

CHAPTER – VIII

LOK ADALATS AND THEIR ROLE

IN REDUCING ARREARS

I

ANCIENT ORIGIN

The term 'Lok Adalat' as the word itself suggests is a Court as per requirements and convenience to the People, for the People and of the People. Contrary to the traditional approach of forms, precedents, arguments and protracted procedure, which is the outcome of adversary system, Lok Adalat has its basis in consent. Its success lies in educating the people not only about rights of theirs and duties/obligations of others, but rights of others as well. The present day Lok Adalats have their origin in People's Court of Ancient times and concomitant people's participation in India is as old as the advent of village.**1 The foundation and respect for such Lok Adalats is to encourage people to participate in the process of justice seems to have been imbibed in Indian Culture and Civilisation.**2 In ancient times forums known as Kula, Sreni and Puga were arbitration tribunals like modern Lok Adalats.**3 Under the Hindu system of jurisprudence the King used to see the functioning of administration of justice but people also used to contribute in the process of administration of justice.

All the governments in Ancient India followed the policy of encouraging the people's courts and enforce their decisions. The Courts though were not strictly official in nature but had the authority of State behind them.**4 the idea was that such Courts should widen the scope of their activity and command more and more respect from people.

**1 R. SAHAI PANCHAYATI RAJ IN INDIA PAGE 95.

**2 M. N. MORJE, LOK NYALAYA, AIR 1984 JAN.. P. 68.

**3 P. V. KANE HISTORY OF DHARMASHINGHA 1973 PAGE 280.

**4 DR.ALTERKOR A. S. V/s. STATE & GOVT. IN ANCIENT INDIA PG. 253.

There are several reasons for promoting the concept of people's Courts, the prominent among them can be summarised below:

- (a) Such Courts encouraged principle of Self Government.
- (b) Such Courts reduced the burden of Central Administration and expedited the process of justice.
- (c) The members of such Courts had reliable knowledge of the facts because they were local persons. In such case possibility of a witness telling a lie and thwarting the cause of justice could be eliminated.

The bodies of Self adjudication as they existed in ancient times had three fold hierarchy.

- BODIES OF SELF-ADJUDICATION (LOK ADALATS)

- (A) Gana (Puga)
- (B) Sreni
- (C) Kula

During the evolution of Hindu Judicial System, the above referred categories of Courts of popular character were available to the litigants.**5

There existed two different set of courts, the first set of courts was known as the State Courts and the other known as People's Courts.**6 and both the bodies played a complimentary role to achieve the cause of justice.

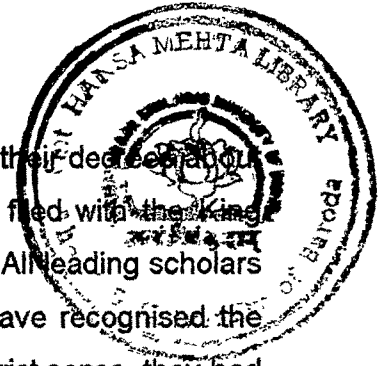
A. PUGA COURTS

The Puga/Gana Courts, used to function in Gana, means local corporations of towns and villages. They included the persons/communities residing in a town or village. The Puga Court consisted of members belonging to different castes but staying in same village/town. The Puga Courts were recognised by the King and were empowered to decide disputes of litigants except the cases falling under Sahasa.**7 It was only the King who could carry out orders for fine or Corporal

**5 P. B. MUKHERJEE – HINDU JUDICIAL SYSTEM PAGE 439.

**6 HISTORY OF ANCIENT INDIA - COLEBROKE

**7 BRIHASPATI QUOTED BY P. V. KANE, HISTORY OF DHARMASHASTRA VOL-3, PAGE-280.



punishments. The Puga Courts had no jurisdiction to execute their decrees about fines and corporal punishments. Their decisions were to be filed with the King who, if he did not disapprove of them put them into execution. All leading scholars like Manu, Yajnavalkya, Brihaspati, Katyayana and Narada have recognised the role of these Courts. Though such Courts were not official in strict sense, they had the sanction from the King and the Rajya was to execute their decrees because the powers were delegated to them.

B. SRENI COURTS

The term "Sreni" means an association of persons engaged in similar pursuits. The courts of merchant guilds was a prominent feature of commercial life in ancient India. Mahabharata recognises that these courts were vested with the powers to decide matters relating to their special callings or trade. **8 These courts had the jurisdiction to resolve disputes among its members. The Sreni Courts were vested with the power to decide all disputes among the members of the guild except those falling under the title 'sahsna'.**9 they had the authority to decide all civil and criminal cases except those involving trial for an offence committed with violence. For execution of sentences involving fine and corporeal punishments, the matter required approval of King. Sreni Courts were thus agencies of adjudication other than official ones. Sreni Courts had a limited appellate jurisdiction also on the decisions of Kula Courts.

C. KULA COURTS

The term 'kula' refers to meeting of persons collectively related by blood as a family/tribe and also includes persons distantly related by marriage. It was the lowest court headed by Kinsman.**10 These courts were informal bodies of family

**8 S. SUPAKAR LAW OF PROCEDURE AND JUSTICE IN ANCIENT INDIA PAGE-67.

**9 MR.RAMA JOIS; LEGAL AND CONSTI.HISTORY OF INDIA VOL.I. PAGE 490.

**10 M. G. CHITKARA, LOK ADALAT AND THE PROV.(PAGE-22)

elders. The underlying concept is that members who descended from a common family may have looked for an organisation representing the group concerned and "Kuladharmā" was recognised as an important aspect in imparting justice. Even official courts used to recognise it. 'Kula' courts were the lowest popular court in the entire strata of local courts, vested with powers to discharge judicial functions.**11

The idea behind recognising this system of courts was that the administration of justice is not the sole concern of the King alone but the people also shared the burden of State in administration of justice. Kula court being informal body of family elders commanded good respect and acceptance among the family members. If effort at family level failed matter used to go to Sreni courts.

II

YAJNAVALKA SMRITI AND PROCEDURE OF LOK ADALATS IN ANCIENT TIMES

Even yajnavalkasmṛiti discloses that in ancient times there was a hierarchy of courts, the highest being the court of the King himself and the lowest on the ladder was the village council.**12 Yajnavalkya has mentioned about all 3 types of people's courts discussed above. Almost all smṛitikaras and ancient scholars share a common view that judicial power was confided with them which implies that people's participation in process of justice administration prevailed at that stage also.

During the ancient times Lok Adalats were very popular because centralisation of judicial system was not there. There were no means of speedy communication or transport and people used to settle their disputes as far as possible through the respectable influence on the parties.

**11 S.D.SARMA, ADMN.OF JUSTICE IN ANCIENT INDIA, PAGE-167.

**12 YAGNAVALKYA, QUOTED BY S.D.SARMA, ADMNI.OF JUSTICE IN ANCIENT INDIA PG.167.

There was no limit on jurisdiction of popular courts in civil matters and voluntary arbitration was quite accepted. The parties to such arbitration were prasnin (plaintiff), Abhi-prasnin (defendant) and Prasna viveka (Arbitrator).^{**13} If dependable evidence was available matter was decided on basis of evidence. If it was not available it was difficult for the judge to ascertain truth. In such cases there were two modes.^{**14}

TRIALS

- (a) By oaths
- (b) By Ordeals

A. TRIAL BY OATHS

It used to be widely practiced in ancient times with the result that religious faith became intimately connected with oath and was effective due to sanctity of God.^{**15} Manu was of the view that if two disputants quarrel and real truth can not be ascertained the judge may discover it by oath. The sanction of trial by oath acted as preventive deterrent for checking false statements in the judicial trials, Persons who used to make false statements on oath used to be shunned and ridiculed by the society.

B. TRIAL BY ORDEALS :

The term ordeal means invoking super natural aid because God helps just and punished the unjust. It was to be taken as measure of last resort when no human proof was available.^{**16} The ordinary rule was that it used to be administered to defendants but anyone of the litigants by mutual agreement could undergo ordeal. It was based on belief in personal God who if fervently invoked with religious favour would declare the who if fervently invoked with religious favour

^{**13} R.C.MAJMUDAR-HISTORY AND CULTURE OF INDIA-PEOPLE OF VEDIC AGE PAGE 440.

^{**14} MANU AND NARADA QUOTED BY M.K.SHARAN IN COURT PROCEDURE IN ANCIENT INDIA PAGE-167.

^{**15} DR.BIRENDRA NATH JUDICIAL ADMI.IN ANCIENT INDIA PAGE-126.

^{**16} KATYAYANA, QUOTED IN M.K.SARAN PAGE 146.

would declare the innocence or guilt of the person charged.**17 The practice is somewhat recognised statutorily and oath in any form considered sacred by both parties is valid. **18 This provision was also upheld by Privy Council.**19 The overall influence of Trial by Ordeals has significantly reduced because of increase in importance of documentary evidence and more systematic methods of adjudication.

III

LOK ADALATS AS UNOFFICIAL COURTS

DURING ANCIENT TIMES

During Ancient Times there was no regular heirarchy of courts and the organise system was yet to come. Disputes were therefore settled through the mechanism of people's forums which were not official courts but used to enjoy the privileged, esteem, respect and degree of obedience from the people. The system had its own advantages. There were no technicalities. There were no procedural hurdles. The persons presiding over lok adaiats were from the local village and hence the implementation of decisions was without much resistance. In those days comunication and transport was in much primitive stage and hence the people preferred to sortout the disputes at local level. The courts were guided by scripturies, principles of good conscience, fairness and public convenience.

**17 VISHNU PURANA

**18 SECTION 8 OF INDIAN OATHS ACT, 1873 AND SECTION 10.

**19 INDER PRASAD V/s. JAGMOHAN DAS AIR 1967 SC 165.

IV

MOGHUL REGIME LOK ADALATS

The Muslims ruled India or part thereof between 712 AD to 1857 AD. The initial stage of Muslim Rule was dominated by standards of Caliphate of Baghdad. Over a period of time, the Muslims in particular the Moghuls made deep inroads in India and established hierarchy of courts. However, throughout the regime, the administration of justice in villages remained untouched. There were courts like Royal courts, provincial courts, district courts, parganah courts etc. but people preferred to settle their disputes as far as possible by Lok Adalats in Villages, guilds or community.**20 The people's courts played vital role in settlement of disputes in mofussil areas. There were no government run courts within manageable distance and people were not inclined to approach them. At a later stage the concept of quazi or local adjudicator was introduced,**21 but the traditional dispute resolution through Lok Adalat remained popular because of door step availability of justice with due recognition of customs and traditions by them. In particular the Hindu community was reluctant to approach the courts presided over by Muslim officers and the administration also was relieved of burden of large case inflows. The courts even otherwise were not within the easy reach of people. Arbitration by reference to impartial empire (Salis) was recognised. The procedures, adopted by such village courts were simple and informal. There were no tight-jacketed rules for administration of justice. The Hindus were governed by their scriptures and customs.**22 The courts used to examine the witnesses in detail before arriving at conclusions.

**20 SIR J. SARKAR, MOGHUL ADMINISTRATION, PAGE 344

**21 LEGAL AID NEWSLETTER, MAY-AUGUST 1990 PAGE 14.

**22 SARKAR U.C., EPOCHS OF HINDU LEGAL HISTORY PAGE 253.

The only drawback of these courts was that they had no link or formal recognition from the courts of last resort. The courts used to settle routine matters but in case of serious crimes or when the condemned party was not complying with the orders, litigation with formal court had to be resorted. The popular courts could impose fines, public degradation, reprimand or ex-communication. The sentences of imprisonment or death could not be awarded because there was no mechanism to execute sentences. The law administered by such courts was mainly the tribal/caste traditions, usage and customary law.**23

III

BRITISHER'S PERIOD AND LOK ADALATS

The initial entry of Britishers in India was in form of traders through East India Company. Slowly, the infighting among Indians gave them an opportunity to rule. In the initial period the magisterial functions were delegated to Indians mainly because Britishers were unaware of the local languages and customs. **24 They also had an apprehension that interference by them in affairs of native population may lead to rebellion. Thus during the initial period (upto 1857) the village adalats could preserve their identity.

After 1861, the entire judiciary was reorganised and at higher level justice was administered through the judges trained in Common law. Though the system of Kazi, Paneha or popular courts was not discontinued, their importance drastically reduced by establishment of ad-judicatory courts brought about by formalisation of the judicial system.**25

**23 SRIVASTAVA A.C., AKBAR THE GREAT VOL.II, PAGE 279.

**24 V. N. SRINIVASA RAO, IN THE LAWYER, 1984 VOL.XVI, PAGE 81.

**25 KNC PILLAI, CRIMINAL JURISDICTION OF NYAYA PANCHAYAT JOURNAL OF INDIAN LAW INSTITUTE 1977, VOL.XX NO.4 PAGE 439.

With the introduction of Anglo-Saxon adversary system of jurisprudence, technicalities were introduced in the system, depriving the common man of the opportunity of access to the court and rich man using legal process as instrument of harassment.**26

To quote Justice Ahmadi,**27 this resulted in two-fold difficulty.

- (a) The system could not be approached without the services of trained personnel.
- (b) It became highly expensive.

This has created wide gap between the people and the courts. The judicial administration became more and more complex and the worst impact of it was felt at the lower level, where it turned to be an instrument of exploitation for the obvious reason that the common man was at the victim's end.**28

Thus the advent and consolidation of British Rule led to decline of institution of people's court in India.

With the upsurge of freedom movement in India, the awareness on this aspect and need for reviving Lok Adalat system was felt. Gandhiji cautioned the people of India that it was dangerous for them merely to copy the British Judicial Modes, which had made the judicial machinery cumbrous and slow moving. There was according to him a need to have a simple and effective judicial system capable to avoid the low's delay, expense and complications. He stressed the need for reviving the homespun system of Lok Adalats and Panchayati Raj.**29

**26 LEGAL AID NEWSLETTER, VOL.X MAY-AUGUST 1990 PAGE 14.

**27 JUSTICE AHMADI 'ACCESS TO JUSTICE IN INDIA' LEGAL AID NEWSLETTER JAN-MARCH 92, PAGE 17.

**28 JUSTICE V R KRISHNA IYER, 1979, 3 SCC JOURNAL PAGE 11.

**29 GANDHIJI – INDIA OF MY DREAMS, PAGE 99.

VI

NEED FOR LOK ADALATS

In the wake of inordinate delays and high expenses a search for alternative justice delivery system has become inevitable. Alternative however is not to replace the present system but to supplement it. Lok Adalats are one of such experimental alternatives.**30

The judicial system established by Britishers despite all its positive aspects has failed to provide informal, cheap and expeditious justice to common man. The main drawbacks of the system are its rigidity, and expensive/time consuming procedures. The growing frustration and disappointment against the traditional Anglo-Saxon system has made the people to find a ray of hope in the Lok Adalats. It has vast and wide potential not only to reduce the backlog of pending cases but even educate the people to be conscious about the rights of the others and be law-abiding citizens.

Lok Adalats provide a forum to the parties to reach a mutually agreed settlements by conciliation and involvement of mediators. The movement during its present initial stage is too nebulous, sporadic and populist.**31

Lok Adalats can succeed only if people are willing to compromise and come to a mutual settlement. Contested matters have to be tried in regular courts and the problem of improvement and reform of civil judicial system is urgently needed.**32

**30 PROF.DR.MVA NAIDU, ANDHRA UNIVERSITY, RESEARCH PAPER SUBMITTED IN MARCH 1994.

**31 INDIAN LEGAL HISTORY BY M.P.JAIN, PAGE 265.

**32 PROF.MADHAVA MENON, LOK ADALAT, PEOPLE'S PROGRAMME FOR SPEEDY JUSTICE, BAR COUNCIL JOURNAL, 1986 PAGE 129.

While the Urban and elite may be in a position to afford the present system to some extent, restructuring or judicial system at grass root level is necessary to achieve goals of social, economic and political justice. Mahatma Gandhi expressed - **33

"Today the poor and disadvantaged are cut off from the legal system – they are functional outlaws not only because they are priced out of judicial system by reason of its expensiveness and dilatoriness but also because of the legal and judicial system. They have distrust and suspicion on the law, the low courts and the lawyers for several reasons. There is an air of excessive formalism in law courts which over owes them and sometimes scares them. They are completely mystified by the Court proceedings and this to a large extent alienates them from the legal and judicial process. The result is that it has failed to inspire confidence in the poor and they have little faith in it a capacity to do justice."

The modern version of Lok Adalat has thus arisen out of the concern expressed by the committees set up to resort on organisation legal aid to the needy and poor people and alarm generated by judicial circle on mounting arrears of pending cases at different levels in Court system.**34

The Committee for Implementing Legal Aid Schemes (CILAS) appointed by the Union Govt. in 1980 under the Chairmanship of the then Chief Justice Shri P. N. Bhagwati gave an impetus and encouragement to the legal aid movement in general and legal aid camps and Lok Adalats in particular.**35

**33 MAHATMA GANDHI, QUOTED IN JURIDICARE EQUAL JUSTICE, SOCIAL JUSTICE REPORT 1977.

**34 REPORT OF GUJARAT LEGAL AID COMMITTEE (1971)

**35 CILAS REPORT, 1980

To sum up, there is unanimous opinion that Lok Adalats are the need of time to provide speedy and inexpensive justice.

VII

LOK ADALATS AND BACKLOG OF CASES

IN REGULAR COURTS

The ever increasing and virtually uncontrollable phenomenon of backlog of cases has virtually shaken the faith of the people in judicial system and its credibility.

The technicalities, adjournments, appeals and other endless devices to keep on extending the litigation have made the justice scholars so desperate and disappointed that a few extreme cases, they have even attempted to commit suicide in the court rooms.**36 Many of them passed away by the time their legitimate claims could be decided. The statistics of pending criminal cases is alarming. There are 1155 prisons in India where at the end of 1994, 207,000 prisoners were imprisoned. Of them, 160,000 were under-trials and probably could be innocent. **37 Every year the situation in our courts becomes worse in terms of the number of cases that never come to trial. Our courts seem to have a great deal of time to deal with politically important cases but have no time at all for ordinary, everyday justice.**38

The experiment of Lok Adalats has definitely shown positive results to reduce the backlog. The position of cases decided by Lok Adalats reveals this position.

**36 TIMES OF INDIA, 26/9/94.

**37 THE JUDICIARY SLIPS UP.. ARTICLE BY TAVLEEN SINGH INDIAN EXPRESS, 29/1/95.

**38 TAVLEEN SINGH, FIFTH COLUMN, INDIAN EXPRESS 29/1/95.

TABLE

<u>STATE</u>	<u>YEAR OF</u> <u>COMMENCE</u> <u>MENT</u>	<u>POPULAR</u> <u>NAME OF</u> <u>ADALAT</u>	<u>NO.OF</u> <u>ADALATS</u> <u>HELD</u>	<u>NO.OF</u> <u>CASES</u> <u>DECIDED</u> <u>(IN LACS)</u>	<u>AMOUNT</u> <u>IN CRORES</u>
*Gujarat	1982	Lok Adalat			
**Maharashtra	1984	Lok Nyayaoa	925	1.10	250
		(upto 1992)			
Uttar Pradesh	1985	Litigation Free Zone(certain area only)	1349	13.67	37.77
Andhra Pradesh	1985	Lok Adalat	128	1.84	33.68
		(upto 1992)			
Rajasthan	1985	Lok Adalat	293	4.64	24.78
Assam	1988	Lok Adalat	43	0.004	3.38
Tamilnadu	1986	Lok Adalat	131	0.15	37.42
Kerala	1985	Mulakar	12	0.003	N.A.
		Neeti Mela (Nov'92)			
		(People's			
		***Festival for Justice)			
Karnataka	1984	Janatha Nyayalaya	965	2.39	38.37
		(1992)			
Bihar	1983	Lok Adalat	22	0.40	0.32
Madhya Pradesh	1986	Lok Adalat	344	5.10	19.61
Haryana	1985	Lok Adalat	330	1.11	19.65
Union Territories	1980	Lok Adalat	148	0.32	55.00

- * INTERVIEW WITH SHRI TRIVEDI OF GUJARAT LEGAL AID BOARD
- ** LEGAL AID NEWSLETTER JULY-SEPTEMBER 1992, PAGE-36.
- *** NAMED BY JUSTICE V. R. KRISHNA IYER.

The conclusions which can be drawn from the above statistics are as under:-

- a) In a short time of nearly a decade the Lok Adalat programme has received great response.
- b) So far the area of operations of the Lok Adalats have remained limited to MACT cases, Land Acquisition cases, Matrimonial cases, Government cases etc.
- c) More involvement by Government and its agencies/corporations for compromise/settlements giving up bureaucratic and rigid approach can provide further boost to the programme.
- d) To sustain the momentum, the procedure needs to be streamlined and incentive needs to be given to the states getting maximum cases.

All the cases referred above were pending before Courts/ Tribunals. Thus the Lok Adalats have significantly contributed in settlement of the cases.

VIII

LOK ADALATS AS INSTRUMENTS OF SPEEDY JUSTICE

Though the states have framed their own rules and regulations governing the Lok Adalats, mainly the following 3 categories of matters can be entertained.

****38A**

- (a) Pre-litigation
- (b) Pending cases
- (c) Legal Advice for general guidance

The analysis of statistics of various cases shows that the Lok Adalats have mainly dealt with the following areas - ****39**

****38A** LOK SABHA UNSTARRED QUESTION DATED 18/3/86.

****39** LEGAL AID NEWSLETTER, MAY-AUGUST 1987, PAGE 1.

- (a) Civil and Property Disputes
- (b) Adjudication of Insurance claims Civil Disputes
- (c) Motor Accidents
- (d) Labour
- (e) Matrimonial
- (f) Special Laws
- (g) Land Acquisition
- (h) Compoundable Criminal offences

It can be appreciated that in most of the matters under the categories referred above, the litigants mainly come from poor and middle class families and humanitarian aspects are also involved. By persuading both the parties to reconcile through able counselors including lawyers, law teachers, social workers and eminent public persons, the matters can be decided quickly.

Lok Adalats, are generally in the nature of one-day camp and the objective is to explore to the best possible extent the chance of compromise. The procedures are simple and the congenial atmosphere also motivates the litigants to put an end to the matter rather than drag on with the litigation.

Lok Adalats, thus have vast potential to decide the pending cases in a speedy manner. Apart from that, the process reduces bitterness and hence chances of any appeal, second appeal, revision, review or remand (which significantly contribute to the backlog of cases) are virtually eliminated.

IX

LOK ADALATS, THEIR NATURE AND STATUS

A - PARA JUDICIAL INSTITUTIONS

During the freedom movement, the need to revive villages and panchyats was felt by many leaders including Gandhiji. Gandhiji advocated the concept of village government in following words:

"The Panchayats will be the legislatures, judiciary and executive combined:
**40

Gandhiji aimed at achieving Ram Rajya through Gram Rajya.

However, there was no unanimity among the National leaders and few of them prominent being Dr. B. R. Ambedkar, characterised village as "Sink of Localism"***41

Article 40 of the Constitution, obligates the state to take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The ultimate goal is to ensure democratic decentralisation and creating an exhilarating feeling and sense of confidence among the villages in the sphere of decision making. **42

Article 14 of the Constitution guarantees equality and equal justice. It can be secured when –

- (a) Access to justice, civil, Criminal and other becomes democratic.
- (b) Procedure of judicial consideration of disputes is streamlined.
- (c) The remedy should be adapted to needs of people.
- (d) The people should get opportunity to participate in system of delivering justice.
- (e) Preventive justice through legal education and compromise/settlements etc. should be encouraged.

The Lok Adalats thus can supplement the present judicial system as Para Judiciary Institutions to ensure speedy, door step justice to the citizens.

**40 AVADH PRASAD AND GOPI NATH GUPTA, LOK ADALAT – A PROBE INTO ORGANISATION AND WORKING PROCESS (1976) PAGE 43.

**41 CONSTITUENT ASSEMBLY DEBATES VOL. VIII PAGE 209.

**42 SIBNATH BHATTACHARYA, RURAL POVERTY IN INDIA 1989 PAGE 37.

B - HOW FAR CAN THEY SUBSTITUTE REGULAR COURTS

The Supreme Court in number of recent decisions warned the judicial system of the country and legal profession in particular that they must shed their character as upholder of established order. The court also expressed that the time has now come for the Indian Judiciary to sensitise themselves to the need of doing justice to the large masses of people to whom justice has been denied by the Society.**43

In other significant case the Supreme Court has observed - **44

"The rule of law does not mean that the protection of laws must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on papers and not in reality. So far the courts have been used only for the purpose of vindicating the rights of the wealthy. It is true that there are large arrears pending in Courts but that can not be a reason for denying access to justice to the poor and weaker sections. No state has a right to tell its citizens that because a number of cases of the rich and well to do are pending, we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford, is disposed off."

The litigation explosion problem is felt also in newly developed litigation segments like industrial disputes where the labour courts and industrial tribunals setup under the Industrial Disputes Act are also a victim of procedural wrangles with the result that the industrial disputes takes years to be decided.**45

**43 HUSSAIARA KHATTON V/S. STATE OF BIHAR AIR 1979 SC 1360.

**44 PEOPLE'S UNION FOR DEMOCRATIC RIGHTS V/S UNION OF INDIA AIR 1982 SC 1473.

**45 PROCEDURAL REFORMS WITH REFERENCE TO INDUSTRIAL DISPUTES – ARTICLE BY ADVOCATE SHRI AMIT BOSE IN ALL INDIA SEMINAR ON JUDICIAL REFORMS.

The above referred judgements of the Hon'ble Supreme Court expressing anguish for the present day system for alternative forums wherein the people can get justice at doorsteps, without exorbitant costs and in a speedy manner.

Lok Adalats thus can not substitute the present day courts but if people by their own choice opt to resolve their disputes through Lok Adalats, it will not only improve the quality of justice delivery system but also promote among the people awareness about being just to others and expecting that others are just to them.

C - COMPARISON WITH THE REGULAR COURTS

<u>REGULAR COURTS</u>	<u>LOK ADALATS</u>
1. The jurisdiction comes from Statutes like Civil Procedure Code, Criminal Procedure Code and other Statutes.	The jurisdiction comes under Legal Services Authorities Act. 1982.
2. Any of the parties having a Cause of Action and state in case of criminal offences can initiate the process.	The matters can be referred with consent of both parties.
3. The matter is disposed off by Adjudication i.e. after examining evidence, witnesses and reaching a conclusion.	The matter is disposed off by conciliatory approach.
4. Has in built potential for further litigation in form of appeal, revision etc.	The endeavor is to settle the matter forever in cordial manner.

- | | | |
|----|--|---|
| 5. | Is time consuming and technical | Is simple and expeditious |
| 6. | There is not much scope for involving social workers and people's representative from various walks of life. | The involvement of social workers and people is the major advantage. |
| 7. | Involves payment of Court fees and other expenses are heavy which are to be borne by litigation. | The costs and expenses are minimised. |
| 8. | Judiciary is recognised as vital organ of the State only and their decisions have binding effect. | Lok Adalats mainly aim at settling disputes between the parties involved. |
| E. | Is a long existing and well-knit system | Is of recent origin in its present form |
| F. | It is based on Anglo Saxon adversary system where if one party wins the other necessarily loose. | Both the parties give up some part of their demand acceptable settlement. In other words, both of them win.**46 |
| G. | The court has its own mechanism for execution | Have to depend on execution machinery of regular courts |

****46** BROCHURE CIRCULATED BY GUJARAT LEGAL AID COMMITTEE

The comparison reveals that Lok Adalats can play very effective complimentary role in adjudication of disputes by the judicial system.

X

STATUTORY RECOGNITION

The Lok Adalats aim at settlement of disputes by mutual consent, Prior to the passing of Legal Services Authority Act 1987 the sanctity and validity of any order passed by the Lok Adalat was later disputed by the parties when it actually comes to implementation. The legal position in the matter is discussed below:-

A - ORDER 23 RULE 3 OF CIVIL PROCEDURE CODE.

This rule deals with the situation when subsequent to initiation of litigation the parties decide to arrive at compromise. The rule provides:

Compromise of a Suit:

Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the parties to the suit.**47

The provision is mandatory in nature. Once the fact and validity of compromise are not disputed the Court is bound to accept the same. **48

****47** CIVIL PROCEDURE CODE BY J.WOODROFFE AND AMEER ALI VOL.13
PAGE 2289.

****48** SILVER SCREEN ENTERPRISES V/S. DEVKI N. NAGPAL, AIR 1970 SC
669.

All that the court has to do is to satisfy itself about settlement of dispute under a lawful agreement. The Court will of course look into the merits of the submission, so that the parties get full justice. **49

The compromise and consequential orders by the Court can be inferred from the conduct. It is not necessary for the court to say in express terms that it was satisfied that compromise is lawful. **50

The purpose of filing an agreement in writing before the Court is that oral agreements are difficult to prove and sometimes delay the progress of the suit. **51

Thus, the role of Lok Adalat will be to persuade the parties first to arrive at a settlement, get it reduced to writing and signed by both the parties and get a decree passed in accordance with the same.

Such orders when passed may attract provision of other laws also. Thus if in a compromise Decree a charge/right is created on immovable properties the decree requires registration under the Registration Act. **52

B - RECORDING JUDGEMENTS BY MUTUAL CONSENT

The exact legal position about the judgements recorded on the basis of consent is not free from doubt. It is definitely appreciable that the parties themselves accept a position in respect of their rival contentions. A compromise decree merely puts the seal of the court on the agreement of parties. The court neither decides anything nor can it be said that decision of court was implicit in it. **53

**49 LAW COMMISSION OF INDIA, 54TH REPORT, PAGE 205.

**50 SULEMAN V/S. UMARBHAI, AIR 1978 SC 952.

**51 LAW COMMISSION OF INDIA 27TH REPORT, PAGE 312.

**52 NAI BAHU V/S LALA RAM NARAYAN AIR 1978 SC 22.

**53 CIVIL PROCE. CODE BY WOODROFFE AND AMEER ALI VOL.3 PAGE 2297.

The decree passed by the court on the basis of such compromise creates an estoppel by conduct between the parties but cannot act as resjudicata.**54

Having arrived at a compromise the parties can not be allowed to escape the obligations on technical grounds. It is a well settled principle that the statements of facts as to what transpired at the hearing are conclusive of the facts so stated and if any statement was wrongly recorded, it is incumbent upon the party, while the matter is still fresh in minds of judges, to get it corrected. If no such step is taken matter must end there.**55 The compromise is not binding to a person who is not a party to it and such person claiming interest in the subject matter can challenge it.

The judgements recorded on the basis of mutual consent can thus be enforced unless the compromise is vitiated on the grounds of fraud, mistake, undue influence, coercion etc.

The position of cases decided by way of compromise, as given in the table below, clearly reveal that substantial number of matters can be disposed off by compromise:**56

TABLE

(SHOWING CASES DECIDED BY COMPROMISE)

<u>NAME OF COURT</u>	<u>YEAR</u>	<u>NO.OF CASES</u>	<u>AVERAGE</u>
		<u>DECIDED BY</u>	<u>DURATION</u>
		<u>COMPROMISE</u>	
(a) Small Cause Court, Ahmedabad	1994	112	474 days
(b) Nadiad, Kheda Dist.	1994	581	603 days
(c) Godhra, Panchmahals Dist.	1994	167	2572 days
(d) Vadodara	1994	673	1632 days

**54 BIRENDRA NATH ROY V/S. BISWANATH MANDAL 88 CWN PG.859.

**55 LORD BUCKMARTER,MADHUSUDAN V/s.CHANDRABATI AIR1917 PC30

**56 SOURCE DATA PROVIDED BY HON'BLE GUJ. HC & VISIT TO CONCERNED COURTS.

The above statistics reveal that as against the average duration of regular trials (8 years), the decision by compromise involves lesser time.

The suggestion in the area is that the compromises should be submitted and recorded in precise terms so that there is no scope left for any of the parties to backout by exploiting some loop hole or lacunae in the compromise terms.

The jurisdiction to record an adjustment though not agreed by the other party is not taken away unless where such recording would result in substantial failure of justice.**57

C - LEGAL SERVICES AUTHORITIES ACT, 1987

Need was felt since long to unburden the judiciary and expeditiously dispose off the cases. The frustration of common man in respect of traditional approach of judiciary is expressed by Justice V. R. Krishna Iyer in following words:-

"Here is a rising revolution of justice expectations ignited by Independence, which may burst as an energy explosion of frustration if the judiciary due to its conservative tradition fails in its mission as a radical fiduciary and redemptive instrumentality of the people.**58

It is in this background that the Legal Services Authorities Act was passed. It has received the assent of President on 11/10/1987. **59

The Act is a composite enactment covering Legal Aid and Lok Adalat, and aims at providing free and competent legal services to weaker sections of society.

**57 MOLELA BAVAJI V/S. HEIRS OF AMIRKHAN, AIR 1978 GUJARAT P.44.

**58 INDIAN BAR REVIEW, VOL.16(2), 1989 PAGE 137.

**59 AIR 1988, ACT NO.39, STATUTES SECTION.

The main objectives of the Act are:

- (a) To provide free and competent legal service to weaker sections of the society.
- (b) To ensure security of justice to all despite their economic or other disabilities.
- (c) To strengthen the system of Lok Adalats with a view to promote justice.

CONSTITUTION OF LEGAL SERVICES AUTHORITIES

(A) NATIONAL LEGAL SERVICES AUTHORITY

Comprises of Chief Justice of India as Chairman, a sitting judge of Supreme Court as Executive Chairman and other members.

(B) STATE LEGAL SERVICES AUTHORITY

Comprises of Chief Justice of High Court or other High Court Judge as Chairman and other members.

(C) DISTRICT LEGAL SERVICES AUTHORITY

Comprises of District Judge, Secretary and such other members as nominated by Government. **60

FUNCTION OF NATIONAL AUTHORITY

- (a) Lay down policies and principles for making available.
 - (b) Frame the most effective and economic scheme for that purpose.
 - (c) Utilise the funds at its disposal and make appropriate allocation of funds to State/District Authorities.
 - (d) Take necessary steps to promote and encourage social justice litigation.
 - (e) Organise legal aid camps especially in rural area, labour colonies etc.
 - (f) Encourage settlement of disputes by way of Negotiation, Arbitration and Conciliation.
 - (g) Undertake and promote Research in field of legal services.
-

**60 SECTION 4 OF THE ACT.

- (h) Ensuring commitment to fundamental duties of citizens.
- (i) Monitor and evaluate implementation of legal aid programmes.
- (j) Develop in consultation with Bar Council of India programmes for Clinical Legal Education.
- (k) Monitor functioning of State/District Authorities.

FUNCTIONS OF STATE AUTHORITY **61

- (a) Give legal advice to persons eligible under the criteria
- (b) Conduct Lok Adalats
- (c) Undertake preventive/strategic legal aid programmes

FUNCTIONS OF DISTRICT AUTHORITY **62

- (a) Co-ordinate activities of legal services in the District.
- (b) Organise Lok Adalats in District.

ORGANISATION OF LOK ADALATS

Chapter VI of the Act covers detailed provisions regarding organisation, cognizance of cases, award and powers of Lok Adalats.

The Act provides that every Lok Adalat organised for an area shall consist of such judicial officers of the area as may be specified by the Authorities organising Lok Adalat. The state is also empowered to induct any other person as judge of Lok Adalat. **63

****61 SECTION 7(2) OF THE ACT.**

****62 SECTION 9(1) OF THE ACT.**

****63 SECTION 19(2), LEGAL SERVICES AUTHORITY ACT.**

The Act also confers on Lok Adalats the jurisdiction to determine and arrive at compromise or settlement between the parties to a dispute in respect of matter falling within the jurisdiction of any Civil, Criminal or Revenue Court or any Tribunal constituted under any law for the time being in force in area for which Lok Adalat is organised. Thus there are no barriers or limitations except serious noncompoundable criminal offences. For the purpose of referring the matter to the Lok Adalat joint application be submitted by the parties to the forum where the matter is pending.**64

Every Lok Adalat shall while determining any proceeding before it under the Act tries to persuade the parties to arrive at compromise in almost expeditious manner and shall be guided by principles of justice, equity and fair play.

If no settlement could be arrived it will be open to the parties to continue the proceeding before the forum from which matter was transferred.

The Lok Adalats have been vested with all the powers of the court under code of Civil Procedure, 1908.

Every Award by Lok Adalat is deemed to be a decree of Civil Court and shall be final and binding to all the parties and no appeal shall lie to any court against such award.**65

The Act thus gives statutory status to Lok Adalats and also confers on them wide powers and also lays down the procedure for dealing with matters by such courts.

**64 SECTION 20(1) OF THE ACT.

**65 SECTION 21, LEGAL SERVICES AUTHORITY ACT.

XI

ANALYSIS OF LOK ADALATS FUNCTIONING **IN GUJARAT AND BARODA**

Gujarat has the privileged status of being pioneer in Lok Adalat movement. It was Justice Bhagwati, elevated to the Supreme Court of India from Gujarat who played key role in conceiving the idea and putting it in action. The present Chief Justice of India Hon'ble Shri A. M. Ahmedi has also given lot of momentum to Lok Adalats and has attended several Lok Adalats in almost all the States of India. Gujarat thus has a privileged status in the history of Lok Adalats.

As far as city of Baroda is concerned, the late Maharaja Shri Sayajirao Gaekwad was a visionary and he had moulded the State machinery in such a way that judiciary and judicial process becomes public oriented. The judicial administration was separate from Executive. The word 'Nyay Mandir' given to the court is eloquent to speak about the purity of justice that he preserved.**66 Maharaja also used to give surprise visit to Nyay mandir and oversee the functioning of the courts. He has implemented several measures to make judiciary public oriented.

After almost 14 years of the advent of Lok Adalat from Una in Amreli 'district, the State Legal Aid Board has successfully organised 1000 Lok Adalats. The 1000th Lok Adalat held at Mirzapur Court, Ahmedabad on 31/3/96 was attended by Hon'ble Justice Ahmedi and other dignitaries. The details of proceedings of Lok Adalat held at Ahmedabad on 31/3/96 have been given at Annexure IV to this Chapter.

****66** ARTICLE BY ADVOCATE SHRI TEREDESAI IN 'JUSTICE', SOUVENIR OF STATE LAWYER CONFERENCE ORGANISED BY BARODA BAR ASSN.IN'83.

Out of experience gained during 14 years, the Lok Adalats have on certain occasions, concentrated in specific areas like MACT, Matrimonial, Labour, Land Acquisition, Bank cases etc. Such an approach makes the Lok Adalats more effective.

A report on Lok Adalat at Baroda held on 9/3/96 is enclosed at Annexure III.

Annexure – I gives year-wise details of Lok Adalats held exclusively for cases relating to women in State of Gujarat.

Annexure – II gives the details of various types of cases decided by the Lok Adalats upto 30/3/96.

OBSERVATIONS

- (a) An analysis of the latest statistics collected during research study clearly reveals that Lok Adalats have become immensely popular and people find in them new ray of hope to get speedy justice at their doorsteps.
 - (b) It is also observed that the Government is the largest litigant and if the Government departments themselves take initiative to settle disputes by way of compromise, it will give tremendous boost to Lok Adalat movement.
 - (c) As far as public sector institutions, banks etc. are concerned, the officials representing the organisations were not in a position to agree for the proposal immediately because such powers were not delegated to them. In such cases, either the competent authority at higher level should attend the Lok Adalat or suitable powers/authority can be delegated.
 - (d) Matrimonial cases deserve a special reference. In such cases reunion is the best preferred option and for that purpose, prominent social workers, doctors, industrialists and other local persons who command respect can be helpful to make the forum more effective.
 - (e) Persons who get the disputes settled through Lok Adalat can be given special incentive say higher refund of court fees etc.
-

- (f) There should be some permanent machinery to oversee actual implementation of the decisions of Lok Adalats in a time bound manner because in some cases the zeal and enthusiasm comes to an end when court is over.
- (g) Law Teachers can be involved in the process because their impartial, objective and academic approach may help solving the problems in a better way.
- (h) All large public sector undertakings should develop in house Lok Adalats where the complaints of customers are dealt with in fair and objective manner and things are set right as a part of their public duty by suitable action in case any injustice is done.
- (i) TV media can be effectively used by telecasting 5 minutes insertion on advantages of Lok Adalat and interviews of litigants who benefit in the process.**67
- (j) Secular, non-controversial religious leaders from all communities who have good reputation like Shri Morari Bapu, Pramukh Swami can be requested to give some time for few Lok Adalats and their presence/discourses can give great boost.
- (k) Donations by companies and other Tax-payers for Legal Aid movement should be given Tax exemptions. This will encourage industries to come forward and sponsor Lok Adalats. Care should be taken to see that their own cases are not taken up in such Lok Adalats.
- (l) The concept of motivator, who persuades both the parties to come to a Lok Adalat be introduced. Such persons in deserving cases can be rewarded for their efforts.
- (m) If any of the public sector undertakings is not giving proper response, matter can be taken up by the National Authority with concerned organisation at apex level.

**67- INTERVIEW BY JUSTICE AHMEDI TO DOOR DARSHAN NEWS, 31/3/96.

- (n) Attending atleast 3 Lok Adalats should be a part of curriculum of Law students.
- (o) Lawyer free Lok Adalats should be arranged and people's response studied.
- (p) The police department can be involved for settling petty criminal offences.
- (q) There is wide scope for settling consumer disputes, traffic offences etc. through Lok Adalats.
- (r) Mobile Lok Adalats can be arranged at places involving concentration of cases.

At present the expenses for arranging Lok Adalats are borne by the State Legal Aid Board, Bar Councils etc. Larger funds need to be allocated by the Government and sponsoring of Lok Adalats by Government undertakings like IPCL, IOC etc can be encouraged.

XII

CONTRIBUTION OF LOK ADALATS IN RESOLVING DISPUTES

A - PURSUASIVE IN NATURE :

Though Lok Adalats resemble the courts in some respects, they are not courts in accepted connotation.**68 The role of Lok Adalat is to provide a voluntary forum to the parties where they can understand their respective rights and obligations and consciously by free will arrive at a settlement. The role of Lok Adalalt in other words is to clarify the law and by gentle persuasion to convince the parties how they stand to gain by an agreed settlement.**69

**68 ARTICLE SUBMITTED TO MEETING OF COMMON WEALTH LAW MINISTERS PUBLISHED IN LEGAL AID NEWSLETTER, MAY 1990.

**69 N.R. MADHAV MENON, PEOPLE'S PROGRAMME FOR SPEEDY JUSTICE, INDIAN BAR REVIEW, 1986 PAGE 132.

Evaluating the contribution of persuasive efforts of Lok Adalats in dispute resolution one can say that their presence during last 15 years have indeed contributed significantly in creating awareness among the people to resolve the disputes by understanding each other's view points where Lok Adalat plays role of the dependable mediator.

B - NO ADJUDICATING POWERS :

Though Legal Services Authorities Act confers powers on Lok Adalat, the basic edifice of the entire system is the compromise arrived between contesting parties. Even if the Lok Adalat feels that one of the parties before it is wrong they have no powers to decide the matter on merits as can be done by an ordinary court. Lok Adalat in most of the cases is a day-long exercise at a pre-determined place where the legal aid team will assemble to determine the disputes. The aim is to dispose off maximum number of cases and the Lok Adalat has neither the time nor the role to look into the intricacies and technicalities of the case. It will therefore be prudent that such cases where the deadlock continues should revert back to the regular courts. The main objective of settlement of dispute through Lok Adalat is to settle the dispute in such a way that the mutual relations of the parties are restored to the same position as they existed before the dispute arose. They aim at providing a more lasting solution to the dispute rather than a barren declaration on Law.**70

C - PROCEDURAL ASPECTS, JUDGEMENTS, EXECUTION ETC.

The procedures followed by Lok Adalats to some extent vary depending on the litigants, their economic/social backgrounds, nature of disputes etc. The common features of the procedure are summed up below:

****70 AVADH PRASAD GOPI NATH GUPTA, LOK ADALAT-A PROBE INTO THE ORGANISATION AND WORKING PROCESS, PAGE 43.**

- (a) The Adalat in the first instance calls both parties to present their case.
- (b) It seeks elucidation from the parties on the subject matter and provides opportunities to both the parties to explain their viewpoints.
- (c) The members of Lok Adalat endeavor to provide guidelines to both the parties to arrive at truth.
- (d) The Adalats suggests even a practical solution to both the parties in case they have any difficulties to decide.
- (e) Consent terms are recorded on the basis of consensus of both the parties and signed by parties.
- (f) The Adalat acquaints the Regular Court with such dispute resolution.
- (g) Adalat requests the court to pass an order on the basis of the recorded compromise.**71

XIII

SUGGESTIONS TO MAKE THE SYSTEM

MORE EFFECTIVE

A - STATUTORY RECOGNITION :-

The Statutory recognition for Lok Adalats as such is given under the Legal Services Authority Act. the Lok Adalat can be given wider power to pass awards on basis of facts admitted in writing by the parties before Lok Adalat. This will reduce the chances of the parties backing out from settlements on small excuses. The Lok Adalats have been vested with powers of Civil Courts and in deserving cases they can exercise the power to call a party to declare facts on Affidavit or produce evidences.

****71 FROM VISITS TO LOK ADALATS AT DELHI (5/2/96), VADODARA (7/3/96) AND AHMEDABAD (31/3/96).**

There is substantial scope for setting the Consumer Forum Disputes through intervention of Lok Adalats and for that purpose if required the Consumer Protection Act can be amended.

B - ALLOCATION OF MORE FINANCE :

During the informal interviews with organisers of Lok Adalat, it was inferred that there is need for allocating more funds for this activity. The Lok Adalats are instrumental in saving the time of the Judges and their staff in regular courts and keeping in view the cost savings resulting from it more funds can be provided to them. Provisions should be made for giving honorarium to prominent persons who provide their services to Lok Adalats for settlement of disputes.

In the geographical pockets involving concentration of large cases concept of mobile Lok Adalats, can be introduced on selective basis. It will promote wider awareness amongst the people.

C - PRE-LITIGATION CONCILIATION:

Right to judicial remedies being a recognised fundamental right cannot be taken away or curtailed. **72 In certain cases the chances of the parties being advised by the Advocate about success in litigation without revealing the drawbacks or weak points of the case may instigate a party to jump to litigation more so when he is having the money power. In such cases pre litigation conciliation can prove to be of great help. In respect of Trade Disputes or business disputes, 'Sreni' courts used to play important role even during ancient times and pre-litigation conciliation can bring good results if some recognition is given to it on the line of the similar provisions under I. D. Act and other statutes.**73

**72 ARTICLE 32 AND 226 CONSTITUTION OF INDIA

**73 INDUSTRIAL DISPUTES ACT, SECTION 10(1).

D - GOVERNMENT CASES AND OMBUDSMAN

The concept of ombudsman was originally conceived by the Scandinavian Countries as an independent external authority to hear the grievances of the people against misadministration and set right the position by passing necessary orders in favour of aggrieved party.**74

By taking a complaint to the ombudsman the complainant does not lose any of his legal rights. If he is not satisfied with ombudsman's decision legal recourse is open to him. His award however will be accepted by the concerned administration.

Recently the Times of India has appointed Justice Bhagwati as ombudsman for grievances against their publications.**75

There are large number of cases pending against Government and the office of ombudsman if created in some of the departments like Railways, Posts, Telecommunications, Airlines etc. can help to a great extent in pre-litigation conciliation and settlement of the cases. At present some departments have their own forums to help grievances of public and the introduction of concept of ombudsman can make the exercise meaningful.

E - BANK CASES AND OMBUDSMAN

The scheme of Banking Ombudsman was introduced in England in 1986. In India the concept is introduced since 1994. State bank of India took the initiative by introducing concept of State Bank Lok Pal.**76

**74 IBA BULLETIN, FEBRUARY 1993, PAGE 10, ARTICLE BY SHRI J. RADHAKRISHNAN.

**75 ANNOUNCEMENT MADE BY THE TIMES OF INDIA IN JANUARY 1993.

**76 STATE BANK LOK PAL SCHEME.

The Ombudsman is vested with the authority to examine customer grievances in various spheres of activities of banks.

The scheme has received good response as can be seen from the date given below: **77

BANK OMBUDSMAN
CASES SETTLED/RESOLVED (AS ON 20/9/95)

<u>SR.</u> <u>NO.</u>	<u>CENTRE</u>	<u>NO.OF</u> <u>COMPLAINTS</u> <u>RECEIVED</u>	<u>NO.OF</u> <u>COMPLAINTS</u> <u>NOT MAINTA-</u> <u>NABLE</u>	<u>NO.OF</u> <u>CASES</u> <u>SETTLED/</u> <u>RESOLVED</u>	<u>NO.OF</u> <u>COMPLAINTS</u> <u>PENDING</u>
1.	Bombay	195	-	143	52
2.	Bhopal	144	68	17	59
3.	Bangalore	97	61	8	28
4.	Chandigarh	90	22	14	54
5.	New Delhi	126	39	40	47
TOTAL		652	190	222	240

At the places where the rejection is large an objective review needs to be taken because in most of the cases the ombudsman appointed are former Chairman of Banks.

**77 REPLY, LOK SABHA UNSTAINED QUESTION NO.2914 QUOTED IN IBA BULLETIN FEB'96 PAGE 46.

XIV**ARBITRATION**

Arbitration is the forum through which parties to a dispute get the same settled through the intervention of the third person but without recourse to a Court of Law. The Law of Arbitration is based upon the principle of withholding the dispute from ordinary courts and enabling the parties to substitute a domestic tribunal.**78 In Wharton's Law Lexicon it has been defined as "the determination of a matter in dispute by the judgement of one or more persons called arbitrator who in case of difference usually calls in an umpire to decide between them.**79 Halsbury defines arbitration as the reference of dispute or difference between not less than two parties, for determination after hearing both sides in a judicial manner, by a person other than a Court of Competent jurisdiction. In India it is popularly known as Pancha or Lavad of both the parties. The court may have to intervene only under exceptional circumstances at the request of either of the parties may approve the court, from initial state of arbitration and even then it remains arbitration.

Though arbitration and Lok Adalat differ in many ways, the major common point is that they act upon a dispute with consent of both the parties. The decision given by Arbitrator is called Award. Unless vitiated by fraud, misconduct etc. it is having the force of Court order and can be executed.

Arbitration has tremendous potential for dispute resolution without reference to the Courts. After promulgation of Arbitration ordinance, 1996 the Arbitration Act, 1940 is repealed, the Award of arbitrator now is given more recognition and it is enforceable as a decree of Court.

**78 F.J.RAJA V/S. KHIMJI PUNJA AND CO. AIR 1934 BOM.476.

**79 WHARTON'S LAW LEXICON, PAGE 74, 14TH EDITION.