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Lok Adalats - A Practical Examination¹

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Ignorance of lawyers is the genesis behind the failure of Lok Adalats. The minimal success, which any Lok Adalat achieves, is due to the rationality present in the ordinary human mind, which very often disappears, as soon as lawyers appear on the scene.

Introduction

The Lok Adalat is an affective mechanism for the settlement of disputes. Prior to 1987, it had no legal structure, but was organised voluntarily, by organisations, on principles of mediation. Unlike the pre-trial processes, followed in countries like Canada or the United States, the Lok Adalat came in only when the parties wished to settle the dispute amicably, or where the court felt it necessary to refer the dispute for settlement, thereby limiting its scope of activity.

Various Legal Aid Boards, like the Tamil Nadu Legal Aid Board and the Karnataka Legal Aid Boards, undertook the frequent organisation of such camps. Such initiative brought forth moderate success in the settlement of disputes.

The Lok Adalat, as the word suggests, is organised for the "Lok" or for the "People", thus aiming to benefit the masses and thereby strengthening the principles of legal services.

The Legal Services Authorities Act, 1987, gives the Lok Adalat a legal structure, conferring on it the power of a civil court, thereby formalising the structure. The "Court" which is contemplated has been criticised by Justice Krishna Iyer, as it would once again lead to lawyer like litigation, constant adjournments and procedural problems, thus defeating the purpose of speedy justice.² The authorities empowered under the Act, however, have not been brought into existence, from which it can be happily inferred that the legal structure conferred to Lok Adalats remains in suspension.

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1 This Article is based on certain observations made personally, in the capacity of a student volunteer, during the Lok Adalat conducted by the Karnataka Legal Aid Board, on Canara Banking Cases, in the months of Oct. & Nov. 1993.

2 Krishna Iyer, *Legal Services Authorities Act- A Critique*, (Madurai: Society for Community Organisation Trust, 1988.) 48.

The informal structure of the Lok Adalat continues and the Karnataka Legal Aid Board, for instance, activates Lok Adalats in pursuance of its functions under the Karnataka Legal Aid Board Act, 1981.

In the present structure, the Lok Adalat can be described as an informal structure where disputants meet in the presence of an officiated mediator (which gives the gathering some formality) to settle the dispute by arriving at a solution agreeable to all the contesting parties. The manner of reference of disputes remains the same as before, where the court or one of the disputants asks for such reference. The Lok Adalat is thus an *ad hoc* body which comes into existence only upon such a reference under the aegis of the legal aid structure of the State.

Factually, disputants never refer the case to the Lok Adalats unless they are informed of the advantages of the same by the legal aid structure and it is only after several persuasive dialogues that the party or parties refer the case to the Lok Adalat for settlement.

The task of negotiations commences when the Lok Adalats through volunteers—usually student volunteers approach the opposite parties, requesting them to appear before the forum on a specified date and appraising them of the advantages of the same.

The final stage is the settlement stage, where the parties meet at the mediating table before a professional mediator and arrive at a solution on principles of bargaining, with the mediator intervening on grounds of equity and justice.

The settlement finally arrived at by the parties is signed and is placed before the court from where the dispute was referred to the Lok Adalat. The court treats the settlement as a compromise and after satisfying itself that the compromise was fairly arrived at, gives it the status of a decree. At the cost of repetition it may be pointed out that the above process of ratification is necessary, as the Lok Adalat is not an "Adalat", as such, and its decisions do not have the necessary statutory recognition.

It may be noted that cases which are not settled through the Lok Adalat are referred back to the original court for adjudication.

The Practical Reality

The Lok Adalats have achieved only a moderate success, despite its advantageous framework.

Refusal of parties to appear before the Lok Adalat is a common phenomenon. Parties who may not even have the slightest chance of winning the case refuse to appear, believing that the court would act as a time delay system, and the case would be probably decided only after their time. Such a belief is only a belief in the postponement of the inevitable. A simple example is a case where

there is a borrowal of money and a failure in repayment. A suit is filed for the repayment. The borrowing party realizes that he ought to have paid it back, but due to certain hardships, he has not been able to do so. If he proceeds with the case despite all evidence against him by raising frivolous arguments he can postpone the inevitable decision. In such cases it often happens that the borrower is adjudged insolvent.

The Lok Adalat works primarily on principles of morality, thus it may result in the non-appearance of unscrupulous parties. It is only when a party realizes the existence of an obligation, that the Lok Adalat machinery can roll into action. In case of extremities, the Lok Adalat can merely appeal to the conscience of mankind, which is dormant amongst the majority population of the country.

A few instances of the settlements arrived at under the auspices of the Lok Adalat, would illustrate how a Lok Adalat functions satisfactorily.

In one case a loan of Rs. 18,000/- was taken by an individual to purchase machinery from the Canara Bank. Due to constant requests from the landlord, the individual had to vacate his shop premises and transfer his machinery to his house, which resulted in a loss of business, as a consequence of which he was unable to pay the loan in the stipulated time. The case for recovery was filed by the Canara Bank. The case was referred to the Lok Adalat, where the individual voiced his problems and put forward a scheme of repayment by which he would repay the money at the rate of 1,000/- per month. The bank agreed to the scheme and to minimise the interest payable from the date of filing of the suit to the scheduled date of payment.

In another case a person had borrowed a loan for the purchase of candle manufacturing machinery. The business did not pick up and the individual had to close down the business. The case for recovery was filed against him. During the pendency of the case the individual had to vacate his residential premises due to inevitable circumstances. Two years later he obtained a job in a chemical store earning about 2,000/- per month. His total liability extended to around Rs. 55,000/-. The bank reduced the rate of interest from the date of the filing of the suit and agreed to an instalment payment spread over a period of four years.

In yet another case involving a large amount of money, a Rs. 350/- per month payment was accepted by the bank in a situation where the individual was earning only Rs. 800/- per month. The rate of interest was also reduced. The bank, influenced by the official mediator accepted the same, though it would result in repayment being spread over a term of 15 years. The same was beneficial to the borrower. The borrower was not asked to produce any documents as evidence. His word about his earnings was taken as final. This reflects the atmosphere of mutual trust in which a Lok Adalat functions.

The above cases reflect the spirit of magnanimity and compromise which alone can bring about settlements. It may however be pointed out that human

ignorance, especially that of lawyers, is the causative factor behind the limited success of the Lok Adalats. It is pointed out that most lawyers do not even know what a Lok Adalat is. This has hampered the settlement process to a large extent, even though the parties themselves are convinced of the advantages of the same. In fact the practical experiences in a case reflect a situation where a party is willing to appear before the Lok Adalat, but was dissuaded by his lawyer, resulting in his non-appearance.

Such legal ignorance reflects irrationality and the absence of a desire for learning. In the settled cases discussed above, no lawyer appeared on behalf of the parties and it was only the rationality of the parties which could bring about such a settlement. In only one case out of all the cases heard and settled, did a lawyer appear on behalf of the party, bringing about a negotiated settlement.

It is highly probable that the lawyers fear a loss of fee if a settlement is entered into between parties. This however should not be so as lawyers are primarily representatives and professional negotiators, and are thus entitled to a fee for securing their clients the best possible bargain. A lawyer who willfully ignores the possibility of a settlement for his client deserves to be debarred.

Alternatively, the clients are free to represent their own cases without the help of lawyers, and this is a right which ought to be exercised in situations in which their ultracrepidarian lawyers instruct them not to appear before the Lok Adalats.

Conclusion

The Lok Adalats can expand their moderate success to an almost total success, if the conscience of the individuals responds to the persuasions of the mediators of the Lok Adalats.

It is necessary for individuals to realize the true bargaining nature of the Lok Adalats and to appear before them in their individual capacities, ignoring their lawyers, as every man, every day, bargains and negotiates somewhere or the other, be it in business or with an autorickshaw driver or while purchasing vegetables. Bargaining is in the blood of man.

There is a need to establish the Lok Adalat as a compulsory pre-trial settlement mechanism, as well as an optional settlement mechanism at any other stage of the trial, in all disputes.

The need of the day is not to grant the Lok Adalat a formal structure, but to compell lawyers (keeping the structure informal) to present themselves (when clients feel that they ought to appear) along with their clients before the Lok Adalat, so that a settlement can be arrived at. Such compulsory measures are necessary as we cannot wait for the light of knowledge to dawn on the ignorant some day....