Natural Justice and Lok Adalats

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by Tulika Sen*
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The Constitution promises to every citizen “free, fair and unbiased. Equal access to judicial redress, which has also been reiterated in international conventions, is one of the pillars on which the rule of law stands. However, in reality access to justice is denied to the socio economically weaker sections of society. As a result of the mounting backlogs in courts and the protracted, dilatory tactics being used in litigation, it is only the affluent who possessed the “golden key to unlock the doors of justice”.

Hence an alternative had to be found to the traditional dilatory system of litigation in courts, and one such proposed solution was the Lok Adalat. It was a system of inexpensive and expeditious resolution of disputes that did not involve substantial questions of law, as it was based on compromise.

The legislative mandate for the creation of Lok Adalats was contained in the Legal Services Authorities Act, 1987. Chapter VI of the Act provides for setting up Lok Adalats. Lok Adalats have been set up in several States of India where they have enabled the disposal of a large number of cases in a relatively short period of time.

Lok Adalats had been set up to provide speedy and inexpensive justice to the poor. But subsequently a disquieting phenomenon began to be observed—the objective of the Lok Adalats is speedy justice. For this purpose, the Lok Adalats have a simple, streamlined procedure. But it is still “which must reign paramount. In a classic case of throwing the baby out with the bath-water, it appears that justice has itself fallen victim to the desire for a “resolution. Instead of engineering a genuine compromise, in some cases, Lok Adalats have tried to force an adjudicatory decision upon unwilling litigants. The right to a fair hearing, the rule of audi alteram partem, is one of the basic principles of natural justice but in the name of expediency, this right has been denied to the people. This opportunity of being heard is a necessary component of natural justice and absence of a hearing vitiates the process, no actual or resultant prejudice needs to be proved.

This article shall evaluate the procedure followed in Lok Adalats with respect to the determinants of natural justice. Natural justice is the natural sense of what is right and wrong and is the term used to describe those principles which constitute the minimum requirement of justice and without adherence to which, justice would be a travesty. There are no fixed rules of natural justice, rather, the rules have to be moulded to fit the exigencies of the situation. As has been observed by the Supreme Court in several cases such as D.K. Yadav v. J.M.A. Industries Ltd. natural justice is essentially fair play in action.

Lok Adalats have a dual mandate firstly, to provide justice and secondly, to do so in an expedient and inexpensive manner. Thus, Lok Adalats are entitled to follow a streamlined procedure. It is an established principle of law that procedural rigour has to bow before substantive justice. However, at the same time, those procedural safeguards that are meant to ensure a fair trial cannot be done away with in the name of expediency. The task of the Lok Adalats is to perform a balancing act between the competing requirements of procedural safeguards and expediency. This article seeks to demonstrate that Lok Adalats have failed to achieve this balance; natural justice has been sacrificed at the altar of expediency.

Lok Adalats have broad discretion while performing this balancing act. The Legal Services Authorities Act, 1987 does not lay down a detailed procedure to be followed by the Lok Adalats, rather it is left to the discretion of the Lok Adalat and it is for the State Government to frame rules in this regard.

Lok Adalats, despite the nomenclature, are not adalats or courts. They do not follow an adjudicatory mechanism, rather they are para-judicial institutions whose function is to ensure that the parties to the dispute reach a settlement through compromise. Under Section 20 of the Act, a case may be referred to the Lok Adalat if both parties make an application for the same; or when one party makes an application, after a reasonable opportunity of being heard is given to the other party. The Lok Adalat may take cognizance of the case both at pre-litigation stages and while the case is pending. Once the Adalat has taken cognizance of a matter, it shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. The Lok Adalats are required to act with utmost expediency to arrive at a compromise or settlement between the parties. The Adalat is not bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, rather it shall be guided by legal principles and the principles of justice, equity and fair play. Where no award is made by the Lok Adalat as no compromise or settlement could be arrived at, the records of the case shall be returned to the court from which the reference originated. When the matter is in a pre-litigation stage, if no compromise or settlement is arrived at, the parties will be advised to approach a court. Thus, the basic principle is that a Lok Adalat cannot adjudicate on the merits of a case, its decision can only be based on a compromise or settlement.

The Lok Adalat under Section 20 lays down certain conditions for cognizance of a matter by the Lok Adalat. A Lok Adalat can take cognizance of a matter either on application by both, or one of the parties or even suo motu if it is satisfied that elements of conciliation and settlement exist in it. However, in all cases, it is obligatory that the other party should be
given an opportunity of being heard.

Several cases have come up before the Court where there has been denial of a "reasonable opportunity of being heard". In Kishan Rao v. Bidar District Legal Services Authority the question raised was whether the Lok Adalat could pass a decree when all the parties had not appeared before the Lok Adalat nor had notice been issued to them. The Karnataka High Court interpreted Section 20(3) of the Legal Services Authorities Act to hold that all the parties to the suit must be present if the compromise was to be a valid one. Thus the impugned decree was struck down as being a nullity by reason of violation of natural justice.

A similar fact situation arose in Moni Mathai v. Federal Bank Ltd. and Recovery Officer, Debts Recovery Tribunal. The award of the Lok Adalat was given without issuing a notice of hearing to the petitioners; the compromise deed on the basis of which the award was given was not signed by the petitioners and this was a clear violation of the Kerala Regulations. The High Court of Kerala struck down the award with the observation that:

"The Lok Adalats are also bound to follow the principles of natural justice, equity, fair play and other legal principles. The Lok Adalats shall also not forget that their duty is not to dispose of cases somehow but settle cases amicably."

The basis on which Lok Adalats have been set up is settlement and compromise. But lately, there has been a trend towards Lok Adalats assuming adjudicatory functions instead. While civil courts do have the power to suo motu refer a case to the Lok Adalat if it appears that it is a fit case for settlement, it must be remembered that the very purpose of Lok Adalats is to enable the parties to reach an amicable settlement. If one of the parties had refused to submit to the jurisdiction of the Lok Adalats in the first place, then compelling it to appear before the Adalat is unlikely to generate a compromise.

The decision of the Karnataka High Court in Commr., Karnataka State Public Instruction (Education) v. Nirupadi Virbhadrappa Shiva Simpi is an instance where the decision of the Lok Adalat was rendered a nullity due to violation of natural justice. In this case, the Assistant Government Pleader, representing the State, had submitted that he had no authority to enter into a settlement without previous sanction from the State. Ignoring the objection made by the Pleader, the Karnataka High Court proceeded to hear the matter and pass an order. The High Court observed that natural justice had been sacrificed at the altar of expediency. Lok Adalats could only decide matters on a settlement or compromise and could not force a decision on merits on an unwilling party. The impugned award of the Lok Adalat was quashed and the matter referred to the civil court for adjudication.

The dangers of the uncanalised discretion given to Lok Adalats have been recognised by some States and pursuant to Section 28 of the Legal Services Authorities Act, Regulations have been framed in relation to the conduct of Lok Adalats. The Kerala Regulations, 1998, framed by the Kerala Legal Services Authority (KELSA), provide a model of good practice. Regulation 28 makes it mandatory for notice to be issued to the parties in a dispute in order to enable them to prepare their case. This embodies the right to a fair hearing. Regulation 31 explicitly lays down that the Bench is to restrain itself to a conciliatory role and make efforts to bring about a settlement "without bringing about any kind of coercion, threat or undue influence, allurement or misrepresentation". Under Regulation 33, the Bench is required to obtain the signatures of the parties to the dispute, in addition to the signatures of the Members of the Bench. This Regulation ensures that the parties are given adequate notice and are present during the proceedings.

The Kerala Regulations, 1998, have given statutory expression to the principles of natural justice. Thus the uncanalised discretion of Lok Adalats has been cut down and the chances of arbitrary use of power have been minimised. The framing of such clear, categorical regulations is a laudable effort. It is desirable that such Regulations be framed by the Central Legal Services Authority under Section 27 or the State Legal Services Authority under Section 28 of the 1987 Act.

Thus there is a clear need to restrain Lok Adalats from assuming adjudicatory functions which they were not designed to perform in the first place. Unfortunately though, the Legal Services Authorities (Amendment) Act, 2002 which inserted a new Chapter VI-A into the Act appears to continue this trend. These amendments provide for the establishment of Permanent Lok Adalats, which would be dealing with disputes relating to "Public Utility Services". In his speech introducing the Legal Services Authorities (Amendment) Bill, 2002, in the Lok Sabha, the erstwhile Law Minister Mr Arun Jaitley observed that a drawback of Lok Adalats is that they were designed to "bring about resolution of disputes only by conciliation, and when conciliation fails, the experiment does not succeed". Thus, Section 22 C(8) gives the Bench the power to adjudicate the dispute, provided a settlement cannot be reached. This is contrary to the very ethos of the institution of Lok Adalats, which were envisaged as conciliatory mechanisms where the adversarial trial system had no place.

Lok Adalats are institutions built on the philosophy of compromise to entrust them with adjudicatory functions that they are not designed to perform would create a cure that is worse than the disease. There can be no "justice" without adherence to the principles of natural justice and they cannot be ignored in the name of expediency.

* 5th Year, BA/BSc LLB (Hons), National University of Juridical Sciences, Kolkata.
- See Article 14(3)(d) of the International Covenant on Civil and Political Rights. The Universal Declaration on Human Rights provides that:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.

- People’s Union for Democratic Rights v. Union of India, (1982) 3 SCC 235 at p. 242, para 3
- Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584
- Per Tucker, L.J. in Russell v. Duke of Norfolk, (1949) 1 All ER 109 at p. 118 E: “The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth.”
- (1993) 3 SCC 259: The Court is required not so much to act judicially but act fairly, justly, reasonably and impartially.
- See Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620: A party would forfeit its right to hearing if undue advantage is obtained by protracting the proceedings somehow and nullifying the objective.
- See Section 22(2) of the Act which gives Lok Adalats the power to specify their own procedures.
- See Section 7(2)(b) of the Act which gives the State Legal Services Authority the responsibility of conducting Lok Adalats.
- See supra fn 4, p. 114.
- See Scheme for the Constitution of Permanent and Continuous Lok Adalat for Ministries/Departments of the Government of India = (Prepared by the Ministry of Law, Justice & Company Affairs); available at , last visited on 23 6 2004.
- AIR 2001 Kant 407
- OP No. 12956 of 2002 (P) in the Kerala High Court, decided on 22-1-2003
- This refers to the Kerala Regulations, 1998, framed by the Kerala Legal Services Authority (KELSA), which will be used as a model for analysis in the next section.
- See supra fn 11: “On a reading of the impugned award, I am constrained to place on record that while the Lok Adalat had done its utmost to give effect to the first part of sub-rule (4) (of Section 20 of the Legal Services Authorities Act) in disposing of the reference with utmost expedition, but regrettably has given a complete go-by to the latter part of the clause which enjoins on it a duty to be guided by the principles of justice, equity and fair play;â€”Study of the Functioning of the Institution in West Bengal, 2003, p. 116.
- See supra fn 13
- Examples would be Legal Aid Ambulance (Lok Adalat) Scheme of the Pondicherry Legal Aid and Advice Board and the West Bengal State Legal Services Authorities Regulations, 1998. These Regulations are substantially similar to the KELSA Regulations.
- The rules may be viewed at the website of KELSA, http://www.kelsa.nic.in/regul1d.htm#CHAPTER%20VI; last visited on 19-7-2004.
- Reference may be made to the decision of the Kerala High Court in Moni Mathai v. Federal Bank Ltd. and Recovery Officer, Debts Recovery Tribunal, OP No. 12956 of 2002 (P), decided on 22 1 2003 where the fact that the compromise was not signed by the petitioners was one of the grounds on the basis of which the impugned award was struck down.