

## LOK ADALAT

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The connotation of Lok Adalat is difficult to be defined but easy to be understood and perceived. In fact, it represents the sense of justice in the hearts of people which percolates through their thinking, deeds and behaviour. It really denotes a match of sense of civilized existence of the people. While it combines with the democratic values, it produces the colours of spectrum which represent the level of democratic institutions and their efficiency to achieve the aspiration of the people. In the ultimate analysis, the spirit of Lok Adalat because “part of our cultural heritage representing our enriched sense of justice responsible for providing a vision essential for self estimation to feel a proud segment of contemporary human existence.

It is well known that Lok Adalats have created a sense of confidence in the people that there is hardly any match to it to retrieve the existing justice delivery system from the ever increasing arrears at all levels. The efficacy of Lok Adalats and the resultant people’s faith in this system lies is the under current that it knows no man made barricades and it flows through the basic human precepts of equality, good conscience, fair play and natural justice.

The magnitude of the task of providing legal forum to Lok Adalats has been a cause of concern to the judges. Jurists and all those who thought it to be the need of the day to provide it uniform and competent efficacy without hampering its inherent spirit. The whole idea was to make Lok Adalat, if not an alternate, at least a supplement to the existing justice delivery system by rendering the disputes through conciliation. This was aimed at to leave with sufficient time to the regular courts to attend to the matter of complicated and heinous nature so as to restore the people’s dwindling faith on account of unending waits for justice.

Under the Legal Services Authorities Act, 1987 the word “Lok Adalat” has been assigned a meaning which can be comprehended only by giving through the provisions of chapter VI which pertains to Lok Adalat. Under this chapter, it is enjoined upon every State Authorities or District Authority or the Supreme Court Legal Services Committee or as the case may be the Taluka Legal Services Committee to organise Lok Adalats at such intervals and pieces as it thinks fit. Every such Lok Adalat small consist of serving or retired judicial officers and such other persons having experience and qualifications which may be prescribed. This leaves sufficient scope to include members of legal professional, social workers or para legal of the area.

However, it should never be lost sight of that these statutory discussion of Lok Adalat can only bear fruits when the intrinsic strength of Lok Adalat is kept intact by sincere efforts to bring about conciliatory settlement in every case put before it without bringing about any kind of coercion threat or undue influence, allurements or mis representation.



## ADR Mechanism

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Indian Judiciary, though the most impartial constitutional authority, is plagued by inexcusable delay in the deliverance of justice. Delayed justice is treatment to denial of justice. The excruciatingly time consuming case disposal process has rendered the common man's knock on the doors of justice a frustrating experience both in terms of cost and time. The prolonged process of deliverance of justice and the exorbitantly high cost of litigation make the Indian Judiciary inaccessible to the weaker and marginalized sections of the society. In the words of Aristotle, "injustice arises when equals are treated unequally and unequal are treated equally. Justice arises when equals are treated like". Equal justice and access to justice for all are the essential principle, on which the entire system of justice stands. High Cost of litigation and prolonged process of litigation are the main reasons for putting justice beyond the means of the poor. In a country like India where 30 crores of people are living below the poverty line, and double the number ignorant of law and its process, it has greater social implications. The exploited and the victimised under privileged sections of the society are concern to suffer injustice, as seeking remedies or relief's through litigation is beyond their means. Justice is turned into injustice where "laws grind the poor and the rich men rule the law". Therefore, the challenge of a democratic country like India which ensures equality before law and equal protection to all, is to reconstruct the social order with the help of laws and legal institutions to make justice accessible to all on an equal basis. The concept of legal aid to the needy was realised in England long time back in 1215 when the Magna Carta was born. In States "to no men will we deny, to no men will we sell or delay justice or right". If an aggrieved person is unable to attain access to the Court of law to redress his grievances or defend himself, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose. It is in this context that the ADR system became relevant. Had litigation been expeditions and cheap there would have been no need to look for alternatives to legal Courts. Of course all litigations cannot be settled through ADR system.

In a Country like India which has a vast rural background, ADR is the best way to settle rural disputes. Grass-root level settlement of disputes paves the way for peaceful coexistence and hope out rancour and malice among the disputants. Had elder's settlement been acceded to, the great Kurukshetra could have been avoided. "Compromise with your adversary quickly while you are in the way with him" was the advice given by Jesus Christ. Let us be wise enough to leaven from history and follow the teachings of great visionaries.

## Alternative Dispute Resolution

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The disputants want a decision, and that too fast. As the problem of over burdened courts has been faced all over the world new solutions were searched. Various Tribunals were the answer to this search. In India, we have a number of these Tribunals. To name a few, we have Central Administrative Tribunal, Public Services Tribunal, Industrial Tribunal, Family Courts, Consumer Forum, Railway Tribunal etc. There is a demand to create new Tribunals in the fields of Human Rights and Environmental law. However the fact of the matter is that even after the formation of so many Tribunals the administration of justice has not become speedy. Thus it can be safely said that situation lies elsewhere. All over the globe the recent trend is to spirit from litigation towards Alternative Dispute Resolution (ADR) methods which primarily involve arbitrators, conciliation and mediation. The most important aspect of the ADR is that both the parties are eager to settle the matter, forget it and move forward in their respective pursuits. They do not want to adhere to the proceedings and make the matter linger on. We would do well to remember the exhortation made by John. F. Kennedy when he stated boldly: - "Let us never negotiate out of fear but let us never fear to negotiate".

Thus coming together with a clear mind to iron out the differences is the sine qua non of any ADR initiative becoming a success.

Judges and lawyers can play a great role in establishing such agencies to redress the dispute in the frame work of law applicable to parties. This will relieve traditional courts from heavy burden of adjudicating factual disputes. Courts should be used for adjudication of disputes requiring legal interpretation. This alternate redressal forum may not be replacement of courts but definitely they will aid to achieving goal of speedy justice.

It is the duty of the lawyers to create the awareness about ADR among their clients. Former Chief Justice of India, A.M. Ahmadi wrote :- "While we encourage ADR mechanism we suggest also create a culture for settlement of disputes through these mechanism. Unless the members of the Bar encourage their clients to settle their disputes through negotiations such mechanism cannot succeed".



# Right to Legal Aid

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Dispensation of justice to all, irrespective of one's social ranking and economic status, is the true test of a government based on the rule of law. Justice is the highest virtue of the human spirit, which conceives "fiat justicia ruat co eleem" i.e. "Let heaven fall, justice has to be done" is the quintessence of all philosophies human beings have ever founded. The action of justice is underlived in the maxim "suum cuique tribuere" i.e. "To render to each person his/her due". The action goes back to the injunctions of ancient Egyptian or Hebrew law to administer the laws impartially "to hear the small as well as the great". Equality of justice postulates – equality as a means of doing justice and as an end of justice. The dominant idea common to both the expressions is that of "equal justice". However, the first expression connotes, the equality of access to the Courts to "receive a just and fair treatment within the legal system". The concept of equal justice visualizes a political and legal order in which justice will be brought within the reach of all, both those blessed by their wealth and those depressed by their poverty. Legal aid has been recognised the world over as a mechanism to ensure easy and inexpensive access to justice and it has now evolved as a distinct human right beginning its journey from charity depending on the altruistic impulses of church, Kings, lawyers, and individuals – to a basic human right buttressed by the constitution, statutes and international humanitarian law to realize the substantive human rights through its procedural aim. The preamble to the Constitution invokes justice – social, economic and political as a core principle. To realize these cherished ideals of the Constitution guaranteed fundamental right to all citizens and some of these rights, specially right to equality and right to life and liberty to all persons. Both these rights are the strongest foundation of right to access to justice. The denial of a right to a person by reason of his social and economic disabilities is the violation of the right to equality. This formed the ground on which right to legal assistance at State expense in criminal proceedings was recognized as a fundamental right. The other aspect of the right to legal assistance emerges from the right to life and liberty, when a person's life is affected the moment such person is brought under the criminal justice system. The right to access to judicial remedies for defending oneself is an integral part of the right to life guaranteed under Article 21 of the constitution. Again, the right of a person arrested to be represented by a counsel was declared to be a fundamental right under Article 22(1) of the constitution.

The Constitution (Amendment) Act, 1976 incorporated Article 39A in Part IV of the constitution which provides for equal justice and free legal aid to “to remove the difficulties, which have arisen in achieving the objectives of socio economic revolution, which would end poverty, ignorance, disease and inequality of opportunity”. The incorporation of Article 39A recognized free legal aid as a non-enforceable right. However, the higher judiciary interpreted the right to life and liberty under Article 21 inclusive of right to legal aid at State expense and Article 39A was used to define the scope and content of this right.

Various strands of statutory law regime extending legal aid comprise Code of Criminal Procedure, Code of Civil Procedure, Legal Services Authority Act 1987, Mental Health Act, 1987 etc. Legal aid acquired prominents in criminal justice system vis-à-vis civil justice system, where the right is invoked to protect the life and liberty in contra distinction to property. Under criminal justice system Sec. 340 of Cr. P.C gave every arrested person, the right to be defended by a pleader but the right of an indigent accused to legal representation at State expense was also introduced in Cr. P.C. While dealing with the right to legal aid the Supreme Court categorically stated that – “the right conferred by Sec. 340(1) of Cr. P.C does not extend to a right in an accused person to be provided with a counsel by the state. The duty cast on the Magistrate is to afford him the necessary opportunity”. Article 22(1) which provides for the “right to commit and to be defended by a legal practitioner of his choice”, was read as an enabling provision to afford an opportunity to the arrested person to engage a counsel for his defence. Article 14 and Article 21 had to await judicial interpretation in the late seventies when “due process clause” was smuggled into our jurisprudence.

The incorporation of Article 39A in the constitution and the creative interpretation of Article 21 requiring the procedure to be “reasonable, just and fair”, ushered into the new era of legal aid. The Supreme Court strengthening the citadel of right of legal aid observed that “free legal assistance at State cost is a fundamental right of a person accused of an offence..... and this fundamental right is implicit in the requirement of reasonable, fair and just procedure”. [(1986) 2 SCC. 401]. The apex court settle the proposition that – “rights of the arrestees include the right to the assistance of a lawyer during interrogation”(AIR 1977 SC 610) upholding the right to legal aid of the under trials languishing in jails, the court held that “this is a constitution right of every accused person who is unable to engage a lawyer or secure legal services on account of reasons such as poverty indigence or incommunicado situation and the State is under a mandate to provide a lawyer... if..... one used of the justice so require” and the indigent accused is entitled to the right “when he is first produced before the magistrate as also when he is remanded from time to time”.