

# ALTERNATIVE DISPUTE RESOLUTION: NEED FOR A CLINICAL METHOD OF TEACHING WITH SPECIAL REFERENCE TO LEGAL AID SCHEMES

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World is moving very fast. In every field there are very rapid changes. Legal teaching also has to undergo a desirable change. The very aim of legal teaching should be given a new meaning. It should become 'justice education'. When the aim of 'learning law' becomes attaining justice, the change should reflect in the teaching of law as well as legal process. A new development in the legal process is the emphasis given to the alternate dispute resolution (ADR).<sup>1</sup> ADR would help getting speedy and less expensive justice to the economically, socially and educationally backward people. But this welcome development must be reflected at the learning-teaching level. Herein comes the need for clinical method of teaching.

## IMPORTANCE OF ADR

Internationalisation in the socio-politico-economic field has created hitherto unknown problems in the sphere of law. For instance law relating to information technology has not been developed.<sup>2</sup> In future the technology can be successfully used to resolve legal disputes. Here also the traditional courts structure may not be efficient. Hence the importance of ADR mechanism.

In developing countries like India there are many problems which need *inter alia* legal solutions also. Poverty, ignorance, alien legal system, foreign language dominating the legal profession, unethical competition among the professionals are some of the serious problems. Lack of relevant information, secrecy in governance, diversity in customary practices are issues which make these problems more serious as well as dangerous. Here also for the poor man

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<sup>1</sup> Address by Arun Mishra, the then Chairman of Bar Council of India in the Conference on Dispute Resolution on 13<sup>th</sup> December 1998 at New Delhi organised by International Centre for Alternative Dispute Resolution (ICADR), XXV (4) I.B.R., 1998 at 47, 50. He observed thus:

42<sup>nd</sup> Amendment brought about incorporation of Article 39-A to provide equal justice and cheap legal services to the poor. Lok Adalat was devised as a mechanism. All over the world the trend is to shift from traditional litigation towards A.D.R. method involving arbitration, conciliation and mediation or Lok Adalat.

<sup>2</sup> Lance Rose, *NET LAW : YOUR RIGHTS IN THE ONLINE WORLD* (1995).

ADR bring consolation through informal methods of dispute resolution. In this regard much has been achieved by way of legal aid programmes.<sup>3</sup>

Another development is the importance given to the concept of Human Rights in recent years. According to William Twining "...1990s are being spoken of as the decade of implementation (of human rights)".<sup>4</sup> Here also one has to recognise the importance of ADR.

Thus ADR should become an inevitable part of legal education. This fact is to be accepted by people who shape the legal education system in various countries. In this regard it would be appropriate to quote the words of William Twining regarding an institution of law in India.

On the way back from Hong Kong I had the privilege of visiting the new National Law school in Bangalore, which has been established by the Bar Council of India as a model law school, designed to help to upgrade the whole system of legal education in India. It approximates very closely to the multifunctional model for which I argued in my paper. To be sure, it gives pride of place to an intensive, imaginatively conceived five-year first degree that integrates a multidisciplinary approach to legal study with clinical experience, placements, and skills training. But that is only one part of its activities: already it has organized intensive refresher courses for law teachers, judicial training seminars, legal literacy courses for women, and legal awareness programmes for community workers and others. It is producing a law journal and a legal information service about current law, advanced continuing legal education workshops, and is developing plans for distance education using modern techniques and technology. The National Law School promises to become a model not only for India, but for many other countries in the Commonwealth, not least because it is relatively modestly financed.<sup>5</sup>

In this context clinical education must become a part of curriculum in law schools. Regarding this a point to be noted is that Bar Council of India has taken initiative in reshaping the curriculum at graduate level. Bar Council has insisted on practical training for law students. Practical training includes clinical aspects also. But the clinical approach is to be widened so that a poor and ignorant client may also be assured of justice. Clinical methods in dispute resolution should have the following aspects.

- (i) How informal methods like Negotiation, Mediation, Conciliation and Arbitration can be effectively put into practice?

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<sup>3</sup> N.R. Madhava Menon, "Legal Aid and Justice to the Poor" in Upendra Baxi (ed.), *LAW AND POVERTY* (1988).

<sup>4</sup> William Twining, *LAW IN CONTEXT* (1997) at 282.

<sup>5</sup> *Id.*, at 285.

If these methods are to be worked out successfully the parties to the dispute must also require some legal knowledge. Therefore, it is the duty of a lawyer to advise his client with regard to issues of law.

(ii) How to impart the legal knowledge to the common man?

This question is also to be addressed in clinical legal education. When a student comes out of law school with necessary professional skills he/she must also be able to guide the client in such a way as to get justice through informal means. Here we find that the lawyer must have sufficient expertise in counselling.

In every law school there must be sufficient scope for developing 'teaching advocacy skills' and 'learning advocacy skills'. It goes without saying that such skills should contain clinical methods.<sup>6</sup> For carrying out such programmes a modest beginning was made far back in 1985, when the five year LL.B. course was introduced. The Bar council also established the model institution namely National Law School of India University. My experience as a clinical legal teacher and co-ordinator of clinical programmes has been very informative.

The operational methods are as follows: Usually a village is identified. There the law students conduct a socio-economic and legal survey which aims at collecting data regarding the legal disputes, if any, in each family. The data is then classified under the supervision of lawyers and law teachers. After a fortnight the parties to the disputes including concerned government officials are invited to a specified place. Here the mediation or amicable settlement talks are held under the guidance of practising lawyers and law persons. The students actively participate and thereby get trained in counselling the clients. This offers sufficient opportunity for students, lawyers and citizens to interact. Law students are exposed to the professional discipline, while the lawyers are exposed to different kinds of socio-economic and psychological problems behind the legal disputes, and the officials understand the plight of the poor. For instance, one of the usual complaints is the difficulty in obtaining "ration card". This 'card' is issued to the families to get essential food items through public distribution system. As an alternative dispute resolution forum, these clinics or Lok Adalats provide easy access to the citizens who are usually indifferent to approach an authority for legal redressal. Interaction among students of law, lawyers and other professionals is very fruitful. Hence forums are to be provided for such collective discussion and exchange of information.

The informal dispute resolutions got legal recognition through Article 39-A of our Constitution<sup>7</sup> and Legal Service Authority Act, 1995. Legal aid

<sup>6</sup> Marlene Le Brun and Richard Johnstone, *THE QUIET REVOLUTION: IMPROVING STUDENT LEARNING IN LAW* (1994).

<sup>7</sup> Article 39-A reads as follows:

programs are getting more and more publicity and number of participants is increasing. A comprehensive legal aid program has been slowly developing under the Indian legal system.

The Government of India constituted a Committee for Implementing Legal Aid Schemes which came into effect in September 1983. Chief Justice of the Supreme Court is the Patron-in-Chief and one of the senior Judges is appointed as the Executive Chairman. The members from judiciary, noted academicians, senior bureaucrats from the departments of finance, legal affairs are also members of the committee. The main objective of this committee is the formulation and implementation of legal aid scheme in various states. To a great extent the committee was successful in helping Legal Aid and Advice Boards. It started the publication of a quarterly news letter which helped in co-ordinating and monitoring the activities of various State Boards. CILAS also extends financial assistance to various agencies and institutions which are engaged in legal aid service. The effort of CILAS attained an effective statutory form when Legal Services Authorities Act, 1987 was passed.

The object of Legal Service Authorities Act is to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalat to secure that the operation of the legal system promotes on the basis of equal opportunity. The Act came into force on 9-11-1995.

Three kinds of legal services authorities under the Legal Services Authorities Act. Are:

- i. National Legal Services Authority
- ii. State Legal Services Authority
- iii. District Legal Services Authority

The Act provides for constitution of National legal Service Authority (NLSA)<sup>8</sup> under the Act. The Chief Justice of India is the patron-in-chief. A sitting or a retired judge of the Supreme Court nominated by the President in consultation with Chief Justice shall be the Executive Chairman. NLSA has following functions under the Act:<sup>9</sup>

- (a) to lay down policies and principles for making legal services available under the provisions of this Act;

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The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

<sup>8</sup> The Legal Services Authorities Act, 1987, sec. 3.

<sup>9</sup> *Id.*, section 4.

- (b) to frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;
- (c) to utilise the funds at it's disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
- (d) to take necessary steps by way of social justice litigation with regard to consumer protection, environment protection or any other matter of special concern to the weaker sections of the society and for this purpose give training to social workers in legal skills;
- (e) to organise legal aid camps especially in rural areas, slums and labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;
- (f) To encourage the settlement of disputes by way of negotiation, arbitration and conciliation;
- (g) to undertake and promote research in the field of legal services with special reference to the need for such services among the door;
- (h) to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;
- (i) to monitor and evaluate implementation of the legal aid programs at periodic intervals and provide for independent evaluation of programs and schemes implemented in whole or in part by funds provided under this Act;
- (j) to provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District authorities from out of the amount placed at it's disposal for the implementation of legal services schemes under the provisions of this Act;
- (k) to develop, in consultation with the Bar Council of India, Programs for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions;
- (l) to take appropriate measures for spreading legal literacy and legal awareness amongst the people and in particular to educate weaker sections of the society about the right, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programs and measures;
- (m) to make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level particularly amongst the scheduled castes and the scheduled tribes, women and rural and urban labour;
- (n) to co-ordinate and monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court legal services committee, Taluk Legal Service Committee with voluntary social service institutions and other legal service

- organisations and give general directions for the proper implementation of the legal service programs; and
- (o) to publish materials which will help to disseminate knowledge concerning law and procedure.

The State legal Service Authority (SLSA)<sup>10</sup> shall consist of the Chief Justice of the High Court or any other serving or retired judge of the High Court nominated by the Governor in consultation with the Chief Justice who shall be the Chairman. There are also members nominated by the State Government. The main functions of the SLSA<sup>11</sup> are:

- (i) to give legal service,
- (ii) to conduct Lok Adalats,
- (iii) to undertake preventive and strategic legal aid programs.

The District Legal Services Authorities (DLSA)<sup>12</sup> consists of the District Judge who shall be its Chairman, members and secretary to be appointed by the State Government. DLSA is bound to carry the functions viz. to co-ordinate the activities of legal services in the district and organise Lok Adalats within the district.

Thus clinical legal education should also include Legal aid programs. The ignorance of legal proceedings have also led to unnecessary harassment of employees and workers by the managers and administrators. Thus legal illiteracy is detrimental to the interests of the managers and the workers alike. Prolonged litigations caused due to ignorance of law sometimes leads to mounting loss in business, lower production, reduced profitability and hostile employer-worker relations. These have a snow-balling effect since legal ignorance tends to create economic stagnation, poverty and unemployment. This leads to human rights violation. Here too clinical legal education is of much value.

According to Prof. Upendra Baxi:

None in India care for legal education and it is costing us now the very survival of democracy. Legal education is where law begins. Development of legal learning and legal sciences also occur through law schools. Neither the U.G.C nor the Bar Council of India, nor the Universities behave as if they understand the fundamental significance of legal education for the achievement of just society in India.<sup>13</sup>

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<sup>10</sup> *Id.*, section 6.

<sup>11</sup> *Id.*, section 7(2).

<sup>12</sup> *Id.*, section 9.

<sup>13</sup> *Judgement Reports*, 1986 at 14.

The government alone cannot fulfil the aim of the constitutional obligation under Article 39-A (The voluntary participation of organisations or Non-governmental organisations is absolutely necessary for this goal. The aims and object of these organisations must be to educate, enlighten and create awareness among the people belonging to weaker sections, particularly scheduled castes, scheduled tribes, economically backward classes, women and minorities who are illiterate and had been suffering social disabilities and economic inequalities for centuries together and make them aware of the existence of the legal aid schemes and programs established by the State. But there is a conflicting view about these organisations. The Supreme Court has given a clear picture in this regard in *Centre for Legal Research v. State of Kerala*,<sup>14</sup> Bhagwati C.J., observes:

...voluntary organisations and social action groups must be encouraged and supported by the State in operating the legal aid program. It is now acknowledged throughout the country that the legal aid program which is needed for the purpose of reaching social justice to the people cannot afford to remain confined to the traditional litigation oriented legal aid program but it must, taking into account the socio-economic conditions prevailing in the country, adopt a more dynamic posture and take within its sweep what we may call Aid Schemes or the State Legal Aid and Advice Board, but we may make it clear that such voluntary organisation or social action group shall not be under the control or direction or supervision of the State Government or the State Legal Aid and Advice Board because we take the view that voluntary organisations and social action groups operating these programs should be totally free from any Governmental Control.<sup>15</sup>

One of the important means by which the concept of legal aid could be implemented is Lok Adalat. To provide cheaper and speedy justice the Legal Services Authorities Act, 1987 conceived a Lok Adalat. It shall have a jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute. The reference of a case pending in the court or a tribunal to the Lok Adalat is voluntary. If the case is not settled or compromised the Act provides for continuation of the suit before the original court/tribunal. When a case is settled in the Lok Adalat, the award of the Adalat is deemed to be a decree of the civil court or orders of any other Court of tribunal. The court fee paid in such cases, under the Act, has been made refundable and the finality has been attached to such orders.

Lok Adalat is not a court in the formal sense of the term. It is a democratized form of justice delivery system. People who are public spirited, or who have knowledge of law and are interested in settling disputes between

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<sup>14</sup> AIR 1986 SC 1322.

<sup>15</sup> *Id.*, at 1323.

fellowmen participate in this forum which can be described as para-judicial institution. The need for such an institution is keenly felt because it can make positive contribution in aiding the poor.

The Committee for implementing Legal Aid Schemes (CILAS) gives guidelines for the working of Lok Adalat. The Lok Adalats are organised by State Legal Aid and Advice Boards or District Legal Aid committees. The venue of the Adalat is fixed about a month in advance by legal aid board. Information about the Lok Adalat is given wide publicity through media. Usually retired judges, lawyers, law-teachers, active social workers, elders of the locality and voluntary social organisations take part in the proceedings. The members of Lok Adalat are called conciliators. The number of conciliators is usually three. If conciliation is successful, a compromise deed is drawn up. The parties to the disputes and their advocates sign the deed. It is then presented to the presiding officer of the competent court. He, after examining the deed, passes the necessary decree.

A peculiar feature of Lok Adalat is that it has neither uniform structure nor procedure. The procedure followed by Lok Adalat differs in different states. Lok Adalat, in this way, is informal and more flexible. The procedure may be summed up as follows :

1. The Lok Adalat, at first instance, calls both the parties to the disputes for the presentation of their case before it.
2. It asks for the elucidation on the points of disputes and affords opportunities for both the parties to explain their view points on the disputes.
3. The members of the Lok Adalat endeavour to provide guidelines for both the parties for arriving at truth of the matter.
4. The Lok Adalat provides even a solution with regard to resolution of dispute in case of any difficulty faced by them in the decision-making process.
5. A 'Kararkhat' is finally drawn on the basis of the free consent of the parties and is signed by the both parties in the presence of the members of the Lok Adalats.
6. The Lok Adalats take initiative to acquaint the regular Court with the resolution of dispute and request for the execution of agreement arrived at between the parties.
7. Finally, the Lok Adalat requests the court to withdraw the case of party, on the lines agreed to by both the parties before the Lok Adalat.

Thus inexpensive and quick justice is provided through "Lok Adalats", which may be understood as "people's courts".<sup>16</sup> Lok Adalat experiment in

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<sup>16</sup> Inaugural address by Justice A.S. Anand, Chief Justice of India in the Conference on Dispute Resolution on 12<sup>th</sup> December 1998 at New Delhi organised by the International Centre for Alternative Dispute Resolution (ICADR), XXV (4) IBR, 1998 at 41, 43.

India has met with an astounding success. It is no longer a floating trial balloon. Its relevance and effectiveness in providing speedy and inexpensive justice to the litigants has withstood the test of time and a large segment of litigants now look upto Lok Adalats for conciliatory settlement of their disputes. Lok Adalats have now been given a statutory base and the awards passed by the Lok Adalats have acquired the force of a decree of a civil court.<sup>17</sup> The same are final and binding between the parties and cannot be challenged in any court in appeal or revision. Even the court fee is refundable in certain cases to the successful party.

Legal Services Authority is concerned more with conducting Lok Adalats which can be termed as, "People's Court". Some times these, Adalats assume the proposition of festivals. In my native state they are called Neethi *Melas*. i.e. Justic festivals. In reality these *Melas* are only informal courts where often judges preside over and hear cases. Counselling, negotiations or mediation are seldom resorted to. The objectives of the Act are hardly achieved. The Adalats, in short, become a court of informal sitting.

Pre litigation counselling, rendering legal advice and imparting legal knowledge are practically absent. Spreading legal literacy has not been effective. Achieving success in the functioning of Lok Adalats presupposes legal literacy to spread among masses.

The informal dispute resolution process resorted to by non-governmental or voluntary organisations and women's commission does not have any statutory support and hence lacks effectiveness.

A core group of law persons-judges, lawyers, Law teachers and students should come forward to co-operate with voluntary organisations to spread legal literacy. From the school level onwards, legal education should be made compulsory. Above all, to implement legal aid programs the state (to be precise the executive) must make sincere efforts. The Legal Services Authority Act was passed in 1987. It came into effect in November 1995. But the authorities were formed only after three years. These time intervals show that the state is not sincere enough in implementing legal aid schemes. Legal aids should be made a powerful tool. Only then can human rights jurisprudence bring speedier justice to all.

For the successful implementation of legal aid programs and other ADR methods what we urgently need is socially committed lawyers. The clinical legal education can create such social commitment among the law students. Therefore, every law school should come forward to shape legal teaching in such a way that justice should become the sole aim of the legal education. The shift should be from the letter of law to the spirit of law.

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<sup>17</sup> *Ibid.*