



LOKADALAT AS A UNIQUE MEASURE OF ALTERNATIVE DISPUTE RESOLUTION (ADR): A BOON FOR LITIGANTS

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ARTICLE INFO

Article History:

Received 17th June, 2018
Received in revised form
19th July, 2018
Accepted 16th August, 2018
Published online 30th September, 2018

Key Words:

Successful and viable national
Sections of the society
LokAdalat system.

ABSTRACT

The LokAdalat system is intended to act as a safety valve to relieve the mounting pressure on the courts. LokAdalat is one of the alternate dispute redressal forms to provide qualitative and speedy justice to a common man, thus it means a place of justice for a common man. LokAdalat has provided an important juristic technology and vital tool for easy and early settlement of disputes. It has again been proved to be a successful and viable national imperative and incumbency, best suited for the larger and higher sections of the society.

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Citation: Dr. Dhanalakshmi, G., Dr. Dhanapakiam, P. and Dr. Reniprabha, A. 2018. "Biochemical alternations induced by textile industrial effluent on common carp cyprinus carpio", *International Journal of Development Research*, 8, (09), 23152-23155.

INTRODUCTION

Dispute resolution is an indispensable process for resolving and checking conflicts, which enables persons and groups to maintain co-operation. It is the *sin qua non* of social life and security of the social order, without which it may be difficult for the individuals to carry on the life together. Alternative Dispute Resolution (ADR) is an alternative to the formal legal system to solve litigation. With the evolution of modern States and sophisticated legal mechanisms, the courts perform their duty on very formal processes. The procedural formalities of justice gave considerable rise to consumption of time and large number of cases and as a result thereof heavy amount of expenditure. This necessitated for an alternative complementary and supplementary mechanism to the process of the traditional civil court for less expensive, expeditious, less cumbersome and less stressful resolution of disputes. In a country like India where most people prefer to opt for litigation to resolve disputes, the courts in India are excessively over-burdened with the backlog of cases and the regular courts are to decide the cases involve a lengthy, expensive and tedious procedure.

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As a result thereof, backlog of pending cases have piled up in huge numbers, which has ultimately led to dissatisfaction and frustration among people regarding the judicial system and its ability to dispense justice. The business world as well as common men have experienced that it is impracticable for many individuals to file law suits and get timely justice. This opinion is generated largely on the basis of the popular belief, "*Justice delayed is justice denied*". To solve this problem of delayed justice ADR mechanism has been developed in response thereof. Alternative Dispute Resolution methods are being increasingly acknowledged in field of law and commercial sectors both at national and international levels. Its diverse methods can help the parties to resolve their disputes at their own terms cheaply and expeditiously. The goal of Alternative Dispute Resolution is enshrined in the Preamble of the Indian Constitution itself, which enjoins the state: "to secure to all the citizens of India, justice-social, economic and political-liberty, equality and fraternity". Alternative Dispute Resolution in India was founded on the Constitutional basis of Articles 14, 21 and Article 39-A. The Acts which deal with Alternative Dispute Resolution are Arbitration and Conciliation Act, 1996 and the Legal Services Authorities Act, 1987. In India, the Parliament has amended the Civil Procedure Code by inserting Section 89 which provides for the settlement of disputes outside the Court. It is based on the

recommendations made by the Law Commission of India and Malimath Committee. It was suggested by the Law Commission of India that the Court may require attendance of any party to the suit or proceedings to appear in person with a view to arriving at an amicable settlement of dispute between the parties and make an attempt to settle the dispute between the parties amicably. Malimath Committee recommended to make it obligatory for the Court to refer the dispute, after issues are framed, for settlement either by way of arbitration, conciliation, mediation, judicial settlement through LokAdalat. It is only when the parties fail to get their disputes settled through any of the alternate disputes resolution method that the suit could proceed further.

The quest for equal, fair and even handed justice has been the passionate demand of human being from the emergence of the society in all civilisations. Therefore, the right of effective access to justice has developed as the most basic human rights of a legal system which purports to guarantee the legal, social, political, cultural and economic rights in a country. The Preamble makes it abundantly clear that justice social, economic and political are the cherished objects. With the purpose to implement these objectives of justice, the various mandates enshrined in Part III and Part IV of the Constitution lay emphasis on the establishment of a qualitative justice dispensation system and at the doorsteps of people. However, in reality, our present judicial system based on Anglo-Saxon jurisprudence is being buried under the monumental weight of arrears. Because, litigation has increased manifolds, not only on account of population growth but also in view of new laws, legal awareness, shortage of judges, industrial and commercial increasing involvement of government in everyday life of people, growth, besides urbanization. The formal judicial machinery has failed to administer qualitative and effective to the people due to delay, corruption, highly cost of litigation, non access to justice, lengthy legal process due to technical procedural laws and less number of courts etc.

But after seven decades of the Constitution at work has tossed up many issues related to the working of the judiciary; the most important being court burdened, judicial delays and heavy costs. Delay in justice administration is the biggest operational obstacle, which has to be tackled on a war footing. Thus, its first quest was to find solutions to the problem of the ever increasing burden on the courts and to resolve the dispute as early as possible. Alternative dispute redressal techniques can be used in almost all contentious matters, which are capable of being resolved, under law, by agreement between the parties. ADR techniques can be employed in several categories of disputes, especially civil, commercial, industrial and family disputes. It has been found that, alternative dispute redressal methods offers the best solution in respect of commercial disputes where the economic growth of the country rests. In this article LokAdalats as a unique measure of ADR as a boon for litigants has been discussed. As a part of conflict management and judicial reform, the emergence of alternative dispute resolution has been one of the most significant movements. No doubt that Indian Judiciary has won laurels, however, there is criticism that the Indian judiciary is struggling with many problems as the mounting burden of backlog of court cases, the astronomical rise of high costs of litigation, corruption, inadequate number of judges, lack of sufficient accommodation and staff, unpredictable delays, and inaccessibility of justice. Thus the LokAdalat system is only the answer of these significant problems of

Indian judicial system. The concept and philosophy of LokAdalat is an innovative Indian contribution to the jurisprudence. LokAdalat an important alternative method used for resolution of disputes, where justice is dispensed summarily without too much emphasis on procedural technicalities. It is an old form of adjudicating system prevailed in ancient India which is valid even in the modern days too. LokAdalat is an appropriate and well-known method of participatory justice in which people and judges participate and resolve their disputes by discussion and mutual consent.¹ The introduction of LokAdalats has added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants or disputants for satisfactory settlement of their disputes. It is a major aspect of legal aid programme because it intends to provide equal protection of law and equal access to justice to all people, particularly the poor who lack means to knock at the door of justice.²

The LokAdalat works as an additional and complementary arm for existing judicial system. Judiciary through the activist approach has tried to revive the old strategy of conciliation in the form of LokAdalat for amicable settlement of dispute. Basically, this strategy aims at providing quick and cheap and efficacious justice along with reducing the backlog of cases pending in courts, with an idea that in future they prefer the settlement even before the institution of cases in courts. LokAdalat is one of the best and familiar forums which has been playing an important role in settlement of disputes. It also helps in emergence of jurisprudence of peace in the larger interest of justice and wider sections of society. The first LokAdalats was held in Unnao the Junagadh district of Gujarat State as far back as 1982. Now, the LokAdalat system has got the statutory recognition under the Legal Services Authorities Act, 1987 The object of the Act was to provide free and competent legal system to the weaker section of society to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities, and to organise LokAdalats to secure that the operation of the legal system promotes justice on basis of equal opportunity. The Act gives statutory recognition to the resolution of disputes by compromise and settlement by the LokAdalats. As per the Legal Services Authorities (Amendment) Act 1994, LokAdalat settlement is no longer a voluntary concept. By this Act it has got statutory character and has been legally recognized. LokAdalat is an institution that settles dispute by adopting the principles of justice, equity and fair play. It provides a quick, easy, accessible, non-technical, sympathetic and disputant friendly forum to the people for resolution of their disputes. It is only an institution meant to promote voluntary settlement between parties. Nothing can be imposed on the parties to dispute. Mutually agreed settlements through LokAdalat system contribute to greater social solidarity and better cohesion among disputants. Perhaps culturally and historically, Indian people are disposed to conciliated settlements with community intervention rather than adjudicated decisions through adversarial process of formal courts.³ It is an institution which strive to further the solidarity and integrity in the society by finding the amicable settlement of the dispute. LokAdalat accepts those cases which are pending in the regular courts within their jurisdiction and could be settled through conciliation and compromise. The LokAdalat method is quite inexpensive. There is no court fee and the disputes are settled without bearing any expenses by the parties. The procedure followed by it is simple, flexible ,

non-technical and informal as the cumbersome procedural laws, Civil Penal Code, Criminal Penal Code and the Evidence Act are not strictly followed while assessing the merits of the claim. However, the LokAdalats are bound to follow the principles of justice, equity, fair play and other legal principles.⁴

The lawyers are not essential to appear during the conciliation process of LokAdalat. Its decision is binding on the parties to the dispute and its order is capable of execution through legal process. There are no further appeals, revisions or review applications. These are empowered to settle the both kind of matters which are already pending before courts and which are at pre-litigation stage. It dispenses justice to the disputants by discussion, counselling, persuasion, conciliation and humane approach. It also helps in creating awareness among the people of their rights and obligations mentioned in numerous social and welfare legislations, by providing legal literacy in the basic laws with which people come in close contact in day to day life; in involving them in judicial processes at the grass-root level and by educating social workers to function as paralegal to enable them to give first-aid in law to the people on the spot.⁵ It takes justice at the door-steps of the people, they settle the dispute on the basis of compromise and thus, there is neither a victor nor a vanquished and both the contestants are gainers and winners. It is a boon for the litigants, where they can get their disputes settled speedily and free of cost. The LokAdalat system is intended to act as a safety valve to relieve the mounting pressure on the courts. LokAdalat is one of the alternate dispute redressal forms to provide qualitative and speedy justice to a common man, thus it means a place of justice for a common man.⁶ LokAdalat has provided an important juristic technology and vital tool for easy and early settlement of disputes. It has again been proved to be a successful and viable national imperative and incumbency, best suited for the larger and higher sections of the society. LokAdalat phenomenon is an expression of the disgust and disenchantment of the poor and the middle class people in respect of the court system as it functions today. It is a unique ray of hope for the common masses where they can get the justice in real sense without any impediments.

In view of mounting arrears of litigations in the existing judicial courts, the LokAdalats are constituted not to decide the cases on the merits and demerits but rather to resolve them by persuading parties to take advantages of compromise bypassing the entire dilatory procedure of adversarial litigation. The LokAdalat system is not a substitute for the present judicial system, but a supplementary to it so that the arrears of cases in courts of law may be reduced. The system is based on Gandhian principles because it gives a practical shape to the twin concept of Swaraj and Sarvodaya propounded by the Father of the Nation. The concept of the Swaraj implies not merely liberation from the foreign yoke but also emancipation from backwardness, poverty and illiteracy.⁷ The LokAdalat is an innovative system invented for dispensation of justice in a manner compatible with the social, cultural, economic, political and administrative inheritance of India. The concept of LokAdalat is an integral part of the Indian Constitutional Scheme mentioned in Preamble, Part III and Part IV of the Constitution. Because the Constitution mandates not only to impart justice in its legal sense, but also social, economic, and political sense. The LokAdalat system fulfils the requirement of justice of the poor, backward and illiterate people who are often intimidated and confused by the greasy, semantics and

substantive and procedural laws and provides them this approachable system to resolve their disputes while securing justice. As it is observed by Justice Dr. A.S. Anand, the LokAdalats are providing an effective solution to the main drawbacks facing Indian justice delivery system i.e. access to courts, backlog in courts resulting in delays and cost of litigation.⁸

As the term implies, LokAdalat (LokNyayalaya), is a court for the people at their door-steps with a true spirit of conflict resolution and devoid of strict formalism of the existing judicial system. LokAdalat means people's court but, in its accepted connotation, it is not a court. It is an alternative dispute resolution forum where voluntary efforts intended to bring about settlement of disputes between the parties are made through conciliatory and persuasive efforts. However, the LokAdalat has got the status of a Civil Court as all proceedings before a LokAdalat for the determination of the dispute are deemed to be judicial proceedings. The award of LokAdalat is deemed to be a decree of Civil Court and final and binding on all the parties to the dispute. No appeal can be made to any Court against such award of LokAdalat. The institution of LokAdalat is not the substitute of existing judicial system but only works as supplementary to it so that mounting arrears are reduced and quick justice is provided. LokAdalat system is a medicine in litigating with hardly any adverse effects. In fact, apart from easy accessibility, quicker and cheaper justice, the chief beauty of Lok-Adalat is the decimation of bitterness, because compromise is the very soul of the Lok-Adalat justice. It is based on the spirit of equality, justice and rule of law enshrined our National Charter with a view to improving the prevailing judicial system with functional process and promotion of justice through law. Hence, the LokAdalat system is people oriented and people supported mechanism which has received wide support from different sections of the society. Due to, its features, it has not only resulted in lessening the workload of our regular courts but has also provided efficacious justice to those who cannot afford to fight the costly legal battle for the assertion and protection of their rights under the prevailing justice delivery mechanism.

Even though LokAdalats continue to be accepted today, they have not met many of their initial goals. Initially, as more referrals to the LokAdalats system were made, people supported the LokAdalat system because of popular dissatisfaction with the time and cost of litigation in the formal court system. Participants increasingly approved of LokAdalats because they provided quick resolutions and a sense of collaboration. Lawyers are famous for dragging on cases by abstaining themselves, pressure to settle and seek postponement because they are unprepared. In such cases judges may be hostile toward the presence of lawyers in these forums because they may negatively impact settlement agreements. Further, disputants are frequently dissatisfied because one party's attorney is unprepared or not present, which subsequently prohibits the parties from being able to reach a settlement. In rural LokAdalats, there are numerous unsuccessful attempts at conciliations because judges and lawyers fail to understand the relationship between disputants. Often, the parties have a long history of caste or tribal conflict. The limited success of LokAdalats can partially be explained by the ignorance of the judges to the true nature of the conflict between the parties. Another reason the LokAdalat system has failed to provide justice to the public is due to lack of

dedicated judges and lawyer. In many situations, it was this judicial dedication that enabled conciliation rather than the informal structure of the LokAdalats. Another issue is the adversarial nature of LokAdalats. Rural villagers prefer settlement through an informal medium. To most, it is socially and morally desirable to reach a compromise outside of court, created in an informal atmosphere where there is no winner or loser. Consequently, the adversarial process is considered too formal and is therefore used as a last resort. LAs were meant to be a process of conciliation and settlement, which is more suitable for the rural population when compared to the adversarial process. The village population finds settlement socially and morally preferable to resolutions by the adversarial system. However, over a period of time, fewer LokAdalats were held because of severe lack of resources, despite their growing demand. Thus, LokAdalats were increasingly viewed as just another arm of the formal justice system. As a result, not only have people had negative experiences with LokAdalats, but the LokAdalat system has struggled to provide justice to the public. Due to the foregoing issues, the amount of cases brought before LokAdalats and successfully resolved has declined. For instance, in the National LokAdalat during 2015-16, 61,58,529 cases were settled, during 2016-17, 49,77,002 cases were resolved but during 2017-18, up to December 2017, 29, 28, 339 cases were decided.⁹

Therefore, the forum of LokAdalat deserves to be strengthened, developed for preventing litigation, ending the pending litigation and ultimately forming the LokAdalat a peace-making and peacekeeping institution so that it may play a significant role in development of country.

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