Legal Services Authorities Act, 1987 in order to give effect to Article 39A of the Constitution to extent free legal aid, to ensure that the legal system promotes
justice on the basis of equal opportunity. Those entitled to free legal services are members of the Scheduled Castes and the Scheduled Tribes, women, children, persons with disability, victims of ethnic violence, industrial workmen, persons in custody, and those whose income does not exceed a level set by the government (currently it is Rs. 1 lakh a year in most States). The Act empowers Legal Services Authorities at the District, State and National levels, and the different committees to organize Lok Adalats to resolve pending and pre-litigation disputes. It provides for permanent Lok Adalats to settle disputes involving public utility services. Under the Act, legal services' have a meaning that includes rendering of service in the conduct of any court-annexed proceedings or proceedings before any authority, tribunal and so on, and giving advice on legal matters. Promoting legal literacy and conducting legal awareness programmes are the functions of legal services institutions. The Act provides for a machinery to ensure access to justice to all through the institutions of legal services authorities and committees. These institutions are manned by judges and judicial officers. Parliament entrusted the judiciary with the task of implementing the provisions of the Act.

As to the scope of the Lok Adalats {Other than Permanent Lok Adalats (Public Utility Services)}. The Hon'ble Supreme Court in State of Punjab Vs. Jalour Singh (2008) 2 SCC 660 has pointed out the following aspects:

• Lok Adalats have no adjudicatory or judicial functions. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of compromise or settlement.

• In case there is no settlement or compromise, no award is made and the case record is returned to the reference court.

• No. Lok Adalat has the power, to hear parties to adjudicate cases as a court does.

• In their conciliatory role, the Lok Adalats are guided by principles of justice, equity and fair play.

• The 'award' of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process.
Lok Adalats related Regulations Promulgated by the National Legal Services Authority.

The Legal Services Authorities Act, 1987 under Section 29, empowers the Central Authority, i.e. NALSA to make regulations not inconsistent with the provisions of the Act (LSA,1987) and the rules made there under for giving effect to the provisions of the Act. In the exercise of this power, the NALSA has notified the National Legal Services Authority (Lok Adalat) Regulations, 2009 w.e.f. 14th October, 2009.

The salient features of the Regulations are as under:

1. Lok Adalat may be organised by a Legal institution at regular intervals and for a definite geographical area.

2. For organising such Lok Adalats assistance may be taken from the members of the civil society like college students, social organisations etc.

3. The Lok Adalat in a state are to be organised under the overall supervision of the state Legal Services Authority.

4. Notice to every party concerned whose case is referred to Lok Adalat, shall be given well in time so as to afford him an opportunity to prepare himself for the Lok Adalat.

5. The Regulation makes provisions as to the composition of the members of the Lok Adalats for the Legal Institutions in the states. Most importantly the regulation talks about constituting a bench. Comprising of judicial member (a member of legal profession) and a social worker.

6. A Lok Adalat shall get jurisdiction to deal with a case only when a court of competent jurisdiction orders the case to be referred in the manner prescribed in section 20 of the ACT or under section 89 of the Code of Civil Procedure. This shall be done only when the referring court is prime facie satisfied that there are chances of settlement of the case through Lok Adalat and the case is appropriate to be referred to Lok Adalat.

(In this context the Hon'ble Supreme Court of India in afcons Infrastructure Ltd & Another Vs. Cherian Varkey Construction Co. Pvt. Ltd and others (2010) 8 SCC 24, has laid down "If the suit is complicated and the disputes are easily sortable or
could be settled by applying clear cut legal principles and there is no personal animosity between the parties (as in the case of motor accident claims), the court may refer to Lok Adalat).

7. The regulation also provides for transmission and custody of records and lays down that every judicial authority is expected to cooperate in transmission of judicial records.

8. The regulation for ensuring speedy and inexpensive justice as also for saving the time of the court provides the mechanism for pre-litigation settlement of matters. (Section 19(5)(ii)of the 1987 Act has provisions for the pre-litigation Lok Adalats.)

9. With regard to procedure the regulation, laying down the broad principles that the members of the Lok Adalat have the role of Statutory conciliators only and have no judicial role, or should not coerce or pressurise the parties and that they shall discuss the subject matter with the parties provides that the Lok Adalat may conduct the proceedings in such manner as it considers appropriate talking into account the circumstances of the case.

10. The Lok Adalat shall not determine a reference, at its own instance, but shall determine only on the basis of a compromise or settlement between the parties and has no power to hear the parties to adjudicate their disputes as a regular court.

11. When it appears to the Lok Adalat that there exists elements of a settlement which may be acceptable to the parties, the terms of a possible settlement may be formulated by the Lok Adalat mad given to the parties for their observations and modifications and the terms of a possible settlement may be accordingly reformulated.

12. Drawing up the award is merely on administrative act by incorporating the terms of settlement or compromise agreed by parties.

13. When both parties sign or affix their thumb impression and the members of the Lok Adalat counter sign it, it becomes an award every award shall be categorical and lucid and shall be written in the language prescribed for the court in English.

14. The award should mention the factum of refund of the Court fees.

15. Members of the Lok Adalat shall ensure that the parties affix their signatures only after fully understanding the terms of settlement arrived at and recorded.
16. The members shall also ensure that terms of settlement are not unreasonable or illegal or one-sided and that it is voluntary.

17. Lok Adalat shall not grant any bail or a divorce by mutual consent.

18. Confidentiality of all matters relating to the proceedings in the Lok Adalat shall be maintained and only such disclosure be made which is necessary for the purpose of implementation and enforcement of the award.

19. Nothing said or admitted can be brought in evidence or made use of in other court or arbitral proceedings.