# PEOPLE'S COURT: HISTORICAL ANTECEDENCE OF LOK-ADALAT

By Sajisivan S[132]

Legal history indicates that down the ages man has been experimenting with procedure for making it easy, cheap, unfailing and convenient to obtain justice[133]. Procedure for justice is indicative of the social consciousness of the people. Anywhere law is a measuring rod of the progress of the community. Ancient system of dispute resolution made a considerable contribution, in reaching resolution of disputes relating to family, social groups and also minor disputes relating to trade and property.

The Lok-Adalat has not been an unknown institution of Indian justice delivery system. Now, it is no longer an experiment in India, but it is an effective and efficient, pioneering and palliative alternative mode of dispute settlement which is accepted as a viable, economic, efficient, informal, expeditious form of resolution of disputes[134]. The seed of Lok- Adalat mechanism was sown in 1982 in Gujarat which has now grown as a large tree whose branches has been reached in every nook and corner of the country.

Lok Adalat is fairly an old form of adjudicating system prevailed in ancient India. Lok- Adalat has long tradition and history to settle the disputes on basis of principles of honesty, fair play and moral character as embodied in Indian culture and civilization. The institution was prevailed in the Indian society at the grass root level in name of People's Court or Popular Court or Panchayats. The village Panchayats or People's Court, as an integral part of justice delivery system, played a very remarkable role in ancient and medieval India also. The importance and functioning of this institution has been discussed in the texts of Yajnavalkya, Narad, Gautama, Kautilya,

---

[132] PhD RESEARCH SCHOLAR, DEPARTMENT OF LAW, UNIVERSITY OF KERALA,

[133] Dr. Shraddhakar Supakar, Law of procedure and justice in Ancient India,(1986) Deep & Deep Publication, New Delhi.

[134] Jitendra N. Bhatt, "*A Round Table Justice through Lok -Adalat (People's Court) – A Vibrant ADR in India,*" (2002) 1 SCC (Jour) 11.

Brihaspati, Manu and Bhrigu. Generally, these People's Court was of three kinds namely Puga, Sreni and Kula.

In Vedic times, society was composed of patriarchal families. In these families, the Grhapati or Head of Family decided all disputes of members independently. Manu empowered a Grhapati to correct a wife, a son, a servant, a pupil and a younger brother with a rope or the small shoot of a cane, when they committed false.[135] So, in the field of contemporary judicature, the Grhapati was the smallest court for judicious decisions in his family whereas the king of the country happened to be the uppermost and supreme court for all civil and criminal cases in his kingdom. The above enumeration shows the order of authority commencing from the lower to the highest. If one fai1ed, the next in authority could take up the matter and so on until the matter was taken up by the king himself.

During Muslim period in India, these people's court with different names as panchayats continuously functioned with minor variations. Throughout the Muslim rule there was no direct or systematic state control of the administration of justice in the villages where most of India lived.[136] At that time, these panchayats were empowered to dispense justice in all petty civil and criminal matters in accordance with the custom or usages of the locality, caste, trade or family. The Muslim rulers traditionally enjoyed and occasionally exercised a general power of supervision over all these popular courts. The procedure followed by these courts was quite simple, systematic and informal. There was no regular administration of justice; no certain means of filing a suit and fixed rules of proceeding after the suit had been filed.[137] These People's Court or Village Panchayats worked for a long time and existed even at the time of commencement of the British rule in India.

[135] See H.S. Bhatia, Origin and development of Legal and Political system in India (1976) 46, Vol. I, See also M.K. Sharan, Court procedure in Ancient India (1978) 17

[136] Sen Gupta, Evolution of Ancient Indian Law (1953) 112

[137] U.C. Sarkar, Epoches in Hindu Legal History (1958) 250

The British rulers discouraged administering of justice through People's Courts or village Panchayats and established their own hierarchy of formal courts to render justice in civil and criminal matters. They moulded the ancient Indian legal system according to their vested interest with the result that the functioning of people's court withered away and became empty and suffocating with engulfing nothingness.[138] In this way, they gave a death blow to the functioning of people's courts.

## LOK- ADALATS IN ANCIENT PERIOD

In ancient India, during the evolution of Hindu judicial system, there were two sets of courts available to the litigants:

(i) The courts which were directly under the authority of the State,

(ii) Courts which were of popular character constituted by the people themselves either through local sabhas or panchayat or village councils or even family or tribal councils.[139]

The different kinds of courts have been enumerated by various thinkers as Kautilya, Manu, Narad, Yajnavalkya and Brihaspati, etc. But, there was a fundamental distinction between the courts contemplated by Kautilya in his Arthasastra and those conceived by Manu in his Dharmasastra. According to scheme of Kautilya, for the administration of justice, king's courts were to be appointed in the Samgrahana which meant a group of ten villages, the Dronamukha which meant a collection of 400 villages and the Sthaniya which meant the assemblage of 800 villages and also at the meeting places of the districts. The Courts were to consist of those Dharmasthas, i.e., men versed in the sacred law and three Amatyas, i.e. the ministers of the king. But, he did not give much importance to popular courts. Manu, on the other hand, continued the Sabha system which was found to have been in existence from the Rigvedic times. According to the Manu Smriti, the king appointed a Headman for each village and Headman for the groups of villages. He further

[138] P. Parameswaran, "*Dispensation of Justice: Problem of Cost, Quality and Delay*," AIR 1991 Jour. 31.

[139] See P.B. MukherjiI; "The Hindu Judicial System'"" in S.K., (ed); *The Cultural Heritage of India,(1969)439-440,* Vol. II.

provided that "the Governor or the Headman of the village shall try all cases of offences occurring therein, cases which he is not able to decide, he shall refer to the Governor or Headman of ten villages.[140] The later Dharmasastras of Narada, Yajnavalkya, Brihaspati and Katyayana also followed thescheme of Manu.[141] Besides of this courts system, Brihaspati stated another classification of courts as Pratisthita, Apratisthita, Mudrita and Sasita as above stated.

Colebrooke also found that there existed two different sets of courts in ancient India, they were (i) State's courts (ii) People's courts. The State's courts, where people could go for redress, were: (i) the court of the sovereign assisted by the learned Brahmins as assessors. This was known as King's court or King-in-Council, (ii) The Tribunal of the Chief Justice or the pradvivaka appointed by the king and sitting with three or more assessors, not exceeding seven. It was the stationary court held at an appointed place, (iii) the subordinate judges appointed by the sovereign's authority for local areas. Besides these State's courts, the people's courts were also functioning who used to deliver justice to the people with the help of respectable persons of the locality where the courts functioned.[142]

In the very Vedic period, the constitution of the Hindu society was organized on the basis of autonomous villages as its units. In this time, we come across some terms, such as Sabha, Samiti and Parisad which were conceived more or less on the units of villages. But, it was generally believed that the Sabha was a sort of village council consisting of the assemblage of learned and respectable persons who contributed to the national judicature. The judges were always helped by Sabha in the justice delivery process as in modern world, the jury helps the court.[143] However, the Sabha was not an outcome of the king's household but of the Vedic folk-assembly.[144]

[140] Supra n.6, pp 246-247
[141] Id 246
[142] Supra n.8, 440
[143]K.Jayaswal, Hindu Polity (1967) 311
[144] Id. 317

Similarly, when we study Dharamastras and the Dharamasutràs, we find certain terms of tribunals such as, Gana, Kula, Sreni, Puga, Vrata, etc. as discharging some judicial functions along with the State Courts. The existence of these different kinds of judicial tribunals indicates that perhaps the country hardly had any central judicial structure. These courts encouraged the principle of self-government and reduced the burden of central administration. They also helped the cause of justice. The members of popular court or guild court had more or less reliable knowledge of the facts in disputes because the parties belonged to their guild or locality. It was difficult for a witness to come to a village court and tell a brand lie in the presence of his compeers whose respect he will be thereby forfeiting.[145] The people's court knew about the disputants, the witnesses and the facts of the dispute, so, it was easy for them to decide the dispute speedily and effectively.

Bhrigu also emphasizes about the effective working of popular courts and states that there were ten tribunals common to all men, viz.,(i) the village people, (ii) the assembly of the citizens of the capital, (iii) gana, (iv) sreni, (v) men learned in the four vedas, (vi) vargins, (vii) kulas, (viii) kulikas, (ix) judges appointed by the king, and (x) the king himself. According to him, there was existing a peculiar judicial system for the dissolution of disputes amongst the people. The people living in forest used to get their disputes settled by foresters, members of caravans by other members, soldiers by a tribunal of soldiers and those who stayed in the village as well as in the forest could get their disputes settled either by villagers or foresters by mutual agreement and that five tribunals for foresters and other were kulikas (high officers or head of the families), sarthas (members of carvans), headmen, villagers and citizens. [146]

During the Vijayanagar days, besides the regular courts, there were a number of irregular but popular courts, which were recognized by the government and allowed to dispense justice in cases, which arose within their jurisdiction. The reason behind

[145] A.S. Altekar, State and Government in Ancient India (1977) 254
[146] See S.D. Sharma, Administration of Justice in Ancient Indua (1988) 169

the existence of these popular courts was lack of easy and quick communication in the country and therefore it was not possible for all people to seek justice through the regular courts which were few and located at distant places. Further, cases, which required a good or effective knowledge of the differing local customs and practices of the people could more easily be enquired into by men of the locality. Thus, these local courts enjoyed all the judicial and magisterial authority of a regular court.[147] So, it is revealed from the study that people's courts with different names had a significant place in ancient Indian culture and history, to dispense justice as a part of judicial administration.

## KINDS OF LOK- ADALAT IN ANCIENT INDIA

We have discussed that various grades of popular courts were working in ancient India. The different views were given by various thinkers about the kinds of these courts. Yajnavalkya and Brihaspati said that popular courts were of three types, viz: (a) Puga, (Narad Calls Gana) (b) Sreni, and (c) Kula.[148]

On the other hand, in the Smriti Chandrica, there has enumerated fifteen different descriptions of sabhas, courts or assemblies. They are as follows:[149] (i) Aranyasabha, an assembly of foresters; (ii) Sarthiksabha, that composed of merchants; (iii) Senikasabha, the members of which were appointed from among military men; (iv) Ubhayanumatasabha, that chosen by the parties themselves; (v) Gramavasisabha composed partly of the villagers and partly of strangers, or of civil and military persons together; (vi) Gramasabha a village court in which the Mahajenams, or heads of castes are assembled to settle disputes arising in the village: (vii) Purasabha, a town or city court; (viii) Ganasbha, an assembly composed of all the four classes indiscriminately; (ix) Srenisabha, an assembly composed of all the inferior classes, or castes such as washermen, barbers, etc and for deciding causes among their own tribes; (x) Chaturvidyasabha, that composed of persons learned in all the four sastras;

[147] T.V. Mahalingam, South Indian Policy (1955) 213-215
[148] Supra note 13, 251 and Supra note 14, 167
[149] Supra note 3, 16-17

(ix) Vargasabha, an assembly of irreligious men; (xii) Kulasabha, a meeting composed of persons of the same family; (xiii) Kulikasabha, in which the relatives of the plaintiff and defendant meet to discuss the matter; (xiv) Niyuktasabha, a court held by a deputy, or chief judge, regularly appointed by the king with the sabhasads, or assessors. This was sometimes called mudritasabha, as it was presided by the pradvivaka or the chief judge, in virtue of the king's mudra or seal with which he was entrusted; and sometimes also, pradvivakasabha, after the name of the presiding officer; (xv) Nripasabha, or kings court which was also called Sastrita, because the king was assisted by persons skilled in sastras, and all decisions passed here were final. Of these fifteen descriptions of courts, the first three are called apratishthita, unsettled because they were only occasionally held, and were liable to be removed from place to place; and all the rest except the two last, are called pratishthita, fixed or permanent. An appeal lies from an inferior to a superior court in regular succession, or directly to the king's court. The popular courts above described, from the number of persons of whom they were composed, and the facilities which they must have afforded in ascertaining the facts, they were called to judge, present something like a jury, and appear to have produced all the advantages peculiar to that mode of trial, without the delay and vexation attending the forms introduced in more regular courts.[150]

The study of Sukra-Niti also says about the popular courts that Kula, Sreni and Gana formed the threefold hierarchy of bodies of self-adjudication and where these three bodies failed, the king along with his officer was entitled to interfere.[151] Colebrooke also classified the popular courts into three categories, these were:[152] (i) Puga, (ii) Sreni and (iii) Kula.

**PUGA**

[150] Id
[151] Vandanagar, Kingship in the Sukra- Niti (1985) 51
[152] R.C. Majumdar, Corporate life in Ancient India (1969) 128-129

The word ‘puga’ or ‘gana’ had denoted the local corporations of town and villages. The Pugas were of communities residing in villages or in towns. They comprised of persons dwelling in the same place irrespective of their castes or employments. They were competent to decide cases in which the local public was interested. Yajnavalkya mentions that the puga court consisted of members belonging to different castes and professions but staying in the same village or town.[153]

Altekar says with regard to the nature and composition of Puga courts that the members of puga court were of different tribes and profession but they inhabited in the same village or town. If the sabha or village assembly of Vedic period was occasionally settling the village disputes, such sabha court would be the earlier prototype of the Puga court. The Gramavriddha court of the Arthasastra would also be the forerunner of the Puga court. Puga court later became known as Gota court in Maharashtra and Dharamasasana in Karnataka. The Mahajanas (elder) of the village and twelve village servants were represented upon it and it used to decide private disputes.[154]

The Puga courts enjoyed an appellate jurisdiction in all cases decided by the subordinate popular courts, viz. Sreni and Kula. It has been studied that the decisions of the Puga courts were enforced by the State and executed the decrees of the Puga courts with a view to encourage the principle of self-government to reduce the burden of central administration.[155] It is thus evident that Puga court as the highest people's court had played a prominent part almost throughout the country in the long course of the history.

**SRENI**

[153] M.K. Sharan, Court procedure in Ancient India (1978) 26 See also Birendra Nath, Judicial Administration in Ancient India (1979) 76

[154] Supra note 13, 252

[155] Id. 254

The term Sreni was used to denote the courts of guilds, which became a prominent feature of the commercial life in ancient India. Generally, the Sreni was represented by companies of traders or artisans or persons belonging to different tribes, but subsisting by the practice of the same merchant guilds. These appeared to be industrial courts or the courts of profession or courts of disciplinary bodies of different merchant guilds. Modern friendly societies and trade unions have analogous functions and bear almost a historic origin from the Srenis. The basic feature of the Sreni courts was that its members belonged to the same caste as a rule but they could also came from different castes who had same profession. Sreni courts were competent to decide matters relating to their special callings or trade.[156]

These Courts had their own executive committee of four or five members and it was likely that these committees functioned as the Sreni courts for settling the disputes among their members, when the effort at family arbitration had failed.[157] That the Sreni courts as the courts of guilds continued to function down the eighteenth century and remained in existence through the length and breadth of India.[158]

**KULA**

The Kula court was the informal body of family elders. It was the lowest people's court, which was headed by Kinsmen.[159] According to Mitaksara, Kula was a group of relatives of the parties to the dispute. All social matters concerning that particular community could be investigated and decided at this level.[160] This was a meeting of persons collectively related by blood as of a family or tribe. They could also be related distantly by marriage. Kulas or joint families were often very extensive in ancient India; if there was a quarrel between two members, the elders used to attempt to settle it. These courts had power to take cognizance of quarrels arising in family units of ten, twenty or forty villages.[161] Medhatithi also says about the village

[156] Supra note21 Pp 26-27
[157] Id.
[158] Supra note 13, 252
[159] M.G. Chitkara, Lok- Adalat and the poor (1993) 22
[160] Supra note 24, 27
[161] Id

council (Kulani) as group of relatives, which used to be the impartial persons comprising of agnatic and cognative of the litigants. They were paid salary to discharge their judicial functions.[162] It discharged the judicial functions but was considered to be inferior in jurisdiction to officers appointed by the king.[163]

So, it is revealed from the study of Hindu literature that Kula courts were used to attempt to settle family matters by family laws and customs. It was considered to be the lowest popular court in the entire strata of local courts. Thus, this was the hierarchy of the people's courts in which Kula was at lowest and the Puga was at highest level. These Courts were vested with judicial powers on the basis of the sovereignty of the people. The basic idea behind functioning of these courts was that the administration of justice was not the sole concern of the King alone but the people also shared the burden of the State in dispensing of justice. The relations subsisting between the different kinds of courts are thus described by Brhaspati:

> *"when a cause has not been duly investigated by meeting of kindred, it should be decided after due deliberation by companies of artisans; when it has not been duly examined by companies of artisans, it should be decided by assemblies of cohabitants; and when it has not been sufficiently made out by such assemblies then it should be tries by appointed judges".*[164]



And again he says:

> *"Judges are superior in authority to meetings of kindred and the rest, the chief judge is placed above them; and the king is superior to all, because he passes just sentences."*

[162] .V. Kane, History of Dharmasastra,(1973) Vol.III, 280-281
[163] Supra note 14 P 107

[164] Supra note 24, 30

Therefore, in ancient Hindu judicial system, there was a well established hierarchy of courts and appeals with well defined jurisdictions. These courts worked without any procedural technicalities and decided the matters on the basis of principles of natural justice, customs of locality, trade and castes, and commonsense. These popular courts not only helped to reduce the burden of the central administration of justice but also provided justice to the residents at their door -steps.

## STRUCTURE AND POWES OF ANCIENT COURTS

The main object of every judicial administration is to be just, honest and make available speedy remedy to the aggrieved persons who seek the assistance of the courts. The same was the aim of ancient Indian Judicial system. It has been pointed out that the legal life of small towns and villages was not under the direct control of the king and remained under the jurisdiction of its representatives as long as no appeal was made against the judgments given by them, to the king, who was the highest and supreme authority in the state. In ancient India, the village administration was self-contained. It functioned smoothly, whoever might be the king at the centre.

The Central Government did not interfere with local administration but exercised only general control, being mainly concerned with the subject of the land revenue, security and defense. The village community functioned as miniature state having even the power of administering civil and criminal justice".[165]But it is also necessary to mention here that the entire judicial administration functioned under the indirect control and supervision of the king and the courts derived their authority from him. The king was the dispenser of justice as a last resort, in case, justice was denied to a person by the king's tribunals or people's courts.[166]

Brihaspati said in respect of the constitution of popular courts that there were two to five persons selected as advisors and their advice was required to be followed

[165] R.C. Majumdar, The history and culture of the Indian people: The classic age (1970) Vol. III 359-360

[166] V.D. Kulshestha, Landmarks in Indian legal history and Constitutional history(1968) 6

by the villagers, the guilds, the corporations and others. He recommended that with the object to resolve the disputes, a court should be held in forest, for persons roaming in the forest, for warriors in the camp, and for merchants in the caravan.[167] Each village had its local court, which was composed of the headman and the elders of the village. Such courts decided minor criminal cases such as petty thefts, as well as civil suits of trifle nature, like disputes relating to the boundaries of lands situated within the village. Their powers, it seems, were limited to the transfer of the possession of property and inflicting of small fines. Decisions in the courts were given in accordance with the opinion of the majority of honest persons composing the courts.[168] The Sukraniti says about the efficiency of these judges that they are the best judge of the merits of a case who live the place where the accused person resides and where the subject matter of the dispute has arisen.[169] The principle underlying these lower and local courts is that in cases of disputes the best men of the locality concerned can alone be the proper judge.[170]

## JUDICIAL PROCEDURE IN ANCIENT INDIA

The courts in ancient India were not bound by any technical procedure for rendering justice to the aggrieved persons. The basic consideration was upholding dharma and to avoid needless and vexatious litigation. The rules of these local bodies must mean the rules and principles as understood and acted upon by them.[171] It is a general principle of law that a complaint must be made by the aggrieved person. But in these courts, it was not necessary in all cases that the complaint was to be filed by the actually aggrieved, the courts were also empowered to initiate judicial proceedings *suo moto*, if circumstances so warranted. Kautilya states, "Where the interest affected pertained to God, to Brahmins, to ascetics, to women, to minors, to aged persons or to diseased or helpless person, the judges shall take cognizance and give redress even

[167] See *supra note* 24, 26; and M.R. Jois, Legal and Constitutional history of India: Ancient Legal, Judicial and Constitutional System(1990) Vol. I 490

[168] Id.
[169] Id.
[170] Supra note 5, 248
[171] Supra note 5, 245

though not complained".[172] It is also pointed by Brihaspati that in the case of people, with immature minds, idiots, mad men, old and sick people, women, etc., the complaint could be made on their behalf by any relative or well wisher of theirs' whether authorized or not.[173] This process of cognizance of matters by court itself and making of complaint by well wishers is similar to concept of Public Interest Litigation in modern days. When a plaint was filed or cognizance taken by the courts, the courts were required to investigate the matter and satisfy themselves about the genuineness of the matter complained of before summoning the other party to answer the charges.[174]

In modern India, several technical procedural laws such as Civil Procedure Code, Criminal Procedure Code and the Evidence Act, etc., are followed by the courts but there were hardly any rigid and complex procedural laws dealing with the disputes in popular courts. The local courts of cultivators, artisans, money lenders, trade guilds, religious mendicants and even robbers were empowered to resolve their disputes according to the rules of their own profession. Similarly, families, craft guilds and local assemblies were authorized by the king to dispose law suits among their members except such as concerned violent crime.[175] These people courts decided the dispute on the basis of principles of natural justice, equity and fairness.

## PARTS OF TRIAL

It is necessary to discuss here about the parts of a suit and Brihaspati says the suit was divided into four parts which were : (i) the plaint (poorva-paksha); (ii) the reply (uttar): (iii) the trial and investigation of dispute by the court (Kriyaa); and (iv)

[172] S.K. Puri, Lectures on Indian Legal and Constitutional History (1989) 12

[173] Id.

[174] Id.

[175] Birendra Nath, Judicial Administration in Ancient India (1979) 145

the verdict or decision (Nirnayaya).[176] In ancient legal system, generally a suit or trial consisted of four parts:[177]

a) The plaint (Bhasa pada or Pratijna)

b) The reply (written statement or uttara pada)

c) The proof or evidence on behalf of the plaintiff and defendant

d) The decision or judgment.

The plaintiff, who was called as Prasnin, started the suit by filing the plaint before the court and submitted himself to the jurisdiction of the court. The court was then entitled to issue an order to the defendant who was known as Abhi - Prasnin to submit his reply on the basis of allegations made in the plaint. If defendant admitted the allegations leveled against him in the plaint, the business of the court was only to decide the case on the basis of such admission. Where the defendant contested the case before the court, it was the duty of the court to provide full opportunity to both the parties to prove their claims. After examined the parties, final decision was given by the court. During the course of proceedings both parties were required to prove their case by producing evidence. Ordinarily, the evidence was based on any or all the three sources, namely, documents, witnesses and the possession of incriminating objects.[178] Other means of proof consisted of reasoning (Yukti) and ordeals (Divyas).[179] The documents, witness and possession fell under the head of human proof, while ordeals were included under the head of divine proof. The court delivered its judgment when both the parties had submitted their evidence.[180]

The popular courts were empowered to decide civil matters and petty criminal offences only according to the procedure established by law and on the basis of principles of natural justice.[181] In civil cases while examining the witness the social

[176] Supra note 30, 379-410
[177] Sunil Deshta, Lok Adalat in India Genesis and functioning (1995) 25

[178] Id.
[179] Supra note 46, 47
[180] Id.
[181] Supra note 34, 8 see also Supra note 24, 144-145

status and qualification of the witness was always enquired into by the court. In criminal cases, sometimes the circumstantial evidence was sufficient to punish the criminal or to acquit him. The accused was allowed to produce any witness in his defense before the court to prove his innocence. In some cases, no evidence or witness was adduced by the party and it became very difficult for the judge to ascertain the truth. In such cases, religious aid was taken by applying two special kinds of trials, namely, trial by oaths and trial by ordeals.[182]

## TRIAL BY OATHS

In ancient Hindu law, it was a popular belief that no wise man must swear an oath falsely, even in a trifling matter for he who swore an oath falsely; he was lost in this world as well as in the next.[183] It is revealed from the study of Hindu texts that sanction of trial by oaths acted as a deterrent for checking false statements in the court. The trial by oath was widely practiced in ancient India because the religious faith became intimately connected with oath and began to be regarded as charges with super natural power and effective due to sanctity of God.[184] Manu and Narad both had justified the method of trial by oath. Manu says with regard to trial by oath "If two disputants quarrel about matters for which no witnesses are available and real truth cannot be ascertain, the judge may discover it by oath".[185] Narad says that false witnesses were condemned to go to a horrible hell and stay there for Kalpa.[186]Therefore, the trial by oath was become the major method to decide the cases when no evidence was produced before the court. Then the court applied this method.

## TRIAL BY ORDEALS

[182] Supra note 48, 28
[183] Supra note 24, 145
[184] Supra note 46, 126
[185] Supra note 24,147
[186] Supra note 48, 8

Trial by ordeal was also a significant method to determine the guilt of a person. The ancient Indian society, which was largely dominated by religious faith in God, considered the trial by ordeal as a valid method of proof. Ordeal was like an appeal to the immediate judgment of God. In such trials supernatural aid was invoked in the place of evidence. It was the basic idea of the ordeals that God helps the just and punishes the unjust. The ordinary rule was that ordeals were to be administered to the defendants. But Yajnavalkya gives an option that anyone of the two litigants may by mutual agreement undergo an ordeal and the other should agree to pay on defeat. The practice to conduct trial by ordeals was based on the belief in personal God, who if fervently invoked with religious favor, would declare the innocence or guilt of a person charged with a grave crime.[187] A detailed study of ordeals point out that only in cases of high treason or very serious offences the trial by ordeal was used. In other petty case, it was sufficient to prove the truth by taking an oath.

There were some limitations on the application of use of trials by ordeals as it could be resorted to only where any concrete evidence on either side was not available. However, no ordeals should be administered to persons observing vows, those performing austerities, distressed persons, ascetics, diseased, women, minors and aged.[188] Narad discloses that no ordeals should be conducted unless the opponent of the party undergoing the ordeals declared himself ready to undergo punishment in case of being defeated by reason of the party coming out successful from the ordeal though this rule does not apply to cases of high treason.[189] It was the greatest drawback of trial by ordeal that sometimes, a person proved his innocence by death as the ordeal was very painful and dangerous.

There were various kinds of ordeals, which were administered with regard to the nature of the case in dispute. Some important types of ordeals[190] were: (a) ordeal by balance, (b) by fire, (c) by water, (d) by poison, (e) by the cosha, (f) by rice, (g) by

[187] Supra note 24, 150
[188] Id. 147
[189] Id. 167
[190] H.S. Bhatia, Origin and Development of Legal and Political system in India (1976), Vol. I, 33-35

boiling oil, (h) by red hot iron, (i) by plough share, and (j) by images. Some of these were as follows:

(a) **Ordeal by Balance**: This type of ordeal was consisted of weighing the accused in balance. A large balance was set up on which the accused was weighed against weights placed in other pan. The height of the pan in which defendant or accused was set rose, then it was marked on the post setup beside it. After he was weighed, he got down and Pandits pronounced mantras and wrote the substance of the accusation on a piece of paper, bind it on head. Then he was placed on the balance once again. If he weigh more than first time weigh then he was held guilty; if less, innocent; if exactly the same, he would be weighed a third time; when as it has been written in Mitakshra, there will certainly be a difference in his weight. Guilt would be based upon such difference of weight of the person.

(b) **Ordeal by Fire**: In this process, nine hands long, two spans broad, and one span deep, is made in the ground, and filled with a fire of pippal wood; into this the accused must walk bare-footed; and, if his foot be unhurt, they hold him blameless; if burned, he is held guilty. It means in this process the guilt was depend upon the burning of feet of accused person.

(c) **Ordeal by Water**: Water ordeal is performed by causing the person accused to stand in a sufficient depth of water, and a brahman is then directed to go into the water, holding a staff in his hand; a soldier shoots three arrows on dry ground from a bow of cane; a man is next dispatched to bring the arrow which has been shot farthest; and after he has taken it up, another is ordered to run from the edge of water; at which instant the person accused is told to grasp the foot or the staff of the Brahman, who stands near him in the water. The accused must remain under water till the two men, who went to fetch the arrows, are returned; for, if he raises his head or body above the surface, before the arrows are brought back, his guilt is considered as fully proved.

(d) **Ordeal by Poison**: In this ordeal after certain rituals, the poison is eaten by the accused and then the accused is kept in the shade and watched for the rest of the day. If by that time, the accused discloses no signs of the effect of poison, then he is innocent otherwise he is found guilty.

(e) **Ordeal by Cosha**: In this process, the accused is made to drink three draughts of the water, in which the images of the Sun, of Devi, and other deities, have been washed for that purpose; and if, within fourteen days, he has any sickness or indisposition, his crime is considered as proved.

(f) **Ordeal by Hot Oil**: In this kind of ordeal, the oil is heated sufficiently, then the accused thrusts his hands into it, and if he is not burned, then he is held innocent.

Thus, it was very common to use the method of trial by ordeal in cases when no human means of proof were available.

## FEATURES OF JUDICIAL SYSTEM IN ANCIENT INDIA

As we have discussed that the ancient judicial system was based on Vedas, Dharmasastras and Smrities, etc. The king, judges and people's courts performed their functions and dispensed justice in accordance with these Hindu texts. The judicial system had some significant features which were as follows:

1. Truth as basis of justice.

2. Justice within reasonable time.

3. Independent judicial system.

4. Free from corruption.

5. Court fee.

## TRUTH AS BASIS OF JUSTICE

For this purpose, the procedure took every possible precaution, consistent with the conditions of knowledge of the time, to secure the discovery of the truth. The judgments given by the courts in the matters agitated before them were required to contain full facts of pleading and reasoning based on facts and evidence.[191] The matters were decided on the basis of principles of natural justice and not on procedural laws as in modern legal system.

## JUSTICE WITHIN REASONABLE TIME

As Kautiya discloses that the delay may cause the fall of the king and his kingdom.[192] Therefore, "justice delayed is justice denied" is not a new legal principle but this was the maxim, which was well known to the jurists of ancient India. In order to avoid the delay in the administration of justice, Hindu jurists had laid down strict rules as to adjournments and prescribed the time limits for deciding matters.[193] In ancient Hindu judicial system, there was no existence of any separate institution of lawyers for representing a party and to place his case before the court.[194]



## INDEPENDENT JUDICIAL SYSTEM

The judiciary in ancient India was independent and impartial. The other organ of state i.e. executive never interfered in the administration of justice. Nobody is above the law, has been the governing principle of Indian jurisprudence since the Rigvedic period, and therefore, the kings and judges were equally liable for lapses made by them during the administration of justice. The chief judge and the sabhas

[191] Supra note 42, 13
[192] Supra note 31, 191
[193] Id. 190-194
[194] Supra note 34, 7

were prohibited to hold conversation in private with any one of the litigants while the suit was pending.[195] The Sukraniti says about the responsibility of the king and judges with regard to privacy of trials: "Neither the king nor the members of the judicial assembly should ever try cases in private".[196] Trials were always held in public.

## FREE FROM CRRUPTION

Kautilya prescribed fines and even corporal punishments for judges who corruptly gave wrong decisions.[197] Yajnavalkya says if the sabhas give a decision which is opposed to Smriti and usage, through friendship, greed or fear, each member of sabha was liable to be fined twice as much as the fine to be paid by the defeated party.[198] So, in ancient judicial system, various efforts had been made to prevent the judicial system from corruption at all levels.

## COURT FEES

In ancient India, it appears that in disputes of a criminal nature, no court fees had to be paid. The person found guilty had to pay to king the fine declared in the Smritis for offences or awarded by the court. As regards civil disputes also nothing had to be paid at the inception of the suit. Certain rules were prescribed by Kautilya, Yajnavalkya, Vishnu, Narad and others with regard to payments to the king by the debtor and the creditors after the suit was decided. These payments in the form of fine or fee were regarded courts fees as well as a source of income to the kings and their judges.[199] But, this practice was abolished in India, at the close of 18th century, by Warren Hastings and replaced by the present system of court fee stamp by Sir John shore in 1797.[200] So, there were court fees levied only after the decision of civil

[195] Supra note 31, 188
[196] Supra note 24, 30
[197] Supra note 31, 188
[198] Id.
[199] Supra note 24, 31
[200] Id.

disputes. We can say lastly about judicial proceedings of the popular courts that there were no strict technicalities and rigidity in procedural laws dealing with the disputes in these courts.

## LOK ADALAT IN MEDIVAL PERIOD

In the Muslim world, law and political theory are considered to be as much derived from divine revelation, as is religious dogma. Islam did not recognize the institution of kingship to start with. It believed in the democracy of the people. Hence the absence of any particular rules in the holy Quran for the guidance of kings who are subject to the same laws as others. There is no distinction between the canon law and the law of state. Law being of divine origin demands as much the obedience of the king as of the peasants.[201]

So, it is the duty of a king to uphold the authority of the Islamic law and to keep himself within the four walls of it. Holy law served as an effective check on the sovereign authority.[202] On the basis of this idea, in India, the Muslim beginning was made by Mohammudbin-quasim in 712 A.D. He came to India as invader and returned thereafter. The real penetration into India was made by Qutub-uddin-aibek who, in reality established his supremacy in the whole of northern India. The Muslim, thereafter continued to rule over India for centuries till the year 1857 when the last Mughal King Bahadur Shah Jafar was dethroned by the Britishers and they established themselves as the next rulers of India.[203]

The study emphasizes that Muslim rulers did not interfere with the laws of Hindus or its machinery of administration and the Hindus continued to be governed by their own law in personal matters.[204] Because, the main purpose of Muslim rulers

[201] H.S. Bhatia, Origin and Development of Legal and Political System in India (1976) Vol. II, 184
[202] Id.
[203] Supra note 42. 21
[204] Supra note 48. 29

was to preserve themselves and political domination over India. In order to achieve this end, they established their judicial system to settle the disputes of parties with regard to civil as well as criminal matters.

## JUDICIAL STRUCTUR IN MUSLIM PERIOD

The judicial structure which existed in India during Muslim rule can be studied under two separate Periods' viz., the 'Sultanate Period' starting from 1206 A.D. to 1526 A.D. and the 'Mughal Period' starting from 1526 to 1680 A.D.[205] In the Muslim period, the judicial structure was same in both dynasties. The king was the supreme authority and the entire executive, legislative, judicial and military powers were resided in him. In the administration of justice he was considered as the 'fountain of justice'.

The judicial system was organized on the basis of administrative divisions of the empire. There was a systematic classification and gradation of the courts existed at the seat of the Capital, in Provinces, Districts, Paraganahas and villages for deciding civil, criminal and revenue cases.[206] The hierarchy of courts during Muslim period was as follows:



(a) Central Courts

(b) Provincial Courts

(c) District Courts

(d) Parganah Courts

(e) Village Courts

[205] Supra note 42. 18

[206] M.B. Ahamad, The Administration of Justice in medieval India (1941) 104-105; See also R.P. Khosla, Administrative structure of the great Mugals (1991) 126

The judicial structure also gave place to the then existing legal institutions in India, such as village panchyats which served an extremely useful purpose in settlement of disputes during ancient India.

## POSITION OF LOK ADALATS IN MUSLIM RULE

As it has been seen above that the Muslim rulers established their own courts system for providing justice to all. But the local courts or Gram Panchayats as dispute resolution institutions continued functioning with minor variations even in Muslim rule in the Medieval India. During Muslim rule, the royal courts existed in administrative centers, but these did not produce a unified national legal system of the kind that developed in the West.[207] The law made by the Muslim rulers did not penetrate into the villages. Throughout the Muslim rule, there was no direct or systematic state control of the administration of justice in the villages where most of Indian lived.[208]

It is revealed from the study that the Indian villagers settled their dispute through the panchayats which dispensed justice independently. These panchayats were not directly connected with the royal courts. However, the Muslim rulers traditionally enjoyed and occasionally exercised a general power of supervision over all these popular courts. In theory, only the Royal Courts were empowered to decide the criminal cases as well as to execute punishments. These popular courts could pronounce decrees in civil cases at village level and invoke Royal power in order to enforce them. But while some adjudication might be enforced by governmental power and most depended on boycott and ex-communication as the ultimate sanctions.[209] So, the study shows that even in Muslim rule, the disputes at the lowest level were

[207] Upendra Bakshi and Marc Galanter, Panchayat Justice: An Indian experiment in Legal Access in M. Capelettii (ed) Access to justice (1979)Vol. III, 343

[208] N. Sen Gupta, Evolution of ancient Indian law (1953) 112
[209] Jadhunath Sarkar, Mugal Administration (1935) 29

disposed of by the panchayat or the people's courts. The people were satisfied by the decisions of these popular courts because the matters were decided by their own representative. In this way, these courts relieved the government to a very great extent of its judicial functions.

## JUDICIAL PROCEDURE IN LOK ADALATS

In Muslim rule, the village (Dehat) was the smallest administrative unit, at this level, the Panchayat or the people's court was authorized to administer justice in all petty civil and criminal matters. The Panchayat held its sitting in public places where they administered justice and maintained peace and tranquility in the village. It was presided by five Panchas who were expected to give a patient hearing to both the parties and deliver their judgment in the Panchayat meeting. The decision of the Panchayat was final and binding.

The procedure followed by the people's court was quite simple, systematic and primitive. There was no regular administration of justice, no certain means of filing a suit and fixed rules of proceeding after it had been filed.[210] There were no hard and fast technical procedural laws obeyed by these courts for administering justice. There was also no regular and fully fledged legal profession. Nor were there any elaborate provisions for the law of evidence. Hence, the justice could be delivered speedily and effectively.[211] Qazis as the authority of royal courts were concerned more with ecclesiastical matters among the Muslims.

The Hindus were generally governed by their customs and the provisions of Shastras. When the public trial of the accused person was deemed necessary, the Amil could take the assistance of the people's court for this purpose. Many factors were taken into consideration for arriving at the truth after setting every item of the

[210] Supra note 5, 252
[211] Id. 242

evidence adduced. Civil and criminal disputes were decided by caste men or village elders and popular courts in the form of caste-courts, guild or religious heads.[212] The decisions of the Panchayats or people's courts were almost invariably unanimous and the punishments inflicted were fines, public degradation or reprimand or excommunication. No sentence of imprisonment or death was awarded, because there was no proper authority to execute these sentences, and also because there was no jails in the villages. The fear of public opinion was one of the most potent factors responsible for the prevention of crimes and hardly did any case go out of the boundaries of a village. The law administered by the Panchayats or people's court was usually caste and tribal usage and the customary law of the land.[213]

## LOK ADALAT IN BRITISH PERIOD

It is quite evident from the historical facts that the Britishers entered in India with the purpose to establish their trade and business. But, gradually, they started to interfere in the governance and administration of the country and developed their own administrative and judicial system. So, the philosophy of the administration of justice during British period has initially a different history. In the beginning the magisterial functions were delegated to the native people due to reason that Britishers were not acquainted with local languages and the local laws. Besides, there was a lurking fear in the mind of the Britishers that the act of punishment of the members of the native population could lead to agitation at any time. The result, therefore, was that they inducted Indians to discharge the judicial functions in the early days of company rule. There is ample evidence to show that an Indian in the service of company since 1614 exercised the powers of the Magistrate in the earliest days of Madras settlement.[214] However, it was only after the court reorganization in 1861 that justice was administered at higher level by judges trained in common law. The result of the induction of British judges in the Indian judicial system shaped the entire working of

[212]Id. 252; R.C. MAJUMDAR, THE HISTORY AND CULTURE OF THE INDIAN PEOPLE: THE MUGAL EMPIRE (1974) 545-550

[213] Id. 545

[214] V.N.S. Rao, A Sketch of three centuries of Court in Madras (1640-1947) (1984) 81

the local courts. The people's courts thus entered into an era of lessening importance, until, it went into eclipse, as a result of British policy of feudalistic control of the countryside.[215]

## POSITION OF LOK ADALAT IN BRITISH RULE

It is true that the Britishers applied their own justice system through which they established formal courts in India. But the study shows that in beginning in the rule of East India Company some local courts were also found which functioning almost on the line of village Panchayats. These courts were re - modeled from time to time by the company as according to its interest. The company also sometimes established new courts of minor jurisdiction on the model of village tribunal or panchayats for administering justice. These courts were necessarily of minor jurisdiction which followed the simple and speedy procedure unattended by any rigid formality or technicality. Reference may be made in this connection to the Choultry Court at Madras, the Court of Conscience in Bombay and the Court of Requests at each of the Presidency towns of Calcutta, Madras and Bombay.[216]

## CHOULTY COURT

In the village of Madras Patnam, a choultry court was established by the Hindu ruler on the basis of the village administrative unit and the court was entrusted with judicial functions. The Village Headman who also called as Adigar was presided over the court. This was the only court for the residents of the Black Town at Madras Patnam. Adigar decided both civil and criminal cases in petty matters of the natives. For serious offences the reference had to be made to the native Raja. The Choultry court was re-organized in 1678 by the company. Formerly, an Indian officer was to preside over this court, but after the re-organization it came to be presided over by the

[215] R.C. Majumdar, , An Advanced history of India (1977) 553
[216] Supra note 5, 253-254

English servant of the company. There was no regular procedure followed by the court in civil and criminal matters and punishment executed differed from case to case. This court had jurisdiction to decide civil cases up to the value of 50 pagodas and criminal offences of minor nature. After the creation of Mayor's court at Madras, the jurisdiction of choultry court was much diminished. Its civil jurisdiction was limited to only two pagodas and the appeals from the choultry court would lie to the court of governor and council which came to be known as the High Court.[217]

## COURT OF CONSCIENCE

The court of conscience was created at Bombay under the judicial system of 1672. The court had jurisdiction to decide petty civil cases up to 20 Xeraphins summarily and without a jury. The court sat once a week, charged no fees, and provided a forum to dispense justice to poor litigants expeditiously and without any cost.[218] The court also performed its functions on the pattern of village panchayat.

## COURT OF REQUEST

The charter of 1753 created a new court, called the court of requests, at each presidency town of Calcutta, Bombay and Madras to decide, cheaply, summarily and quickly, cases up to the value of 5 pagodas or fifteen rupees. The idea underlying the creation of the court was to help the poor litigants with small claims who could not defray the expenses of litigation at the Mayor's court. The court was to sit once a week, and was to be manned by commissioners, between 8 to 24 in numbers. Three commissioners were to sit by rotation on every court day. The court of requests in each town did much useful work. The court was of great help to poor litigants mostly, Indians, who used to be involved in petty disputes.[219] The creation, working and the

[217] M.P. Jain, Outline of Indian legal hisoty (1972) 14-26

[218] Supra note 42, 37

[219] Supra note 91, 56

functions of the above courts of petty jurisdictions were directly or indirectly influenced by the conceptions of the Popular Courts or the Panchayats. These courts were established with the purpose to provide justice to the poor litigants without much delay and cost.

## IMPACT OF BRITISH RULE ON LOK ADALATS

It is quite evident that the British rulers did not, initially, interfere in the Panchayat system but the establishment of adjudicatory courts in the course of time brought about the formalization of the justice system. There were also several factors weakened the working of people courts and affected the faith of people upon these courts. The administration of villages by the agencies of the central government, extension of the jurisdiction of the civil and criminal courts with their adversary system of adjudication which was unknown and new to village population, increase in the means of communication, progress of English education, police organization, migration of people from village to towns, growing spirit of individualism resulting from new education system, growing pursuits of individual interests and consequently lessening of community's influence over the members may be said to be some of the main factors which gradually contributed towards the decay of the people's courts in India.[220]



It is necessary to disclose that the English men brought with them the concept of ruler and the ruled and the sense of superiority over the local men. Therefore, they were not bound to follow the local laws and the local system of justice which bound only the local people. Gradually, they established the adjudicatory process which became more and more formal with the introduction of Anglo-Saxon system of jurisprudence and when India came to be a part of the British Empire under the direct suzerainty of the crown, a full-fledged adjudicatory setup on the basis of British judicial system with the development of new courts system the legal formalities and

[220] K.N.C. Pillai, , "Criminal Jurisdiction of Nyaya Panchayats," *JILI*, (1977) 439.

technicalities were introduced into the Indian justice system. Due to this reason the legal system became so complicated and it could not be approached without the services of trained personnel i.e. the lawyer. So, it became highly profession-oriented. The cost of litigation and lawyers fees gave rise sharply making access to justice even more difficult.[221] The net effect was that the poor man found it difficult to enter into the portals of the court and the rich man was able to use the legal process as an instrument of harassment of his poor adversary. Moreover, it became time consuming because of technical procedural laws.

Consequently, the judicial administration during British period became more complexed, both in terms of substance and procedure.[222] Our law administration shaped by the Britishers and enshrining values not wholly indigenous or agreeable to Indian conditions, scaring away or victimizing the weak through slow motion justice, high priced legal service, by distant delivery centers, mystiques to legalize and lacunose laws and processual pyramid made up of teetering tiers and Sophisticated rules and tools.[223]

However, it is revealed from the study that some efforts were made by the British rulers to revive the functioning of people's court, as for example, in Madras in 1816, on the initiative of Munro, the panchayats were used to dispose of some petty cases. He tried to restore the everyday administration of civil justice into the hands of people. He tried to legalise the panchayat system.[224] The other important steps in this direction were the landmark decisions such as Mayo resolution of 1870 on decentralization, Lord Ripon's Resolution of 1882 emphasized for decentralization of administration through the establishment of a large network of local self -government, the Report of Royal Commission upon decentralization in India which recommended the constitution and development of village panchayats with certain administrative

[221] A.M. AhamadiI, "Access to Justice in India", 11 Legal Aid Newsletter, (1992) 17.

[222] C.D. Gunninghan, "Legal Ethics – A Gandian Perspective," 15 Indian Bar Review (1988) 69.

[223] V.R.K. Iyer, "The Indian Lawyer, His Social Responsibilities and Legal Immunities," 15 Indian Bar Review (1988)117 at 120.

[224] Supra note 5, 277

and judicial powers, the Government of India Resolution of 1915 and the Montague Chelmsford Report of 1918.[225]

## LOK ADALAT IN POST - INDEPENDENCE PERIOD

After a long struggle, India got freedom on August 15, 1947. It was the dream of freedom fighters that the dawn of independence will bring many golden things to the people of India. The right to access to justice by restructuring of the judicial system at grass-root level may be said to be one of them. It was, therefore, realized by the wise founding fathers of the Constitution that the Anglo-Saxon judicial system must be reorganized so as to make legal relief easily accessible to the poor, downtrodden and backward in our villages. Similarly, Mahatma Gandhi also emphasized for the need of changing of Indian judicial system because according to him: [226]

> *"India lives in her villages and most of the countryside is smeared with poverty and social squalor. Today the poor and disadvantaged are cut-off from the legal system-they are functional out laws not only because they are priced out of judicial system by a reason of its expansiveness and dilatoriness but also because of the nature of the legal and judicial system. They have distrust and suspicion of the law, the law 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 its capacity to do justice".*

Professor N.G. Ranga laid emphasis on the aspect that "without this foundation stone of village Panchayats it would be impossible for our masses to play

[225] Upendra Baxi, The crises of the Indian legal system (1982) 296
[226] See Report of Committee on National Juridicare: Equal Justice - Social Justice (1977) 32

their rightful part in our democracy.[227] Generally, Gandhiji compared Gram-Rajya to Ram Rajya. So, he strongly supported the development of Panchayat justice system and wished that the Panchayats will be the legislatures, judiciary and executive combined.[228] Similarly, D.S. Seth wanted that the Government system should be based on the Panchayati institution because he viewed that too much concentration of powers makes that power totalitarian and takes in towards fascist ideals.[229] H.V. Kamath said about the people's participation in legal system that our polity in ancient times was securely built on village a community which were autonomous and self-contained; that is why our civilization has survived through all these ages.[230]

Similarly, Jayaprakash Narayan, also agreed with Gandhian philosophy related to the concept of Panchayati Raj and emphasized that "Administration of justice by Panchayats in villages would be speedy, efficient and quick, would discourage litigation and help settlement of disputes out of the Court by agreement among the parties. It will also lay foundation of non-violent democracy fostering love of justice away the people". He opined that Centre would automatically become strong if we can build the whole structure on the village Panchayats, on the willing co-operation of the people.[231]

Therefore, there was a demand from the all corners of the country to reconstitute the nyaya panchayat system for the purpose of providing quicker, cheaper and qualitative justice to all at on the basis of traditional principles and values and to implement the aspirations of the freedom fighters to establish the philosophy of equality and justice.

## REVIVAL OF NAYA PANCHAYAT

[227] M. Venkitarangian and Patabiraman, Local Government in India (1969) 248-253

[228] Id. 247
[229] Supra note 86, 66-67
[230] Id. 67
[231] Id. 69

Towards the revival of nyaya panchayats in the villages, definite steps were, however, taken only when India had attained independence. With the establishment of panchayat-raj institutions in the States, almost, all the states enacted separate legislations establishing Nyay Panchayats. In this way, nyaya panchayats represented the judicial wing of Panchayati Raj and operated as per principle of separation of power. Besides, the ideology of separation of powers and efficient division of labour, two considerations supported the creation of nyaya panchayat as it provide easy legal access to villagers and helps the State to displace the existing dispute processing institution in village areas – be they caste panchayats, territorially based secular institutions or special dispute processing institutions established by social reformers or political leaders.[232]

In beginning of post independence era, nyaya panchayats worked effectively in most of the States of the country and incorporated several distinctive features. First, these were established by the government, and had jurisdiction over both civil and criminal cases arising in the villages. Secondly, they functioned on the broad principle of natural justice and tended to remain procedurally as simple as possible. Thirdly, they were separate from other rural institutions such as village panchayats, vikas parisads, sahakari samitis and the like. This was so in order to ensure a degree of non-partisan approach in their working and implement the principle of separation of executive from judiciary. Fourthly, nyaya panchayats were not required to follow, *in toto*, the provisions of the Criminal Procedure Code, the Civil Procedure Code, the Evidence Act and other procedural laws. Similarly in order to retain simplicity, legal practitioners found no place in the proceedings of nyaya panchayats. Fifthly, nyaya panchayats dispensed justice to the villagers with speed, economy and effectiveness. Therefore, the nyaya panchayat retained the some of the features of the traditional panchayats.[233]

[232] Supra note 99, 307
[233] K.R. AITHAL, "Revivification of Nyaya Panchayat as" 24 Indian Bar Review (1997)117 at 123.

Nyaya panchayats decided both type of cases civil and criminal. But a wide divergence in the jurisdiction and powers of nyaya panchayats had been reported over different states in the country. However, taking a general view, these had been vested with criminal jurisdiction over (a) offences affecting public tranquility; (b) offences affecting public health, safety, convenience, decency and morals; (c) minor offences against the human body; (d) offences affecting property, particularly under the subheads—theft, receiving stolen property and cattle-theft; (e) offences relating to mischief and criminal trespass; (f) criminal intimidation, insult and annoyance; (g) possession or use of false weights or measures and (h) sundry minor offences.[234]Besides, nyaya panchayats were empowered to try civil cases of small magnitude which included the suits for compensation for wrongfully taking or injuring movable property, and suits for specific movable property the value of which does not exceed the ceiling prescribed by the statute.[235]

Nyaya panchayats had powers to dismiss a plaint or application if there was no prima facie case against the defendant or accused. They might issue summons, cause appropriate documents to be produced and require the presence of a person for evidence. They were empowered to impose a fine upon the persons convicted for committing offences, but no imprisonment was awarded for the conviction.

There were several advantages of allowing people's participation in the administration of justice at the grass –roots through the institution of nyaya panchayats. As knowledge of local conditions and the prestige of the members of nyaya panchayats helped for dispensing effective justice. Likewise, the decisions of nyaya panchayats enjoyed a fair degree of trust and acceptance among the litigants and the villagers.

Therefore, it could be stated that the institution of nyaya panchayat enlarged the common man's involvement in the affairs of the community and in the mainstream

[234] M.Z. KHAN and K. SHARMA, PROFILE OF A NAYA PAPNCHAYAT (1982) 6
[235] Id. 77

of national life. As a mode of participation in self-governance, it engendered confidence among the villagers who served for various periods of time as members. This process could be expected to render the villagers into more conscious and active citizens. Thus, this minuscule's made a small but significant contribution towards nation-building. Therefore, it was necessary to strengthen the position of Nyaya Panchayats in India. For the improvement of working of Nyaya Panchayat System, the Mehta Committee Report recommended that judicial panchayats should have much larger jurisdiction.[236] The Committee also suggested that the village panchayats should suggest panels of names from which sub-divisional Magistrate or the District Magistrate should select persons who would form judicial panchayat, having jurisdiction to adjudicate upon the matters of both civil and criminal nature. The Committee laid emphasis on the use of local knowledge in adjudicating the disputes by the Gram Panchayats. It was also suggested that Nayaya-Punchas should exercise some caution and should have a degree of humility in the discharge of their functions. At the same time they should be fearless and must administer justice in such a way that respect for law is maintained.[237]

Similarly, the significant role of panchayats courts in administration of justice was highlighted by the Law Commission in its fourteenth report. The Commission supported the view point that these village Courts are capable of doing a good deal of useful work by relieving the regular Courts of petty civil and criminal litigation. The statement made by the Law Minister in the Parliament in 1959 also emphasizes that small disputes must necessary be left to be decided by the system of Panchayat justice i.e. the People's Court. The statement of the Law Minister runs as follows:[238]

> *"There is no doubt that the system of justice which obtains today is too expensive for the common man. The small disputes must necessarily be left to be decided by a system of Panchayat justice–call it the People's Court, call it the Popular Court, call it anything–but it would certainly be subject to such*

[236] Supra note 48, 71
[237] Id.
[238] Id. 71-72

*safeguards as we may devise–the only means by which for ordinary disputes in the village level the common man can be assured of a system of judicial administration which would not be too expensive for him and which would not be too dilatory for him."*

Further, the Legal Aid Committee constituted by Gujarat Government, recommended in its report that revival and reorganization of Nyaya Panchayats was necessitated by the circumstances to have easy access of the rural population to the lower Courts and provide cheap and expeditious justice to them in small cases arising out of their life.[239] Keeping in view the increasing importance of the settlement of disputes through people's participation at grassroot level, P.N. Bhagwati and V.R. Krishna Iyer, JJ. emphasized to modernize the existing judicial administration and for the establishment of the Lok Nyayalayas at the village level.[240] The Ashoka Committee (1978) merely reiterated[241] the recommendations made by Balwantrai Mehta Committee (1957) and agreed to proposals for extensive of Nyaya Panchayats jurisdictions. The Committee found that Panchayati Raj Institutions had performed a magnificent role and expressed the hope that these institutions can do a promising role in the administration of justice.[242]

Similarly, Law commission of India also visualized the problem of administration of justice in the light of the spirit contained in the Article 39A[243] which directs that 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. The Report of Law Commission reveals that the Commission was not agreed with the idea of abolition of Nyaya Panchayats while stressed that they should

[239] Report of Gujarat Legal Aid Committee, 204-205 (1970)
[240] Supra note 100, 35
[241] Supra note 99, 320
[242] P. Satyanarayana, Towards new Panchayat Raj (1990) 197
[243] Art. 39A added in Constitution (42nd Amendment), 1976.

be strengthen by adopting the proper safeguards.[244] It also advocated the introduction of conciliation as the method of resolution of disputes to be undertaken at the discretion of Nyaya Panchayats. The commission was also inspired by the working of Lok Adalat which was effectively dispensing justice in Gujarat under the guidelines of a voluntary organization named Anand Niketan Ashram.[245]

Therefore, there was a great need to look forward for new methods, means and modes to settle the disputes. There appeared to be deep felt need to avoid all sorts of confrontations and adopt peaceful and amicable methods of conciliation with the hope to maintain harmony in the society. Keeping in view these requirements, the Lok Adalat system was introduced as an alternative forum to resolve the disputes at various levels.

The experiment of this new kind of Lok Adalat in India was for the first time made in State of Gujarat by Shri Harivallabh Pareek, one of the disciples of Mahatma Gandhi. He was very much disturbed by the miserable conditions of the tribal adivasis of Rangpur (Baroda) on account of their involvement in various types of litigation which seriously affected their life style and financial position. In order to provide relief to these adivasis he started the alternative mode of Lok Adalat for dispensing justice in the year 1949 in Rangpur and continued the same for number of years. The system was very effective and was acclaimed by all concerned.[246] Shri. Pareek undertook the 'Padyatra' from village to village and spread this movement as a result it came into existence as an institution of Anand Niketan Asharam. This form of Lok Adalat was people oriented and participated forum which dispense to the poor litigants at their door-steps without any cost.[247]

[244] One hundred and Fourteenth Report of Law Commission of India on Gram Nyayalalaya (1986) 18

[245] Id. 54

[246] S.S. Sharma, Legal services, Public Interest Litigation and Para-legal services (2003) 184

[247] Id.

The modern version of Lok Adalat has arisen out of the concern expressed by the various committees setup to resort on organizing legal aid to the needy and poor people and alarm generated by judicial circle on mounting arrears of cases pending for long time at different levels in the court system.[248] Justice P.N. Bhagwati and Justice Krishna Iyer, laid emphasis on need for revival of the informal system of dispute resolutions including the Nyaya Panchayats. They mobilized social action groups, public spirited citizens and a section of lawyers to experiment settlement of disputes outside the courts.[249] They were of the opinion that to have an effective system it must be informal, least expensive, generally deprofessionalized, expeditious and justice oriented. Justice Desai, to encourage participation of people in the system, circulated a paper to all the Bar Associations in the country in which he cautioned, "*If we fail in this endeavour, history is not going to pardon us, the time is running out for all of us.*"[250]

The setting up of the Committee for Implementing Legal Aid Schemes (CILAS) by the Union Government in 1980 under the Chairmanship of Justice P.N. Bhagwati and later on under the Chairmanship of Justice R.N. Mishra gave a further impetus to the legal aid movement in general and the concept of legal Aid camps and Lok Adalat in particular.[251] Hence, the Lok Adalat movement as a part of the strategy of Legal Aid Movement was started in Gujarat in March, 1982. The first Lok Adalat was held at village "Una" in Junagarh District and inauguarated by justice D.A. Desai, the then judge of the Supreme Court of India. Keeping in view the successful working of Lok Adalats, the Lok Adalat programme was adopted by other states, such as Andhra Pradesh, Bihar, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Uttar Pradesh, and the Union Territories of Delhi, Pondicherry, etc. [252]

[248] See Report of the Gujarat Legal Aid Committee, 1971; Report on Processual justice to the People, 1973; and Report on Juridicare: Equal Justice – Social Justice, 1977.

[249] P. Bhargava, Lok Adalat : Justice at the door steps (1998) 16-17
[250] Id. 17
[251] Id.
[252] Id. 18

The Lok Adalats, which were functioning on an informalbasis, had got statutory recognition under the Legal Services Authorities Act, 1987 (for brevity 'the Act')[253]. The Act came into force on account of several amendments on November 9, 1995. The Act contains the detailed provisions about the set-up of Lok Adalats, their jurisdiction, powers, procedure and functioning, etc. The Act has been again amended by the Parliament, with the intention to constitute 'Permanent Lok Adalats' for deciding the disputes concerning 'Public Utility Services'. The objective of bringing this Act into existence was to devise more ways of reaching the poor man and evolving speedy and less expansive system of administration of justice. Now, the Lok Adalat system is working in accordance with the provisions of the Act.

## CONCLUSION

At last, it may be summed up that Lok Adalats are not of recent origin in India. The administration of justice by village panchayats through concomitant people's participation is as old as the Indian village itself. The system of Lok Adalats, by whatever name, has been called for dispensation of justice from time to time. This system by panches or elders of village or mediators had been popular and prevalent even from Vedic times. At that time, the people's court decided the matters of the villagers, guilds, soldiers or artisans. These courts were consisted of their own representatives or elders. The members of these courts knew about the disputants, witnesses and facts of the dispute and so it was not difficult for them to provide justice speedily to the parties. The courts were not bound to follow the rigid technical procedural laws such as Civil Procedure Code, Criminal Procedure Code and the Evidence Act, etc. The procedure adopted by these courts was simple, informal, and systematic and based on the traditions, usages and customary laws of land. The courts were not required to have any type of legal or technical qualification. They decided both civil and criminal matters except serious crimes on the basis of common sense. The basic feature of these courts was that the people relied on the courts for the resolution of their disputes.

[253] Act No.39 0f 1987 ( As amended by the Legal Services Authorities (Amendment) Act,1994 (59 of 1994) and ( 1 of 1996)

These people's courts or village panchayats were appreciated because they encouraged the principle of self government, reduced the burden of the central administration and helped the cause of justice. The people's courts or village panchayats had also functioned during the period of Muslim rule. The Muslim rulers established their own royal courts system but they did not interfere in the working of the people's courts at the lowest level. These courts did not directly come under the supervision of the Muslim rulers. They continued adjudicating the disputes with minor variations in accordance with the customs or usages of the locality, family, caste or trade. These people's court dispensed justice for a long time and existed even at the time of the commencement of British rule in India. In beginning, the Britishers inducted Indians to discharge the judicial functions through their people's courts or village panchayats but after 1861, they moulded the Indian legal system according to their vested interests and established the hierarchy of courts on the basis of British Judicial system.

After Independence the reports of Law Commission and various committees emphasized on the revival of the traditional form of dispute resolution system at the village level, with the object to bring justice to the door-steps of the poor and make it cheapily, easily, informal and expeditiously available to them. The people's courts with the name of Nyaya panchayats had also decided the cases in various states. But these nyaya panchayats did not function effectively therefore these were abolished. Thereafter, the modern type of Lok Adalat system came into existence in the year of 1982, which got the statutory status with the enforcement of the Legal Services Authorities Act, 1987, on November 9, 1995. The basic objectives of the Act is to evolve a mechanism in order to provide free and competent legal services to the weaker sections of the society and to organize Lok Adalat so that operation of legal system promotes justice on the basis of equal opportunities.