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DISPUTE REDRESSAL MECHANISM AND INSTITUTIONS IN INDIA

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DISPUTE REDRESSAL MECHANISM AND INSTITUTIONS IN INDIA

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Article 21 of the Constitution of India declares in a mandatory tone that 'no person shall be deprived of his life or his personal liberty except according to procedure established by law. The Right to Speedy Trial has been rightly held to be a part of Right to Life or Personal Liberty by the Supreme Court of India. This liberal interpretation of Article 21 is to redress that mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself effectively. Thus, the Supreme Court has held the Right to Speedy Trial as a manifestation of fair, just and reasonable procedure enshrined in the said Article.

Before formation of law Courts in India, people were settling the matters of dispute themselves by mediation. The mediation was normally headed by a person of higher status and respect among the village people and such mediation was called in olden days "Panchayat". The Panchayat will be headed by a person of higher stature, quality and character who will be deemed to be unbiased by people of the locality, called Village Headman and he was assisted by some people of same character or cadre from several castes in the locality. The dispute between individuals and families will be heard by the Panchayat and decision given by the Panchayat will be accepted by the disputants. The main thing that will be considered in such Panchayat will be the welfare of the disputants as also to retain their relationship smooth. Similarly in the case of dispute between two villages, it will be settled by Mediation consists of person acceptable to both villages and people from both the villages and the decision of such mediation will be accepted by both village people. The disputes in olden days seldom reached law Courts. They would be even settling the complicated civil disputes, criminal matters, family disputes, etc. Such type of dispute resolution maintained the friendly relationship between the disputants even after resolution of their disputes. But subsequently, this type of Panchayat has failed due to intervention of politics and communal feelings among the people.

But in a developing country like India with major economic reforms under way within the framework of the rule of law, strategies for swifter resolution of disputes for lessening the burden on the courts and to provide means for expeditious resolution of disputes, there is no better option but to strive to develop Alternative modes of Dispute Resolution (ADR) by establishing facilities for providing settlement of disputes through arbitration, conciliation, mediation and negotiation. In this context, the GOI has set up different dispute redressal mechanisms to address the problem.

In essence the system are on:

- Mediation rather than winner takes it all.
- Increasing Accessibility to justice.
- Improving efficiency and reducing court delays.

Some dispute redressal mechanisms present in India are discussed below:

ADMINISTRATIVE TRIBUNAL

With the acceptance of Welfare ideology, there was a mushroom growth of public services and public servants. The courts, particularly the High Courts were inundated with cases concerning service matters. The Swaran Singh Committee therefore, inter-alia recommended the establishment of Administrative Tribunals as a part of Constitutional adjudicative system. Resultantly the Constitution (42nd Amendment) Act, 1976 inserted Part XIV-A to the Constitution of India consisting of Articles 323A and 323B.

Article 323A provides for the establishment of Administrative Tribunals for adjudication or trial of disputes and complaints with respect to recruitment, conditions of service of persons appointed to public services and other allied matters.

Article 323B makes provision for the creation of Tribunals for adjudication or trial of disputes, complaints or offences connected with tax, foreign exchange, industrial and labour disputes, land reforms, ceiling on urban property, election to Parliament and State Legislatures, etc. Parliament has power to enact any law under Article 323A while both Parliament and State Legislatures can make laws on matters of Article 323B, subject to their legislative competence.

Types of Administrative Tribunals

There are different types of administrative tribunals, which are governed by the statues, rules, and regulations of the Central Government as well as State Governments.

- **Central Administrative Tribunal (CAT)**

The enactment of Administrative Tribunals Act in 1985 opened a new chapter in administering justice to the aggrieved government servants. It owes its origin to Article 323A of the Constitution which empowers the Central Government to set up by an Act of Parliament, the Administrative Tribunals for adjudication of disputes and complaints with respective recruitment and conditions of service of persons appointed to the public services and posts in connection with the Union and the States.

The Tribunals enjoy the powers of the High Court in respect of service matters of the employees covered by the Act. They are not bound by the technicalities of the Code of Civil Procedure, but have to abide by the Principles of Natural Justice. They are distinguished from the ordinary courts with regard to their jurisdiction and procedures. This makes them free from the shackles of the ordinary courts and enables them to provide speedy and inexpensive justice.

The Act provides for the establishment of Central Administrative Tribunal and State Administrative Tribunals. The CAT was established in 1985. The Tribunal consists of a Chairman, Vice-Chairman and Members. These Members are drawn from the judicial as well as the administrative streams. The appeal against the decisions of the CAT lies with the Supreme Court of India.

- **Customs and Excise Revenue Appellate Tribunal (CERAT)**

The Parliament passed the CERAT Act in 1986. The Tribunal adjudicate disputes, Complaints or offences with regard to customs and excise revenue. Appeals from the orders of the CERAT lies with the Supreme Court.

- **Election Commission (EC)**

The Election Commission is a tribunal for adjudication of matters pertaining to the allotment of election symbols to parties and similar other problems. The decision of the commission can be challenged in the Supreme Court.

- **Foreign Exchange Regulation Appellate Board (FERAB)**

The Board was set up under the Foreign Exchange Regulation Act, 1973. A person who is aggrieved by an order of adjudication for causing breach or committing offences under the Act can file an appeal before the FERAB.

- **Income Tax Appellate Tribunal**

This Tribunal has been constituted under the Income Tax Act, 1961. The tribunal has its benches in various cities and appeals can be filed before it by an aggrieved person against the order passed by the Deputy Commissioner or Commissioner or Chief Commissioner or Director of Income Tax. An appeal against the order of the Tribunal lies to the High Court. An appeal also lies to the Supreme Court if the High Court deems fit.

- **Railway Rates Tribunal**

This Tribunal was set up under the Indian Railways Act, 1989. It adjudicates matters pertaining to the complaints against the railway administration. These may be related to the discriminatory or unreasonable rates, unfair charges or preferential treatment meted out by the railway administration. The appeal against the order of the Tribunal lies with the Supreme Court.

- **Industrial Tribunal**

This Tribunal has been set up under the Industrial Disputes Act, 1947. It can be constituted by both the Central as well as State governments. The Tribunal looks into the dispute between the employers and the workers in

matters relating to wages, the period and mode of payment, compensation and other allowances, hours of work, gratuity, retrenchment and closure of the establishment. The appeal against the decision of the Tribunal lies with the Supreme Court.

At present and in view of the decision of the Supreme Court in 'Chandra Kumar's case, the administrative tribunals are rendering the following diversified judicial duties/functions:

1. Functioning as a 'Court of first instance; by adjudicating the Original Applications (shortly called O.A.s) filed by the Government employees and also Miscellaneous Applications, Contempt Applications and Review Applications, arising out of them.
2. Adjudicating the cases remanded by the High Courts, in exercise of its power of 'Judicial Review'.
3. Adjudicating cases remanded by the Supreme Court of India.

Advantages of Administrative Tribunal

Administrative adjudication is a dynamic system of administration, which serves, more adequately than any other method, the varied and complex needs of the modern society. The main advantages of the administrative tribunals are:

a) Flexibility

Administrative adjudication has brought about flexibility and adaptability in the judicial as well as administrative tribunals. For instance, the courts of law exhibit a good deal of conservatism and inelasticity of outlook and approach. The justice they administer may become out of harmony with the rapidly changing social conditions. Administrative adjudication, not restrained by rigid rules of procedure and canons of evidence, can remain in tune with the varying phases of social and economic life.

b) Adequate Justice

In the fast changing world of today, administrative tribunals are not only the most appropriated means of administrative action, but also the most effective means of giving fair justice to the individuals. Lawyers, who are more concerned about aspects of law, find it difficult to adequately assess the needs of the modern welfare society and to locate the individuals place in it.

c) Less Expensive

Administrative justice ensures cheap and quick justice. As against this, procedure in the law courts is long and cumbersome and litigation is costly. It involves payment of huge court fees, engagement of lawyers and meeting of other incidental charges. Administrative adjudication, in most cases, requires no stamp fees. Its procedures are simple and can be easily understood by a layman.

d) Relief to Courts

The system also gives the much-needed relief to ordinary courts of law, which are already overburdened with numerous suits.

Disadvantages of Administrative Tribunals

Even though administrative adjudication is essential and useful in modern day administration, we should not be blind to the defects from which it suffers or the dangers it poses to a democratic polity. Some of the main drawbacks are mentioned below.

a) Administrative adjudication is a negation of Rule of Law. Rule of Law ensures equality before law for everybody and the supremacy of ordinary law and due procedure of law over governmental arbitrariness. But administrative tribunals, with their separate laws and procedures often made by themselves, puts a serious limitation upon the celebrated principles of Rule of Law.

b) Administrative tribunals have in most cases, no set procedures and sometimes they violate even the principles of natural justice.

c) Administrative tribunals often hold summary trials and they do not follow any precedents. As such it is not possible to predict the course of future decisions.

d) The civil and criminal courts have a uniform pattern of administering justice and centuries of experience in the administration of civil and criminal laws have borne testimony to the advantages of uniform

procedure. A uniform code of procedure in administrative adjudication is not there.

e) Administrative tribunals are manned by administrators and technical heads who may not have the background of law or training of judicial work. Some of them may not possess the independent outlook of a Judge.

FAST TRACK COURTS

Indian jails are, in fact, brimming with prisoners. Against the sanctioned capacity of 2.56 lakh, jails in the country are crowded by more than five lakh inmates. This is resulting in all sorts of complications. Keeping this factor in view the States had together sought from the Eleventh Finance Commission an aggregate of Rs. 3,700 crore upgradation grants to improve facilities and infrastructure relating to jails. The Finance body, however, provided 116 crore for a five-year period. This may be small consolation. But the fact remains that a Finance Commission has for the first time set apart a special grant for upgradation of conditions in jails.

The Finance Commission has hoped that the establishment of additional courts and reforms in laws and procedures would result in substantial reduction, if not elimination, of pending court cases over a period of five years.

Thus a novel experiment aimed at clearing the massive backlog in court cases has begun in the country with the setting up of 'fast track' courts in various states. Fast track courts are meant to expeditiously clear the colossal scale of pendency in the district and subordinate courts under a time-bound programme.

A laudable objective of the experimental scheme is to take up on top priority basis sessions and other cases involving undertrials. An estimated 1.80 lakh undertrials are languishing in various jails in the country. A majority of them are behind bars on account of petty or minor offences not warranting prolonged imprisonment. Yet many of them are under lock up in the absence of trial.

The fast track courts are expected to substantially reduce the number of undertrials in jails. A vast majority of them will be set free, thereby reducing expenditure as well as burden on jails. The State Governments are spending an aggregate of over Rs. 361 crore per annum on the imprisoned undertrials at the rate of Rs. 55 per head per day. Besides saving a bulk of this expenditure, the expeditious disposal of cases relating to undertrials will address a serious human rights problem.

Under the government's action plan, the fast track courts will take up as their next priority sessions cases pending for two years or more, particularly in which the accused persons have been on bail. According to an official figure, the total number of cases pending in the nearly 13,000 district and subordinate courts in the country is a whopping 2.40 crore (latest estimate). Of these, over 50 lakh criminal and over 25 lakh civil cases are pending for a period ranging from one to three years. These are in addition to over 10 lakh pending sessions cases. The others are more than three years old. The 21 High Courts account for over 34 lakh pending cases. Over ten per cent of these are more than ten years old.

The scheme envisages the setting up of an average of five fast track courts in each district of the country. Statewise distribution has, however, been done keeping in view the pendency of cases and the average rate of disposal of cases in courts. Uttar Pradesh will have the largest number of 242 additional courts followed by Maharashtra's 187, Bihar's 183, Gujarat's 166 and West Bengal's 152. Karnataka's tally is 93, Jharkhand's 89, Andhra Pradesh's 86, Madhya Pradesh's 85, Rajasthan's 83, Orissa's 72, Tamil Nadu's 49, Uttaranchal's 45, Kerala's 37, Haryana's 36, Chhatisgarh's 31 and Punjab's 29. Assam will have 20 fast track courts, Jammu and Kashmir 12, Himachal Pradesh 9, Goa and Arunachal Pradesh 5 each and Mizoram, Manipur, Nagaland, Sikkim and Tripura 3 each. Jammu and Kashmir and Punjab are not content with the allotted number of fast track courts. They have notified to the Centre that they will respectively establish 43 and 34 additional courts.

The scheme further envisages the appointment of ad hoc judges from among retired sessions/additional sessions judges, judges promoted on ad hoc basis and posted in these courts or from among members of the Bar. Selection of judges will be done by the High Courts. The Centre has directed the State Governments that consequential vacancies resulting from ad-hoc promotion of judges be

filled through a special drive. This is called for in order that further pendency is not created in existing courts of magistrates and civil judges.

As per the Centre's action plan, the fast track courts will be required to dispose of 14 sessions trial cases and/or 20 to 25 criminal/civil cases every month. The State Governments and High Courts have been requested to make effective arrangement for representation on behalf of the prosecution and to ensure quick process service.

A unique feature of the scheme is that it is going to prove to be cost effective. This is so because the new courts have been charged with the exclusive work of disposing of undertrial cases in the first year of their existence. A large majority of undertrials being those who had been booked for petty/minor offences, they are bound to be discharged forthwith as most of them have been behind bars for periods which are longer than the punishment warranted by the offence. In plain terms, this will mean a huge saving in jail expenditure.

Analysis of Fast Track Courts

Ever since they were set up by the federal government in 2001 to help tackle the case backlog, more than 1,000 fast–track courts have disposed of more than three million cases.

Many lawyers believe this is a considerable achievement given the fact that more than 30 million cases are pending in High and District courts in India.

To add to litigants' woes, there's also a shortage of judges as vacancies are not filled: High courts have 32% fewer judges than they should and District courts have a 21% shortfall. No wonder the ratio of judges is as low as 14 per one million people, compared with over 100 judges per million citizens in the US. Some years ago, a Delhi High Court judge reckoned it would take more than 450 years to clear the backlog given the then judge numbers.

All this prodded the government to launch a scheme under which more than 1,700 fast track courts would tackle long-pending cases at a cost of $90m (£56.18m). An average of five such courts were to be established in each district of the country. The judges were to be a mix of retired high court judges and promoted judicial officers.

But funding has been an issue. The central government said it could no longer fund the new courts after March 2011, leaving future funding decisions to individual states. The result - some states have done away with the courts after finding them too expensive to run.

Former Supreme Court Chief Justice KG Balakrishnan has said the fast track courts were quite successful in reducing the backlog of cases. But leading lawyer and rights activist Colin Gonsalves says fast-track courts have not turned out to be a "very satisfactory system of delivering justice". He told that people are " generally very upset by the declining standards of these courts and have defined it as 'fast-track injustice. " These courts are given unrealistic targets of cases to finish. They have been told they ought not get involved in too much technicality, and that broadly if they get a feeling that a person is guilty, then declare him guilty and if he is innocent, then declare him innocent."

The government was working on another proposal to allow states to use funds available for morning and evening courts to further increase the number of fast-track courts, a demand raised by various sections of society to expedite trial of pending cases, particularly those of sexual assault and heinous crimes.

The Law Ministry allowed setting up of morning and evening courts in 2010 but the scheme failed to take off with very few states availing the scheme leading to unused funds. Now, the government proposes to divert this allocation towards setting up of fast-track courts, sources said.

The Centre had discontinued the fast-track courts scheme in March 2011 after running it for over 11 years. However, several states like Assam, Manipur and Arunachal Pradesh decided to convert these courts into regular courts while some like West Bengal and Maharashtra continued to run more than 100 such courts without the central contribution.

During the central funding of fast-track courts, between 2000 and 2011, Bihar ran maximum number of such courts at 179 and this also resulted in reduction of a large number of pending cases in the state. Under the scheme, the central assistance was limited to Rs. 4.80 lakh per court per annum for recurring expenditure

and Rs. 8.60 lakh non-recurring expenditure. Any other expenditure incurred by states in excess was to be borne by them.

Despite all these efforts, there are more than 3.20 crore pending cases in different courts of the country. Of this, at least 2.76 crore cases are pending in subordinate courts while 44 lakh are pending in various high courts, according to the law ministry.

The addition of 2,000 judges in the lower judiciary for setting up fast–track courts is welcome, but must be seen as no more than a modest beginning. The truth is that fast track courts are only an interim solution to an urgent problem. In the final analysis, it is not only specific categories of crime, like sexual offences or corruption cases, that need to be dealt with speedily by our judicial system. The principle of justice delayed being equivalent to justice denied must ultimately apply across the board. All cases, irrespective of the nature of the alleged offences, must be dealt with speedily. For that we need more judges and a more efficient work culture in the entire judicial system not just in fast track courts.

GRAM NYAYALAYAS

Equality and justice are indisputably two key facets of the idea of a modern, democratic, and constitution-adhering India. The principles of equality and justice are realized by the State apparatus through the business of administration of justice. India's judicial system is characterized by systemic problems, including corruption, delays, pendency, increasing costs, limited legal aid, and a lack of appropriately trained lawyers and judges.

To overcome these problems the Law Ministry had set up Gram Nyayalays in 2009 with an aim to provide a cost-effective forum at the grassroot level for the poor living in villages to settle legal matters. It was established by the Gram Nyayalayas Act, 2008.

This Act perpetuates the phenomenon of two Indias – that of the better-resourced urban citizen who can afford and has access to the courts, and the other India of the impoverished–the more disconnected rural citizen, who gets primary access to forums that focus primarily on disposing of their claims, minus the application of essential safeguards of the legal process – lawyers, appeals, procedural protections, and evidentiary requirements.

The Gram Nyayalaya was proposed by the 114th Law Commission way back in 1986. The report recommended the concept of the Gram Nyayalaya with two objectives. While addressing the pendency in the subordinate courts was the major objective, the other objective was the introduction of a participatory forum of justice. To make it participatory the Law Commission recommended that the Magistrate be accompanied by two lay persons who shall act as Judges, that the legal training of the Magistrate will be complemented by the knowledge of the lay persons who would bring in the much required socio-economic dimension to adjudication. It was proposed that such a model of adjudication will be best suited for rural litigation. The Law Commission also observed that such a court would be ideally suited for the villages as the nature of disputes coming before such a court would be 'simple, uncomplicated and easy of solution' and that such disputes should not be enmeshed in procedural claptrap.

Salient Features of Gram Nyayalaya Act, 2008 which came into effect from Oct 2, 2009 are:

a) Gram Nyayalayas are aimed at providing inexpensive justice to people in rural areas at their doorsteps.

b) The Gram Nyayalaya shall be court of Judicial Magistrate of the first class and its Presiding Officer (Nyayadhikari) shall be appointed by the State Government in consultation with the High Court.

c) The Gram Nyayalaya shall be established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State.

d) The Nyayadhikaris who will preside over these Gram Nyayalayas are strictly judicial officers and will be drawing the same salary, deriving the same powers as First Class Magistrates working under High Courts.

e) The Gram Nyayalaya shall be a mobile court and shall exercise the powers of both Criminal and Civil Courts.

f) The seat of the Gram Nyayalaya will be located at the headquarters of the intermediate Panchayat, they will go to villages, work there and dispose of the cases.

g) The Gram Nyayalaya shall try criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the Act.

h) The Gram Nyayalaya shall follow summary procedure in criminal trial.

i) The Gram Nyayalaya shall try to settle the disputes as far as possible by bringing about conciliation between the parties and for this purpose, it shall make use of the conciliators to be appointed for this purpose.

j) The judgment and order passed by the Gram Nyayalaya shall be deemed to be a decree.

k) The Gram Nyayalaya shall not be bound by the rules of evidence provided in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice and subject to any rule made by the High Court.

l) An appeal in criminal cases shall lie to the Court of Session, which shall be heard and disposed of within a period of six months from the date of filing of such appeal.

m) An appeal in civil cases shall lie to the District Court, which shall be heard and disposed of within a period of six months from the date of filing of the appeal.

n) A person accused of an offence may file an application for plea bargaining.

o) The proceedings will be carried out in the local language.

Analysis of Gram Nyayalayas

The Gram Nyayalaya, the latest judicial mechanism to provide access to justice at grass roots level although, looks beautiful from its face, but, there may be some practical difficulties in its functioning. The problems may be described as:

- About the adequate number of courts to address whole of rural India – Initially, it was decided to form Gram Nyayalaya for every 50000 people and estimated 6000 Gram Nyayalayas were to be constituted but at present the government has declared 5000 Gram Nyayalayas only. However, from the population and Nyayalaya ratio it can be apprehended that the number of Nyayalayas cannot meet the whole of rural India. So, many people cannot get the benefit of these courts.
- About adequate number of qualified nyayadhikaries–About the appointment of Nyaadhikaries, Section 6(2) of the Act provides for adequate representation from the SC, ST, women and other categories should be maintained, but, from the trend of employment in J.M.F.C of various States it is found that sufficient number of candidates for each category may not be available to be appointed to these posts. Thus, it may lead to vacancy of posts, hence defeat the object of the Act.
- Regarding constitution of the courts- It is mentioned that Gram Nyayalaya is the lowest court of subordinate judiciary and integral part of existing judiciary. It is a court of JMFC, the magistrate / presiding officer of this court will be called as Nyayadhikari. But, the court structure provided in Cr.P.C. does not provide for either Gram Nyayalaya or Nyayadhikari, which may create confusion in the powers of the court.
- Regarding the court system – It is mentioned that Gram Nyayalaya is to conduct the cases in close proximity of the cause of action and it will be a mobile court and the procedure is of adversarial system of justice and a time frame for judgment is also provided in it. Thus the court must go to the place of cause of action at the request of the aggrieved party to decide the matter. For the time frame, it may not wait for the parties or witness to prove the particular fact in issue and pass order. A question arises, what will happen if the opposite party or all the necessary parties in case of civil disputes are not available before that mobile court within the stipulated time or if they want to avoid the court, and the court makes an ex-parte decree or it gives the judgment from the facts and circumstantial evidences it has in its possession. Such a decision cannot give justice to the effected party, there may also

be violation of natural justice to them and for which they may go to regular court for enforcement of their rights. In such cases the object of the Act which is to reduce the burden of cases in courts will be defeated.

- In the matter of Summary trial and concept of Natural Justice – It is provided in the Act that, all proceedings in criminal cases have been made into a summary one. Two important aspects of summary trial are that charges are not framed and only the gist of the evidence is recorded. What could be gained if a full recording of evidence is given up in favour of summary recordings. By making summary trial, one is giving more room to the Judge to exercise his discretion. Further, concept of Natural Justice provides for fair trial and protection from reasonable bias. In criminal cases, the duty of the State is to prove the case beyond all reasonable doubts. By summary trial it may amount to not providing sufficient opportunity to the accused for defence and discretion of Judge may turn arbitrary.
- Lastly, regarding the duties of Nyayadhikari it is mentioned that the Nyayadhikri has to assist, persuade and conciliate the parties apart from their adjudicative function at the first instance of the case. But, if the Nyayadhikaries are to assist, persuade, conciliate the parties, even with the assistance of the conciliators then they have to be exposed with the individual litigants. In case the mediation or conciliation of that particular litigation has failed and the aggrieved parties come for adjudication of the matter in the same court, it may lead to a situation of favoritism or bias.

Suggestions to Improve Functioning of Gram Nyayalayas -

Regarding the number of courts, as it is in early stage of constitution, the Government may consider the population court ratio from a practical point of view to form as many courts to achieve the objective of the Act. Similarly, as the courts are to be opened in a phased manner, so the rule regarding reservation may not be strictly adhered but sufficient steps should be taken to empower the category of students / advocates to qualify for the post. This can be done by (1) Assisting different Law colleges to organize remedial courses for these students, (2) Creating awareness among the advocates to join such jobs, (3) creating a sound legal education system throughout the country. Regarding the anomalies in constitution of courts–Cr.P.C. is to be suitably amended to insert Gram Nyayalaya and Nyayadhikari as a cadre of lower judiciary with defined powers. Regarding the court system the court must adopt the provision of sufficient and reasonable notice to all parties and must have the power to enforce attendance of the parties before the mobile court. Regarding the summary procedure and maintenance of natural justice, strict guideline for flexibility of recording evidence and use of discretionary power should be prescribed. And lastly, about the conciliation, mediation to be conducted by the judges - more ethical standard moral value should be maintained by the Nyayadhikaries in their work life, especially, while doing some acts like conciliation, etc. It would be better, if the judges are not involved in conciliation directly and do it through the help of Gram Sabha of that particular locality or conciliators appointed for the purpose and accept only the conciliators report for giving order in case of a successful conciliation among the parties.

PARIVARIK MAHILA LOK ADALAT (PMLA)

The Constitution of India confers equal rights and opportunities on men and women in the political, economic and social spheres. The Millenium Development Goal 3 – Promote gender equality and empower women. Three pronged strategy of empowering women has been proposed. This include:

- **Social Empowerment –** 'create an enabling environment through adopting various policies and programmes for development of women, besides providing them easy and equal access to all the basic minimum services so as to enable them to realize their full potential'.
- **Economic Empowerment –** 'ensure provision of training, employment and income generation activities with both forward and backward linkages with the ultimate objective of making all women economically independent and self reliant'.

- **Gender Justice –** 'eliminate all forms of gender discrimination and thus enable women to enjoy not only de jure but also de facto rights and fundamental freedom at par with men in all spheres, viz., political, economic, social, civil, cultural, etc.

Thus to provide gender justice the concept of Parivarik Mahila Lok Adalat (PMLA) has been evolved by the National Commission for Women (NCW) to supplement the efforts of the District Legal Service Authority for redressal and speedy disposal of matters pending in various courts related to marriage and family affairs.

Matters Which can be Brought Before Parivarik Mahila Lok Adalats

The following type of matters can be brought before the PMLA:

- All civil cases.
- Matrimonial disputes, including divorce, maintenance (of wife, parents, children, etc.).
- Compoundable Criminal cases.
- Disputes related to Labour Laws.
- Motor Accident Claims.
- Bigamy.

Objectives of Parivarik Mahila Lok Adalat:

- To provide speedy and cost free dispensation of justice to women.
- To generate awareness among the public regarding conciliatory mode of dispute settlement.
- To gear up the process of organizing the Lok Adalats and to encourage the public to settle their disputes outside the formal set-up.
- To empower public especially women to participate in justice delivery mechanism.

Methodology

The Parivarik Mahila Lok Adalat functions on the model of the Lok Adalat. The Commission provides financial assistance to NGOs or State Women Commissions or State Legal Service Authority to organize the Parivarik Mahila Lok Adalat.

The NGOs approach the DLSA or District Judge and collect information about pending cases of family disputes within the district. Then the DLSA selects women related cases which are admissible in the Lok Adalat, and makes relevant files/case papers available to the NGOs. NGOs through their counsellors approach the parties and start counselling prior to the date of the PMLA to bring them to a compromise or settlement. If settlement occurs then the settlement will be noted down on paper in each case and the signatures of both the parties must be obtained on the document which will be presented before PMLA for its legal authentication.

Later the NGOs will organize PMLA on the specified date on which the cases will be brought up for settlement. At least 40% of the cases received from DLSA must be disposed of on the date of PMLA.

The District Judge will appoint a Presiding Officer, for the PMLA, who should be a Judge and two or more members who can be judges, advocates or social activists. The Venue of the PMLA will be a suitable central place convenient to the panelists as well as the parties and preferably premises other than a Court Room. The panel will authenticate the settlement on the date of PMLA. Court decree will be issued as per the settlement and will be legally binding on both the parties. After that the settled cases will be withdrawn from the dealing courts.

NGOs shall not charge any fee from the parties.

Advantages

Advantages of the PMLA are that it is cheaper, it helps encourage the public to settle their disputes outside the formal set-up, it empowers the public (especially women) to participate in the justice delivery mechanism, and ideally, cases are amicably settled by the parties in a harmonious atmosphere. Interestingly, an award of the Lok Adalat has the same force as a decree by a Court of Law.

FAMILY COURTS

In 1975, the Committee on the Status of Women recommended that all matters concerning the family should be dealt with separately. The Law Commission in its 59th report (1974) had also stressed that in dealing with disputes concerning the family, the court ought to adopt and approach radical steps distinguished from the existing ordinary civil

proceedings and that these courts should make reasonable efforts at settlement before the commencement of the trial. Gender-sensitized personnel, including judges, social workers and other trained staff should hear and resolve all the family-related issues through elimination of rigid rules of procedure. The Code of Civil Procedure was amended to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However the courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. Hence a great need was felt, in the public interest, to establish family courts for speedy settlement of family disputes.

Thus the reason for setting up of family courts was the mounting pressures from several women's associations, welfare organizations and individuals for establishment of special courts with a view to providing a forum for speedy settlement of family-related disputes. Emphasis was laid on a non-adversarial method of resolving family disputes and promoting conciliation and securing speedy settlement of disputes relating to marriage and family affairs. Finally, the Family Courts Act was passed in 1984.

Section 3 of the Act empowers the State governments after consultation with the High Court, to establish, for every area in the State comprising a city or town, whose population exceeds one million, a family court. The criteria for appointment of a Family Court Judge are the same as those for appointment of a District Judge requiring seven years experience in judicial office or seven years practice as an advocate. The Central Government is empowered to make rules prescribing some more qualifications. Apart from prescribing the qualification of the Judges of Family Courts, the Central Government has no role to play in the administration of this Act. Different High Courts have laid down different rules of the procedure. A need for a uniform set of rules has however been felt.

The Act provides that persons who are appointed to the family courts should be committed to the need to protect and preserve the institution of marriage and to promote the settlement of disputes by conciliation and counselling. Preference would also be given for appointment of women as Family Court Judges.

It provided a platform to associate institutions engaged in promoting welfare of families, especially women and children, or working in the field of social welfare, to associate themselves with the Family Courts in the exercise of its functions. The State Governments are also required to determine the number and categories of counsellors, officers, etc. to assist the Family Courts.

The Act confers on all the family courts the power and jurisdiction exercisable by any District Court or subordinate civil court in suits and proceedings of the nature referred. These, inter-alia relate to suits between parties to a marriage or for a declaration as to the validity of marriage or a dispute with respect to the property of the parties, maintenance, guardian-ship, etc. In addition, the jurisdiction exercisable by a First Class Magistrate under Chapter IX of the Cr.P.C. i.e., relating to order for maintenance of wife, children or parents, has also been conferred on the family courts. There is also an enabling provision that the family courts may exercise such other jurisdiction as may be conferred on them by any other enactment. Provision has also been made to exclude jurisdiction of other courts in respect of matters for which the family court has been conferred jurisdiction.

Procedure Followed in the Family Court

It has been made incumbent on these courts to see that the parties are assisted and persuaded to come to a settlement, and for this purpose they have been authorized to follow the procedure specified by the High Court by means of rules to be made by it. If there is a possibility of settlement between the parties and there is some delay in arriving at such a settlement, the family court is empowered to adjourn the proceedings until the settlement is reached. Under these provisions, different High Courts have specified different rules of procedure for the determination and settlement of disputes by the family courts. In the rules made by the Madhya Pradesh High Court, the family court judge is also involved in the settlement, and if a settlement cannot be reached then a regular trial follows. It is also provided that the proceedings may be held in camera if the family court or if either party so desires. The family court has also been given the power to obtain assistance of legal and welfare experts.

Section 13 of the Act provides that the party before a Family Court shall not be entitled as of right to be represented by a legal practitioner. However, the court may, in the interest of justice, provide assistance of a legal expert as amicus curiae. Evidence may be given by affidavit also and it is open to the family court to summon and examine any person as to the facts contained in the affidavit. The judgement of the family court is concise and simple, it contains the point for determination of decision and the reason for the same. The decree of the Family Court can be executed in accordance with the provisions of the CPC or Cr.P.C., as the case may be. An appeal against judgement or order of family court lies to the High Court.

The Act gives power to each of the High Courts to make rules for the procedure to be followed by the family courts in arriving at settlements and other matters.

The Act was expected to facilitate satisfactory resolution of disputes concerning the family through a forum, and this forum was expected to work expeditiously, in a just manner and with an approach ensuring maximum welfare of society and dignity of women.

The Act however does not define 'family'. The matters of serious economic consequences which affect the family, like testamentary matters are not within the purview of the family courts. Only matters concerning women and children - divorce, maintenance, adoption, etc. are within the purview of the family courts.

Analysis of Family Courts

The Act has brought civil and criminal jurisdiction under one roof. This was seen as a positive measure to centralize all litigation concerning women. Secondly, the very nature of criminal courts facilitated quicker disposal of applications to a civil court. Thirdly, there was seriousness and a sense of intimidation associated with a criminal court, which would act in a woman's favour. Also the Act brought under one roof, matters which were handled by forty odd magistrates and at least two courts in the city civil court, into five court rooms in the city of Mumbai.

While the Act laid down the broad guidelines it was left to the State Government to frame the rules of procedure. However, most state governments did not bother to frame the rules and set up family courts. Rajasthan and Karnataka were the first two states to set up family courts. But soon women litigants as well as activists were disillusioned with the functioning of the courts. The overall situation is the same everywhere, with minor differences. In Tamil Nadu, the marriage counsellors keep changing every 3 months and each time the woman meets a new counsellor she has to explain her problems all over again, with no continuity in the discussion.

Suggestions to improve functioning of Family Courts:

a) The Family Courts Act, 1984 was enacted with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. Though this was aimed at removing the gender bias in statutory legislation, the goal is yet to be achieved.

b) Mechanism of the family courts must develop systems and processes, perhaps with the help of civil society organizations, to ensure that atrocities against women are minimized in the first place.

c) Family courts should align themselves with women's organizations for guidance in matters related to gender issues. In the context of family courts, action forums should be initiated and strengthened by incorporating NGOs, representatives of elected members and the active members of the departments such as Urban Community Development, as members.

d) State level monitoring mechanisms could be established to review the functioning and outcome of the cases related to women in the family courts. Women judges and those who have expertise and experience in settling family disputes should be appointed.

e) These special courts should have the authority to try cases against an accused even if the female victim is not willing to testify or is bent upon withdrawing her case.

f) The marriage counsellors should not be frequently changed as it causes hardship to women who have to explain her problems afresh to the new counsellors each time.

g) The family courts committed to simplification of procedures must omit the

provisions relating to Court Fees Act. Each additional relief should not be charged with additional court fee.

h) The Act and Rules exclude representation by lawyers, without creating any alternative and simplified Rules. The situation has worsened because in the absence of lawyers, litigants are left to the mercy of court clerks and peons to help them follow the complicated rules. Women are not even aware of the consequences of the suggestions made by court officials. For instance, when a woman files for divorce and maintenance, the husband turns around and presses for reconciliation only to avoid paying maintenance.

i) The setting up of family courts does not in any way alter the substantive law relating to marriage. Divorce disentitles a woman to the matrimonial home. Whether or not she gets maintenance during a separation or after divorce depends on her ability to prove her husband's means. In a situation where women are often unaware of their husband's business dealings and sources of income, it is difficult, if not impossible, to prove his income.

j) The other much neglected area of law for women is domestic violence. Wife beating is prevalent in all classes and yet there is no effective law to prevent it or protect a woman against a violent husband. Such a law is urgently required.

LOK ADALAT

The concept of Lok Adalat is an innovative Indian contribution to the world of jurisprudence. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the victims for satisfactory settlement of their disputes. This system is based on Gandhian principles.

The advent of Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats, pursuant to the constitutional mandate in Article 39-A of the Constitution of India, contains various provisions for settlement of disputes through Lok Adalat. It is an Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity. Even before the enforcement of the Act, the concept of Lok Adalat has been getting wide acceptance as People's Courts as the very name signifies. Settlement of disputes at the hands of Panchayat Heads or tribal heads was in vogue since ancient times. When statutory recognition had been given to Lok Adalat, it was specifically provided that the award passed by the Lok Adalat formulating the terms of compromise will have the force of decree of a court which can be executed as a civil court decree. The evolution of movement called Lok Adalat was a part of the strategy to relieve heavy burden on the Courts with pending cases and to give relief to the litigants who were in a queue to get justice. It contains various provisions for settlement of disputes through Lok Adalat.

Salient features of Lok Adalat:

1) It is based on settlement or compromise reached through systematic negotiations.

2) It is a win–win system where all the parties to the dispute have something to gain.

3) It is one among the Alternate Dispute Resolution (ADR) systems. It is an alternative to “Judicial Justice”.

4) It is economical – No court fee is payable. If any court fee is paid, it will be refunded.

5) The parties to a dispute can interact directly with the presiding officer, which is not possible in the case of a court proceeding.

6) Lok Adalat is deemed to be a civil court for certain purposes.

7) Lok Adalat is having certain powers of a civil court.

8) The award passed by the Lok Adalat is deemed to be a decree of a civil court.

9) An award passed by the Lok Adalat is final and no appeal is maintainable from it.

10) An award passed by the Lok Adalat can be executed in a court.

11) The award can be passed by Lok Adalat, only after obtaining the assent of all the parties to dispute.

12) Code of Civil Procedure and Indian Evidence Act are not applicable to the proceedings of Lok Adalat.

13) A Permanent Lok Adalat can pass an award on merits, even without the consent of parties. Such an award is final and binding. From that no appeal is possible.

14) The appearance of lawyers on behalf of the parties, at the Lok Adalat is not barred. (Regulation 39 of the Kerala State Legal Services Authority Regulations, 1998.)

Lok Adalats have competence to deal with a number of cases like:

- Compoundable civil, revenue and criminal cases
- Motor accident compensation claims cases
- Partition Claims
- Damages Cases
- Matrimonial and family disputes
- Mutation of lands case
- Land Pattas cases
- Bonded Labour cases
- Land acquisition disputes
- Bank's unpaid loan cases
- Arrears of retirement benefits cases
- Family Court cases
- Cases which are not sub-judice

Procedure

The procedure followed at a Lok Adalat is very simple and shorn of almost all legal formalism and rituals. The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. It is revealed by experience that in Lok Adalats it is easier to settle money claims since in most such cases the quantum alone may be in dispute. Thus the motor accident compensation claim cases are brought before the Lok Adalat and a number of cases were disposed of in each Lok Adalat. One important condition is that both parties in dispute should agree for settlement through Lok Adalat and abide by its decision. A Lok Adalat has the jurisdiction to settle, by way of effecting 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. Such matters may be civil or criminal in nature, but any matter relating to an offence not compoundable under any law cannot be decided by the Lok Adalat even if the parties involved therein agree to settle the same. 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 where upon the Lok Adalat Bench constituted for the purpose shall attempt to resolve the dispute by helping the parties to arrive at an amicable solution and once it is successful in doing so, the award passed by it shall be final which has as much force as a decree of a Civil Court obtained after due contest.

The award of the Lok Adalat is fictionally deemed to be decree of Court and therefore the courts have all the powers in relation thereto as it has in relation to a decree passed by itself. This includes the powers to extend time in appropriate cases. The award passed by the Lok Adalat is the decision of the court itself though arrived at by the simpler method of conciliation instead of the process of arguments in court.

Benefits of Lok Adalat

The benefits that litigants derive through the Lok Adalats are many.

a) First, there is no court fee and even if the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat.

b) Secondly, there is no strict application of the procedural laws and the Evidence Act while assessing the merits of the claim by the Lok Adalat. The parties to the disputes though represented by their advocates can interact with the Lok Adalat judge directly and explain their stand in the dispute and the reasons therefore, which is not possible in a regular court of law.

c) Thirdly, disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat.

d) Fourthly, the decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat whereas in the regular law courts there is always a scope to appeal to the higher forum on the decision of the trial court, which causes delay in the settlement of the dispute finally. The reason being that in a regular court, decision is that of the court but in Lok Adalat it is mutual settlement and hence no case for appeal will arise. In every respect the scheme of Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost.

e) Last but not the least, it has faster and inexpensive remedy with legal status.

The system has received laurels from the parties involved in particular and the public and the legal functionaries, in general. It also helps in emergence of jurisprudence of peace in the larger interest of justice and wider sections of society. Its process is voluntary and works on the principle that both parties to the disputes are willing to sort out their disputes by amicable solutions. Through this mechanism, disputes can be settled in a simpler, quicker and cost-effective way at all the three stages i.e., pre-litigation, pending-litigation and post-litigation.

Overall effect of the scheme of the Lok Adalat is that the parties to the disputes sit across the table and sort out their disputes by way of conciliation in presence of the Lok Adalat Judges, who would be guiding them on technical legal aspects of the controversies.

The scheme also helps the overburdened Court to alleviate the burden of arrears of cases and as the award becomes final and binding on both the parties, no appeal is filed in the Appellate Court and, as such, the burden of the Appellate Court in hierarchy is also reduced. The scheme is not only helpful to the parties, but also to the overburdened Courts to achieve the constitutional goal of speedy disposal of the cases. About 90% of the cases filed in the developed countries are settled mutually by conciliation, mediation, etc. and, as such, only 10% of the cases are decided by the Courts there. In our country, which is developing, has unlike the developed countries, number of Judges disproportionate to the cases filed and, hence, to alleviate the accumulation of cases, the Lok Adalat is the need of the day.

Criticism

The right to appeal is one of the most basic features of any sound legal system. It sprouts from the principle 'to err is human'. It recognizes the fact that it is impossible to be infallible always. Lok Adalats cannot proceed to pass awards unless the parties to a dispute under its consideration, agrees to the passing of an award. In such a situation, by agreeing, the parties are estopping themselves from challenging it afterwards. In that case, denial of an appeal provision can well be justified. But a Permanent Lok Adalat can proceed to dispose of a matter referred to it even without the consent of the parties to such dispute. And the PLA does not have to go by the rules of evidence contained in The Indian Evidence Act. Moreover, a party can be drawn to PLA, despite his wishes. In such a situation, denying a chance to appeal may not be in consonance with our most cherished legal principle: Justice should not only be done, but should manifestly and undoubtedly be seen to be done.

Arbitration and Conciliation

Arbitration is a method for settling disputes privately, but its decisions are enforceable by law. An arbitrator is a private extraordinary judge between the parties, chosen by mutual consent to sort out controversies between them. Arbitrators are so called because they have an arbitrary power; for if they observe submissions and keep within due bounds their sentences are definite from which there is no appeal. Arbitration offers greater flexibility, prompt settlement of national and international private disputes and restricted channels of appeal than litigation. In the words of Richard Cobden "At all events, arbitration is more rational, just, and humane than the resort to the sword."

Arbitration is a simplified version of a trial involving no discovery and simplified rules of evidence. Either both sides agree on one arbitrator, or each side selects one arbitrator and the two arbitrators elect the third to comprise a

panel. Arbitration hearings usually last only a few hours and the opinions are not public record. Arbitration has long been used in labour, construction, and securities regulation, but is now gaining popularity in other business disputes. Litigation is expensive, time consuming and full of complexities.

Kinds of Arbitration

- **Adhoc Arbitration:** In the course of a commercial transaction if a dispute arises and could not be settled amicably either by way of mediation or conciliation, the parties have the right to seek Adhoc arbitration. It is a process entrusted to a non-institution with all the procedural laws set out in specific agreement of the parties for that particular arbitration only.
- **Institutional Arbitration:** In this kind of arbitration there will be a prior agreement between the parties regarding the institution that they will refer to in order to resolve their disputes in the course of a commercial transaction.
- **Contractual Arbitration:** In the present scenario, where the number of commercial transactions as well as the number of disputes are increasing, the parties entering into a commercial transaction prefer to incorporate an arbitration Clause in their agreement. The arbitration Clause provides that if in future any dispute arises between the parties they will be referred to a named arbitrator(s).
- **Statutory Arbitration:** If by operation of law the court provides that the parties have to refer the matter to arbitration it is termed as Statutory Arbitration. In this kind of arbitration the consent of the parties is not required. It is more of a compulsory arbitration and it is binding on the parties as the law of the land.

The Arbitration and Conciliation Act, 1996 provides two alternate methods of ADR: Arbitration and Conciliation.

Arbitration may be conducted ad hoc or under institutional procedures and rules. Institutional arbitration is conducted under the guidance and well-tested rules of an established arbitral organization whereas under Adhoc arbitration, the parties have to draft their own rules and procedures to fit the needs of their dispute. There are number of national and international organizations set up with the main object of settling commercial disputes by way of arbitration and other alternative dispute resolution mechanism.

These organizations lay down rules for the conduct of arbitration. These rules, however, cannot override the Act. These organizations handle the arbitration cases of the parties and provide valuable services like administrative assistance, consultancy and recommending names of arbitrators from the panel maintained by them.

The Act contains general provisions on arbitration, enforcement of certain foreign awards, conciliation and supplementary provisions. The three schedules reproduce the texts of Geneva Convention on the execution of Foreign Arbitral Awards, 1927, the Geneva Protocol on Arbitration Clause, 1923 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. The Act differs from previous Acts in many ways.

Firstly, where there is an arbitration agreement, the judicial authority is required to direct the parties to resort to arbitration as per the agreement, provided the application for that purpose is made before or when a written statement on the merits is submitted to the judicial authority by the party seeking arbitration.

Secondly, the grounds on which award of an arbitrator may be challenged before the court has been severely trimmed. For e.g., a challenge will now be permitted only on the basis of invalidity of the agreement, want of jurisdiction on the part of the arbitrator or want of proper notice to a party of the appointment of the arbitrator or of arbitral proceedings or a party being unable to present its case. At the same time, an award can now be set aside if it is in conflict with "the public policy of India" — a ground which covers, inter–alia, fraud and corruption.

Thirdly, the powers of the arbitrator himself have been amplified by inserting specific provisions on several matters, such as the law to be applied by him, power to determine the venue

of arbitration failing agreement, power to appoint experts, power to act on the report of a party, power to apply to the court for assistance in taking evidence, power to award interest, and so on.

Fourthly, obstructive tactics sometimes adopted by parties in arbitration proceedings are sought to be thwarted by an express provision whereunder a party who knowingly keeps silent and then suddenly raises a procedural objection will not be allowed to do so. Fifthly, the role of institutions in promoting and organizing arbitration has been recognized. Sixthly, the power to nominate arbitrators has been given (failing agreement between the parties) to the Chief Justice or to an institution or person designated by him. Seventhly, the time limit for making awards has been deleted. Eighthly, present provisions relating to arbitration through intervention of court when there is no suit.

Advantages of Arbitration over Litigation

1. Arbitration carries a number of advantages over usual method of dispute resolution of redressal through a court of Law.
2. Arbitration promises privacy. In a civil court, the proceedings are held in public.
3. Arbitration provides liberty to choose an arbitrator, who can be a specialist in the subject matter of the dispute. Thus, arbitrators who are sector specialists can be selected who resolve the dispute fairly and expeditiously.
4. The venue of arbitration can be a place convenient to both the parties. Likewise the parties can choose a language of their choice.
5. Even the rules governing arbitration proceedings can be defined mutually by both the parties.
6. A court case is a costly affair. The claimant has to pay advocates, court fees, process fees and other incidental expenses. In arbitration, the expenses are less and many times the parties themselves argue their cases. Arbitration involves few procedural steps and no court fees.
7. Arbitration is faster and can be expedited. A court has to follow a systematic procedure, which takes an abnormally long time to dispose of a case.
8. A judicial settlement is a complicated procedure. A court has to follow the procedure laid down in the Code of Civil Procedure, 1908 and the Rules of the Indian Evidence Act. An Arbitrator has to follow the principles of natural justice. The Arbitration and Conciliation Act, 1996 specifically states that the Arbitral Tribunal shall not be bound by The Code of Civil Procedure, 1908 and The Indian Evidence Act, 1872.
9. Section 34 of the Act provides very limited grounds upon which a court may set aside an award. The Act has also given the status of a decree for the award by arbitrators. The award of the arbitrators is final and generally no appeal lies against the award.
10. In a large number of cases, 'Arbitration' facilitates the maintenance of continued relationship between the parties even after the settlement.

It is quicker, cheaper, and more user-friendly than courts. It gives people an involvement in the process of resolving their disputes that is not possible in public, formal and adversarial justice system perceived to be dominated by the abstruse procedure and recondite language of law. It offers choice – choice of method, of procedure, of cost, of representation, of location. Because often it is quicker than judicial proceedings, it can ease burdens on the Courts. Because it is cheaper, it can help to curb the upward spiral of legal costs and legal aid expenditure too, which would benefit the parties and the tax payers. In this juncture, few things are most required to be done for furtherance of smoothening the mechanisms. Few of them are:

- Creation of awareness and popularizing the methods is the first thing to be done.
- NGOs and Medias have prominent role to play in this regard.
- For Court – annexed mediation and conciliation, necessary personnel and infrastructure shall be needed for which government funding is necessary.

Training programmes on the mechanism are of vital importance. State level judicial academies can assume the role of facilitator or active doer for that purpose. While the Courts are never tired

of providing access to justice for the teeming millions of this country, it would not be incorrect to state that the objective would be impossible to achieve without reform of the justice dispensation mechanism. There are two ways in which such reform can be achieved - through changes at the structural level, and through changes at the operational level:

- Changes at the structural level challenge the very framework itself and require an examination of the viability of the alternative framework for dispensing justice. It might require an amendment to the Constitution itself or various statutes.
- On the other hand, changes at the operational level requires one to work within the framework trying to identify various ways of improving the effectiveness of the legal system. Needless to say, this will considerably reduce the load on the courts apart from providing instant justice at the door-step, without substantial cost being involved. This is also avoiding procedural technicalities and delays and justice will hopefully be based on truth and morality, as per acknowledged considerations of delivering social justice.

NATIONAL LEGAL SERVICES AUTHORITY

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes. Actually, Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. In 1987, the Legal Services Authorities Act was enacted by the Parliament which came into force on 9th November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity.

The Central Authority shall consist of –

1. The Chief Justice of India who shall be the Patron-in-Chief.
2. A serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and
3. Such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that government in consultation with the Chief Justice of India.

The Central Authority shall perform all or any of the following functions, namely:-

- Lay down policies and principles for making legal services available under the provisions of this Act;
- Frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;
- Utilize the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
- Take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;
- Organize legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;
- Encourage the settlement of disputes by way of negotiations, arbitration and conciliation;
- Undertake and promote research in the field of legal services with special reference to the need for such services among the poor;
- To do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;
- Monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in

whole or in part by funds provided under this Act;

- Provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out of the amounts placed at its disposal for the implementation of legal services schemes under the provisions of this Act;
- Develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions;
- Take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;
- Make special efforts to enlist the support of voluntary social welfare institutions working at the grassroots level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour, and
- Coordinate and monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social service institutions and other legal services organizations and given general directions for the proper implementation of the Legal Services programmes.

In every State, State Legal Services Authority has been constituted to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalats in the State. The State Legal Services Authority is headed by the Hon'ble Chief Justice of the respective High Court who is the Patron-in-Chief of the State Legal Services Authority.

In every District, District Legal Services Authority has been constituted to implement Legal Services Programmes in the District. The District Legal Services Authority is situated in the District Courts Complex in every District and chaired by the District Judge of the respective district.

Primarily, the State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, etc. have been asked to discharge the following main functions on regular basis:

- To Provide Free and Competent Legal Services to the eligible persons;
- To organize Lok Adalats for amicable settlement of disputes; and
- To organize legal awareness camps in the rural areas.

Advantages of the Movement:

It has helped overcome three impediments:

1) **Economic inequality (legal aid) -** the poor can not afford good legal counsels to get them out on bail, nor can they afford the bail amount. This was sought to be remedied by the provisions of legal aid and an attorney for all those below a certain specified income bracket. They have a right to be informed about the same, since being illiterate and poor, they are often unaware of their rights.
2) **Organizational impediments (diffused interests) -** to facilitate collective action, since the individual was too small to play a significant role/effect a change. According to Justice Krishna Iyer, another reason for justice 'on the streets, rather than the courts' is that the Constitution with its mandate of socio-economic rights is in contradiction with the colonial Justice and law hangover. These are not attuned to the Indian social realities and the 'mystiques of lacunose legalese and processual pyramids with sophisticated rules', alongwith 'slow-motion justice and high priced legal services has led to victimization of the common man.
3) **Procedural obstacles (informal justice) -** to overcome the current, traditional procedures through alternate dispute resolutions, specialized or small claims courts such as the Family Courts or the Lok Adalats, etc.

During the period from 1st April, 2011 to 30th September, 2011 more than 6.95 lakh persons have benefited through legal aid services in the country. Out of them, more than 25.1 thousand persons belonged to the Scheduled Castes, about 11.5 thousand Scheduled Tribes, about 24.6 thousand were women and 1.6 thousand were children. During this period, 53,508 Lok Adalats were organized. These Lok Adalats settled more than 13.75 lakh cases. In about 39.9 thousand Motor Vehicle Accident Claim cases, compensation to the tune of Rs. 420.12 crore has been awarded.

Analysis of the Working of NALSA:

The National Legal Services Authority was set up in 1995 under the Legal Services Authorities Act, 1987 to provide ''free and competent'' legal services to the needy.

According to the views of the Committee headed by E.M. Sudarsana Natchiappan the programme lacked proper planning and suffered from paucity of funds and failure at the level of states to utilise even the grants made. The actual benefit of this scheme is not gaining access to poor litigants and the programme is "confined to high profile areas or capital cities only."

To be eligible for legal aid, the annual income limit fixed by the central government for cases before the Supreme Court is Rs. 50,000.

Over the past decade, the Authority claims to have aided 8.25 million individuals, besides holding 4,86,000 Lok Adalats or conciliation courts nationwide and settling 18.3 million cases. But critics say that tells little about the sort of cases in which the Authority helped individuals, the quality of legal aid or the outcome. Nor does it tells the plight of citizens who are neither eligible for legal aid nor can afford legal recourse on their own -- with no limits enforced on lawyers' fees or duration of proceedings.

As in ordinary cases, in aided cases, too, the quality of lawyering is a key issue, only perhaps more so given the 'meagre' fees NALSA Advocates supposedly get.

The Committee noted that counsels engaged for the poor under the legal aid programme "are paid meagerly" and "good and reputed lawyers do not come forward to take up the cases. Even Senior Advocates do not take up such cases. As a result poor litigants feel that legal aid being provided to them is mere eyewash.

The Committee recommended "reasonably" enhancing the fee structure -- and standardising it nationwide -- so as to draw experienced and competent lawyers to legal aid.

The Committee said that the government has been providing adequate funds to NALSA from year to year. However, there has not been total utilisation of the "allocated grants."

Some Steps taken by NALSA to Bring Justice at the Doorstep:

a) Para-Legal Volunteers

One of the problems faced by legal services institutions is their inability to reach out to the common people. It is in this context that the National Legal Services Authority (NALSA) has come up with the idea of para-legal volunteers to bridge the gap between the common person and legal services institutions.

The scheme seeks to utilise community-based volunteers selected from villages and other localities to provide basic legal services to the common people. Educated persons with commitment to social service and with a record of good character are selected. The volunteers are trained by district legal services authorities. The training equips them to identify the law-related needs of the marginalised in their locality. Such needs include assistance to secure legal rights, benefits and actionable entitlements under different government schemes that are denied to them. Coming as they do from the same locality, they are in a better position to identify those who need assistance and bring them to the nearest legal services institutions to solve their problems within the framework of law. They can assist disempowered people to get their entitlements from government offices where ordinary people often face hassles on account of bureaucratic lethargy and apathy.

b) Legal Aid Clinics in Villages

In order to reach out to the common people, NALSA has come up with a project to set up legal aid clinics in all villages, subject to financial viability. Ignorance of what to do when faced with law-related situations is a common problem for disempowered people. Legal aid clinics work

on the lines of primary health centres, where assistance is given for simple ailments and other minor medical requirements of village residents. Legal aid clinics assist in drafting simple notices, filling up forms to avail benefits under governmental schemes and by giving initial advice on simple problems. A legal aid clinic is a facility to assist and empower people who face barriers to 'access to justice.'

Trained para-legal volunteers are available to run legal aid clinics in villages. The common people in villages will feel more confident to discuss their problems with a friendly volunteer from their own community rather than with a city-based legal professional. The volunteers will refer any complicated legal matters that require professional assistance to the nearest legal services institutions. When complex legal problems are involved, the services of professional lawyers will be made available in the legal aid clinics.

c) Free and Competent Legal Services

There has been a widespread grievance that lawyers engaged by legal services institutions do not perform their duties effectively and that the lawyers are not paid commensurately for their work. In order to solve these problems, NALSA has framed the National Legal Services Authority (Free and Competent Legal services) Regulations, 2010 to provide free and competent legal services. Scrutiny of legal aid applications, monitoring of cases where legal aid is provided, and engaging senior lawyers on payment of regular fees in special cases, are the salient features of the Regulations. In serious matters where the life and liberty of a person are in jeopardy, the Regulations empower legal services authorities to specially engage senior lawyers.

d) Legal Aid Camps:

NALSA has organized camps targeted neighbourhood itself. The people shall not be made to travel long distances for the purpose of attending camps. Instead of pompous inaugural functions and speeches, time, energy and resources shall be devoted on interaction with the people. Local bar shall be encouraged to participate. Local voluntarily organizations, social clubs, colleges, universities and other educational institutions shall be engaged to join as partners in such ventures for mutual benefit.

e) Student Legal Aid Clinics

Association of law students with the work of providing legal services would not only help the cause of legal services but also give to the young students a sense of identification and involvement with the cause of the poor.

The legal aid clinic is an excellent medium to teach professional responsibility and a greater sense of public service. The law school legal aid clinic is a viable and effective instrument for community education and preventive legal services programme. Inclusion of the law students in legal aid will contribute towards a better legal education, socially relevant and professionally valuable. The law school clinics can plough back into the legal curriculum and will be a goldmine of information that can make learning and teaching of law stimulating, challenging and productive.

Law school legal aid clinic can be located at the law colleges premises itself which will be an excellent source for study of conflicts in civil society.

Each State Authority shall prepare a law school legal aid manual depending on the local needs of the State.

The law students shall be encouraged to form into different groups, each group adopting a village, preferably a remote village. The students who have adopted a village may conduct socio-legal surveys in that village. The questionnaire in the surveys may be prepared in consultation with the teachers of the law schools, the contents of which may vary depending on the local circumstances. The questionnaire shall be sufficient enough to gather the problems faced by villagers, especially relating to their legal rights.

The nature of disputes, if any, inter-se the inhabitants of the village may be identified and they may be encouraged to resolve the disputes amicably through the ADR techniques like conciliation, mediation, Lok Adalat, etc. For this purpose, the students may seek the help of their teachers, and if necessary, of the nearest legal services institutions.

The students shall be encouraged to organize legal awareness classes for small groups of people (4 or 5 houses together or 10 to 12 people). It should be more in the form of informal gatherings.

In appropriate cases, senior students and post-graduate students who have already enrolled as lawyers may be entrusted with the filing and conducting of the litigation in the courts, free of cost.

The students may adopt colonies and slum areas in urban locations also where economically and socially backward people reside. Such areas also may be chosen for setting up of legal aid clinics.

f) Legal Aid Clinics in Jails

Prisoners are doubly handicapped persons. Most of them belong to lower strata of the society, both socially and economically. Secondly, they are incommunicado, walled-off from the world. But they being citizens of India are entitled to protect their rights enshrined in Article 21 of the Constitution and its variants. Therefore, it is highly essential that prisoners also are given legal aid especially in matters relating to defending or prosecuting their cases and appeals and also legal problems they and their family might face on account of their being behind the bars.

The legal aid clinics in Jails shall be run under the District Legal Services Authorities. Panel of lawyers selected in consultation with the local bar association may be deployed for manning the legal aid clinics in prisons. Services of sociologists and psychiatrists also may be availed of while providing legal aid to the prisoners.

The applications, appeals and petitions from the prisoners may be forwarded to the appropriate authorities and courts as expeditiously as possible. Their pleas in relation to the remission, parole, etc. also may be assisted and attended to by the legal aid counsel deputed to such clinics in Jails.

REDRESSAL MECHANISM FOR DISPUTES RELATED TO WEAKER SECTION

There are several Constitutional and statutory institutions which look into complaints filed by citizens:

a) **National Human Rights Commission:** Regarding violation of or abetment of violation of human rights or negligence in the conduct of public servants in such violation.{Section 12(a). The Protection of Human Rights Act, 1993}.

b) **State Human Rights Commission:** similar to above. {Section 29. The Protection of Human Rights Act, 1993}.

c) **National Commission for Women:** Regarding deprivation of womens' rights, non-implementation of laws providing protection to women, etc. {Section 10(f). The National Commission for Women Act, 1990}.

d) **National Commission for Scheduled Castes:** Regarding complaints with respect to deprivation of rights and safeguards of the Scheduled Castes. Article 338 (5)(b).

e) **National Commission for Scheduled Tribes:** Regarding complaints with respect to deprivation of rights and safeguards of the Scheduled Tribes. Article 338A (5)(b).

f) **State Commissions for Women:** Regarding complaints relating to deprivation of womens' rights, non-implementation of laws providing protection to women, etc. {For example, Section 10(1)(f) of the Maharashtra State Commission Act, 1993}.

g) **National Commission for Protection of Child Rights:** Regarding deprivation and violation of child's rights and non-implementation of laws providing protection to children. {Section 13(f). The Commissions for Protection of Child Rights Act, 2005}.

h) **State Commissions for Protection of Child Rights:** Regarding deprivation and violation of child's rights and non-implementation of laws providing protection to children. Section 24. {The Commissions for Protection of Child Rights Act, 2005}.

i) **National Consumer Disputes Redressal Commission, State Consumer Disputes Redressal Forum, District Consumer Disputes Redressal Forum:** Regarding complaints in relation to any goods or service sold or provided for a consideration. {Section 12, Consumer Protection Act, 1986}.

These are all institutions constituted for providing special focus on redressing the grievances of specific sections of society but the issues related to these mechanisms are listed below:

There is a lack of coordination among the different organizations. The suggestion for merging of the Commissions came from different experts, particularly in larger States, is impracticable and would fail to adequately address the special problems of different disadvantaged groups. However, this may be possible in case of some of the much smaller States where the various Commissions to redress the grievances of different sections of society could be constituted into a single 'multi-role' Commission to carry out the specific functions of the existing constitutional and statutory Commissions of that State.

The existence of a large number of Commissions' should enable each one of them to look into specific categories of complaints thereby ensuring speedy action on the complaint. However, this multiplicity of Commissions could lead to problems of overlapping jurisdictions and even duplication of efforts in dealing with complaints. Some of the laws had envisaged these problems and made legal provisions for the same.

For example, in order to prevent duplication of efforts among the National and State Human Rights Commissions', Section 36 of The Protection of Human Rights Act, 1993 (PHRA) mandates that the NHRC shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force. Furthermore, Section 3(3) of the PHRA provides that the Chairpersons of the National Commission for Minorities, the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes and the National Commission for Women shall be deemed Members of the NHRC for the discharge of various functions assigned to it. However, this does not cover functions prescribed under Section 12(a) of the PHRA, which deals with inquiry, suo motu or otherwise, into a complaint of violation or abetment of violation of human rights or negligence by a public servant in the prevention of such violation.

Moreover, it is evident that there exists national as well as state level Commissions to redress similar grievances. The Central law itself provides for the constitution of National and State level Commissions for safeguarding human rights and child rights. Further, different State governments have constituted statutory Commissions for safeguarding the interests of SCs, STs, Women and Minorities. Among all these Commissions, the Human Rights Commissions have the widest mandate due to the broad definition of the term 'human rights' provided in the PHRA, 1993. Similarly, wherever the States have established statutory State level Commissions' (such as those for Women, SCs and STs, Minorities, Children, etc.) whose jurisdictions may overlap with the National level Commissions, it is necessary to evolve a mechanism to prevent duplication of efforts.

Thus there is need to provide a more meaningful and continuous mode of interaction between the National and State HRCs. At the basic level, in case of complaints, coordination between different Commissions at the national and state levels could easily be facilitated through creation of electronic data bases and networking. For having a seamless exchange of data, a common complaint format needs to be devised for all such Commissions constituted to monitor and investigate the constitutional and legal safeguards. This common format would have specifically designed data fields to capture the details of the victim(s) and complainants. In case of complaints filed without utilizing the specifically designed format, the necessary details could be ascertained at the time of registration of the case itself.

The creation of a database and networking would assist these Commissions in not only streamlining their workload but also in deciding which body would be the best agency to carry out investigations. Further, it would also help in identifying those areas and groups where the rights of such groups of citizens are more prone to abuse. This would assist the respective governments in devising specific measures to address the situation.

Further a large number of complaints are received by these Commissions which are regularly disposed by them by providing some relief to the victims. Efforts have to be made by the Union and State Governments to ensure that the cases of violation of the rights of citizens especially the vulnerable sections are significantly reduced if not eliminated altogether. Preventive

measures would also have to be taken to eliminate cases of serious human rights violations such as custodial deaths, torture, etc.

In addition to the criminal justice system, the National and State Human Rights Commissions as well as the other Commissions could play an important role in preventing such violations of citizens' right and also in mitigating the hardships of the victims. An analysis of the cases disposed of by NHRC over the last three years reveals that a wide variety of complaints of human rights violations are received and processed. But despite the efforts of the NHRC/ SHRCs, the number of such cases has not been significantly reduced. Therefore, the Union and the State Governments should take proactive steps to eliminate causes of such occurrences. This could be achieved by prioritizing the more serious offences like custodial deaths/rapes, etc. Guidance of the NHRC and SHRCs may be taken to prepare and implement an action plan for this purpose.

Lastly a separate Standing Committee of Parliament may be constituted to look into Annual Reports submitted by these Statutory Commissions.