THE FUNCTIONING OF *LOK ADALATS* IN INDIA— A CRITICAL ANALYSIS

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ABSTRACT

When laws are equal for all irrespective of one's social, economic, cultural and educational background, then why not justice which is contemplated widely in the Constitution of India? Lok Adalats were introduced in the country to give effect to the Constitutional mandates. The idea of propounding a system of Lok Adalats found its base in the system of resolving disputes through the Panchayat mechanism that prevailed in our country. In the course of time, Lok Adalats received statutory recognition. However, in the long run, Lok Adalats have been unsuccessful. The existence of gross inefficiency, illegality and coercion in the system of Lok Adalats causes a great deviation from the standards of justice. Moreover, there is a flaw in the very procedural and functional aspect. The emphasis is on "disposal of cases" rather than on "justice". Supporters of the system tout on the fact that it helps reduce burden on the formal system of courts. However, the

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harsh reality is that, in the effort to reduce the burden on the judiciary, no real benefit reaches the needy. Besides, in cases between people who can afford formal courts and those that cannot, the less-desperate party is at a greater advantage. The disadvantaged party is forced to settle for the less. Consequently, although the broader objective of 'access to justice' has been attained, to what extent this access has ultimately resulted in justice is the big unanswered question. The article seeks to inspect the working of the Lok Adalats, critically analyse its positive as well as negative aspects, and throw light on why the negatives far exceeds the positives and annihilates the very objective of the institution of Lok Adalats.The material for this project has been obtained using books, cases and the internet. A descriptive method is used in completion of this paper.

I. JUSTICE-WHAT DOES IT CONTEMPLATE?

The notion of justice evokes images of the rule of law, of the resolution of conflicts, of institutions that make laws, and of those that enforce it.[1] Justice implies fairness and the implicit recognition of the principle of equality.[2] Justice is the supreme objective of the Constitution of India. Justice is envisaged in its widest sense in all its forms whether social economic and political in the Preamble to the

[1]S. MURLIDHAR, LAW, POVERTY AND LEGAL AID: ACCESS TO CRIMINAL JUSTICE 1 (1st ed., 2004) [hereinafter S. MURLIDHAR].

[2]JOHN RAWLS, A THEORY OF JUSTICE 11 (Harward University Press, 1st ed., 1971); see alsoS. MURLIDHAR, supra note 2.

Constitution itself. This paramount goal have been realised by the framers of the Constitution through Parts III and IV of the Constitution that deal with fundamental rights and the Directive Principles of State Policy respectively. Articles 14, 22, 32 and 226 are some of the provisions which presuppose effective justice for all.

Moreover, justice can be viewed as a fundamental human right as reflected under Article 8 of the Universal Declaration of Human Rights which reads: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law." Article 14 of the International Covenant on Civil and Political Rights provides that all persons shall be equal before the courts and the tribunals. The denial of justice challenges the very legitimacy of a legal system. It is a basic service that a welfare state owes to its citizens.

A mere proclamation of justice for all is not sufficient and does not encompass justice in the true sense of the term. In order to effectuate the justice which the fathers of the Constitution have proposed for, it is necessary that the state guarantees effective access to justice by affirmative action.

II. ACCESS TO JUSTICE

Access to Justice inheres in the notion of justice. Two basic purposes which are intended to be served by providing access to justice are:

a. to ensure that every person is able to invoke the legal processes for redressal, irrespective of social or economic status or other incapacity; and

> b. that every person should receive a just and fair treatment within the legal system.[3]

In other words, the term 'Access to Justice' signifies the opening up of the formal systems and structures of the judiciary to all sections in the society including the disadvantaged groups. It implies the removal of legal, economic, social, political etc. hurdles to justice. This shall go on to ensure equal access to justice by all.

In the late 1970s, an attempt was made by the judiciary of our country to give effect to the right of access to justice in the form of Public Interest Litigation. This device has gone a long way in enforcing the right to access to justice. Furthermore, judicial decisions have declared legal aid to be a part fundamental right to life under Article 21 of the Constitution.[4] Although the construction of the right of access to justice as a part of the scheme of Article 14 and 21 had to await judicial interpretation till late 1970s, the constitutional right of an arrested person to legal representation was seen as being contained under Article 22.

Article 22 (1) provides that "no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice". *In Re Keshav Singh*,[5] the Hon'ble Supreme Court observed "*The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the court in that behalf."*

In *Bihar Legal Support Society v. The Chief Justice of India & Ors*[6], the Court observed:

[3]S. MURLIDHAR, supra note 2.
[4]M H Hoskot v. State of Maharashtra, (1978) 3 S.C.C. 544 (India).
[5]Keshav Singh v. Speaker, Legislative Assembly, A.I.R. 1965 S.C. 745 (India).
[6]Bihar Legal Support Society v. The Chief Justice of India & Ors., A.I.R. 1987 S.C. 38 (India).

"the weaker sections of Indian society have been deprived of justice for long long years; they have had no access to justice on account of their poverty, ignorance and illiteracy...The majority of the people of our country are subjected to this denial of 'access to justice' and overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings…"

Thus, the constitution and the judiciary calls for and accentuates equal access to justice. This means that the poorest in society should not be excluded from the legal system when they cannot afford court fees or a lawyer. The other important judicial intervention in this regard was the Constitution (42nd Amendment) Act 1976 which inserted Article 39-A which provided for equal justice and free legal aid. The inclusion of the right to legal aid as a directive principle does not dilute its importance or enforceability.

III. DEVELOPMENT OF LOK ADALATS

According to an estimate the majority of the people in India live below the poverty line. People living in 5,18,000 villages are poor and ignorant of their rights.[7] The life span of a civil case in India is expected to range between eight and twelve years.[8] The ratio of judges per million in India is approximately nine whereas it is 115 in the United States of America.[9] The ratio of advocates per population is also very low in India compared to other developed countries. There are around five lakhs advocates for more than one billion

[7]MADABHUSHI SRIDHAR, ALTERNATIVE DISPUTE RESOLUTION: NEGOTIATION AND MEDIATION 115 (1st ed., 2006).
[8]Id.
[9]Id.

population in India.[10] These facts bring into view the existence of a tremendous strain on resources which further detaches many people from justice and a need for a system which would fill this existing void.

A system of *lok adalats* was introduced in India in the year 1982 in Gujarat with the long term objective of providing 'access to justice'. Soon the endeavour took the form of an institution which spread across the country. Necessity of an informal system of settlement of disputes was all the more important in a country like India where poverty dominates almost all aspects of governance.

It is pertinent to mention that a system of resolution of disputes through conciliation is rooted in the Indian culture and society since time immemorial in the form of the Panchayat System. However, the concept of legal aid and informal mechanism of dispute settlement gained support in 1980 when Justice Bhagwati propounded the creation of the Committee for Implementing Legal Aid Schemes (CILAS) after the judgement in the *Hussainara Khatoon case.* [11] Initially CILAS focussed on spreading legal education and awareness. *Lok adalats* were conceptualized later.

The purpose for the institution of *lok adalats* was manifold. It envisaged providing free legal aid to the needy in order to ensure that justice is not denied to them. It made an attempt in reducing the role economic status played in seeking justice. It also aimed towards relieving the pressure upon the overburdened formal court system in India. *Lok adalats* were expected to transform the society through law.

Moreover, the fact that *lok adalats* relate to the system of the indigenous system of justice that prevailed in India enabled it to be popular which called for further institutionalization and expansion. In

[10]Id.
[11]Hussainara Khatoon v. State of Bihar, A.I.R. 1979 S.C. 1369.

1987 the lok sabhapassed the Legal Services Authorities Act which provided statutory powers to *lok adalats* and cemented their role in the legal aid movement.

In the year 2002, two significant changes took place in the arena of *lok adalats* in the form of amendments. These developments changed the power and purview of *lok adalats*. Firstly, the Code of Civil Procedure, 1908 was amended as a result of which, the formal courts were empowered to refer cases to *lok adalats* whenever there existed a possibility of a compromise in the opinion of the Court.[12] However, the amendment is silent as to the consent of both parties.[13] The second development was the amendment to the Legal Services Authorities Act which created a modified form of *lok adalat* called a "permanent *lok adalat.*"[14] Parmanent *lok adalats* sit in a permanent location all through the year, rather than being held only on certain dates. The result of these two amendments is that it is now legally permissible for a judge to refer a case to a permanent *lok adalat* without the parties' consent, and further, for the judge in the *lok adalat* to decide a settlement to a case without consent of either party. However, a 2004 ruling reinforced the idea that *lok adalat* rulings are invalid without the consent of both parties.[15] The award by a *lok adalat* is deemed to be a decree of a civil court and thus enforceable.[16]*Lok Adalats* are held within the Court premises and the bench comprises of a judge, a lawyer and a social worker. There are no appeals from the decisions of a *lok adalat* that record a compromise. *Lok Adalats* can also dispose of compoundable criminal cases.[17]

[12]The Code of Civil Procedure, 1908, No. 05, Acts of Parliament, 1908 (India), § 89.
[13]Id.
[14]The Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India), § 22-B [hereinafter LSA Act, 1987].
[15]State of Punjab and ors. v. Phulan Rani and anr., (2004) 7 S.C.C. 555 (India).
[16] LSA Act, 1987, supra note 15, amendments to Sections 19, 21 and 23.
[17]S. MURLIDHAR, supra note 2.

IV. PRACTICAL WORKING OF LOK ADALATS- ACCESS TO JUSTICE, BUT NO JUSTICE!

Encouraged by the settlement of a large number of cases, the government had proposed to strengthen the Legal Services Authorities Act by permitting *lok adalats* to dispose off a case on merits if no settlement is reached.[18] On one hand the holding of *lok adalats* is encouraged by the judiciary to settle accident claims, insurance claims and claims by banks against defaulters etc., while on the other hand it is unclear as to what is happening to the litigants in individual cases on account of the 'mass settling' of cases.

It is submitted that the organization of *Lok Adalats* and legal aid camps has not been a success in the strict sense of the term. This is either because of the manner in which they are conducted or because they were a farce with the cases being referred to themeven after a settlement has been arrived at.[19] In criminal cases too such exercises raise more questions than they resolve. In fact, the term '*Lok'* is perhaps a misnomer since there is a little involvement of the people in the actual decision making process.[20] This distinguishes *lok adalats* from the traditional modes of mediation and other informal dispute resolution mechanisms that had existed.

Moreover, the lawyers who appear for the accused in criminal cases go with the object of quick disposal of the cases by encouraging guilty pleas. [21] The prospect of immediate release after being sentenced to the period of detention already undergone is enough of

[18]Scope of Lok Adalat to be widened, THE HINDU (Jan. 9, 2002), at 13.
[19]SUJAN SINGH, LEGAL AID: HUMAN RIGHT TO EQUALITY 313 (1st ed., 1996) — where he notes that 36% of the lok adalat cases were already settled and kept pending for declaring an agreement at the next lok adalat.
[20]S. MURLIDHAR, supra note 2, at 380.
[21]Id. at 381.

an incentive to an accused to admit to his guilt. This manner of disposal does not answer the demand of the accused for a just, fair and reasonable procedure but perhaps answers the need to preserve the legitimacy of the legal system that is beleaguered by lack of infrastructure and resources. The available resources are also poorly utilized.[22] This situation is primarily due to the general lack of awareness, the belief that a person who gets help for free is disabled from demanding quality service, the disinterestedness of lawyers and other concerned administrators; the uncompensated costs incurred by the parties etc.

The objective behind *lok adalat* was to avoid strict rules of procedure and evidence which would enable the poor litigants who likely know nothing of law to interact plainly with the judge and explain the merits of their case. This would free them from the need to hire a lawyer, and make the courts more accessible. Additionally, as there lies no appeal from thedecision of *lok adalats*,the poor litigants get liberated from the cycle of a never-ending case in which their opponents exploit the legal system to avoid paying compensation.[23] However, this objective has not turned real in the present *lok adalat* system. Poor litigants are often unable to get a chance to speak before the case is quickly "resolved" in a compromise proposed by the lawyers. The stronger party is able to settle cases to their advantage enabling them to avoid cost which would have been imposed on them otherwise.[24] The emphasis is on "settlement" of cases rather than

[22]Id.

[23] Scott J. Shackelford, In the Name of Efficiency : The Role of Permanent Lok Adalats in the Indian Justice System and Power Infrastructure (Apr. 27, 2009), http://ssrn.com/abstract=1395957 [hereinafter Shackelford].

[24]Id.

'justice". When settlement was not reached "subtle and coercive" pressures used to convince litigants to come to a compromise.[25]

Often the rewards given by these courts are a small fraction of what would be prescribed by a formal court, and many times this amount is decided before the hearing has begun, settled beforehand in negotiations between lawyers.[26]

For many, using *lok adalats* instead of formal courts is not a choice. But at the same time, CILAS and others have claimed that one of *lok adalats* greatest achievements is providing legal access to the poorest in society who do not have the resources to pursue litigation through formal courts.[27] Works in support of *lok adalats* have stated that they are "the only alternative"[28] for the poor and that the poor "do not have the staying power which litigation inevitably involves".[29] Surely there are segments of the poor in India who are only able to pursue legal action through *lok adalats*. And for these citizens, and any others who find they simply cannot afford court fees or legal representation, *lok adalats* are their only option. These citizens are not evaluating the costs and benefits of *lok adalats* to make an informed decision, as *lok*

[25]Robert Moog, Conflict and Compromise: The Politics of Lok Adalats in Varanasi District, 25(3) LAW & SOCIETY REV., 545-570 (1991), http://www.jstor.org/stable/3053726 [hereinafter Robert Moog].
[26]Marc Galanter & Jayanth K. Krishnan, Bread for the Poor: Access to Justice and the Rights of the Needy in India, 55 HASTINGS LAW JOURNAL,801 (2003), http://www.gsdrc.org/docs/open/SSAJ115.pdf.
[27]Sarah Leah Whitson, Neither Fish, Nor Flesh, Nor Good Red Herring Lok Adalat: An Experiment in Informal Dispute Resolution in India, Hastings 15 INTERNATIONAL AND COMPARATIVE LAW REV., 391-445 (1991-1992) [hereinafter Sarah Leah Whitson].
[28]Shiraz Sidhava, Lok Adalats: Quick, Informal Nyaya, LEX ET JURIS 38 (1986).
[29]RAJEEV BHARGAVA, POLITICS AND ETHICS OF THE INDIAN CONSTITUTION 19-20(1st ed., 2008).

adalat supporters often do, but rather are pursuing justice through the only means possible.[30]

There exists a persistent unwillingness to settle matters of fact as the focus is on speedy compromise. *Lok adalats* are regularly unable or unwilling to treat questions of fact adequately. Thus, cases are 'disposed off' rather than solved. This deviates the system from its objective of 'justice to all'. 'Disposal' does not ensure 'justice'. This harms the citizens who use *lok adalats.* Moreover, the compromise settlements that *lok adalats* produce do not meet standards of justice. Victims are often under-compensated and the accused faces lowered sanctions.[31]

Lok adalats have frequently been described as courts in which conclusions are often shaped by the views of the mediating judge, and where questions of fact rarely intrude.[32] In one particular case, a judge completely ignored the lawyer's arguments regarding whether or not an employer was legally responsible to provide the specific type of insurance demanded by the claimant, scolding the lawyers for what he viewed as obstruction of compromise.[33] According to the lawyers interviewed about *lok adalats,* judges skimming complex issues or avoiding evidence entirely is a common thing.[34]

At another *lok adalat,* defendants entered one by one and presented the judge with their case file and an attached plea agreement. The judge signed it and within a few moments, the case was recorded as

[30]An observation made by Josh Stark, International Research Associate (Canada), Research Foundation for Governance: In India, Ahmedabad [hereinafter Josh Stark].
[31]Id.
[32]Marc Galanter & Jayanth K. Krishnan, Bread for the Poor: Access to Justice and the Rights of the Needy in India, 55 HASTINGS LAW J.,801 (2003), http://www.gsdrc.org/docs/open/SSAJ115.pdf [hereinafter Marc Galanter & Jayanth K. Krishnan].
[33]Id. at 818.
[34]Id.

being settled. There were no lawyers, no investigation or presentation of evidence, negotiations towards a plea agreement occurred long before the so-called *lok adalat.*[35] While this practice is not condoned explicitly by law, it has been observed commonly in *lok adalat*s. For example, at another *lok adalat,* criminal cases were disposed off in a similar fashion. A quick plea bargaining session followed by confession and vastly lowered fine or prison sentence as the case was.[36]

In a case brought to a *lok adalat,* twenty-six villagers were seeking compensation from a state-owned bus company after they were injured during a traffic accident. While an account of the accident was given, and x-rays were provided to the chief district judge, they had no direct impact on the settlement of the case. The compromise was crafted through negotiation between the lawyer of the claimants and the bus company officials, with pressure applied by the chief judge to come to an agreement which, predominantly favoured the proposals by the bus company officials.[37]

In this case, and in many other cases, matters of fact only influences the outcome if they affect the preferences of any party to accept one compromise over another. A case is not resolved when it is determined that the driver was at fault, or that the x-rays showed negligible injuries. A case is resolved when negotiations reach an end. Perhaps the x-rays might embolden the claimant's lawyer to demand a higher settlement, or might persuade the judge to pressure the bus company officials into accepting a larger compensation to the injured. But, these facts in a case do not play any necessary role.[38]

It cannot be ignored that settling matters of fact is necessary in order to ensure a just outcome. In certain cases, the very issue at the centre

[35]Id. at 826.
[36] Sarah Leah Whitson, supra note 28, at 417.
[37]Marc Galanter & Jayanth K. Krishnan, supra note 33, at 816.
[38]Josh Stark, supra note 31.

of the case is whether or not the allegations are true. A claimant who claims not to owe money to an electricity company due to a blackout that prevented him from accessing any power has brought the matter to a *lok adalat* so as to determine whether this is true, and if so, provide a legal guarantee that he does not have to pay for services he did not receive. An individual brings a case to a *lok adalat* contending that a particular contract stipulates that pension is paid in certain circumstances. The *lok adalat* is supposed to rule on whether or not these circumstances are met, and if so, compel the employer to pay the required pension. Using *lok adalats* to settle a dispute is ineffective when the dispute requires determining certain facts, and having determined those facts, proceeding to see that justice is provided according to legal standards.

The result of this flaw is that one party may have to relinquish what they deserve in order to make the compromise function by securing the consent of the guilty party. For example, a man who has not received the amount of pension he deserves – a fact that the *lok adalat* is unwilling to determine – must sacrifice some of what he is entitled to in the form of a reduced compensation in order to secure a conclusion to his case, allowing the guilty party who under-compensated him originally to do so again.[39] Thus, the victims are rather penalized as they are forced to waive the benefit they deserve by law.

This view of compromise in *lok adalats* was endorsed in a 2004 Supreme Court decision. In *State of Punjab and others v. Phulan Rani and another,*[40]the Hon'ble Supreme Court considered the validity of a decision by a *lok adalat.* Phulan Rani claimed she had never received the pension that owed to her deceased husband by his employer which was a corporation owned by the state of Punjab. Her petition was settled in her favour at a *lok adalat* in 2000. But the state government

[39]Id.

[40]State of Punjab and others v. Phulan Rani and another, (2004) 7 S.C.C. 555.

claimed that it had not been represented at the proceedings. The Supreme Court's decision considered two tests to determine whether or not the matter had properly been settled at the *lok adalat.* The first was whether both parties to the case had agreed to the settlement. To this, the Hon'ble court discovered that the state of Punjab or its representatives had not consented. The second test was whether the settlement could be described as a compromise. Because of the fact that the ruling by the *lok adalat* was in complete satisfaction of Phulan Rani's demands, the Supreme Court stated that this was not a compromise. The Hon'ble Court opined that a compromise is *"an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands"*[41]. Thus any decision that was a complete satisfaction of one party's demands could not be a compromise, and thus could not be a legal conclusion of a *lok adalat.*

Ideally, in a *lok adalat* a conclusion should reach when all parties including the judge agree on a particular compromise.[42] In order for the *lok adalat* to resolve a case all parties must agree on a compromise. A case may be returned to the formal courts if no agreement can be made. Nonetheless, there is a high possibility that in many cases litigants accept a compromise because of persuasion, coercion, etc. Consent to a compromise is the only necessary requirement for the conclusion of a case. Thus, questions of fact influence the outcome only at the edges. The victim is made to relinquish the compensation owed to him by law in order to secure the consent of the party that is accused.

The 2002 amendment to the Legal Services Authorities Act created permanent *lok adalats* where the presiding judge is entitled to rule on the merits of the case. However the permanent *lok adalats* are free from the restrictions imposed by the Code of Civil Procedure. The

[41]Id.

[42]The exceptions to this are permanent lok adalats in which a judge can decide a case on merit.

only statute regulating the behaviour of judges in such courts is the Legal Service Authorities Act, by which, the judges are required to apply principles of natural justice, objectivity, fair play, equity and other principles of justice.[43] The biggest loophole is that, the standard provided which includes the completely undefined "other principles of justice" seems almost impossible to apply or use to hold judges accountable.[44] Therefore, judges are in effect free from any legal or institutional restriction on their behaviour and methodology in permanent *lok adalats*.

Proponents of *lok adalats* focus more on the number of cases that are solved and the number of rupees distributed in compensation.[45] There are multiple accounts of *lok adalats* serving as a venue to simply rubber-stamp predetermined plea agreements for criminal cases.[46] A plea agreement is reached in private negotiations that go unrecorded. The defendant is brought to a *lok adalat* where the presiding judge approves the settlement. Moreover, not all of the plea bargaining meetings results in compromise. The Legal Services Authority office does not keep statistics of what transpires within these plea-bargaining meetings.[47] This process serves to hide the true percentage of cases resolved through plea bargaining. This could be one of the reasons of how a single *lok adalat* solves thousands of cases in a day.[48]

Furthermore, it is very unfortunate to state that the officials running *lok adalats* have even gone to the extent of asking the police to fine as many rickshaws and scooters as possible and instructing the drivers to have the matter settled at the *lok adalat* scheduled for the next day.[49]

[43]LSA Act, 1987, supra note 15, § 22-D.
[44]Shackelford, supra note 24.
[45]Marc Galanter & Jayanth K. Krishnan, supra note 33, at 829.
[46]Id. at 825.
[47]Id. at 826.
[48]Robert Moog, supra note 26, at 545-570.
[49]Id. at 558.

This increases the number of cases resolved at a *lok adalat* as more cases are 'created' for it to solve. CILAS provides federal funds to states for the promotion of *lok adalats*[50]. And in many states, judges are paid at least partially based on the number of cases they dispose.[51] From state governments to legal aid boards to individual judges, there are powerful political and monetary incentives to promote *lok adalats* and to ensure that they appear popular and prodigious.[52]

Officials and judges also create incentives for lawyers so that they help maximizing case disposal. Lawyers are paid through a percentage compensation system which means that they earn a certain percentage of the compensation that is awarded in their favour. Thus it is in the lawyers' interest to settle as many cases as possible and as quickly as possible.[53] In one particular case, a lawyer who was defending several clients at once did so because of his professional aspirations. He sought to impress the officials and judges who oversaw the *lok adalats.*[54]

Additionally, in criminal cases a lowered sentence can be an efficient way to convince a defendant to plead guilty thus securing a quick, voluntary resolution to the case. At a *lok adalat* observed by Robert S. Moog in 1987 in Varanasi fines were being imposed that were only 10% of the statutory minimum limit.[55] A senior attorney suggested that such low fines were used as a way to convince defendants to plead guilty in order to speed up the resolution of cases.[56] In a 1985 *lok adalat* in Rajasthan, criminal trials were carried out through quick

[50]Id.
[51]Shackelford, supra note 24.
[52]Josh Stark, supra note 31.
[53]Sarah Leah Whitson, supra note 28, at 425.
[54]Marc Galanter & Jayanth K. Krishnan, supra note 33, at 816.
[55]Robert Moog, supra note 26.
[56]Id. at 558.

plea-bargaining sessions, and the accused was rewarded for pleading guilty with shortened sentences.[57]

Lawyers often pressurise their clients to accept lower settlements.[58] However, it is pertinent to mention at this juncture that despite lower rewards, *lok adalats* may result in an overall savings to litigants. The larger settlement amount provided by formal courts may take years to receive and may require the litigant to hire a lawyer and pay court fees. Nonetheless, it should not be forgotten that penalties such as fines and sentences are imposed not with the sole objective to punish but also to dissuade so that it acts as a disincentive and prevents the commission of future crimes. However, lower sanctions in *lok adalats* serve to lessen the legal system's authority to create disincentives for criminal acts.[59]This is particularly problematic if one considers the use of *lok adalats* by large companies.[60] A company may be tried often for very similar crimes. For example, a significant portion of *lok adalat* cases are motor vehicle accident claims, and in many of these the defendants are state owned bus companies. Because they are tried again and again for similar crimes they can easily take advantage of the savings that *lok adalats* offer. They would not try and make an effort to prevent such accidents from happening.

An example worth mentioning is how an electricity company in Delhi uses *lok adalats* to reduce the amount of damages that it is legally supposed to pay to the customer. Using *lok adalats* the electricity company can settle thousands of cases against it in a short period of time, paying out settlement amounts far lower than they would in a formal court.[61] Many of the cases involve unpaid bills where the customer refused to pay because the service was faulty or non-

[57]Sarah Leah Whitson, supra note 28, at 417.
[58]Id. at 425.
[59]Marc Galanter & Jayanth K. Krishnan, supra note 33, at 807-809.
[60]Id.
[61]Supra note 51, p. 40

existent, and in the majority of cases the customer is forced to pay some portion of the bill.[62] Therefore, the electricity company has less incentive to fix the infrastructural problems which cause inconvenience to its customers. This forces the customers to pay for the electricity they did not receive.[63]

Certainly the existence of these courts provides an access where there was none at one point of time for many individuals to pursue legal solutions to their disputes. However the legal aid movement was not concerned only with access. The aim of 39-A was to ensure that economic inequality prevalent in India would not erode the goal of equal access to justice. It is found that *lok adalats* have not met this goal. While *lok adalats* have enhanced the situation of those who are unable to afford the formal court system, they have not reduced the inequality within the legal system between rich and poor and thus failed to meet one of the central goals of the legal aid movement.

Considering the two broad groups of the rich and the poor, there can be four basic cases:

> 1. those between two parties who cannot afford the formal system;
> 2. those between two parties who can afford the formal system;
> 3. those between a plaintiff who can afford the formal system and a defendant who cannot;
> 4. those between a plaintiff who cannot afford the formal system and a defendant who can.[64]

In cases where both the plaintiff and the defendant are unable to afford the formal court system, the *lok adalat* is the only legal remedy they can afford. Both secure a speedy verdict, but the plaintiff will be

[62]Id.
[63]Id.
[64]Josh Stark, supra note 31.

awarded less money than what they would have received in a formal court and the defendant is punished less than that in a formal court. In cases where both the plaintiff and the defendant are able to afford the formal court system, they will not prefer *lok adalat*. Both parties benefit from the reduced backlog in the formal courts as a result of cases like the first instance (where both parties cannot afford the formal mechanism) being settled in a separate institution.

In cases where one litigant can afford the formal court system but the other cannot, the matter becomes worse for the disadvantaged one. In cases where the plaintiff cannot afford the formal system but the defendant can, *lok adalat* is the only option for the plaintiff. This benefits the defendant. Because the *lok adalat* proceeds by compromise, the defendant has a veto over any particular compromise.

In cases where the defendant cannot afford the formal system but the plaintiff can, things become more complex. The defendant's only option remains the *lok adalat*. The plaintiff may prefer the formal courts. However, the case may be transferred to a *lok adalat* if the judge is of the opinion that the case is appropriate for a *lok adalat* either due to the substance of the case or due to the inability of the defendant to pay the court fees. In both these cases, the less wealthy party is likely to be more desperate to secure an award, and thus more willing to accept a compromise that falls short of their demands.

Thus, *lok adalats* benefits those who can afford the courts (by sequestering the poor litigants into an alternate system of justice) rather than those who cannot afford. One of the goals of the constitution is to transform the society by abolishing practices that promote discrimination and social hierarchy. *Lok adalats* resolve disputes not by reference to existing laws but by compromise, and thus the parameters of the decision are shaped by the litigants and the

judge, leaving any attempt at social transformation to rest on the personal attitudes of those involved in the case.[65]

V. THE SOLUTION

The inability to invoke the processes of law by those whom the law is meant to empower highlights the need to spread awareness of the existence of the institution of *lok adalats.* This inability owes to a variety of reasons, principally the fear of reprisal from the upper castes. Moreover, there is a lack of study and research in the area of how the poor perceive the laws, the legal system and the personnel they encounter within it. There is a need for constant review and assessment of the programmes and plans to ensure their continued relevance to those they are meant to serve. There ought to be a regular check on the functioning of *lok adalats.*

Lok adalats were functioning perfectly well in many provinces without regulation or statutory powers.[66] Bringing them under the influence of state legal aid boards only served to destroy the concept of informal community dispute resolution that was the strength of the pre-1987 *lok adalats.*[67] Rather, modern *lok adalats* are simply an imitation of the formal court system, a "disrobed ineffectual tribunal" that lacks the benefits of the original model.[68] In other words, the institutionalization of *lok adalats* paved way for the central government to increase its control over the rural population.

In order to get a meaningful insight into the actual working of *lok adalats* it is necessary to introspect whether the rich, the middle

[65]Id.
[66]KRISHNA IYER, LEGAL SERVICES AUTHORITIES ACT: A CRITIQUE 13 (1st ed., 1988).
[67]Id. at 49.
[68]Id.

classes, the poor, or the extremely poor most often use *lok adalats;* whether any discrepancies exist between how *lok adalats* treat the cases of each; whether cases are between litigants of similar economic status, or there are cases in which one litigant has significantly greater financial resources; whether this has any effect on the outcome of these cases; whether lawyers are involved in a considerable number of cases or not; whether this has an effect on the outcomes of the trials; whether the individuals using *lok adalats* have come into contact with a legal institution for the first time, or they are predominantly individuals who had previously been engaged with the formal courts but prefer *lok adalat*; whether *lok adalats* have provided the most vulnerable in the Indian society with a first chance to pursue legal solutions, or whether they have largely moved cases from one legal system into another, or both. However, there is an absence of adequate data and empirical research in this arena.[69] Moreover, there is a lack of interest on the part of officials to answer the questions which are not reflected by means of empirical data. Only when such facts become known, can the success of *lok adalats* be ascertained and the mechanism of *lok adalats* be developed to its full potential and to the benefit of the litigants, judiciary and the country at large.

VI. CONCLUSION

The denial of access to justice has its impacts directly on the liberty of those who are arraigned as victims or accused, many of whom belong to the economically and socially weaker sections of the society.[70] *Lok Adalats,* is undoubtedly is a big step towards the achievement of such a system. However, it has drastically failed in its endeavour. While *lok adalats* may seem successful to its staff and the parties who use

[69]Josh Stark, supra note 31.
[70]S. MURLIDHAR, supra note 2.

them, this success exists only in comparison to the woefully inadequate formal court system. *Lok Adalats* might have had a big hand in tackling the hindrances in the formal mechanism. However, it has its own hurdles to overcome. Although the situation is not ideal, the fact that *lok adalats* have helped reduce burdens on the formal courts and have provided access to justice to the poor litigants cannot be overlooked.

Assessed as courts, *lok adalats* appear to be inadequate for the various reasons discussed. Assessed as a social reform aimed at promoting equality under the law *lok adalats* are once again inadequate. For many, using *lok adalats* is not a choice but the only possible means to access the law. *Lok adalats* increase access to justice for poor litigants, but by doing so they maintain the divide in power between the rich and the poor. The drive towards broad social transformation appears to have no place in *lok adalats*.