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INSTITUTIONALISING THE LOK ADALAT IN THE JUSTICE DELIVERY SYSTEM: "ORGANISATION & PROCEDURE PLANNING IN MATRIMONIAL CASES".

By
D.K.Sampath

For Readers who are not of Indian origin

The words "LOK" & "ADALAT" are from the Hindi language. Lok Adalat means people's forum. It is conceived as a programme where disputants with unequal bargaining power can meet and negotiate on an equal footing. It is informal and submission is voluntary. Often cases pending before court are off-loaded to Lok Adalat with consent of parties for a negotiated settlement, directly or with the assistance of counsel. For instance claims for civil damages for highway accident victims against insurance companies or claims for compensation for value of lands compulsorily acquired by government frequently figure in such programmes as they are conducive to a rough and ready assessment.

This has been institutionalised in The Arbitration and Conciliation Act passed by Indian Parliament in 1996.

INTRODUCTION:

The twin strength of the Lok Adalat is the informality and the flexibility, so characteristic of it. Now that the Legal Services Act, 1987 has given Lok Adalat a statutory basis, it is time to pay attention to its organisation. A word of caution; whenever a particular programme is institutionalised, the structure it acquires in the process renders it rigid. It runs the risk of becoming unresponsive to the changing needs of the situation that may emerge in the course of settlement of disputes. The structure should follow the function. Hence the procedure should be such that the informality and flexibility are preserved with a view to promote its function of finding a consensus. The Adalat must project an image of caring for the parties. This will enhance its credibility. No procedure as such; but you cannot dispense with a few ground rules, if a sense of direction is to inform the activity.

THREE STAGES:

Lok Adalat proceedings may be divided in to three stages for the purpose of study though they overlap.

Stage.I Initial dialogue

Stage.II : Negotiations

Stage.III : Agreement and after

STAGE.I : INITIAL DIALOGUE:

By initial dialogue is meant the exchange of information between the Adalat and the disputing parties. It is a two way flow of information. As of now, the parties attend the Adalat in total ignorance of what it is all about. This affects their anticipation. In return their attitude is affected. You cannot expect cooperation from such parties. Can the parties be furnished with a brief guidelines in regional language on these points along with the request to attend the Adalat ? If the ground rules are known to both the spouses before they start the talks, it will avoid embarrassments to them.

Information is the life blood of dispute resolution. The other part of the exchange is when those who conduct the Adalat have to gather all the relevant information from the parties about the dispute. It is best done orally as parties may hesitate to commit themselves in writing on some matters, particularly if a case is pending in court. It should not be like the presentation by a counsel to court. While speaking about the rights asserted and denied, emotions will sway the parties, particularly in matrimonial disputes. Emotions should not be suppressed at the Adalat by presenting an uncaring face. Feelings are as important as facts in finding a consensus. The procedure must provide for an uninhibited presentation of the rival versions by both parties without interruptions. Active listening by the Adalat is required. The person conducting the adalat should play an active role in encouraging the reticent to speak out and the voluble to be relevant. If the husband tries to intimidate the wife, separate sessions for each of the spouses may be tried, at least at the initial stages.

The disputants should know about the nature of the proceedings in the adalat. How would his or her problem be approached ? What facts and circumstances would be needed at the talks ? How to negotiate ? Are documents looked in to ? Need they be proved ? What help would the adalat extend to the party, particularly the weaker party in negotiating a settlement ? Should one bring witnesses ? Would there be cross examinations ? Would the proceedings be recorded ? How final is what is agreed upon ?

STAGE.II : NEGOTIATIONS:

This is the most important part of the Adalat proceedings. It is desirable that the spouses themselves are involved in negotiating a settlement. After all they have known each other ever since their wedding and in some cases, perhaps, even earlier. They should know what bothers them. Negotiations have a better chance of success if the efforts are directed to specifics. Each party would have come to the Adalat with some expectations about the outcome, whether he or she wants restoration of marital relationship or seeks to sever the tie but retain the status, asking for maintenance, or aims at a divorce. Ascertaining this clearly would give a purpose and direction to the talks. For instance, if both agree that they would give their marriage another chance, then the focus in the talks would be on eliminating factors which make such resumption difficult. The aim is to restructure their relationship. The thrust would be to create a new situation where they can live with dignity. At this stage, their relations may have to be involved in the negotiations. In our society they have a say in the matter, particularly the parents on both sides. The totality of the problem has to be tackled without losing focus on the specifics.

No allocation of blame:

During negotiations, party should be encouraged to look forward to organise their mutual relationship. Apportionment of guilt for the past conflicts and recriminations have to be avoided. Of course, the spouses have to be allowed to talk about their marital problems freely so that they may unwind their tension. But that should go on endlessly, increasing the bitterness. Thus, the Adalat should keep the negotiations on a track to consensus.

Helping hand:

The person in charge of the Adalat has to help the weaker of the spouses, often the wife, to identify the choices open to them in arriving at a solution. All the same, the final choice should be the party's. The Adalat should not impose its values and views on the disputants. If the parties are illiterate and cannot structure a settlement, they may be helped along step by step towards an agreed solution. The consequence of each step may be explained to them before they commit themselves to it.

Posturing:

Court model of presentation is familiar to the parties. The Adalat is usually conducted by lawyers and retired judges. If it is a pending case, the parties are represented by the lawyers at the Adalat too. Thus the Adalat proceedings fall into an adversarial pattern inevitably. This has to be avoided. Otherwise the purpose of the Adalat, one of consensus, will be defeated. Parties would recount their respective versions in a way in which they themselves come out in their best colours. Such posturing should be discouraged by the Adalat. Whenever omissions or exaggerations are indulged in by a party, the Adalat has to deflect him or her by open ended questions, like "what happened next?". A positive and steering role for the Adalat.

Negotiating skills:

The spouses should be encouraged to give it a thought as to how far he or she would yield in making concessions to the other side. Similarly, they should make up their mind as to what their minimum demands would be. The Adalat should not be content with merely scaling down or up the claims and counter claims with a view to finding a meeting point. The aim should be to turn the disputing parties around to a joint search for a new situation in which the rights of both parties could be reconciled. The functioning style of the Adalat need not be cramped by strict rules of evidence. No rigid rules of admissibility. Even copies can be look into. No fixed turns for the parties to speak, nor duration. Whatever promotes a settlement is relevant.

Face management:

When emotions sway the parties, he or she does not care for the dignity of the other party. Once the parties lose their dignity, the negotiations would be a non-starter. In our society, a favourable image is all important. Loss of face is catastrophic to the prospect of settlement. Face saving would be a salvage operation urgently undertaken to put the talks back on track. A presence of a third party, the Adalat, helps the disputants to undertake such an exercise. E.Goffman, in his article, "On face work", in *Psychiatry*, 1955, (pp 213-231) defined "face" as the positive social value that a person effectively claims for himself or herself by the line that others assume he or she has taken during a particular contact, where "line" is a pattern of behaviour that reflects impressions of self, others and the situation. A loss of face results in embarrassment and in consequence, tension. The party becomes unresponsive.

Self image:

Thus, during negotiations between the spouses, their self image, their mutual image and their perception of marriage in general and their marriage in particular would certainly emerge, influence and control the flow of the negotiations. If a given episode brings out the party in not so creditable a colour, the Adalat should strive to restore his face when he is embarrassed or better still, should help the party manage it himself. Otherwise the communication between the parties would suffer and then, the talks would stall. The procedure at the adalat should allow exercise of tact and diplomacy. It

should project an image of being empathic, competent, trustworthy and impartial. The last word should be with party and not the Adalat.

Challenge:

During negotiations, the Adalat should preempt and avoid situations of any party throwing a challenge or flinging an ultimatum as they are conflict language, not conducive to the efforts at conciliation. Such an attitude would stifle all response from and choice by the other party.

Focus according to needs:

If it is a settlement of differences between a couple still living together, a promotion of mutual understanding is the aim. If the negotiating parties are separated spouses, then reunion, if they want it, has to provide for elimination of divisive factors. If they agree to separate, the Adalat should ensure such separation with dignity. Maintenance and child custody have to be negotiated. A joint petition for divorce may come up for negotiation in cases where the parties have already made up their mind to terminate the marriage but seek assistance only in working it out amicably. A contested divorce may embitter them further. Their child too will have to pay the price.

Child custody:

The child is often the victim when parents quarrel. The bewilderment of the puzzled child or the distress of the emotionally disturbed child should decide the degree and manner of the involvement of the child during the negotiations between the child's parents. The procedure at the adalat should provide for the input of the child in the talks for settlement. If the child is 8 years or above, direct participation of the child may be tried depending on how far the child is already involved in the dispute and how perceptive the child is. The child's preference may be ascertained in the presence of the parents. If the Adalat thinks fit, a session with the child alone would avoid embarrassment to the child and the parents. In suitable cases, the Adalat may talk to the child and convey to the parents the child's view as the Adalat's perception. The child being tutored to speak in a particular way may be more readily seen in such sessions. Even in cases where the child is too young to express his or her views, it would help a settlement in the best interest of the child, if the Adalat talks to the child. Visitation agreements, not very common in our society, may be tried amongst educated and working parents. The Adalat strives to ascertain the best interest of the child.

STAGE.III : AGREEMENT & AFTER:

This is the final stage. The decree will be in terms of the consensus. Hence the agreement should reflect clearly, concisely and in simple language the consensus. All language suggestive of apportionment of blame may be avoided. The mutual obligations may be balanced so that neither party may find it loaded against him or her. It should be drafted in a language known to the parties. It should be read out, explained and if need be, revised till both the spouses are satisfied with it. If they seek time to consider the matter further before signing, they need not be hustled. The relations who have helped in arriving at the settlement may attest the parties' signature. That would ensure their cooperation in the implementation of what is agreed upon. Satisfaction by execution should be the last resort in Adalats.

The primary objective of Lok Adalats is to foster conciliation as a culture. To achieve this, the organisation has to be flexible and the procedure, informal.