CHAPTER - IV

ROLE OF JUDICIARY IN STRENGTHENING LOK-ADALAT

In no other system except perhaps in the United States of America, the judges and the judicial branch of the Government occupy as prominent and powerful a position as in the Indian system. Indeed, the importance of the Courts, particularly the Supreme Court and its judges has, if anything increased over the decades.¹ Right from its inception, the apex Court in India has influenced the national policy making agenda in significant proportions.² The judiciary, specifically Apex Court, has not only indulged in judicial legislation but has even exercised the constituent power unknown anywhere in the World and the seemingly transcending all, received notions of separation of power.³ In a large number of issues, while deciding the cases, the judiciary marched a long way in order to materialize the Constitutional goal and the protection of human rights. Among those, one was the goal of providing Legal Aid where judiciary propounded new legal aid jurisprudence so that the opportunity of securing justice are not denied to any citizen by reason of economic and other disability, of which Lok-Adalat is a strategic means.

Judiciary played vital role in not only providing legal aid but also institutionalising the concept of LokAdalat, which evolved as an instrument for providing legal aid. The institution of judiciary not only influenced the enactment of Legal Services Authority Act, 1987 but was also determined so that the Act can be implemented all over the country with its true spirit.⁴ The judiciary even directed the Government to provide funds to NGOs in order to encourage people participation through legal awareness, so that the Legal Aid programme can succeed.⁵ It went on further directing the Government and Governmental organizations to hold permanent

² George H. Gadbois, "The Supreme Court of India: As a political institution" in Rajeev Dhavan, R. Sudarshan & Salman Khurshid, Judge and Judiciary power, (1985) P-251
³ Upendra Baxi, The Indian Supreme Court and politics, (1980)
⁴ In Supreme Court Legal Service Committee V. U.01 AIR 1998 SC 2940, The Court directed all the states those had not framed rules till that time, to frame rules and implement the Law constructively.
⁵ See Centre for Legal Research & Other V. State of Kerala. AIR 1986 SC 2195
LokAdalat in their concerned departments to settle the grievance of the citizens speedily and cost effectively.6

4.1 Judiciary: A Path Provider for Lok-Adalat As Legal-Aid Strategy

In the landmark judgement of the Hussainara Khatoon case7, Justice Bhagwati spelt out the right to Legal Aid in criminal proceedings from the language of Article 21 and held that this is a Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or in-communicable situation and the State is under the mandate to provide a lawyer to an accused person, if the circumstances of the case and the needs of justice so received, provided accused person does not object to the provision of such lawyer. After two again reiterated similar views in the Khetri case,8 The Supreme Court said, state of affairs could be permitted to continue despite the decision of this Court. This Court has pointed out that the right to free Legal Services is clearly an essential ingredients of fair and just fair and just procedure for a person accused in an offence and it must be held; implicit in the guarantee of article 21 and the state is under the constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require. It is unfortunate that though this court declared the right to legal aid as a fundamental right of an accused person, by a process of judicial construction of Article 21, most of the States have not taken note of this decision. The Court directed the State Government to provide free legal services to the accused who is unable to provide lawyers on the ground of poverty and indigence. The Court also directed the Magistrate and Session Judges to inform the accused about the availability of the Legal Aid.

Again in 1986 the Supreme Court enhanced the ambit of the Legal Aid to the Appellate Court.9 The Court asked, ‘whether the fundamental right could lawfully be denied to the appellants if they did not apply for free legal aid? Is the exercise of this

---

6 Abdul Hassan and N.L.S.A. V. Delhi Vidyut Board and others, AIR 1999 DEL 88
7 Hussainara Khatoon V. State of Bihar. AIR 1979 SC 1369
8 Khatri & Others V. State of Bihar. AIR 1981 SC 928
9 Sukh Das & Others V. Union Territory of Arunachal Pradesh, AIR 1986 SC 991
fundamental right conditioned upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate legal representation being offered to him? Supreme Court while setting aside the conviction order said: The result was that the appellants remained un-represented by a lawyer and the trial ultimately resulted in their conviction. This was clearly a violation of the fundamental right of the appellants under Article 21 and the trial must accordingly be held to be vitiated on account of total Constitutional infirmity, and the conviction and sentence recorded against the appellants must be set aside.

The most vital challenge before the judiciary was to provide access to justice to a large number of people of the country. Judiciary tried its best to provide access to justice to the downtrodden people. The significant statement made by former chief justice Dr A.S. Anand with regard to the process of access to justice through the means of social action litigation is noteworthy. To quote:

While the judiciary was striving a balance between dignity of the individual and the unity of the nation, it found itself faced with a serious challenge concerning access to justice. It was noticed that the weaker section of the Indian humanity had been deprived of justice for long years: they had no access to justice on account of their poverty, ignorance and illiteracy. They were not aware of the rights and benefits conferred upon them by the Constitution and other beneficial legislations. On account of their socially and economically disadvantaged position they lacked the capacity to assert their rights. Access to justice to protect their fundamentals rights was almost illusory for such sections of Indian Humanity. The judiciary rose to meet the challenge and regarded it as its duty to come to the rescue of the underprivileged to help them to reap the benefits of economic and social entitlement.10

Though social action litigation provided means to hopeless people to access to justice and to protect their rights through such instrument, even then the goal of access

to justice is an unfulfilled reality. Large numbers of people do not have access to justice primarily because of the high cost of the administration of the justice system. In such a aggravated situation and on the role of judiciary, justice Dr A.S.Anand said:

*The high cost of litigation is a challenge, which judiciary has made attempts to meet though without any spectacular success. Even after decades of independence the poor, backward and weaker sections of the society feel that they do not have equal opportunities for securing justice because of their socio-economic conditions. The judiciary evolved schemes for providing legal aid to the poor A Committee for Implementation of Legal Aid Scheme (C/LAS) was set up by the judiciary to further the Directive Principles and assure 'equal protection of law' to the citizen.*

The judgment in *Hussainara Khatoon case* was pronounced in 1979 and in 1980 Committee for Implementation of Legal Aid Scheme (CILAS) was constituted with Justice Bhagwati who was appointed as the Chairman of the Committee. The CILAS started holding Lok-Adalat as a legal aid strategy. The working of the CILAS and all the aforesaid judgements made Legislature bound to pass Legal Services Authorities Act, 1987. However, the Act came into force with effect from 9.11.1995. Thus the judicial efforts not only evolved the institution of Lok-Adalat but also made Legislature bound to provide legal backing to the institution of LokAdalat.

### 4.2 Judiciary as Watch Dog for Proper Implementation Of Lok- Adalat Schemes

Though the Legal Services Authorities Act, 1987 was passed and enforced through Central notification, the Part III of the Act was not enforced by most of the States. Part III of the Act provides directives for the formation of State Authority, District Authority, High Court Committee and *Taluka* level Committee. Again, when most of the States have not implemented the law, which in result jeopardized the object of the Act to provide Legal Services at grass root level and holding Lok-Adalat as a mechanism for providing legal services, judiciary has to appear for materializing the aim and object of the Act. In Supreme *Court Legal Aid Committee V. Union of*

---

*Hussainara Khatoon V. State of Bihar. AIR 1979 sc 1369.*
the Supreme Court directed all the States and Union Territories, which have not framed the Rules so far, to frame Rules u/s. 28 and notify the same within a period of two months. It also directed the States or Union Territory for constitution of High Court Legal Services Committees and other Committees within two months and a compliance report was asked for by February 3, 1998. However, most of the States did not initially comply with the order and the matter again came up for hearing on 10th February, 1998. The Court threatened to initiate contempt proceedings against the Chief Secretary of the concerned State. However, by extending some time, the court again directed the Union Territory and State Government to comply with the directions saying, ‘We give in the meanwhile, time till 30.4.1998, to all the defaulting States/Union Territory Administration to comply full direction’.

Thus, judiciary not only played a vital role in the enactment of the Act but also in the enforcement of the Act. The Judiciary not even stops here, it went further to constitute a permanent Lok-Adalat in different Governmental agencies, concerning the public utilities services. Delhi High Court in Abul Hassan and N.L.S.A. V. Delhi Vidyut Board and others \(^{13}\) highlighted the aim of the LSA Act and said

\begin{quote}
One of the aims of the Act is to organize Lok-Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity. The Act gives statutory recognition to the resolution of disputes by compromise and settlement by the Lok-Adalat. The concept has been gathered from the system of Panchayat, which has root in the history, and culture of this country. It has a native flavor known to the people.
\end{quote}

Court further- highlighted the need for the Lok-Adalat and said that the need of the hour is practically beckoning for setting up Lok-Adalat on permanent and continuous basis. What we do today will shape our tomorrow. The choice is between an overburdened Court system being crushed under its own weight and the alternative dispute resolving machinery including an impressive dispensation of justice by Lok-Adalat. Court further said that for facilitating expeditious disposal of all kinds of

\(^{12}\) 1998 (5) SCC 762.
\(^{13}\) AIR 1999 DEL 88.
cases, permanent Lok-Adalat, must be set up in DVB, MCD, NDMC, DDA, MTNL, GIG and various departments of Government for resolving the disputes between the citizens and Government of India and the Government of India and its employees. Court directed all such Governmental Agencies to establish permanent Lok-Adalats.

Now the 2002 Amendment of Legal Service Authority Act, which mandate for constitution of permanent Lok-Adalat for resolving disputes in public utility service, is nothing but materialization of the thought expressed by the Delhi High Court in 1999.

4.3 Legal Aid, Legal Literacy, Ngo and Judiciary

Since the inception of the Lok-Adalat, as a Legal Aid strategy, the NGO played critical role in mobilizing people of all segments, specifically the down trodden people. Appreciating the functioning of the voluntary organization, justice Bhagwati said:

*If we want to secure people participation and involvement in legal aid programme, we think the best way of securing is to operate through voluntary organization and social action groups. These organizations are working among the deprived and vulnerable sections of the community at the grass root level and they learn what are the problems and difficulties encountered by the neglected section of Indian humanity. They have their fingers on the pulse of the people and they know from their own experience as to what the unmet legal needs of the people are and what measures are necessary to be taken for the purpose of ending such exploitation and injustice and reaching social or distributive justice to them.*

Even before the enactment of the Legal Service Authority Act, 1987, the issue was raised before the Supreme Court as to whether voluntary organizations or social action groups engaged in legal aid programme should be supported by the State Government financially. Such issues which are normally considered in the purview of the executive, the Court transcends the boundary and direct the Government to provide funds to such NGOs. Supreme Court speaking through justice Bhagwati held:

---

14 Centre of Legal Research and another V. State of Kerala. AIR 1986 Sc 2195
We therefore definitely of the view that voluntary organizations and social action groups must be encouraged and supported by the State in operating the Legal Aid programmes. It is now widely acknowledged throughout the country that the Legal Aid programme, which is needed for reaching social justice to the people, cannot afford to remain confined to the traditional or litigation oriented legal aid programme. But it must, taking into account the socio-economic conditions prevailing in the country, adopt a more dynamic positive steps and take within its sweep what we call strategic legal aid programmes, consisting of promotion of legal literacy, organisation of legal aid camps, encouragement of PIL and holding Lok-Adalat for bringing about the settlement of disputes, whether pending in the Court or outside.

The judiciary not only paves the ways for the moral encouragement of the NGOs but also arrange for their economic needs. The bold attempt of the judiciary will provide new energy in the Lok-Adalat movement vis-a-vis NGOs participation in the movement.

4.4 Lok-Adalat in The Eyes Of Judiciary

Few cases appeared before the higher judiciary relating to Lok Adalat. In almost all cases judiciary discouraged appeal or revision against the compromise order passed by the Lok Adalat. However, a decade ago the Gujarat High Court set aside the decree passed by the Civil Judge on the compromise entered before Lok Adalat. The contention of the appellant was that they did not agree on compromise as are being imposed on them. If so, the High Court was justified in setting aside the order. ¹⁵ However, caution is essential so that litigant with bad intention could not take alike pleas. In Punjab National Bank V. Laxmi Chand Rai & others ¹⁶ the Madhya Pradesh High Court dismissed the appeal filed against the decree passed by the Lok Adalat. In this case during the negotiation before Lok Adalat, the official of the appellant bank agreed on the award consisting of full dues amount as well as pendente lite interest and the period of instalment left on the Lok Adalat to decide. The argument of the appellant was that they never agreed on the instalment and the rate of pendente lite

¹⁶ AIR 2000 MP 30.
Interest is bad and unacceptable. The Court highlighted the aim and object of the Act and the provision of Sec. 21 of the Act, which debars appeal along with sec. 96(3) of C.P.C., which also debars any appeal from compromise decree. Court said that the Code of Civil Procedure intends that once a consent decree is passed by Court, finality is attached to it. Such finality cannot be permitted to be destroyed, particularly under Legal Services Authorities Act, as it would amount to defeat the very aim and object of the Act.

In *Kishan Rao v. Bidar District Legal Services Authority*\(^{17}\) the issue was raised as to whether the Lok Adalat can pass a decree when all the parties to the suit did not appear before Lok Adalat or any notice has been issued to them. A compromise was entered between the plaintiff and defendant 2 & 4 and accordingly the Lok Adalat passed the decree. Whether the Lok Adalat was right while passing the decree is the issue? Sec. 20(3) of the Act empowers the Lok-Adalat to proceed to dispose of the suit, proceeding, dispute or matter arrived at a compromise or settlement between the parties. Court interpreted the provision and said that the term "parties" used in the Section indicates all the parties in the suit. Court declared the decree illegal, null and void and remanded the case for trial.

In another case\(^ {18}\) the issue raised as to whether Court can refer the matter to the Lok Adalat if one party does not agree on such reference. The language of section 20 is clear which not only empowers the Court to refer the case, when one party file application for reference, but also the Court can *suo-moto* refer the case to the Lok Adalat if Court satisfied that there are chances or possibilities of settlement. However, the proviso mandates the Court to provide opportunities to the other parties to place their views. The Court appreciated the view of referring the matter to the Lok-Adalat by saying:

*The purpose of such reference is to explore the possibility of conciliation with the mediation of an independent agency which has the expertise in that behalf and*

\(^{17}\) AIR 2001 Karnataka 407.
\(^{18}\) *Puspa Suresh Bhutada & other V. Subhash Bansilal Maheswari & Other*, AIR 2002 Born 126.
statutory backing for the decision. In the matter like the present one, it is bounded duty of the Court to first explore the possibility of settlement. Such an approach alone would serve the legislative, intent of creating Lok Adalats and for providing them statutory backing for their decision. Any other view would not only frustrate the legislative intent but also result in affecting the authority of the Courts to the extent that it enables the Court to require the parties to submit to the jurisdiction of Lok-Adalat, in cases where the Courts are satisfied that the case is an appropriate case to be referred to the Lok-Adalat.

However, the Court forgets that the power of reference is for settlement of dispute and when one party had refused for reference and had even come for appeal, on the face of it, looks that the case is not a fit one to be settled before Lok Adalat. Thus in my opinion, for the sake of sending cases to Lok-Adalat one cannot pressurize the party to refer the case, where the Court knows that the matter will again come back.

The Indian judiciary through its activist role when attempted to reform almost all sectors and to evolve new jurisprudence for their materialization, the sector of Legal Aid vis-a-vis Lok Adalat is no exception to it. From the inception of Lok Adalat movement, the judiciary played a significant role. It not only made its effect on the enactment of Legal Services Authority Act but also reflected on the proper implementation of the Act. When the Executive fails to implement the statute in most of the States, the judiciary appeared as a messiah and made it enforceable in such places. It also played a role of policy maker by directing the State to provide funds to different NGOs for such purposes.

Now when the Lok Adalat is functioning as an effective dispute resolution mechanism, the judiciary is working as a watch-dog on the process so that no one can abuse the process. It is also rectifying the fault through judicial pronouncements. The 2002 amendment of the Act is nothing but the materialization of the verdict of the judiciary. So now it is in the process of expanding the scope of Lok Adalat.
Thus the judiciary not only acted as the policy maker but also as executors. However, very few cases appear before higher judiciary, we have to see further for assessing its role in future. While directing for formation of organization, like permanent Lok-Adalat, which the Legislature makes parallel to all almost adversary processes, except few differentials in the procedure, judiciary is required to take caution. However, the judiciary attempted to provide modern additional means for resolution of disputes but the legislature has moulded it in a different tune. Now we have to see further, for its effective functioning. Again the responsibility came on the shoulder of judiciary to safeguard the institution from losing its basic characteristics and evolving newly developed processes to make it more effective.