ALTERNATIVE MODES OF ACCESS TO JUSTICE

Imran Mohd. Khan*

INTRODUCTION

The phrase "access to justice" cannot be easily defined. It is a political, legal, and rhetorical symbol of undeniable power and attractiveness for the subjects of statecraft. Access to justice has an intrinsic nexus with the term "justice", in the sense that it is its minimum prerequisite. The notion of justice evokes the cognition of the rule of law, of the resolution of conflicts, of institutions that make law and of those who enforce it; it expresses fairness and the implicit recognition of the principle of equality.[1]

Access to justice relates to the ease of entry to a legal institution as also to the nature of the de jure fact that carries its promise.[2] The concept of access to justice has undergone an important transformation; earlier a right of access to judicial protection meant essentially the aggrieved individuals formal right to merely litigate or defend a claim. The reason behind this was that access to justice was a natural right and natural rights did not require affirmative state action. However with the emergence of the concept of welfare state the right of access to justice has gained special attention and it has become right of effective access to justice. In the modern, egalitarian legal system the effective access to justice is regarded as the most basic human right which not only proclaims but guarantees the legal rights of all.[3]

In today's world, "Access to justice" means having recourse to an affordable, quick, satisfactory settlement of disputes from a credible forum.[4] The words "access to justice" serve to focus on two basic purposes of legal system- the system by which people may vindicate their rights

* 3rd Additional Civil Judge (J.D.), Haridwar

1 Rawl John, "A Theory of Justice" (Harvard University press, Edition 1997) p 11

2 This view is contrary to the general notion wherein the nature of justice as contained in the law (procedural or otherwise) is considered beyond the scope of this head.

3 Cappilletti, M., Garth, Bryant, Access to Justice, Vol I, The Florence Access to Justice Project, Sijthoff and Noordoff, Milan, 1978, p. 9.

4 P P Rao, Access to Justice and delay in disposal of cases, Indian Bar Review, vol-30, 2003, pp 208

and/or resolve their disputes under the general auspices of the state. Thus it requires that the system, firstly, must be equally accessible to all, and second, it must lead to results that are individually and socially just.

Access to justice can be broadly categorized into formal and informal access to justice. The formal access to justice is basically adjudication of disputes by the courts which follow the rules of civil and criminal procedure. This mode of justice delivery system though the primary model, has numerous shortcomings such as cost hurdles, inordinate delays and other technical hurdles like laches and execution of courts order. On the other hand informal access to justice includes alternative modes of dispute resolution such as arbitration, conciliation, mediation, lok adalats and nyaya panchayats. Contrary to what the nomenclature suggests, alternative modes are more of a supplementary phenomenon and were devised with that very intent. However, one has to remember that these methods of dispute resolution are required to always adhere to certain basic postulates of dispute resolution - parity of power between the contesting parties being one such postulate. If they in their very conceptions offer scope for coercion or influence, they cannot be considered to be imparting justice. It has to be remembered that justice is the beacon of any dispute resolution method and not just mere settlement of dispute. If mere settlement becomes the beacon, then there comes the element of power imbalance and as a result, the society becomes lop-sided leading to tussle and eventual conflict between power holders and power addressees.

In the present paper, the researcher has tried to focus on the informal modes of Access to justice and how it can help in effectively supplementing the formal mode of the same. The process of adjudication as practiced in Courts presently and the lacunas inherent therein are also made the subject matter of study in the present paper.

ACCESS TO JUSTICE IN INDIA

The present mode of access to justice through courts, followed in India is based on adversarial legalism. The adversarial system of law is generally followed in common law countries, and is characterized by the state's neutrality and in which the parties are responsible for initiating and conducting litigation except in criminal matters wherein the state initiates

the proceedings.[5] This mode of access to justice is an inheritance from the British and was implemented by the British government to exploit the Indian masses. The whole set up was for the benefit of the power holders and not for the power addressees. In this method there was no parity of power between the parties to the dispute and it was plagued by high cost, delay, uncertainty and exploitation of parties by advocates. This mode of access to justice displaced the community justice system as well as the last vestiges of the inquisitorial model, which was prevalent in ancient India. This inherited mode of access to justice is unable to deliver as it is a relic of colonial rule, was born out of the need of the colonial masters to perpetuate their dominance and was thus primarily designed for the same, with 'justice' being more or less an afterthought. It was fashioned to provide a semblance of justice so as to avoid dissent, which is but the natural fallout of denial of the same. Real and effective justice, for obvious reasons, was not a priority of the colonial masters. The system prevalent then, and unfortunately for us, still in continuation is inherently partial to the well heeled. It discriminates on economic grounds, creating disparities right at the outset, de facto denying to some even access to the institutions of justice delivery. And the de facto denial is a consequence of us trying to work de jure equality[6] through a mechanism at odds with it, on account it being inherently iniquitous.

After the independence when the Constitution of India came into being the approach towards access to justice was redesigned and modified, and an attempt was made to bring parity of power in modes of dispute resolution. The preamble of the Indian Constitution resolves to secure for all its citizens, justice-social, economic and political. Further, Article 14 of the Indian Constitution reads as follows: "Equality before Law - The State shall not deny to any person equality before the law and the equal protection of the laws within the territory of India." The words "equal protection of laws" indicates two things: Firstly that every person is entitled to protection of all the laws of the land, and secondly, every person within Indian territory is equally entitled to that protection.

Article 14 casts a duty on the State to deliver the substantial promise of the laws, in other words the state has been imposed with a

---

5 'cited in' http://en.wikipedia.org/wiki/Adversarial_system

6 See Article 14 of the Constitution of India.

duty of delivering justice to all the people within the territory of India. In addition to this, Article 256 of the Indian Constitution provides for two important things firstly, it obliges the State governments to implement the laws, which are the laws passed by the State and Union Legislatures. Secondly, on failure to do so, the Union government is under an obligation to direct the State government to implement the laws.[7] Thus under the Constitution, a strict duty is cast on the State to ensure that there is compliance with every law. Therefore from the abovementioned, it is logical to conclude that even the violation of a private right casts a duty upon the state to initiate proceeding against the offender.

Thus, from a reading of the abovementioned provisions one can infer that the Constitution discarded the adversarial mode of adjudication and impliedly adopted the inquisitorial mode. But that idea, unfortunately has not reified as yet, and the old model though in dissonance with fundamental provisions of our Constitution is still operative.

ACCESS TO JUSTICE IN ANCIENT INDIA

In the ancient India, legal process was governed by the principles of Rajadharma, which was akin to modern day Constitutional law. Rajdharma unequivocally stated the laws (dharmas) precedence over the King. The law was the king of kings and nothing was superior to law. All Dharmas merged into the philosophy of Rajadharma and it was therefore, the paramount Dharma.[8] The ancient polity could in fact serve as a classic example of a trans- personalized power system.

Rajadharma envisaged a mechanism wherein the mere fact of information of violation was enough to set the law into motion. The King, under the codes of Rajdharma was bound to take cognizance, and therefore bringing a matter to his notice was enough to render it fit for judicial proceeding. Furthermore procedural law was not much emphasized in ancient India and this in turn was in keeping with the rule that justice shall never be denied on account of the mere technicalities of the law. Under the principles of Rajdharma the administration of justice was accorded great importance for Rajdharma declared the same to be the personal

---

7 See Article 256 of Constitution of India.

8 Justice M. Ramajois, "Legal and Constitutional History of India", (Delhi, Universal Law Publishing Company, 2004), p. 578.

responsibility of the King. He was required to preside over the highest court and render justice to the litigants, as well as punish the offenders in an impartial manner.[9]

"Law is the king of the kings; nothing is superior to the law; the law aided by the power of the king enables the weak to prevail over the strong."[10]

The beauty of this verse is that it emphasis on the parity of power between the parties and if there is no parity of power than it is the duty of the king i.e., executive to provide help to the disadvantaged so as effectuate the equality principle. Parity of power between the parties was maintained under all circumstances.

Kautilya stressed the importance of personal attention to be given by the King at judicial work.

Kaut. P. 38 (p. 41-42s)

"All urgent cases should be heard once, but never be put off; for such postponement may complicate matters and make the decision even more difficult."[11]

The above verses hint that there should not be any hindrance in access to justice and it is the duty of the state to provide easy access to justice. The King was exhorted to ensure speedy justice and access was not restricted by any covert or overt means. If any one injured on account of violation of a law of the Smiritis were to simply inform the King, the matter would be fit for judicial proceeding.[12] Thereafter the onus of investigation in order to get to the bottom of the matter was the state's; which was then in keeping with the concept of a welfare state of now.

In the medieval period also during the rule of Mughal Emperor Jahangir, Justice Delivery was regarded as the most important duty of the state. To ensure easy and obstacle free access to justice, a gong was hung outside the palace of the Emperor, a person seeking justice had to

---

[9] Ibid.

[10] Justice M. Ramajois, "Seeds of Modern Public Law in Ancient Indian Jurisprudence and Human Rights-Bharatiya Values", (Lucknow, Published by Eastern Book Company, Edition, 200), p. 24.

[11] Supra no. 11 p 616

[12] Ibid p. 516.

just pull the chain in order to have his grievances redressed by none other than the Emperor himself. The whole process underscored the importance of a mechanism that made possible equitable and unrestricted access to justice.

INFORMAL ACCESS TO JUSTICE.

What does informal access to justice mean? There is as such no definition of informal access to justice, but as the name itself suggest, it means the "access to justice" which does not follow any prescribed procedure for adjudication of disputes. Unlike a court which is a formal mode of access to justice, in informal modes of access there is not strict adherence to procedural laws and the laws of evidence. Further, parties are free to represent themselves, without taking the help of an advocate and there are no formalities in respect of filing the suit etc. and other such technicalities as followed in the regular courts.

But the fundamental question that arises is that when we have the formal system of adjudication in the form of courts, why then are the informal modes required? There are many reasons for adopting the informal modes of access to justice: First and foremost, it helps to dispose of a large number of trivial cases summarily and thus relieves the burden of regular courts. This is facilitated by the relaxation in rules of procedure and evidence, and as a corollary results in a relatively inexpensive settlement of disputes. Thirdly, cases are decided in a manner more befitting a compromise than adjudication and therefore the antagonism that follows in the wake of litigation is greatly reduced. Fourthly, it is more practical that matters relating to personal laws like divorce, maintenance etc. and other non compoundable criminal matters are settled through these means, for it works out in the best interests of both citizens and the state. It must, however, always be remembered that informal modes are to be supplemental to the convential modes of access and not to ever substitute it. They, as the nomenclature suggests, make access more accessible by ridding it of excessive red tape, but this is not to be construed as affording to the administering instrumentality the space to subvert or overlook certain essential underlying principles, chief among them being the maintainence of the principle of parity. For that would defeat the very purpose of their being, on account of it seriously vitiating the quality of justice to be delivered.

To impress upon this, it would be appropriate to mention that any justice delivery mechanisms, formal or informal ought to be able to withstand the test of the power spectrum as enunciated by Prof. Julius Stone.[13]

The informal modes of access to justice include Nyaya Panchayats, lok adalats, Negotiation, Arbitration, Conciliation, Mediation and the Ombudsman.

1. NYAYA PANCHAYAT

Nyaya Panchayat is one of the oldest institutions in our country. Literally the terms means the "coming together of five persons", hence, a council, meeting or court consisting of five or more person of a village assembled to judge disputes or determine group policy.[14] Kautilya in his scholarly work, the Arthashastra has discussed about the institution of Panchayat working in India at that time. In the ancient India, the panchayats were the courts having jurisdiction over the members of different castes and occupations, inhabitants of the same village or town. The panchayats were independent in their working although the king used to issue directives to them, but that were based on the traditions, the rule of law and were not governed by his personal whims and fancies, rather the king used to be the guardian of the panchayats. The qualification for the membership of panchayats was that a person be well versed in Vedic dharma, self controlled, well born, noble and selfless, experienced and capable. The members of these panchayats were considered the best judges of the merits of a case as they lived in that very place where a given dispute arose. They decided both the civil and criminal matters and their powers ordinarily were not confined to cases within any financial limit. The fact that the members of the court came from the very village had a salutary effect on the litigants. The institution of nyaya Panchayat continued to function with minor variations during the Muslim rule also, but its downfall started with the advent of the British who established the formal courts for adjudicating civil and criminal matters.[15]

---

[13] Supra 10 p 598

[14] Upendra Bahakshi and Marc Galanter, Panchayat Justice: An Indian Experiment in Legal Access, ed by M. Capelletti and Bryant Garth, Access to Justice- a world Survey, vol- III (Sijhoff and Noordhpff, Milan:1978), p. 343.

[15] Mathur, S N "Nyaya Panchayat as Instrument of Justice" (New Delhi, Published by Concept Publication Edition 1997) pg 26

After Independence several attempts were made to revive Nyaya Panchayat as part of strengthening panchayats on the basis of the Directive Principles of State Policy of the Constitution. Article 40 of the Constitution enjoins the state to organize village Panchayat, another directive principle article 50 directs it to take steps to separate the judiciary from executive.

Nyaya Panchayat usually covers an area of 7 to 10 villages and a population of 14,000 to 15,000. The members of Nyaya Panchayat are elected by the members of Gram Panchayat which itself is an elected body.[16]

The essential features of adjudication of disputes by the Nyaya Panchayat are as follows:

a) The procedure of Nyaya Panchayat is very simple and it is very flexible in functioning.

b) The Nyaya Panchayats are not required to follow the elaborate rules of civil or criminal procedure or the laws of limitation of evidence.

c) The principle of natural justice is followed in the proceedings.

d) A complaint can be made orally or in writing.

e) A legal practitioner is not allowed to plead or act on the behalf of any party.

f) Statutes relating to court fees do not apply, only a minor fee is levied.

g) A judgment is written which, after being read out in open court, is signed by the parties, signifying the communication of judgment to them. Witnesses, if any are examined on oath or solemn affirmation.[17]

The members of Nyaya Panchayat now are elected unlike in the traditional panchayats in ancient India where the respected and elderly people of the village who were noble, selfless, experienced and capable were appointed. So the political imperatives will come into play whether consciously or unconsciously and will jeopardize justice delivery. Thus the influence count and ethical will not be satisfied. A study in Uttar Pradesh

[16] However in Uttar Pradesh the method of election with nomination is followed.
[17] Supra 17 p. 365.

reveals that the powerful factions in village influence the decision making of nyaya Panchayat substantially in their favour at the cost of justice.[18] Thus even though Nyaya Panchayat is an institutionalized system, and the power sought to be formally depersonalized, the influence of external political considerations cannot be wholly ruled out, because its members are first and foremost politicians having elaborate executive functions in their context, and therefore the danger of extraneous circumstances marring the delivery of justice. A contrary argument was expressed by the Law Commission, in its fourteenth report, it expressed that the nominated panches may not "command the complete confidence of the villagers"; nominated panches may be impartial, but the nominating officer may lack "first hand knowledge of local conditions"; in that event, "the freely expressed will of the villagers, in substance will be replaced by untrustworthy recommendations of subordinate officials."[19]

2. LOK ADALAT

The Legal Services Authority Act, 1987 provides for setting up of Lok Adalats. The purpose of establishing the lok adalats is two fold firstly, is to provide people a quick, accessible and non-technical forum for dispute resolution and secondly to help the courts to clear the backlog of arrears of cases.

The lok adalats is presided over by the sitting judge or retired judicial officer as the chairman with two other members, usually a lawyer and social worker. The lok adalats seeks to resolve the dispute through conciliation and persuasive means.[20] It uses a simple method which is devoid of formal procedures of regular court; the procedural laws and the Evidence Act are not strictly followed while assessing the merits of the claim. There is no provision of court fees for the adjudication of dispute. The lok adalats can also try the cases pending in the court and the fees paid for these cases will be refunded if the dispute is settled at the lok adalats. Resolving disputes through lok adalats not only minimizes litigation expenditure, it saves valuable time of parties and their witnesses and also facilitates inexpensive and prompt remedy appropriately to the satisfaction

[18] Supra 17 p 362

[19] Ibid

[20] P B Shankar Rao, Establishment of Permanent Lok Adalats- A bane or boon? Indian Bar Review, Vol. XXXI) 2003 p. 53.

of both the parties.[21] The main condition for lok adalats is that both parties should agree for settlement. The decision of lok adalats is binding on the parties to the dispute and its order is capable of execution through process. No appeal lies against the order of the lok adalats.

One major drawback in concept of lok adalats is that a case can be taken to lok adalats only when the petitioner and claimant want the same, thereby indicating its conciliatory nature. This, the practicability notwithstanding, is significant of a cloaked compromise wherein both parties agree to forego a portion of their rights for the sake of avoiding incommodiousness. Such an approach also curries favour with the state, which inveigles the public to dilute their legal claims by offering alternatives to the cumbersome and protracted procedures of the formal modes. If looked at sorely from the legal point of view, this attitude of the states' is an out and out abdication of one its primary duties, namely that of ensuring justice. The regular or formal mode of justice delivery being fashioned as to not only inconvenience, but at times also harass the justice seeker is the substrate from which the injustices inherent in all of its subsidiary justice delivery mechanisms spring forth. Therefore what happens is this; firstly the strict promise of the law is diluted by the inconsistencies that are built into its processes, secondly an offer of conciliatory alternatives wherein the parties to a dispute are encouraged to reach some form of agreement, irrespective of whether such strictly conforms to the promise of the law or not is made. There is no ordering of fact according to provisions of law. Further conciliation involves waiver of right which patently violates Article 14 of the Constitution. All of which is possible and occasioned by the already mentioned fundamental flaws of the formal system.

The institution of lok adalats which was meant to be simple and hurdle less system of adjudication is now more or less working like a formal court in which parties are more often than not represented by the advocates. The system, as was envisaged, did allow for representation by advocates though it did not require it, and only at the parties' convenience. Yet in making space for advocates, the principle of parity is diluted. The

---

[21] Singh Avtar "Law of Arbitration and Conciliation" (Lucknow, Published by Eastern Book Company, Edition 2002) p. 334.

hiring of advocates to argue the matter puts parties at an unequal footing, the economically better off being at liberty to hire the better intellectual ability.

3. NEGOTIATION

It is one of most fundamental way of dispute resolution. In negotiation the parties to dispute can, on their own motion, start a process of negotiations through correspondence or through one or two mediators with a view to finding a mutually acceptable solution of the problems.[22] The advantage of resorting to negotiation is that it enables the parties to iron out their differences by face to face interaction. It protects and preserves personal and business, secrets, relationships and reputations, which might otherwise be impaired by the adversarial process. It avoids unnecessary acrimony, anguish and expense. It heals the wounds and remedies the pains caused by party-frictions. A recurring theme of problem solving negotiation is looking beyond stated aspirations and trying to assess underlying needs or preferences.

Negotiation, by definition, excludes the participation of an authority that has the obligation or the right to apply a particular rule to the issue in dispute.[23] A negotiation basically depends upon the bargaining power of the parties. Many other factors like maintaining good relation with the opposing party results in compromising legal rights. So we can say that the method of negotiation is high on the coercion band, and also on the influence band. Since a number of interests get jeopardized in the process, it is also high on interest affected band. In negotiation parties are free to waive their right which is against the principles of Constitutional law enshrined in article 14. The advantage of negotiations is that time is saved and thus time count goes in favour of the process of negotiation. There is a fundamental question comes that comes to mind with regards the justice delivering capabilities such alternative dispute resolution mechanisms. The priority almost never is to affect a consummately just outcome strictly according to law; in fact other considerations which if viewed in isolation from the pragmatic exigencies that necessitate them, and which would by

---

[22] Supra 24 pg 345

[23] Klaus- Friedrich Koch, Access to justice, ed. by M Capilletti and Bryant Garth Access to Justice- A World Survey, (Sijhoff and Noordhpff, Milan:1978), p 4

their very consideration and nature be inimical to the object of justice, take precedence. The underlying sentiment here being that one is ready to accept a compromise as a complete restoration of his/her position according to law being highly unlikely on account of the ineptness of the instrumentality or its adopted modalities, or both. What lies beneath the acceptance and promotion of modes such as negotiation, mediation and the like is to a great degree the loss of faith in the states' ability to accord justice. The rise and prevalence of such models is also illustrative of the perceptible change in the social consciousness, the deliverance of justice no more holds its prior revered position, its been upstaged by the mundane; such as self preservation and protection of one's interest. It is more than apparent that the informal modes are designed more to protect and preserve interests than uphold law and justice.

4. MEDIATION

It is the most frequently adopted mode of informal access to justice. In this process the parties to the dispute engages the assistance of impartial third party who act as a mediator. Mediator is a facilitating intermediary who has no authority to make any binding decisions, but who uses various procedure, techniques and skills to help the parties to resolve their dispute by arriving at amicable agreement without adjudication.[24]

The process of mediation is not a determination but a facilitated negotiation. The parties are free to evaluate the law and a fact, even to err in law, is fact, or is important, and to walk away with no decision if either of them doesn't like the deal that is offered.[25]

In the process of mediation like negotiation parties are free to waive their right which is against the principles of constitutional law enshrined in article 14. Moreover parties are free to evaluate and even to err in law so it doesn't satisfies ethical count. There is also no obligation to comply with the decision of the mediator so the coercion count is also not satisfied. The process of mediation doesn't fit in the constitutional scheme.

---

[24] Rao P.C. "Alternative Dispute Resolution" (Delhi, Pubhlished by Universal Law Publishing Co. Pvt. Ltd, Edition 1997) pg 347

[25] Supra 27 pg 211

5. CONCILIATION

It is another important mode of informal access to justice. In this process the parties to a dispute agrees to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. Conciliator plays an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. He may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an amicable agreement.[26]

The process of conciliation is not an effective mode of dispute resolution as conciliator has no power to order a party to appear and defend a claim nor he can compel a losing party to compile with the decision. Thus it doesn't satisfy the coercion count.

6. ARBITRATION

Arbitration as an institution of dispute has been known and practiced in all civilized societies from the time immemorial. "Of all mankind's adventure in search of peace and justice, arbitration is amongst the earliest. Long before law was established or courts were organized, or judges had formulated principles of law, man had resorted to arbitration for resolving disputes". The practice of parties to a dispute referring their disputes to a person of their choice and accepting them as binding was known to ancient and medieval India.[27] Arbitration is binding procedure where the dispute is submitted for adjudication by an arbitral tribunal consisting of a sole or an odd numbers of arbitrators, which gives its decision in form of an award that finally settles the dispute and is binding on the parties. In India arbitration is governed by Arbitration and Conciliation Act of 1996.

The basic object of arbitration is to obtain a fair resolution of disputes by an impartial third party without unnecessary expense and delay. But it is in no way a cheap method of resolution of disputes. The Arbitration tribunal which consists of at least three members is paid by the parties

---

[26] 'Cited in' http://en.wikipedia.org/wiki/Conciliation_Alternative Dispute Resolution
[27] Supra 27 p 68

and their fees are also very high, so it is very costly. Moreover each party chooses one arbitrator. This gives scope to influence spectrum. Furthermore, the Supreme Court, in the case of Olga Tellis[28], has enunciated that no person can waive any of his fundamental rights. To apply this principle to the Arbitration and Conciliation Act would render section 4 of the same as being at variance with it. Section 4 of the same allows for waiver of a right in order to facilitate arbitration, and any waiver would by necessary implication amount to a denial of the guarantee enshrined in Art. 14. The equality dictum articulated in Article 14 suffers from no constraints, and cannot at given time be wished away. Any waiver of any right, fundamental or otherwise, cannot be reconciled with the equality in respect of the law that Article 14 constantly mandates.

7. OMBUDSMAN

In quest for an effective and efficient mechanism to control the administration, attention of the administrative authorities, institutions and organizations, including the legal fraternity the institution of ombudsman was created. It is a public sector institution, preferably established by the legislative branch of government, to supervise the administrative activity of the executive branch. This includes the investigation of complaints made by individuals against the mal-administration, especially by the public authorities.[29]

The traditional Ombudsman generally has the power to investigate complaints from persons that the administrative activities of the government are being conducted in an illegal or unfair manner, making findings whether or not there has been wrong based on the results of the investigations, and make recommendations for improvement if improper administrative conduct is found. Typically, the ombudsman has no power to make decisions that are binding on the government. Rather, ombudsman uses persuasions to attempt to obtain implementation of the recommendations made for change in administrative conduct. In addition the ombudsman may also have the authority to recommend changes in laws and regulations. In addition, the ombudsman can use publicity to highlight problematic

---

[28] Olga tellis v. Bombay Municipal Corporation, AIR 1986 SC 180, at 192-193

[29] Linda C Reif, "The Ombudsman, Good Governance and International Human Rights System" (Martinus Nijhoff Publisher, Edition 2004), p. 1

administrative activity through the medium of annual, and sometime special, reports to the legislature.[30]

Donald C. Rawat says that "India has the most populous Ombudsman jurisdiction in the world." Unfortunately, in India, the experience of Ombudsman does not seem to be very encouraging At Centre, the office of Ombudsman known as "Lokpal" is still in embryo. The office of Ombudsman, known and called "Lokayukt" has started functioning in some States. In the state of Karnataka the office of "lokayukta" is working quite well, but in other states office of "Lokayukt" is yet to gain momentum. The concept of "lokayukta" is in a nascent stage and the act regarding lokayukta passed by various states do not provide requisite machinery and powers. There are many shortcomings firstly office of lokayukata is responsible to state legislature, secondly it doesn't have any agencies for conducting enquiries and had to rely on state investigating agency, thirdly the recommendations made by the lokayukta are only advisory and not binding on the state government. Moreover the lokayukta should take suo motu action and there should not be formalities of filing complaint otherwise it will also tend to be formal mode instead of intended informal mode. However if the institution of lokayukta has to work effectively then it should be equipped with the requisite machinery and powers and suitable legislations has to be passed in the consonance with the constitutional mandate.

CONCLUSION

The Informal modes of access to justice are not to supplant the formal modes of access to justice rather to supplement them. But as we have already discussed in this paper that the Informal modes of access to justice which includes Nyaya Panchayats, lok adalats, Negotiation, Mediation, Conciliation, Arbitration and Institution of Ombudsman working in India, are not adhering to the principle of parity of power and are also not in consonance with the constitutional mandate. The institution of Nyaya Panchayat is providing easy access to justice to the people living in villages but it's not only about an access to justice rather one should be able to get justice. The problem is that the powerful factions of the villages are

---

[30] Linda C. Reif, "The International Omudsman Anthology" (London, Published by Kulwar Law International) p. xxiii

substantially using the nyaya panchayats for their favour at the expense of justice. The lok adalats are also working well and helping courts in relieving their burden but the approach of lok adalats towards the dispute resolution is conciliatory which involves waiver of right and it is against the article 14 of the constitution. The other mode of informal dispute resolution like negotiation, mediation and conciliation are not effective because a mediator or a conciliator has no power to order a party to appear and defend a claim. Nor can a mediator or conciliator compel the losing side to comply with a decision. Moreover these mechanism of dispute resolution they involves waiver of right which is against the article 14 of the Constitution. As far as Arbitration is concerned the award of arbitrator is binding, thus satisfying the coercion count but as the Arbitration and conciliation act provides for the waiver of the right it is against the principle enshrined in article 14 of the constitution. Another lacuna is that it is based on the adversarial model of litigation which results in delay and high costs. The institution of ombudsman popularly known as office of "lokayukta" is not provided with the requisite machinery and powers by the respective state legislation and is thus not working effectively.

Although these modes of informal access to justice were premised on good intentions, their manifest effects are to the contrary. This is confirmed by the facts as have been aforementioned in the course of this paper. The primary and fundamental flaw being that despite making access to the instrumentalities involved easier, the very quality of justice that they are employed to deliver is warped by their processes. As has been reiterated time and again through this paper, these modes are inclined more to afford convenience to the state than to deliver wholesome justice, and that holds true for the formal modes as well. The quality of justice (the use of the word justice being malapropos here) in the true sense is made ineffectual to a great extent by it being moored in inequitable postulates.

The apocryphal notion that the adversarial system sub serves the object of justice better is exposed by its inherent inconsistency with Article 14, which is as compendious an articulation of the principle of equity as possible. Article 14 impliedly advocates the implementation of an inquisitorial system premised on the parity of power. We can also draw inspirations from the principles of Rajadharma which is based on the inquisitorial pattern. What we need is model which can suit our society and principle of

Rajadharma answers the present problems of the Indian society. The principles of Rajadharma are embedded in the Constitution also. Under the Constitution it is the duty of the state to provide equal protection of laws and to enforce compliance with every law. Thus a state has to play a pro-active role in providing justice; what is required is a reading and enforcement of the Constitution in the true spirit.

BIBLIOGRAPHY

BOOKS

1. Bhakshi Upendra and Marc Galanter, Panchayat Justice: An Indian Experiment in Legal Access, ed by M. Capelletti and Bryant Garth, **Access to Justice - A World Survey**, vol- III (Sijhoff and Noordhpff, Milan:1978),
2. Koch Klaus- Friedrich, Access to Justice, ed. by M Capilletti and Bryant Garth **Access to Justice -A World Survey**, (Sijhoff and Noordhpff, Milan:1978)
3. Rao P C and William Sheffield, **Alternative Dispute Resolution, What it is and how it works**, 1st edition, (Universal Law Publishing Co Pvt, Delhi : 1997)
4. Reif Linda C, **The Ombudsman, Good Governance and International Human Rights System**, (Martinus Nijhoff Publisher, 2004),
5. Sigh Avtar, **Law of Arbitration and Conciliation**, 6th edition, (Eastern Book Company, Lucknow)
6. Stone Julius, **Legal System and Lawyer's Reasoning**, 1st edition, (Universal Law Publishing Company, New Delhi:1999)
7. Reif Linda C, **The International Ombudsman Anthology,** (Kulwar Law International, London)
8. Jois M. Rama Justice, **Legal And Constitutional History of India** Vol.2, 1st ed., (N.M. Tripathi Pvt. Ltd, Bombay, 1984)
9. Jois M. Rama Justice, **Seeds of Modern Public Law in Ancient Indian Jurisprudence and Human Rights-Bharatiya Values**, (Eastern Book Company, Lucknow, 2000)

10. S. N Mathur, **Nyaya Panchayat as Instrument of Justice** (Concept Publication, New Delhi, Edition 1997)

11. Stone Julius, **Social Dimension of Law and Justice** (Universal Publishing Company, New Delhi, Edition 1999)

JOURNALS

1. Rao P P, **Access to Justice and delay in disposal of cases**, Indian Bar Review, vol-30, 2003,

2. Shankar Rao P B, **Establishment of Permanent Lok Adalats- A ban or boon?**, Indian Bar Review, vol xxx1)2003

****