

LOK ADALATS AS MOST POPULAR ADR
MODE IN INDIA: WITH SPECIAL
REFERENCE TO H.P.

Submitted to:

Madhu.S, Project Associate ADR
ADR Centre,
Centre for Public Policy Research,
Elamkulam, Kochi, India- 682 02

Submitted by:

Bhumika Sharma,
Intern, ADR Centre,
CPPR, Kochi
(Final year student,
BALLB(Hons.),
UILS, Shimla

UNIVERSE OF THE STUDY

The study regarding lok adalat in HP has been taken in “whole of the state of HP” as universe. Though, the on-field survey has been done only in Shimla and Kullu.

DURATION OF SURVEY (ONFIELD AS WELL AS LITERATURE)

The study was started by the researcher from 15th October, 2009 and it continued till 15th November, 2009.

1. INTRODUCTION

Resolution of disputes is an essential characteristic for societal peace, amity, comity and harmony and easy access to justice.¹ The processual formalisation of justice as existing in Courts takes time and involves considerable amount of expenditure.

The system of non-formal legal institutions has prevailed in India since ancient times. The barrier in the way of implementation of socio-economic legislations like The Legal Services Authorities Act, 1987 and its complementary Rules enacted by state governments is not the Indian law system rather those who run it. The Lok Adalats are the flagship of the Indian judiciary for dispensation of justice to the poor.

1.1 Deficiencies of Indian Legal System

The legal system as it operates in India, wrong is regarded as a matter of course.² Excessive burden of cases remains upon the judiciary and under such a situation justice is delayed many times. Unfortunately, the most prominent deficiency of our legal system is that it has remained 'alien having no living contact with the masses'.

The legal profession, which is considered the profession of learned, calm and self-controlled people, is now a days going in the hands of such persons who adopt this pious profession just to make a quick buck and nothing else.³ The ratio of judges in India is abysmally low at 12–13 per one million persons.⁴

The accumulated frustration of the people desirous of quick disposal of their cases is the biggest single reason for the people having responded with hope, excitement and zeal in holding Lok Adalats for dispute ending of pending disputes.⁵

¹ Jitendra N. Bhatt, ROUND TABLE JUSTICE THROUGH LOK-ADALAT (PEOPLES' COURT) - A VIBRANT - ADR - IN INDIA, (2002) 1 SCC (Jour) 11, available at <http://kelsa.nic.in/lokadalat.htm>

² Fali S. Nariman, INDIA'S LEGAL SYSTEM: CAN IT BE SAVED?, Penguin Books, Delhi (2006) at 131

³ Brahmatej Chaturvedi, LAWYERS' ROLE IN REDUCTION OF LITIGATION, available at <http://www.ijtr.nic.in/webjournal/14.htm>

⁴ Committee on Reforms of the Criminal Justice System ('Malimath Committee Report') (Bangalore: Ministry of Home Affairs, March 2003)

⁵ Sarfaraz Ahmed Khan, LOK ADALATS - AN EFFECTIVE ALTERNATIVE DISPUTE RESOLUTION MECHANISM, APH Publishing Corporation, (2006) at 27

1.2 Constitutional Mandate of Justice

Article 39-A, The Constitution of India inserted through the 42nd amendment in 1976 requires the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The entire mechanism of Lok Adalats designed and evolved is with the object of promoting justice. Justice has three connotations namely social, economic and political. The first two connotations are handled by the said mechanism. They not only give an opportunity to the parties to resolve disputes but such resolution - is at lowest possible cost, achieved amicably with consent of parties concerned. 'Access to Justice' means an ability to participate in the judicial process.⁶ It is that human right which covers not only bare court entry but has many dimensions including time consuming factor.⁷ For We the People, the vision of justice as embodied in the constitution entails delivering quality of justice (impartial and steadfast) which is speedy, accessible and distributive in nature.⁸

Both pre-litigation and post-litigation efforts are invited by Lok Adalats to enable the entire society to create peace and harmony. The Legal Services Authorities Act, 1987 makes provision for free legal aid which can be availed both before the Courts and Lok Adalats so constituted.

The Court has to give guidance to parties (when parties are opting for any mode of ADR) by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their opinion as to the particular mode of settlement.⁹

⁶ Upendra Baxi, ACCESS, DEVELOPMENT AND DISTRIBUTIVE JUSTICE- ACCESS PROBLEMS OF THE RURAL POPULATION, *JILI* Vol.18, July-Sep 1976, No.3 at 376

⁷ M.G.Chitakra, LOK ADALAT AND THE POOR, Ashish Publishing House,(New Delhi: 1993) at 60

⁸ Jasdeep Randhawa, REALISING OUR JUSTICE NOMO, available at www.rfgindia.org/publications/Guest%20Column%20-%20Jasdeep

⁹ Alternative Dispute Resolution and Mediation Rules, 2003; Rule 4

1.3 Judicial Mandate on ADR Modes

*In Salem Advocate Bar Association, Tamil Nadu v. Union of India*¹⁰, the Apex Court suggested that with a view to enable the Court to refer the parties to conciliation/mediation, where parties are unable to reach a consensus on an agreed name, there should be a panel of well trained conciliators/mediators to which it may be possible for the Court to make a reference.

1.4 Mandate under CPC

Section 89 of the Code of Civil Procedure as amended in 2002 has introduced conciliation, mediation and pre-trial settlement methodologies for effective resolution of disputes.

Judgement to be ordinarily pronounced within 30 days subject to a maximum time limit of 60 days (for extraordinary reasons) is one of the amendments introduced for speedy disposal. Similarly time-limit for filing documents has been fixed and Judge is not allowed to give more than three amendments in a civil suit.

1.4 Policies of Indian Government

The expenditure on the judiciary in terms of gross national product (GNP) is only 0.2 per cent, and that half of it was recovered by the States through court fees and fines. (As observed¹¹ by former Chief Justice of India, S.P. Bharucha)

1.4.1 Gram Nyayalayas Act, 2008

It came into effect from October 2,2009 has been enacted to provide for the establishment of the Gram Nyayalayas at the grass roots level for the purpose of providing access to justice to the citizens at their door steps.

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, for a group of contiguous Panchayats.¹² It shall be a mobile court and where the Gram Nyayalaya decides to hold mobile court

¹⁰ (2005) SCC 6 (344)

¹¹ The Frontline, Volume 19 - Issue 05, Mar 02 - 15, 2002

¹² The Gram Nyayalayas Act, 2008; Section 3(1)

outside its headquarters, it shall give wide publicity as to the date and place where it proposes to hold mobile court.¹³ It shall exercise the powers of both Criminal and Civil Courts.¹⁴ Its seat will be located at the headquarters of the intermediate Panchayat; they will go to villages, work there and dispose of the cases.¹⁵ It 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.¹⁶

1.4.2 National Arrears Grid

The Law Minister has made a proposal in October 2009 of establishing a National Arrears Grid, whose task would be to ascertain the exact number of arrears in every court on a scientific basis and to oversee continued reduction of arrears, increase in efficiency and optimal utilisation of infrastructure.¹⁷

1.4.3 National Litigation Policy

A proposal of framing National Litigation Policy has also been made to transform the Government from a compulsive litigant to a responsible and reluctant litigant.¹⁸ The policy will entrust the task of weeding out the senseless litigation from the government's docket to the office of the country's top law officers - the Attorney General of India and the solicitor general, which will be established as a full-fledged office, assisted by a total of 52 lawyers and 26 law researchers.

¹³ Ibid; Section 9

¹⁴ Ibid; Section 11

¹⁵ Ibid; Section 4

¹⁶ Ibid; Section 26

¹⁷ J. Venkatesan, GOVERNMENT MUST HAVE SAY IN JUDGES APPOINTMENTS: MOILY, *The Hindu*, Oct 25 (2009)

¹⁸ Ibid

1.5 Lok Adalat-distinguished characteristics

The institution of Lok Adalat means People's Court. Lok stands for people and the Adalat for the court.

Both pre-litigation and post-litigation efforts are invited by Lok Adalats to enable the entire society to create peace and harmony. The Legal Services Authorities Act, 1987 makes provision for free legal aid which can be availed both before the Courts and Lok Adalats so constituted.

Justice S.M.Dharamadhikari has called Lok Adalat as indianisation, humanization and spiritualization of justice dispensation on following accounts:

- Indianisation of justice dispensation - Based on customs and traditions found in villages and societies of India
- Humanization of justice dispensation - More and more participation of human beings involved with large consideration to human aspects in the course
- Spiritualization of justice dispensation - Process to uplift society by educating its members to do justice to each other

1.5.1 Genesis of Lok Adalat in Indian legal system

The system of justice dispensation by people's Court has deep roots in Indian legal history and close allegiance to the culture and perception of justice in Indian ethos.

Justice in the view of the father of the nation, Mahatma Gandhi should involve people's participation. The concept has originated from the system of panchayats. The provisions of the Legal Services Authorities Act, 1987 are meant to supplement the formal legal system.

Lok Adalats have endorsed the right to legal aid, which is a part of the human rights law in India, under the Constitution and it has been upheld in several cases before the Supreme Court of India.

1.5.2 Governing enactment

The Legal Services Authorities Act, 1987 has been amended by The Legal Services Authorities (Amendment) Act, 1994 and The Legal Services Authorities (Amendment) Act, 2002.

1.5.3 Present Position

The concept of Lok Adalat is no longer an experiment in India, but it is an effective and efficient alternative mode of dispute settlement. The true basis of settlement of disputes by the Lok Adalat is the principle of mutual consent, voluntary acceptance of conciliation with the help of counsellors and conciliators. It is a participative, promising and potential ADRM.

Gujarat was the first state to organize Lok Adalats in India in 1982. At Una in Junagarh district of Gujarat, the first Lok Adalat was organized on 14th March, 1982.

2. OBJECTIVES OF THE STUDY

Primary Objectives

- 2.1 To find out whether the concern of litigants is of highest priority for the judicial system.
- 2.2 To determine Constitutional and Judicial Mandate of Justice.
- 2.3 To ascertain Mandate regarding ADR modes and speedy disposal of cases in CPC
- 2.4 To find out the deficiencies of Indian system of judicial as administration.
- 2.5 To ascertain the nature of Lok Adalats as mode of justice delivery and compare its working with Courts' procedure.
- 2.6 To find out to what an extent modes of ADR-mainly Lok Adalats are resorted by common man for dispute resolution.
- 2.7 To find out the procedure adopted by Lok Adalats in India and particularly in state of Himachal Pradesh.
- 2.8 To find out the progress made by Lok Adalat Benches in state of Himachal Pradesh in 2008-09.
- 2.9 To find out the response of service providers and beneficiaries of Lok Adalats in HP.

Secondary Objectives

- 2.9 To find out existing number of pending suits in the country.
- 2.10 To ascertain the increase in proportion of delays to laws made etc.
- 2.11 To evaluate the contribution of Lok Adalats in justice dispensation in the country.
- 2.12 To suggest measures in the direction of:
 - 2.12.1 Improving the working of Lok Adalats
 - 2.12.2 Reducing backlog of cases
 - 2.12.3 Improving the image of judges and lawyers
 - 2.12.4 Generating awareness towards adopting ADR modes

3. HISTORY OF ADRs MECHANISMS IN HIMACHAL PRADESH: WITH EMPHASIS ON LOK ADALATS

3.1 EFFORT IN THE FORM OF LOK NYAYALAYAS

Under Rule 10(2)(1) , H.P. Legal Aid Rules,1984 (principally based on Model Rules circulated by CILAS) , H.P. State Legal Board shall arrange for holding Lok Nyayalayas in different areas for the purpose of bringing about voluntary settlement of disputes.

3.2 CONCILIATION PROJECT

Under Chief Justice P.D.Desai ‘Conciliation Project’ was started in the state of H.P. from September 1, 1984. Under it, in a span of around two years till December 31, 1986 from its inception 6963 cases were resolved.

It consisted of a unique pre-trial, in-trial and post-trial conciliation schemes, which were operationalized by subordinate as well as High Court. Rule 5-B, Order XXVII and Rule 3, Order XXII-A ,The Code of Civil Procedure,1908(as amended in 1976) have been recognised by the High Court of H.P. as having the potential for reaching justice especially to the underprivileged sections of the society. This made the H.P.High Court as the first one in the country to take the scheme of conciliation through the subordinate courts.¹⁹

S.No.	Period	No. of cases disposed
1.	01-09-1984 to 31-12-1984	176
2.	01-01-1985 to 31-12-1985	1,890
3.	01-01-19856 to 31-12-1986	4,897
4.	01-01-1987 to 30-09-19857	6,298
Total		13,261

¹⁹ Supra M.G.Chitakra at 128-129

3.3 LOK ADALATS

3.3.1 Maiden Lok Adalat in H.P.

The first Lok Adalat was held at Shimla on August 25th, 1990. It took 406 matters and successfully disposed 181 cases.

3.3.2 Subsequent Lok Adalats

TABLE-1 INITIAL LOKA DALATS HELD IN I.P.

S.No	Place	Date
1.	Solan	May 1,1991
2.	Shimla	June 9,1991
3.	Mandi	June 30, 1991
4.	Poanta Sahib	August, 1991

At such a speed, 100th Lok Adalat was organised on 9th September, 1993 at Hamirpur.

3.3.3 Lok adalats' Success from beginning till December 2008

TABLE -2 PROGRESS IN TERMS OF SETTLEMENT DONE BY

FIRST 10 LOK ADALATS

(August 1990 to November 1991)

No. of Lok adalats	Total no. of cases taken	Total no. of cases decided	Percentage of disposal
1.	406	181	44 %
2	506	173	34%
3	1455	511	35%
4	939	564	60%
5	91	60	66%
6	541	277	51%
7	263	124	47%
8	53	20	38%
9	390	232	59%
10	455	271	60%

**TABLE-3 SUCCESS RATE OF LOK ADALATS ON BASIS OF NUMBER OF
LOK ADALATS HELD**

S.No	Period	Lok Adalats held	Cases settled	5 of cases settled in one Lok Adalat
1.	1990-1993	122	15408	126 %
2.	1994-1997	283	17581	62%
3.	1998-2001	1099	11544	10%
4.	2002-2005	1893	15984	8.4%
5.	2006-2008	1158	9105	7.8%

With the increase in number of Lok adalats being organized, the success has been coming down. In the first four years, one lok adalat took the credit of settling cases at 126% which has declined sharply to 7.8 % for 2005-08.

One of the reasons for decline in success rate can be attributed to organizing more adalats may be reducing the interest of not only litigants rather service-providers. Due to more work pressure, situation as existing in judicial system has arisen where full commitment is lacking on part of members of Lok adalat.

4. ORGANISATION AND WORKING OF LOK ADALATS

4.1 In general

Lok Adalats may be organized at such intervals and places and for exercising such jurisdiction and for such areas as State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may think fit.²⁰

4.1.1 Composition

Every Lok Adalat organized for an area shall consist of such number of serving or retired judicial officers; and other persons.²¹

4.1.2 Jurisdiction

Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any case pending before; or any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized.²²

- (a) Any case pending before any court
- (b) Any case not brought before any court

4.1.3 Permanent Lok Adalat

Permanent Lok Adalats may be established at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.²³

²⁰ Legal Services Authorities Act, 1987; Section 19(1)

²¹ Ibid; Section 19(2)

²² Ibid; Section 19(5)

²³ Ibid; Section 22B(1)

4.2 In Himachal Pradesh

In pursuance of Section 7(2) (b), H.P. State Legal Services Authority conducts Lok Adalats at regular intervals.

4.2.1 Enactments etc. applicable

H.P. State Legal Services Authority Rules, 1995; H.P. State Legal Services Authority Regulations, 1996; H.P. Lok Adalat Scheme, 2005; H.P. Legal Aid Counsel Scheme, 2003 ; and H.P. Legal Literacy Camp Scheme ,2005 are applicable in the state of Himachal Pradesh.

**TABLE-4 ENABLING PROVISIONS AND RULES ETC. ENACTED IN H.P. FOR
LOK ADALATS**

S.No	Enactment, Rule etc	Enabling Provision of Legal Services Authorities Act,1987
1.	H.P. State Legal Services Authority Rules, 1995	Section 28
2.	H.P. State Legal Services Authority Regulations, 1996	Section 29A
3.	H.P. Lok Adalat Scheme, 2005	Section 7(2)(b)
4.	H.P. Legal Aid Counsel Scheme, 2003	Section 2(g) read with 12(g)
5.	H.P. Legal Literacy Camp Scheme ,2005	Section 7(2)(c)

4.2.2 Lok Adalats: Power of organizing

In exercise of the power conferred by Section 7(2)(b), Legal Services Authorities Act, 1987, H.P. State Legal Services Authority has made H.P. Lok Adalat Scheme, 2005. The Secretary or the Chairman shall convene and organise Lok Adalats at regular intervals in the state at High Court, District and Sub Divisional levels. It is the duty of such person organising Lok Adalat to submit to the State Authority ‘an annual calendar of Lok Adalats’ well before the dates on which they are proposed containing following particulars -

- 4.2.2.1 Place and date at which Lok Adalat is proposed to be organised.
- 4.2.2.2 Approximate number of cases proposed to be brought before the Lok Adalat.
- 4.2.2.3 Category and nature of cases.
- 4.2.2.4 Any other information relevant to convening and organising of Lok Adalat.

4.2.3 Permanent Lok Adalats in H.P.

In Himachal Pradesh, there have been established three Permanent Lok Adalats. Amongst 12 districts, 9 districts are covered by these three Lok Adalats in the following manner:

TABLE-5 PERMANENT LOK ADALAT IN H.P. ALONGWITH RESPECTIVE DISTRICTS

S.No	District where Permanent Lok Adalat established	Headquarter	Districts covered by Permanent Lok Adalat
1.	Shimla	Shimla	Shimla, Solan, Kinnaur, Sirmaur
2.	Mandi	Mandi	Mandi, Kullu, Lahaul Spiti
3.	Kangra	Dharamshala	Kangra, Chamba

The remaining three districts (Bilaspur, Una and Hamirpur are planned to be covered by common PLA very soon).

4.2.4 Structure

H.P. Lok Adalat Scheme, 2005 specifies that Lok Adalat shall be organised at High Court level, District level and Sub-Divisional level.

TABLE-6 AUTHORISED PERSONS TO ORGANIZE LOK ADALAT AT THREE LEVELS

S.No	Level	Person authorised to organize
1	High Court level	Secretary of High Court Legal Service Committee (Registrar Vigilance)
2	District level	Secretary of District Legal Service Committee
3	Sub-Divisional level	Secretary of Sub-Divisional(taluk) Legal Service Committee

Such Lok Adalats have to be organized with the approval of Chairman of State Legal Service Authority.

TABLE - 7 COMPOSITION OF LOK ADALAT AT THREE LEVELS

S.No	Level	Composition			
1	High Court level	Sitting or retired judge of HC	Sitting or retired Judicial Officer of rank of District judge	Eminent person in the field of medicine	Person specified under Rule 18, H.P. State Legal Services Authority Rules, 1995 viz. <ul style="list-style-type: none"> • Eminent social worker • Lawyer of standing or teacher • Person of repute interested in the implementation of Legal Services Schemes and Programmes
2	District level	Sitting or retired judicial officer	Eminent person in the field of medicine	Person specified under Rule 18	-
3	Sub-Divisional level	Sitting or retired judicial officer	Eminent person in the field of medicine	Person specified under Rule 18	-

The minimum number required to constitute a Lok Adalat is 2 and maximum 3.

Practical situation in accordance with procedure laid down-

Social worker must be eminent one engaged in the upliftment of the weaker sections including SCs, STs, Women, children, labour.²⁴ Social workers as well as medical expert are regularly invited to render services in Lok Adalat.

Practice is that almost all Benches of lok adalats consist of 3 members-one advocates, one Judicial Officer and one Medical expert (doctor) since almost most of the matters taken up are regarding MACT

²⁴ H.P. State Legal Services Authority Rules, 1995; Rule 18(a)

5. STATISTICAL RECORD OF LOK ADALATS HELD IN HIMACHAL PRADESH

5.1 At High Court level

It is disheartening to note that since the inception of Lok Adalat movement in the state of H.P. , role of H.P. High Court has been negligible as evident from number of Lok Adalats held, cases disposed of and compensation awarded.

TABLE-8 LOK ADALATS ORGANISED BY HIGH COURT LEGAL SERVICE COMMITTEE

S.No	Lok Adalat	Date	Cases taken up	Cases disposed of	Advocates appointed as Legal aid counsel	Compensation awarded
1.	First	9-11-2003	500	212	-	-
2.	Second	24-4-2004	143	71	42	Rs 1,31,18,496
3.	Third	26-6-2004	180	74	34	Rs 1,42,17,466
4.	Fourth	25-9-2004	361	90	64	Rs 1,79,26,413
5.	Fifth	21-4-2007	236	129	35	Rs 3,41,58,453
	TOTAL		1420	576	-	-

5.2 Others

The record of lok adalats of subordinate courts at district and sub-divisional level is submitted to State Authority after successful conclusion.

5.3 Compiled figures for 2008-09

TABLE-9 LOK ADALATS IN 2008-09²⁵

Lok adalats organized in H.P.	Cases Taken up	Cases settled	Disposal rate (%)
308	3212	2181	68 %

²⁵ Annual Administrative Report of H.P. State Legal Service Authority ,2008-09

5.4 District wise study

Out of 12 districts, Lok adalats were organized in 11 districts. Lahaul and Spiti having really minute population had no Lok adalat in 2008-09.

S.No	District	Cases taken up	Cases settled	Disposal rate (%)
1.	Kangra	664	396	60
2.	Mandi	504	349	70
3.	Solan	404	285	83 (Highest)
4.	Una	325	269	83 (Highest)
5.	Shimla	313	155	50 (Lowest)
6.	Bilaspur	256	174	68
7.	Kullu	208	184	89
8.	Sirmour	190	141	74
9.	Chamba	126	76	60
10.	Hamirpur	120	73	61
11.	Kinnaur	102	79	77

5.5 Post litigation and pre-litigation cases

Out of 3212, post litigation were 2586 and pre-litigation cases were 626.

5.6 Committees working under the Act

39 Committees in all work and their functioning is as follows:

S.No	District	No. of Committees	
1	Kangra	7	Kangra, Dehra, Palampur, Baijnath, Nurpur, Dharamshala and Jawali
2	Mandi	6	Mandi, Gohar, Sundernagar, Karsog, Jogindernagar and Sarkaghat
3	Solan	4	Arki, Nalagarh, Kandaghat and Solan
4	Una	2	Una and Amb
5	Shimla	5	Shimla, Rohru, Chopal, Rampur Bushehar and Theog
6	Bilaspur	2	Bilaspur and Ghumarwin
7	Kullu	4	Ani, Banjar, Keylong and Manali
8	Sirmour	3	Nahan, Rajgarh and Paonta Sahib
9	Chamba	2	Bharmour and Dalhousie
10	Hamirpur	3	Hamirpur, Barsar and Nadaun
11	Kinnaur	1	Reckong Peo

6. PROCEDURE FOLLOWED BY LOK ADALAT

6.1 Envisaged under the Legal Services Authorities Act, 1987

6.1.1 Reference by Court or application by party

Where in any case referred to Section 19(5)(i) , the parties thereof agree; or one of the parties thereof makes an application to the court for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat.²⁶

No case shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the parties.²⁷

6.1.2 Guidance by the principles of justice, equity and fair play

Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity fair play and other legal principles.²⁸

6.1.3 Award of Lok Adalat

Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at by a Lok Adalat in a case referred to it Section 20(1) , the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).

Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

²⁶ Ibid; Section 20(1)

²⁷ Ibid; Proviso to Section 20(1)

²⁸ Ibid; Section 20(4)

6.2 Comparison of procedure of civil courts and Lok adalats

**TABLE-10 COMPARISON BETWEEN PROCEDURE OF CIVIL COURTS AND
LOK ADALATS**

S.No	Feature	Civil Court	Lok Adalat
1.	Institution of case	At discretion of party	Case may be taken up : On application of party or By reference by Court in which case is pending
2.	Nature of case	Litigation commences in Court	Pre-litigation and post-litigation
3.	Procedure	Rules of Civil Procedure Code	Power to specify its own procedure for the determination of any dispute coming before it
4.	Guidance by the principles of justice, equity and fair play	Has to follow	Has to follow
5.	Decision/Award		Required to act with utmost expedition in arriving at a compromise or settlement
6.	Mandate	To decide the matter	To determine and arrive at a compromise/settlement

6.3 Procedure adopted in state of H.P. by Lok Adalats

By High Court

The task before the H.C. Legal Service Committee before organizing Lok Adalat is arranging meeting with Regional Managers of Insurance Companies etc. While acting in pursuance of the power under H.P. Lok Adalat Scheme, 2005- The Secretary of H.C. Legal Service Committee (Registrar Vigilance) submits to the State Authority an annual calendar of Lok Adalats well before dates on which Lok Adalats are proposed to be organised.

Once the date is finalized, parties are served notices. It finally makes a plan about number of Benches of lok adalats and their sitting arrangements. Decision as to refreshments to be served to litigants , lunch and dinner arrangements for members of Lok adalats and advocates is also required to be taken up.

For every Bench of Lok Adalat concerned, 1 Reader, 3 Stenographer and 2 peons are also provided.

7. FUNDING AND SUPPORT FOR LOK ADALATS

7.1 In general

Chapter V deals with Finance, accounts and audits of different authorities established under the Act.

7.2 In H.P.

H.P. State Legal Service Authority received grants worth Rs 64, 52,000 in 2008-09 as follows:

From State Government- Rs 7, 00,000

From Central Government- Rs 57, 52,000²⁹

²⁹ Annual Administrative Report of H.P. State Legal Service Authority, 2008-09

8. FINDINGS OF THE STUDY (OBSERVATIONS)

8.1 General

8.1.1 The entire system of administration of justice is of giving least priority to the interests of litigants.

8.1.2 The Constitutional Mandate of Justice is provided particularly in the Preamble and Article 39A.

8.1.3 Lok Adalats as well as other modes of ADR are resorted by common man for dispute resolution to some extent only. Even after insertion of Section 89 in CPC ,we find no change in arrear of cases before Courts, new cases are instituted and join the list of pending ones.

8.1.4 The major deficiencies of Indian system of judicial as administration are overburden of cases (leading to delays), expensive and time – consuming, lack of sincere legal professional and sleeping judicial commitment. Drastically low cost, informal atmosphere, absence of technicalities and nearness, (geographical and psychological) make Lok Adalats a better option than the Courts of law. Until a person has his own matter before the Lok adalat, he will not be in a position to appreciate its role. For a n outsider it is just like Court, but it is full of quest for dispute settlement.

8.1.5 Lok Adalats as mode of justice delivery have large consideration to human aspects, closer to common people, non-formal, accessible (geographically) and provide justice spontaneously having consent of both the disputing parties. In a court proceedings, a judge has to normally adhere to technical procedure whereas being a part of Lok adalat ,he is at discretion whether to follow the procedure or to provide justice ignoring the formal procedure. The litigants also feel free while interacting with judges in Lok adalat ,with whom they consider themselves to be a distant place being in Courts.

8.1.6 The contribution of Lok Adalats in justice dispensation in the country is great. On unfortunate side, when a larger sections of society looks upto them as a proper forum of dispute resolution, the entire system of adversial litigation gets bypassed. They consciously or unconsciously make the existing judicial system appear small and redundant. This shows that the faith of people on the existing legal system has been undermined.

8.1.7 The existing number of pending suits in the country is 3.5 crores.³⁰ At the end of 2008, the arrears of civil and criminal cases pending disposal in the various High Courts were 38, 74,090. Out of which, 31,03,352 are civil and 7,70,738 criminal cases.³¹ In subordinate courts, the total pendency at the end of 2008 was 2,64,09,011. Out of which, 1, 88, 69,163 are criminal and 75, 39,848 civil cases.³² The huge backlog of cases only makes justice less accessible. The delay in the judicial system results in loss of public confidence on the confidence on the concept of justice. The proposed the National Arrears Grid which shall become functional from 26th November, 2009 is expected to suggest forceful reforms.

8.1.8 Evolution of new juristic principles for dispute resolution has become imperative due to inordinate delay in dispensation of justice.

8.1.9 The policy of the government in encouraging judicial reforms is visible by amendment to CPC (2002), proposals such as setting up National Arrears Grid etc.

8.1.10 A wrong trend has emerged in judiciary where judges of lower courts are allowing litigants to file more cases and decide them, so as to increase their rate of disposal. The intention of judges is not to make litigants settle the matter, rather continue with proceedings to earn success rate.

8.2 With emphasis on HP

8.2.1 The procedure adopted by Lok Adalats in India and particularly in state of Himachal Pradesh is envisaged under the Legal Services Authorities Act, 1987 (Section 19) and H.P. Lok Adalat Scheme, 2005 respectively.

8.2.2 The progress made by Lok Adalat in HP in 2008-09 is as 308 Lok Adalats organized, 2236 cases settled and Rs 84, 11,500 awarded as compensation.

8.2.3 The response of service providers and beneficiaries of Lok Adalats in HP is positive towards them and they have more inclination towards the former than the Courts.

³⁰ Chief Justice of India concerned over 3.5 crore pending court cases, available at <http://economictimes.indiatimes.com/News/Politics/Nation/Chief-Justice-of-India-concerned-over-35-crore-pending-court-cases/articleshow/4820440.cms>

³¹ Agenda note of two-day annual conference of Chief Justices of various High Courts, available at <http://trak.in/news/chief-justices-to-discuss-resolution-of-pending-cases-today/1415/>

³² Ibid

8.2.4 The HP High Court has organised only four Lok Adalats till date and the last was organized in April 2007. Their success rate is around 40%.

8.2.5 Though the number of lok adalats being organized in HP is increasing, still resorting to them is not the first option as their success rate has also decreased at the same time.

8.2.6 The State of Himachal Pradesh expressed its non-willingness among other two states (Madhya Pradesh, Uttarakhand) to establish Gram Nyayalayas for every Panchayat and to provide easy access to justice to the citizens at the grass root level in the rural areas, Chief Ministers/representatives of the States in Conference of the Chief Ministers of States and the Chief Justices of the High Courts on August 16, 2009

9. RESPONSE TO THE LOK ADALAT MOVEMENT IN THE STATE OF HIMACHAL PRADESH

New methods of dispute resolution such as ADR facilitate parties to deal with the underlying issues in dispute in a more cost-effective manner and with increased efficacy.

9.1 RESPONSE OF JUDGES AND LAWYERS

The legal fraternity has mixed opinion on the matter. Majority of them feel that neither the legal professionals in H.P. are moving towards ADRs instead of Courts for quick nor they are themselves desirous of getting their cases settled Lok Adalats. One reason for it is unawareness or lack of inadequate knowledge of ADR mechanisms and other is profit motive of legal fraternity. Unfortunately, advocates share the opinion all over India that continuing litigation of matters is of more monetary benefit than resolution of matter in one sitting before ADR authority.³³

A smaller group considers that the HP State Legal Service Authority is doing its best in resolving both arrears of cases and disputes directly filed before Lok Adalats. They as a class have shown interest in getting the cases solved through Lok Adalats instead of Courts.

Bench considers organizing Lok Adalats the best and easiest mode of resolving disputes.

9.2 RESPONSE OF THE BENEFICIARIES

Most of the cases involve Insurance or Banking Sector as one party and they are of the view that since they don't have time to appear in person in hundreds of cases filed against them, Lok Adalats enable them to get the matter settled, at the same time enabling the applicants also to get a fair amount of compensation etc.

The applicants say that they chose Lok Adalats as they don't want their matter to pass on to years and consume their heavy money. Having less involvement of advocates allows them to personally keep their point before the Bench and feel satisfied with its award.

³³ Observations of researcher after picture of arrears throughout the country

On the basis of survey, it can be said that the scope of private ADR mechanisms in HP at present is narrow and needs to be broadened by efforts of concerned authorities.

10. SUGGESTIONS

Arrears are mounting by leaps and bounds because institution of cases is much more than their disposal at all the levels of judicial administration.³⁴ The oath required to be taken by all judges of the higher judges significantly omit any reference to 'justice' and when justice delayed is justice denied, how can judicial system be commended for such unreasonable delays.

India needs a new legal technology, new judicature models and remedy oriented judicare to deliver a pervasive delivery system of justice dispensation. Changes must be introduced in the mode, method and forum for settling disputes before the existing judicial system gets engulfed by its debris.

N.Vittal, former Central Vigilance Commissioner has given suggestions to make judiciary accountable viz. judge should deliver a judgment as quickly as possible and the efforts should be made to improve the performance of the judiciary in terms of speed and productivity.³⁵

10.1 Expansion of judicial system

The judicial system needed to be expanded by at least five times in order to meet the judge-to-population ratio of developed countries.³⁶ It has become essential that the present strength of the judges should be increased manifold according to the pendency, present and probable. It is also necessary that the work of the High Courts is decentralized, that is, more Benches are established in all States.³⁷ Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an hour.³⁸ It is high time when all the judges at different levels of judicial hierarchy must devote full time to

³⁴ NEED FOR SPEEDY JUSTICE - SOME SUGGESTIONS, Report No. 221 of Law Commission of India, April 2009

³⁵ Supra Subhash C.Kashyap at 119

³⁶ REFORMS IN THE JUDICIARY - SOME SUGGESTIONS, Report No.230 of Law Commission of India, August 2009

³⁷ Ibid

³⁸ Ibid

judicial work and should not be under any misconception that they are Lords or above the society.³⁹

10.2 Other strategies

Law Commission of India in its report Reforms in the Judiciary - Some Suggestions submitted in August 2009 has recommended as-

10.2.1 Clubbing of similar cases

Many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be clubbed with the help of technology and used to dispose other such cases on a priority basis; this will substantially reduce the arrears. Similarly, old cases, many of which have become infructuous, can be separated and listed for hearing and their disposal normally will not take much time.

10.2.2 Disposal of cases within reasonable time

Judges must deliver judgments within a reasonable time.

Amendment introduced in Civil Procedure Code in

10.2.3 Clear judgments

Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation.

10.2.4 Appropriate use of technology

Building up a judicial database will enable us to assess the performance of the courts as an institution, and the Chief Justices will be able to use it to assess the individual performance of judges and help in a long way in identifying what the backlog is, what types of cases are clogging the dockets, etc.

10.3 Responsible role of Bar members

If members of the Bar conduct themselves keeping the interests of the clients and the Court above their own, much of the unproductive litigation can be avoided. Again by keeping the number of adjournments to the barest minimum, the Bar can aid speedy

³⁹ Ibid

disposal of cases. Discharging our duties to the client and the Court diligently by preparing the cases thoroughly and presenting them in Court within the shortest possible time without beating about the bush, and fairly conceding if the other side has a valid point and confining the arguments to points which are worth pressing being highly arguable, if not answerable, in the best traditions of the Bar, we can help disposal of cases.⁴⁰

10.4 ADR literacy programme

For mass awareness, ADR literacy programme has to be organized. Popularizing the methods is must.

Common man has to be reached to make him realize that apart from civil litigation as a method of dispute resolution, other methods also exist and are equally successfully in dispute resolution and that even by amicable means (mutual consent).

Training workshops can be organized at various levels from grassroots to state level. Literature can be provided to trainees for distribution in locality.

10.5 Example from other countries

In Japan, Judges intervene extensively during the in-court settlement; every Japanese Judge is expected, both by law and by litigants, to move a case towards settlement. The consequence is that least 55 % of the cases are settled.⁴¹ (The Judge, who decides to switch the litigation to a settlement mode, takes off his robe and acts as mediator.)

10.6 ADR Mechanisms should not overpower themselves

In *State of Punjab and another v. Jalour Singh and others*⁴², the Apex Court reminded the Lok adalats that Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses subject matter with parties and persuades

⁴⁰ P. P. Rao, LEGAL AND JUDICIAL SYSTEM - A NEW LOOK A BIT OF LOUD THINKING, available at <http://www.lexsite.com/services/network/scba/article2.shtml>

⁴¹ http://homepage3.nifty.com/Prof_K_Iwasaki/lawdb/japan/dispute/adr-en.html

⁴² AIR 2008 SC 1209

them to arrive at a just settlement. In their conciliatory role, Lok Adalats are guided by principles of justice, equity, fair play. Further citing LSA Act, it said that the Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by parties, with guidance and assistance from Lok Adalat . The `award' of Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. Making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in presence of Lok Adalat, in the form of an executable order under signature and seal of Lok Adalat.

In the same manner all ADR providers must remember that their role is not to overpower the Courts rather move with them in listening the grievances of people and ultimately solving them to their best ability.

11. EPILOGUE

Law Commission of India has observed - If professionalized model of justice delivery system cannot be extended to meet the legal needs of Indian masses, it becomes incumbent to consider alternatives. In the existing situation, resort to Lok adalats has enabled dispute settlement amicably. The success of Lok Adalat may be measured by the overall atmosphere generated in the country- strengthening the philosophy of Smanve (reconciling of individual liberty with social good), not by the number and nature of Lok Adalat held, cases settled or compensation awarded.

When blind-folded Dike, the Greek Goddess of Justice has no more remained the symbol of 21st century, over-burdened Courts must be supplemented by other means of dispute resolution.

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- State of Punjab and another v. Jalour Singh and others

APPENDIX

SURVEY QUESTIONNAIRE

Name of advocate-

Date -

1. Do you feel the need of regularly organizing Lok Adalats in H.P.?
2. How much cases approximately get successfully disposed of being taken by Lok Adalats?
3. Whether H.P.State Legal Service Authority is doing its best in organizing Lok Adalats in H.P.?
4. Whether legal professionals in H.P. are moving towards ADRs instead of Courts for quick settlement?
5. Whether Advocates of H.P. Courts are themselves desirous of getting their cases settled Lok Adalats.?

RESPONDENTS

Advocates

1. Aditya Verma
2. Amit Datta
3. Amit Jain
4. Anup Chitkara
5. Balram Sharma
6. Balram Thakur
7. Chaman Negi
8. Chhavinder Thakur
9. Naresh Kumar Gupta
10. Neeraj Gupta
11. Nidhi Chawla
12. R. K.Gautam
13. Sanjeev Kumar
14. T.C.Sharma

