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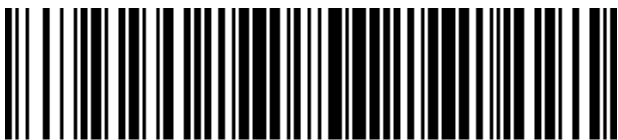
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**Lok Adalats: An Experiment with Informal Dispute Resolution in India**

**Sneha Kalia**

## ABSTRACT

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*The perennial and notorious problem of judicial backlog and delay has been recognised as one of the greatest challenges before the formal judicial system. In response to these issues pervading the legal system, there has been a sustained growth of alternative dispute resolution mechanisms over the last few decades. Lok adalats represent one of the most celebrated and innovative experiments in alternative dispute resolution devised to promote informal, rapid, conciliatory and binding resolution of disputes. Literally meaning “people’s court”, they supplement the formal justice system by establishing non-adversarial and informal courts for bringing justice to the public, particularly those in rural and remote areas. However, in recent years, there has been a decline in the number of successful settlements which is possibly indicative of rising discontentment with the forum. Against this context, this paper seeks to assess and evaluate the structure and functioning of the lok adalats which have received substantial judicial and governmental support. Through the above analysis, the paper aims to put forth the advantages as well as the lacunae within the system which ought to be given due consideration in order to decide upon the continued viability of the forum.*

Keywords: Lok Adalat, Informal Dispute Resolution, Legal Aid, Alternative Dispute Resolution, Access to Justice

## INTRODUCTION

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The Indian formal justice system can be understood as a portrait marred with tremendous stress, stifling economic competitiveness and the long-drawn pursuit of justice often proving to be a disappointment and dissatisfaction amongst justice-seekers.<sup>1</sup> The perennial and notorious problem of judicial backlog and delay has been recognised as one of the primary challenges faced by the system which impacts the economic and political milieu of the society as a whole. To translate this problem into factual terms, currently, nearly 4.5 million cases are pending at the High Court level and 33 million cases at the district court level, some of which have been appealed and argued for more than two decades.<sup>2</sup> The menace of docket explosion can be attributed to a host of factors including *inter alia* the perennial vacancies in the appointment of judges, lack of finality due to the appellate process, technicalities and rigid application of rules, extreme formalism and the vexatious character of litigation.<sup>3</sup> In response to these issues pervading the Indian legal system, there has been a sustained growth of alternative dispute resolution mechanisms over the last few decades.

*Lok adalats* represent one of the most celebrated and innovative forums in alternative dispute resolution devised to promote indigenous, rapid, conciliatory and binding resolution of disputes. Literally translating to “people’s court”, they supplement the formal justice system by establishing non-adversarial and informal courts for bringing justice to the public, particularly those in rural and remote areas. The emergence of *lok adalats* seeks to satisfy a two-fold objective -- on the one hand, it brings to fore the discontentment with the procedurally inflexible adversarial justice system and attempts to combat the alienation of masses thus caused by judicial channels. On the other hand, it encourages institutions with less formal dispute resolution that allow people to conquer procedural, institutional and economic barriers in their pursuance of justice and furthers the principles of promotion of social harmony and provision of legal aid for the weaker sections of the society.<sup>4</sup>

As a result of the above, *lok adalats* have received substantial judicial and governmental support and have been set up throughout India. However, in recent years, there has been a consistent decline in

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<sup>1</sup> Law Commission of India, *Delay and Arrears in Trial Courts* (77<sup>th</sup> Report, 1978) para 4.1.

<sup>2</sup> 'National Judicial Data Grid' (*Njdg.ecourts.gov.in*, 2020) <<https://njdg.ecourts.gov.in/hcnjdgnew/>> accessed 20 July 2020.

<sup>3</sup> Justice Jitendra N. Bhatt, *A Round Table through Lok Adalat (People’s Court) A Vibrant ADR in India* (1 SCC Jour 2002)

<sup>4</sup> Nadja Alexander, *Global Trends In Mediation: Riding The Third Wave in Global Trends in Mediation* (Kluwer Law International BV, 2nd Ed, 2006).



the number of successful settlements which is possibly indicative of underlying issues and rising discontentment with the forum. These concerns have perhaps been overshadowed by the presumed success and lack of research regarding the actual performance of the forum. In view of the same, this paper aims to explore and review the structure, functioning and viability of the forum and highlight the possible lacunae in its operation.

## ORGANISATION AND LEGAL FRAMEWORK

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India has demonstrated a long history of experiments in dispute resolution utilising conciliatory methods outside of the formal justice system and aimed towards increasing access to justice.<sup>5</sup> The earlier models of *panchayats* and *nyaya panchayats* strengthened the support in ideologies in favour of alternative institutions, informality and indigenous justice and set the stage for the current regime of dispute resolution by way of *lok adalats*.<sup>6</sup> The establishment and rise in the forum's popularity overlapped with the struggle to elevate the weaker sections of the society by providing legal aid and encouraging public-interest litigation. In this context, significant contributions were made by Justice N.H. Bhagwati and Justice Krishna Iyer whose reports envisaged the delivering of justice through a decentralised, informal and affordable platform for the common man. Further, Upendra Baxi, a prominent legal scholar, must also be credited for an influential article written in 1976 on a *lok adalat* run by Harivallabh Parikh in a tribal area of Gujarat.<sup>7</sup>

Subsequently, the first *lok adalat* camps were organised on 14<sup>th</sup> March 1982 at Junagarh, Gujarat under the auspices of the Committee for Implementation of Legal Aid Scheme (CILAS).<sup>8</sup> They were soon followed by several other states including Rajasthan, Maharashtra and Kerala amongst others. By the 1980s, *lok adalats* had become increasingly publicised and were being frequently organised across the country. In 1987, the government enacted the Legal Services Authorities Act, which contained several provisions regulating the organisation of *lok adalats*. The enactment of the statute sought to create a wave of goodwill for speedy settlement of disputes through the utility of *lok adalats*. It is in furtherance

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<sup>5</sup> Sarfaraz Ahmed Khan, *Lok Adalat: An Effective Dispute Resolution Mechanism* (APH Publishing, 2006).

<sup>6</sup> Tameem Zainulbhai, 'Justice for all: Improving the lok adalat system in India' (2011) *Fordham Int'l LJ* 35, 248.

<sup>7</sup> Upendra Baxi, *From Takrar to Karar: The Lok Adalat at Rangpur: A Preliminary Study* (X J. of Const. & Parliamentary Studies 53 1976); Justice P.N. Bhagwati, *Report on National Judicare: Equal Justice Social Justice* (Ministry of Law, Justice and Company Affairs, 1976) para 33-34; Justice Krishna Iyer, *Report on Processual Justice to the People* (Expert Committee on Legal Aid, 1973); Report of the Gujarat Legal Aid Committee (1977).

<sup>8</sup> *Lok Adalat: An Effective Dispute Resolution Mechanism* (n 5).

of the constitutional obligation under Article 39A which pledges to protect the social, economic, and political justice of all its citizens and solidifies the shared principles of access to justice to economically weaker sections and establishment of equal opportunity.<sup>9</sup> At the same time, some critics argued that this measure defeated the ethos and object behind *lok adalats* which was entrenched in its identity as an informal and grassroots level forum run by the people distinct from the formal court system under the state authorities.<sup>10</sup> Regardless, the programme gained popularity throughout the country, and 110,600 *lok adalats* had been held which settled 13,141,938 cases (119 cases per Lok Adalat) by November 2001.<sup>11</sup>

The passing of the Legal Services Authority Act has legitimised the forum of *lok adalats* in four significant ways—*for one*, it granted statutory authority to the forum and laid down the framework for the settlement of disputes through *lok adalats*. Concerning the organisation of *lok adalats*, the Act permits the states to organise them at such intervals and locations as they saw fit.<sup>12</sup> They may be organised by either of the State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committee or the Taluk Legal Services Committee.<sup>13</sup> *Second*, the Act made awards given by the *lok adalats* enforceable and granted it the status of a decree of the civil court.<sup>14</sup> Further, the award was made final and binding on both the parties and could not be appealed as per the usual hierarchy.<sup>15</sup>

*Third*, it set the ambit of reference of disputes for settlement by *lok adalats*. They have been empowered to dispose of any dispute within the purview of any civil, criminal or revenue court or any tribunal constituted under the law at pre-litigation and litigation stages on the basis of settlement or compromise.<sup>16</sup> Its mandate permits taking cognisance of cases where both parties agree to settle the dispute in *lok adalat* or cases where an application is made by one of the parties and the court is *prima facie* satisfied with the chance of such settlement or where the court is satisfied that the case is appropriate for settlement under the *lok Adalat*. Where no compromise can be reached through

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<sup>9</sup> Constitution of India, art 39A; Law Commission of India, *Need for Justice-dispensation through ADR etc.* (Report No. 222, 2009).

<sup>10</sup> V.R. Krishna Iyer, *Legal Services Authorities Act- A Critique* (Madurai Society for Community Organisation Trust Ed., 1988).

<sup>11</sup> National Legal Services Authority (NALSA), December 2001.

<sup>12</sup> Legal Services Authorities Act 1987, s 19(1).

<sup>13</sup> National Legal Services Authority (Lok Adalat) Regulations, 2009, regulation 3.

<sup>14</sup> Legal Services Authorities Act 1987, s 21.

<sup>15</sup> Ibid.

<sup>16</sup> Legal Services Authorities Act 1987, s 19(5); Legal Services Authorities Act 1987, s 20.

conciliation, the matter is returned to the concerned court for disposal according to the formal justice system.<sup>17</sup> For this purpose, *lok adalats* have been granted the same powers as civil courts under the Code of Civil Procedure, including *inter alia* the power to order discovery and summon attendance of witnesses amongst others. *Fourth*, it set a standard for the composition of the benches of the *lok adalats* to ensure experience and application of legal mind in decision making. A sitting or retired judicial officer presides the forum as the chairman and two other members which may include a member of the legal profession or an eminent social worker.<sup>18</sup>

With respect to the types of cases, *lok adalats* have been granted the broadest possible jurisdiction and can attend to any matter irrespective of its legal character. Over time, owing to the efficient functioning and increased public confidence, they have been successful in settling disputes concerning motor accident claims, inheritance or succession disputes, matrimonial disputes, labour disputes, land acquisition disputes, disputes relating to public services and even minor criminal cases. However, it is pertinent to note that non-compoundable offences have been strictly excluded from the scope of the *lok adalats*. While dockets vary from place to place, as a general trend the *lok adalats* have been structured to capture cases concerning the poor and are usually unable to attract cases involving important civil or private litigation with heavy financial stakes.<sup>19</sup>

Additionally, dispute resolution through the forum of *lok adalats* was further strengthened through the addition of Section 89 to the *Code of Civil Procedure* (CPC). This section enables the court to frame terms and settle disputes by resort to alternative dispute resolution mechanisms, including judicial settlement through *lok adalats*, where the court is satisfied that the case is appropriate for settlement.<sup>20</sup> In addition to this, as per Rules 1A, 1B and 1C of Order X, the court can direct the parties to opt for any of the methods of alternative dispute resolution after a suit is filed. This statutory recognition has added a new dimension in the formation, organisation and functioning of *lok adalats* which has undoubtedly increased the public's confidence in the system.

Subsequently, in 2002, Chapter VI-A and Section 22D was inserted by way of an amendment to the Legal Services Authorities Act and provided for the setting up of *permanent lok adalats* for specific types

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<sup>17</sup> B.P. Moideen Sevamandir v. A.M. Kutty Hassan (2009) 2 SCC 198.

<sup>18</sup> National Legal Services Authority Rules 1995, rule 13.

<sup>19</sup> P.C. Rao, *Alternatives to Litigation in India, Alternative Dispute Resolution: What It Is and How it Works* (International Centre for Alternative Dispute Resolution, Delhi, Universal Law Publishing Company, 1997)

<sup>20</sup> Code of Civil Procedure 1908, s 89 (as inserted by C.P.C. (Amendment) Act, No. 46 of 1999).

of disputes such as public utility services.<sup>21</sup> Under the *permanent lok adalats*, judges were conferred with the authority to make decisions based on the merits as well as to compel conciliation.<sup>22</sup> This was a significant transition as previously, the parties had the option of going back into the formal justice system if they were unable to come to a resolution. This measure was incorporated to tackle disingenuous references to *lok adalats* as a delaying tactic by lawyers and the consequent problem of delay in the dispensation of justice.

## ADVANTAGES OF THE LOK ADALAT SYSTEM

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*Lok adalats* represent an innovative forum and much-needed addition to international jurisprudence for dispute resolution. They symbolise an independent, voluntary, disputant friendly, efficient, justice-oriented and non-technical platform for the settlement of disputes, in addition to being a recourse from the millions of cases clogging the dockets in courts. Since the enactment of the Legal Services Authorities Act and until 2015, 15.14 lakh *lok adalats* have been organised pursuant to its provisions which have facilitated the settlement of more than 8.25 crore cases.<sup>23</sup> The results in recent years have also been praiseworthy with an average of 50 lakh cases being disposed of each year by the National Lok Adalats.<sup>24</sup> Their popularity can be credited to four primary reasons. For one, the *lok adalat* forum is *inexpensive* and does not require the payment of any court fees. If the matter is already filed before a regular court and court fees have already been paid, the said amount shall be refunded upon settlement of the matter through the *lok adalat*. Thus, as opposed to the traditional court system which involves exorbitant costs linked to procedural formalities and lawyers, *lok adalats* serves the interests of the economically weaker sections of the society and brings justice to their doorstep.

Two, the officials presiding over proceedings of the *lok adalat* do not perform a judicial or adjudicatory function. Instead, they are harmonious and idyllic “para-judicial” proceedings where the conciliator assists in resolving disputes by reaching a *settlement* or *compromise* through a less formalised, less expensive and more purposeful procedure. They attempt to voluntarily settle disputes between the

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<sup>21</sup> The Legal Services Authorities (Amendment) Act, No. 37 of 2002, s 22D.

<sup>22</sup> Ibid.

<sup>23</sup> 'Lok Adalat' (*Nalsa.gov.in*, 2020) <<https://nalsa.gov.in/lok-adalat>> accessed 20 July 2020.

<sup>24</sup> 'National Lok Adalat: More Than 50 Lakh Cases Disposed On An Average By National Lok Adalats' *The Times of India* (February 14 2018).

parties by recourse to an amalgamation of mediation, arbitration and conciliation without clinging to rigid technicalities of the law.<sup>25</sup> The process uses conciliation along with elements of arbitration as the decisions are binding in nature. Further, the settlement process is adjusted according to the nature of the issue at hand such as the process in auto accident cases tends to be more evaluative (as in conciliation) and in family disputes, it tends to be more facilitative (as in mediation).

They have proven to be a preferred alternative due to their functional ability to minimise tension between the parties and reach a compromise or ‘win-win’ situations as opposed to traditional judicial proceedings where there has to be a ‘winner’ and a ‘loser’. The design and functioning of *lok adalats* inherently promote friendliness and emphasise upon the attainment of social goals by ending feuds and restoring peace in the community. It may be said that during the *lok adalat* proceedings, there are no victors and vanquished and, thus, no rancour.<sup>26</sup>

Three, *lok adalats* ensure there is *procedural flexibility* and *speedy trial* of the disputes. The forum does not necessitate strict adherence to the technicalities of procedural laws contained in the *Indian Evidence Act* and *Code of Civil Procedure* as in the courtrooms. In assessing the disputes, the forum focuses on its own experiences which can be modified as per the needs of the parties in order to facilitate mutual compromise or settlement rather than operating in accordance with the law.<sup>27</sup> Although *lok adalats* are not required to follow a uniform and straightforward procedure, their functioning ensures consonance with minimum standards envisaged by the *principles of natural justice, equity and fair play*.<sup>28</sup> Further, these relaxations accord the parties the opportunity to *participate actively* and *directly interact* with the presiding officer, which might not have been otherwise possible due to the involvement of advocates and other procedural hurdles.

Four, the award pronounced at the culmination of the proceedings of the *lok adalat* is *final and binding* on the parties to the dispute and is capable of being executed through the legal process similar to a decree of a civil court.<sup>29</sup> However, as opposed to orders of regular courts, no right of appeal exists against such order of the *lok adalat*. The rationale for the same lies in the unique functioning of the

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<sup>25</sup> Anurag K. Agarwal, ‘Role of Alternative Dispute Resolution Methods in Development of Society: Lok Adalat in India’ (2006) Network of Asia-Pacific Schools and Institutes of Public Administration and Governance (NAPSIPAG), 589.

<sup>26</sup> P. T. Thomas v. Thomas Job, AIR 2005 SC 3575.

<sup>27</sup> Basamma v. Taluka Legal Services Committee AIR 2003 Karnataka 242.

<sup>28</sup> Legal Services Authorities Act, s 20(4); Legal Services Authorities Act, s 22(2).

<sup>29</sup> Legal Services Authorities Act, 1987, s 21; M.I. Ibrahim Kutty v. Indian Overseas Bank AIR 2005 Madras 335.

forum in so far as the order is always passed through mutual consent and settlement of the parties. Thus, the need for any appeal or review procedures which would cause an unnecessary delay is eliminated.<sup>30</sup> Notwithstanding the final and binding nature of the award, the power to remedy or recall the award on the grounds of misrepresentation, fraud or mistake of fact which inherently exists in *lok adalats* akin to any court, tribunal or statutory functionary cannot be barred by the law. Similarly, the awards pronounced by the *lok adalat* are not immune from scrutiny through judicial review by the High Courts under Article 226/227 of the Constitution of India due to the abundant power of superintendence of the High Court over the decisions of all the courts or tribunals existing within its territorial jurisdiction.<sup>31</sup>

## PROBLEMS WITH LOK ADALATS

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The campaign to institutionalise *lok adalats* and its subsequent popularity as a mainstream dispute resolution forum followed even though little is known about their actual performance. The underreported numbers depict that there has been a gradual decline in the number of cases brought before and settled by the *lok adalats* from 1980 onwards. In the year 2015-16, 61,59,529 cases were disposed of by the National Lok Adalats which reduced to 49,77,002 in 2016-17 and 29,28,339 in 2017-18; thus, creating doubts about the efficacy of the forum.<sup>32</sup> In view of these statistics, there is an urgent need to assess the functioning of the forum and system its cumulative impact on society. Against this context, the following lacunae within the *lok adalat* forums need to be given further consideration--

Firstly, *lok adalats* are being lauded for their success despite several instances of dissatisfaction amongst disputing parties being placed on record by legal scholars.<sup>33</sup> This is in view of their presumed contribution in boosting judicial efficiency, with their performance being measured based on the numbers of cases they resolve. However, it is crucial to ensure that the gain in terms of timeliness is not being achieved at the cost of justice or the quality of decisions. Hence, it is equally necessary for

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<sup>30</sup> Code of Civil Procedure, s. 96(3); Legal Services Authorities Act 1987, s 21(2); Bharti Mehta and Ors. V. Haryana Roadways and Ors. (1998) ACJ 942; Thomas v. Thomas Job AIR 2005 SC 3575; Parmod v. Jagbir Singh and Ors. (2003) 133 PLR 365.

<sup>31</sup> Parmod v. Jagbir Singh (2003) 3 RCR (Civil) 184.

<sup>32</sup> Sarfaraz Ahemd Khan (n 5); Bread for the poor (n 24); Justice for all (n 6).

<sup>33</sup> Mark Galanter and Jayanth K. Krishanan 'Bread for the Poor: Access to Justice and the Rights of the Needy in India' (2003) *Hastings J*, 55, 789.

questions relating to their impact on the community or their role in the realisation of any substantive goals to be included within the mainstream discourse surrounding *lok adalats*. Failure to give due consideration to these factors would be fatal to the rights of the disputants as well as to the efficacy of the alternative dispute resolution forum.

The dissatisfaction amongst the people has been linked to a plethora of factors -- one of them being the presence of hostile relations between judges and lawyers.<sup>34</sup> Another challenge relates to the ill-preparedness of the advocates of one or both parties which makes it difficult for parties to settle and inevitably causes delay by forcing the judge to reluctantly adjourn the proceedings for a future date.<sup>35</sup> Further, many cases depict the failure of judges and lawyers in facilitating settlements that are in the best interest of their clients, resulting in unfair outcomes for the involved parties.<sup>36</sup> One case reported by scholars Mark Galanter and Jayesh Krishnan pertains to a bus driver who was responsible for a serious accident which caused injuries to a large number of people.<sup>37</sup> The presiding officer and attorneys of opposing sides spent less than two minutes to settle each injured person's case wherein important evidence was reviewed and analysed by the judge based on his own unsubstantiated inferences.<sup>38</sup>

In addition to this, as discussed, the primary requirement for adjudication before a *lok adalat* is the presence of the consent of both the parties. If one of the parties does not consent to the settlement, the entire procedure fails, and the case goes back to the formal court system. However, there are serious concerns regarding the credibility of such consent and exercise of free will by the parties engaged in proceedings before the *lok adalat*.<sup>39</sup> Prior research on alternative dispute resolution mechanisms such as mediation has discussed the inevitable role of subtle coercive pressures brought by courtroom actors in deciding cases for mediation.<sup>40</sup> It is understandable how similar kinds of pressures to settle could apply in the context of *lok adalats*, where there is increased pressure on

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<sup>34</sup> *Bread for the poor* (n 24)

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> Marc Galanter and Jayanth K. Krishnan, *Debased Informalism: Lok Adalats and Legal Rights in Modern India* in *Beyond Common Knowledge: Empirical Approaches to the Rule of Law* (Erik G. Jensen & Thomas C. Heller eds., 2003).

<sup>40</sup> Frederick E. Snyder 'Crime and community mediation-The Boston experience: A preliminary report on the Dorchester Urban Court Program' (1978) *Wisconsin. Law Review* 737.

achieving high disposal figures and which often involve inexperienced or illiterate litigants who may be susceptible to being influenced by the coaxing of judges or their attorneys.

The factors surrounding this 'pressure to settle' have been further substantiated by the results of a study based on *lok adalats* in Varanasi. The findings elucidate coercion in the process of selection of matters to be transferred to the *lok adalat*, despite the *lok adalat* proceedings being ostensibly voluntary.<sup>41</sup> As primary organisers of the *lok adalat* forums, the judges of the District and Sessions Court have a vested interest in their success and face pressure to cater a sufficient number of cases to the forum which would carve their career with incentives and recommendations by their superiors.<sup>42</sup> Consequently, situations wherein the judges send instructions to the *munsifs* to attempt to transfer cases to the *lok adalats* where they believe there would be guilty pleas or where the defendants are induced to plead guilty before the *lok adalats* instead of the courts in exchange for a promise of a lower fine are frequent occurrences.<sup>43</sup> These instances represent only the tip of the iceberg and cast a dark shadow over the authenticity of the 'consent' present in the proceedings of the *lok adalats*.

Thus, it becomes apparent that *lok adalats* no longer represent the institutions of swift and equitable justice that they had come to be known as during the early years of their origin. Undue emphasis on achieving high statistics has caused the creation of a distorted version and possibly obscured the pursuit of the primary objective of "promotion of justice through the compromise or settlement of disputes" as envisaged in the Legal Services Authorities Act.<sup>44</sup> Instead, the aim of effecting a compromise or settlement more often results in the denial of fair minimum claims to the petitioners rather than a compromise or settlement of mutual benefit. This raises certain questions about the degree and quality of 'justice' being served by the forum in the name of expediency such as— *Were the merits of the cases of the parties adequately presented and considered? Are the decisions of the lok adalats consistent with other similar cases?*

Secondly, the question of the adequacy of damages can also be pegged at a different tangent. It needs to be noted that the claimant is entitled not to the discounted future values of his claim, but the full

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<sup>41</sup> Robert S. Moog, 'Conflict And Compromise: The Politics Of Lok Adalats In Varanasi District' (1991) 25 Law & Society Review.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Legal Services Authorities Act 1987, chapter VI.



present value. *Lok adalats* offer the discounted amount in place of the full entitlement which can be vindicated only by recourse to a lax judicial system having a delivery time of ten years at the very minimum. Thus, the 'advantage' catered by the *lok adalats* lies in the provision of a process for claimants to secure a portion of their entitlements without the aggravation, inordinate delay and tormenting uncertainty of the court process. The aforementioned costs record varying impacts on different kinds of parties; those who are averse to risk and unable to finance protracted litigation accept discounted amounts to escape such cost while others who are in advantageous positions can manipulate high discounts. Due to a dearth of resources, the sums awarded by the courts fail to adequately compensate the injured, who in turn are triply under-compensated-- by the inadequate level of compensation by courts, by high transaction costs, and to the discounts, they must accept to avoid the infliction of such costs.<sup>45</sup>

For instance, in the case of *Manju Gupta v. National Insurance Company*, a three-year-old girl who lost her legs in a motor accident filed a claim petition for Rs. 2.21 lacs.<sup>46</sup> However, due to the inordinate delay in its disposal, the family settled the claim through the *lok adalat* for a meagre sum of Rs. 30,000.<sup>47</sup> Another example would be imposing lower fines than statutorily permitted such as where the Excise Act prescribes a minimum fine of Rs 500, yet the *lok adalat* was imposing fines of Rs 40 and 50. Evidently, as the injured are not adequately compensated, the injurers are under-assessed for the costs they impose on society for their behaviour and may continue to carry forward the injurious conduct. The low amounts of settlements common to the functioning of *lok adalats* raise pressing concerns regarding the impact of diverting matters from the formal justice system to the *lok adalats* in terms of its deterrent impact on frequent injurers in awarding damages and needs to be carefully evaluated.

Thirdly, there have been concerns regarding the efficacy of establishment of an additional informal system itself. It may be argued that informal forums act as a double-edged sword. Although they may be considered desirable in terms of judicial efficiency, simplicity and access to justice, the flexibility and lack of procedural safeguards leave room for unjust, authoritarian attitudes, local mores and personal biases to crop up in justice dispensation. This may inexorably infringe upon the hard-earned rights of the poor and disadvantaged members of the society. The values of equality and non-discrimination lie at the very heart of the constitution, and the goals of encouraging conciliation and

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<sup>45</sup> *Bread for the Poor* (n 24).

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

popular participation cannot be grounds to impinge upon the same. As opposed to this, the blind application of formal rules and procedures existing in the formal system offers protection against unequal bargaining positions and may create an opportunity for the disadvantaged to gain from the system and challenge oppressive relationships.<sup>48</sup>

Further, it is pertinent to focus upon the tendency to use informal systems to portray the wishes of the dominant groups as the wishes of the dominated. Taking a paternalistic stance, the advocates and promoters of the *lok adalat* movement believed that not only was the forum better suited for the poor than formal courts; rather, it was the only alternative.<sup>49</sup> The *lok adalat* forum was promoted as a tool for the legal empowerment of the poor; however, in practice, the informality has the effect of further disempowering the disadvantaged sections by creating a dual legal system. This is done by way of an apparent bifurcation of remedies which segregates and traps 'smaller' cases in an undercapitalised alternative informal institution with hopes of second-class justice while making the formal courts available only for corporate and governmental matters involving large financial stakes. Thus, the features of this forum have been referred to as propagating instances of "*debased informality*" as its attractiveness hinges on the avoidance of the troubles associated with the formal judicial system rather than the genuine virtues of the alternate forum, thereby, making it an involuntary process.<sup>50</sup>

Resultantly, the *lok adalats* have become a tool of magnifying the legal crisis; not only do they act as tangible reminders of the failure of the formal justice system, but their unabashed acceptance reflects a form of acquiescence to failure and complacency that discourages any substantial reform of the state judicial system. The solution does not lie in forcing the people to choose between expediency and justice or creating any alternative institutions (informal or otherwise), which would only accentuate such a bifurcation. Instead, measures must be centred around channelling investments which strengthen and build a strong and effective lower court system that can adequately accommodate and grant expeditious remedies for every type of dispute.

Fourthly, another point of criticism arises from the impact that forums advocating for conciliation and compromise have on the rights of the affected parties. Western feminists have espoused flagrant distrust in the use of mediation and conciliation in family disputes which stems from a romanticised

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<sup>48</sup> William H. Simon 'Legal Informality and Redistributive Politics' (1985) Clearinghouse Rev 19, p. 384.

<sup>49</sup> NR Madhava Menon 'Legal Aid and Justice for the Poor' in Law and Poverty: Critical Essays (Upendra Baxi ed., 1988).

<sup>50</sup> *Bread for the poor* (n 24).

view of marriage surmised on the notion that family disputes are best resolved through informal remedies.<sup>51</sup> In such cases, women's complaints concerning their husbands or families often end up being trivialised and moved to an informal or lesser forum. This treatment of women's issues impacts the relative importance of laws dealing with women's and children's rights. This is because questions relating to these rights are excluded from the society's key institutional system of dispute resolution while corporate and other 'important' matters are allowed continued and unfettered access of to that system.<sup>52</sup> A woman's claims are further underplayed when seen from the prism of mediation or conciliation in the context of grievances of both the sides, thus, preparing the woman to accept compromise as an underhanded solution.<sup>53</sup> Against this context, women's organisations across Indian states have expressed strong reservations against *lok adalats* as an adequate forum for such matters as they have demonstrated a history of placing overwhelming pressure on women to reconcile instead of seeking a divorce.<sup>54</sup>

Fifthly, as discussed, an essential feature of the 2002 amendment to the Legal Services Authority Act was the establishment of *Permanent Lok Adalats* under Section 22D.<sup>55</sup> As opposed to the *lok adalats* established under Section 19, this new forum has been empowered to decide cases on merits between parties by resort to binding arbitration.<sup>56</sup> Further, once an application is made to the *Permanent Lok Adalat*, the parties cannot invoke the jurisdiction of any other court for the same dispute. The award pronounced by the *Permanent Lok Adalat* is final and binding and has all the attributes of a civil court decree without any remedy for appeal.<sup>57</sup>

The main opposition against *Permanent Lok Adalats* has centred around the conferring of power to pronounce binding awards and settle disputes without the parties' agreement; thereby, making the process similar to adjudication rather than conciliation without the procedural safeguards inherent in

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<sup>51</sup> Lisa G. Lerman 'Mediation of wife abuse cases: The adverse impact of informal dispute resolution on women' (1984) *Harv Women's LJ* 57.

<sup>52</sup> Laurie Woods 'Mediation: A Backlash to Women's Progress on Family Law Issues' (1985) *Clearinghouse Rev.* 19 p. 431.

<sup>53</sup> Sarah Leah Whitson 'Neither Fish, Nor Flesh, Nor Good Red Herring Lok Adalats: An Experiment in Informal Dispute Resolution in India' (1991) *Hastings Int'l & Comp. L. Rev.* 15 p. 391.

<sup>54</sup> *Ibid.*

<sup>55</sup> Legal Services Authorities Act 1987, s 22D.

<sup>56</sup> Section 22 C(8), Legal Services Authorities (Amendment) Act, 2002

<sup>57</sup> Section 21(2), Legal Services Authorities (Amendment) Act, 2002; Salem Advocate Bar Association, Tamil Nadu v. Union of India, [2005] 6 SCC 344.

courts of law. The only guiding standards to be followed for procedural fairness are the principles of natural justice which are broad and vague guidelines rather than a set of substantive rights protecting the disputants. The sole check on this authority is through the High Court's powers of judicial review under Article 226 of the Constitution of India. The constitutionality of this amendment and the forum was challenged but was ultimately upheld by the Supreme Court of India.<sup>58</sup> Even so, there has been continued resistance against the uncertainty that this new forum posed on the ideals of fairness and justice as well as the rights of the disputants.

Lastly, there is an urgent need to enhance legal literacy and expand the legal aid programs so as to empower the poor and ignorant. This is imperative as the success of the *lok adalat* movement is contingent upon the voluntary participation of the people and sensitisation about the forum would encourage people to opt for *lok adalats* rather than invoking the jurisdiction of the formal courts where smaller disputes are involved. This may be done by facilitating the organisation of awareness camps at the grassroots level in addition to utilising mediums of mass media such as televisions, newspapers and radios to disseminate information about the holding of *lok adalats* and their contribution in achieving expedient and inexpensive justice. Further, the quality of legal aid being rendered by advocates needs to be examined and improved upon. A revision in the remunerations awarded by legal services authorities would undoubtedly encourage more and more lawyers to provide effective legal assistance to those in need.

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<sup>58</sup> S.N. Pandey v. Union of India (Civil writ no. 543/2002).

## CONCLUSION

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The debate surrounding *lok adalats* can broadly be divided into two schools of thought. On the one hand, it may be argued that *lok adalats* play a pivotal role in dispute resolution even if they continue to function with the aforementioned criticisms as its origins lie in the noble ideals of furthering the cause of justice as well as bringing it to the doorstep of the people. To its merit, the forum consists of a panel which is experienced in legal as well as social issues. Hence, in spite of an emphasis on expediency, the decisions would generally be more or less accurate, leaving the parties in a better position than they were initially. Ultimately, *lok adalats* have admirably achieved at least few of its primary objectives by establishing a forum that allows claimants to secure a portion of their entitlements without the aggravation, inordinate delay and tormenting uncertainty of the court process. Thus, the legal system is being improved by the addition of *lok adalats*, and it would be foolish to ignore their contributions in providing greater access to justice for the people.

On the other hand, giving due credit to their contribution, the opposing view seeks to challenge the unabashed acquiescence of the notion that *lok adalats* are better for the legal system as compared to nothing at all. They have been heralded as a success story by those involved in the planning and execution as well as a large section of the legal community, even though results about their performance portray an unclear picture. *Lok adalats* were established to set up a better alternative to the formal court system; however, realistically a forum does not have to be very good to be better than the traditional courts. Critics propound that the flaws of the forum are fatal-- the absence of recourse to an appeal, paternalistic and overbearing dispositions and extensive discretionary powers of presiding officers and questionable quality of settlements. Hence, it is argued that there is a pertinent need to take into account the criticism surrounding the forum, such as the points discussed in the previous section, and take steps to integrate reforms for further development of the institution of *lok adalats*.

Further, currently, the arguments on each side of the debate rely on assumptions rather than credible investigation. Their functioning is presently being judged under the extremely narrow and modest parameter of creating alternatives that are more efficient than the courts. However, neither the organisers nor the promoters have shown any interest in systematically evaluating the theory and viability of these forums and placing them within the proper and broader historical and socio-political

context. Resultantly, the *lok adalats* now continue to branch out haphazardly and in an *ad hoc* manner. This is problematic since *lok adalats* consume extremely limited resources of money, personnel and energy available to the judiciary. The resources allocated to the judicial system comprises only a meagre 0.2 to 0.4 per cent of the total budget, which sketches a somewhat concerning picture.<sup>59</sup> Out of this sum, *lok adalats* are allocated around 100 crores for a period of five years each.<sup>60</sup> Thus, the results produced by *lok adalats* should justify the non-employment of these resources into other alternatives.

Consequently, there is a need to conduct a targeted and regional assessment examining the quality, costs and alternatives before viewing *lok adalats* as an all-important institution in reducing pendency and delays.<sup>61</sup> This research would be instrumental in answering the broader question of whether the resources being diverted to an alternative system of justice entirely should be injected directly for the formal justice system in a targeted and regionally sensitive manner.<sup>62</sup> In turn, this would transform the debate on the subject and ensure the further growth of *lok adalat* forum into an institution whose goals for boosting access to justice are supported by empirical evidence. Therefore, the opportunity that the *lok adalat* system originally set out to accomplish can only be effectively capitalised when the need for further exploration of its actual impact is acknowledged and duly acted upon.

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<sup>59</sup> Siddhartha Dave, 'The Price of Justice' *The Indian Express* (25 Dec 2017) <[indianexpress.com/article/opinion/columns/the-price-of-justice-pending-court-cases-across-india-judiciary-budget-4997466/](http://indianexpress.com/article/opinion/columns/the-price-of-justice-pending-court-cases-across-india-judiciary-budget-4997466/)>

<sup>60</sup> Thirteenth Finance Commission Grants Department of Justice, Ministry of Law and Justice <[doj.gov.in/reports-and-documents/thirteenth-finance-commission-grants](http://doj.gov.in/reports-and-documents/thirteenth-finance-commission-grants)> accessed on 20 July 2020.

<sup>61</sup> Bread for the poor (n 24).

<sup>62</sup> Pratiksha Baxi, Access to Justice and Rule of (Good) Law: The Cunning of Judicial Reform in India (Working Paper, commissioned by Institute of Human Development on behalf of the UN Commission on the Legal Empowerment of the Poor, New Delhi, 2007).