

## LEGAL SERVICES AUTHORITY ACT, 1987: NEXUS BETWEEN LEGAL AID AND LOK ADALAT

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### **ABSTRACT**

*Our country is based upon democratic law with three organs; they are Legislature, Executive and Judiciary. Judiciary plays vital role in the administration of justice. Welfare states need to uplift the weak along with rich section of society. Courts nowadays are putting up much more efforts to provide legal assistance to weaker segments and settling matters in amicable manner to save time, energy and resources of people. Legal Aid and Lok Adalat formed under Legal Services Authority Act, 1987 are doing utmost to help pursue welfare of the People.*

**KEYWORDS:** Lok Adalat, Legal Aid, Rule of Law

### **INTRODUCTION**

India is a Democratic Country based upon 'Rule of Law' which implies the concept of Constitutionalism whereby every person should be treated equally without any discrimination. No one should feel deprived either due to poverty, illiteracy or ignorance. Also, there should be no discrimination on the basis of race, creed, religion, gender etc. Thus, it creates the need for having a legal system by which equal and non-partial justice should be made available to all and that too without any unfairness, prejudices or bias. It's the foremost duty of the State to redress or solve the grievances of People so that they may live a cordial life. The Judiciary is the most potent organ to resolve disputes. 'Access to Courts' must be available for every-one be they rich or poor. Various efforts are made in this regard. Legal Services Authority Act enacted in year 1987 was enforced on November 9, 1995. It aim is to perform various function of providing legal aid, conducting seminar and camps and coordination of various authorities at Supreme Court legal services committee, High Court, Taluk legal services committee and voluntary social services institutions. Thus, legal aid must be provided to all human beings as it is a basic human right and amicable settlement through Lok Adalat must be appreciated to help people sort out their litigation. Courts are doing much effective work to redress the grievances of People and uplift their welfare.

### **Dash Stated Legal Aid**

Means providing assistance, legal advice or nominal fees to a poor person of limited means. The right to equality or equal protection of law should not be denied to any citizen solely on the basis of his being rich or poor.<sup>1</sup> It is a very comprehensive and dynamic concept which embodies the 'Rule of Law' and distributive justice as well.<sup>2</sup>

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<sup>1</sup> S.K. Dash *Legal Aid To The Poor In Indian Administrator* 1981 P 26

### **Lok Adalat**

It is a forum whereby matters of the People are solved in amicable manner and it is derived from the concept of panch parmashwar prevalent in olden times. It attained the statutory recognition under Legal Services Authority Act, 1987. Monthly Lok Adalats are organized on the last Saturday of every month. National Lok Adalats are conducted in the months of March, June, September, and December at district level. Permanent Lok Adalats are conducted to settle public utility matters in speedy and effective manner.

To improve socio-economic growth of society, legal aid or amicable settlement for speedy justice must be provided to its citizens making their access to courts approachable. It comprises of legal advice, pre-litigation expenses, court fees, lawyer fees or advocate fees and expenditure which should be provided to scheduled caste, scheduled tribe, poor, women and disabled. Also, in criminal cases accused would be provided with lawyer at the expenses of the State.

### **OBJECTIVE OF LEGAL SERVICES AUTHORITY ACT, 1987**

- To help the poor by ensuring access to justice
- To promote the welfare of people and dignity to every citizen
- Natural justice should be provided to each and every person and no one should be deprived of it
- Poor or indigent should be uplifted in order to create a welfare society. Justice should be made available to all.

### **CONSTITUTIONAL MANDATE AND RELATED PROVISION**

The Constitution of India was enacted on 26 November, 1949 but enforced on 26 January, 1950. It is the longest Constitution in the World. It aimed at fulfilling its objectives and to do so, various articles, directive principle or provisions were made.

#### **Article 14**

States that all citizens should get right of equality or equal protection of law. In order to main equilibrium and balance in a society utmost weapon is to give a sense of impartiality or non-discrimination to all, whether they are rich or poor.

#### **Article 15**

There should be no discrimination towards any citizen due to various grounds that is religion, race, creed or sex or place of birth. Various places that is shops, public entertainment, hotels, wells, tanks or roads should not made inaccessible due to discrimination. However, an exception to the section prioritizes enhancing rights of women and children by making use of required special provisions.

#### **Article 21**

Life or liberty should not be denied to any person rather than by procedure established under law. Every person acquires a right of living in a free, independent and dignified manner and he must be regulated according to the provision of law in a impartial or unbiased manner. This article gained a comprehensive and wider scope under which various rights were protected that is labor, women, environment, sexual harassment, livelihood and legal assistance.

<sup>2</sup> S.K. Sharma Jurisprudence Of Legal Aid: A Constitutional Perspective *The Academy Law Review* xiii 1989 P16

### Article 38

It is the utmost duty of State to enhance welfare of people by creating social justice and imparting social, economic or political justice to all. Now, comes the point that if facilities or provisions of law are not made available to all or they are not able to afford it due to poverty or illiteracy, then what remains the relevance of democratic structure or rule of law. Thus, justice is the mandate of the constitution and needs to be allocated to all without any discrimination. Herein, economic justice implies that due to meager or insufficient means person cannot be made to feel deprived of having access to courts, resulting in violation of very basic and fundamental rights provided by constitution. Judiciary always plays a vital role in the interpretation of legal provisions and helps to fulfill the vacuum or loop holes between law and reality or practical implication.

In *Hussainara Khatoon V State of Bihar*<sup>3</sup>, Supreme Court held that right to get legal assistance or free legal aid is a vital part of reasonable, fair & just procedure for an accused. It must be considered as included under purview of Article 21 in implied form.

In *Khatri V State of Bihar*<sup>4</sup>(Bhagalpur Blinded Prisoners Case), Despite the fact that legal-aid is considered as a fundamental right within the scope of Article 21. States have failed to implement the directions. It became utmost duty of the State to assure free legal assistance to indigent accused from which State cannot evade on the basis of financial stringency.

Article 39A introduced by 42nd Amendment to the Constitution states that it is utmost and mandatory duty of State to pursue speedy justice and ensure an uniform legal system in order to promote free legal assistance through laws, rules and legal provisions or other methods so that, no person remains deprived from justice due to any disability either due to economic or otherwise.<sup>5</sup> Thus, legal aid or speedy justice does not remain as mere directive in our country where basic rights are enforced by Constitution under Article 14, 21 and 22. Legal Service Authority Act, 1987, came as outcome of Article 39A.

### VARIOUS COMMITTEES WERE FORMED WHICH PROMPTED THE CAUSE OF LEGAL AID AND LOK ADALAT AND PAVED THE WAY TOWARDS ITS FURTHERANCE

#### Bombay Legal Aid Committee 1945

It was formed under the headship of Lord Rushcliffe which attracted the Government's attention to the report on Legal Aid and advice in England and Wales. The government was suggested to appoint similar committee on legal aid.

#### Trevor Harries Committee 1949

Suggested for establishing a mechanism for Legal Aid Services. It needs to be provided to poor or indigent accused tried of offences punishable with capital sentence. Such right was made available at the discretion of the Court.<sup>6</sup>

#### Report of Law Commission of India 1958

<sup>3</sup> AIR 1979 S.C 1371

<sup>4</sup> AIR 1981 S.C 925

<sup>5</sup> Article 39 A of The Constitution The state shall secure that operation of legal system promotes justice on a 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 due to economic, social or other disabilities.

<sup>6</sup> Recommendations Of Trevor Harries Committee On Legal Aid In West Bengal, 1950.

1st Law commission was organized under the headship of Mr. M.C. Setalvad. Equal access to justice was focused. Particular chapter was written on legal aid and issue of legal-aid was mentioned as not a minor rather a big issue. Thus, legal profession must opt to solve the issues related to legal aid to an extent if not entirely.

### **Gujarat Committee Report 1970**

On 22.06.1970 four member committee under the chairmanship of the then Hon'ble Chief Justice P.N. Bhagwati was passed by Gujarat government to scrutinize and pursue about providing legal aid in civil, criminal, revenue, labor and other proceedings to poor, indigent or persons of insufficient means and backward classes. Committee also emphasized about required steps for encouragement and financial assistance of legal aid to institutions engaged in work of such legal aid.<sup>7</sup>

### **National Conference on Legal-Aid 1970**

National Legal Aid Conference was conducted in 1970 by galaxy of eminent person that is President of India, Law Minister, Supreme Court Judges, Attorney General, leading members of Bar, Law teachers and representatives of State Government.<sup>8</sup> They emphasized on need of giving legal-aid to poor people and spreading legal awareness.

### **Processual Justice to Poor - Expert Committee Report 1973**

An Expert Committee was appointed by government on October 22, 1972 on legal-aid & advice to weak section of society and socially or economically backward section of society. It made various recommendations as:

- Assuring availability of legal aid to weaker segment or those with insufficient means
- To spread awareness of legal and Constitutional rights
- Create policy or scheme with objective of pursuing legal aid or assistance
- To recommend time, manner or method during for enforcing aforesaid scheme.

Report was submitted before the Government of India on 27 May, 1973. Committee consented with Gujarat Report on the issue of involving Nyaya-Panchayat, need for qualifying means test and 'prima-facie' case test before getting benefit of legal aid during trials as well as appellate stages of both civil and criminal cases.<sup>9</sup>

### **Report on National Juridicare: Equal Justice –Social Justice, Ministry of Law and Justice and Company Affairs 1977**

It emphasized upon infrastructure of legal services of organization with a Supreme Court Judge as head. It was an independent institution which stressed upon infrastructure of legal services with its organization, framework, rules and regulation of legal services. It was underlined that it need not be a department of Government rather independent institution headed by judge of Supreme Court. Legal Services should include spreading awareness among poor, solving their problems and starting socio-legal research into the problem so as to create a comprehensive legal aid program for welfare and upliftment of poor.

<sup>7</sup> Legal Aid Movement: Its Development And Scenario Retrieved From <http://www.legalserviceindia.com/1361Legal Aid Movement/html> Visited On 1 June 2016 At 4.12pm

<sup>8</sup> Retrieved from <http://www.sci.gov.in/pdf/supreme court report/index.pdf> Visited On 10 June, 2016 At 9.12pm

<sup>9</sup> Dr V.N Paranjape *Public Interest Litigation, Legal Aid And Lok Adalat In India* (Allahabad: Central Law Agency 2008) P 68

### Committee for Implementing Legal Aid Schemes (CILAS) 198

Under chairmanship of Justice P.N. Bhagwati, CJI (then) CILAS were organized by Indian Government to stress upon legal aid, legal literacy promotion & spreading awareness among those undergoing financial stringency. Also, focus was made upon legal aid camps through 'State Legal Aid Boards' at the doorsteps of People<sup>10</sup> and clinics in the universities or law college should be established to create optimal use of energy and resources of student community towards field of delivering legal assistance to poor. Students should be exposed to socio-economic realities of life and need to be taught how law can act as instrument of socio-economic change and help to change the situations of common man. There remained some lacunae due to lack of legal recognition so in order to conduct Lok Adalat at statutory level that is National, State or District; Legal Services Authority Act, 1987 was enacted after replacing CILAS makes provisions for free legal aid which can be availed both before the Courts and Lok Adalat to pursue justice in speedy and effective manner.

### Legal Service Authority Act, 1987 Aims

"Justice delayed is Justice denied" is well known maxim. After the institution of suit a person has to wait for long time to get the decision and taking justice from formal court system is very difficult.<sup>11</sup> Cases are filed by one person and sometimes the next generation gets the decision. A grievance of an aggrieved person needs to be solved within a prescribed time so that litigant may get justice timely.

Poor people cannot afford to bear heavy-expenses in adversarial system or formal court system should be made enable to afford it through innovative system of 'Lok Adalat'. If poor and illiterate litigants are unable to get justice, then democracy or rule of law is clearly futile. All the litigants should be enabled to have ingress and egress to the Court. Thus, they should be able to afford the services in terms of time and energy.

The concept of Lok Adalat ensures amicable settlement of cases as it helps to resolve matters through persuasion, conciliation, negotiation and meditation. It helps reduce anxiety, ill-will, time-duration and expenses as well. Persons entitled<sup>12</sup> for legal assistance include scheduled caste or scheduled tribe, victim of trafficking<sup>13</sup> or Begar that is involuntary work without payment. Article 23 prohibits making of person to render service where he was lawfully entitled not to work or to receive remuneration of services rendered by him,<sup>14</sup> women or child, disable under section 2(i) Person with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, blind or poor-vision, leprosy-cured, hearing defect, mental retarders or illness<sup>15</sup> are granted legal help. Those who suffered natural atrocities that is mass

<sup>10</sup> Sarfaraj Ahmad Khan *Lok Adalat –An Effective Alternative Dispute Resolution Mechanisms* (Delhi: APH Publication 2007 )P 65

<sup>11</sup> Tameem Zainulbhai Justice for All: Improving Lok Adalat System in India *Fordham International Law Journal* Vol 35 No 1 (2016)P 248

<sup>12</sup> Section 12 Legal Services Authority Act,1987.

<sup>13</sup> *Raj Bahadur V Legal Remembrance To The Government of West Bengal* AIR 1953 Cal 522.

<sup>14</sup> J. N Pandey *Constitutional Law of India* (Allahabad: Central Law Agency2005)P 78.

<sup>15</sup> Section 2(i) Of Person with Disabilities Act,1995. Disability" Means-

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotors disability;
- (vi) mental retardation;
- (viii) mental illness;

disaster, flood, earthquake, ethnic violence, and industrial tragedy have lost their valuables, money, home, amenities are able to get legal services. People with income less than Rs. 9000/- per annum or such high sum as may be fixed by state government; if case lies in a court other than Supreme Court and less than Rs. 12000/- per annum or higher amount as fixed by Central Government, if case lies before the Supreme Court. Section 13 of Act states that person who seeks legal assistance under Section 12 has to prove his apparent or clear case in his favor either to prosecute or defend. In this regard he will have to file affidavit before the concerned authority regarding his bonafide need or requirement.

Lok Adalat should follow basic norms or principles of justice, equity and fair play and the provisions of Civil Procedure code, 1908 and the Indian Evidence Act, 1872 should not be followed or obliged in a very strict or technical manner.<sup>16</sup> Legal Services Authority Act provides for amicable settlement between parties without pursuing the ill-will, hatred or anxiety. It helps poor people to get easy and cheap justice in an expeditious manner. Poor people suffer due to bulky law and technical procedure which involves a long span of time. Lok Adalat may be conducted by local authority, District or Supreme Court, High Court and Taluk Legal Service Committee. It shall be presided by a serving or retired judges along with two other persons; one of whom shall be from legal profession and other social worker.<sup>17</sup>

Lok Adalat may take cognizance if both or one parties reveals interest in amicable settlement and files application or court gets satisfied about suitability or chances of such settlement. If case seems fit and suitable to be decided by the Lok Adalat, then court shall refer the case to the Lok Adalat. Provided that reasonable opportunity of being heard needs to be granted to the parties as mandate. Natural justice emphasize that both parties should be heard beforehand in order to pursue justice<sup>18</sup> Award given by forum is final, binding and enforceable. Appeal cannot be filed against the decision. Finality is attached to the decision of Lok Adalat as to create sense of brotherhood and positivity among people. Various matters of MACT, matrimonial, recovery or compoundable offences are settled by Lok Adalat. The concept of permanent Lok Adalat has been introduced as per amendment, 2002 through Chapter VI A. It decides water, electricity, transport, telegraph and telecom etc. through mutual settlement or on merits.<sup>19</sup> Decision is delivered by panel comprising of chairman

<sup>16</sup> Section 22D Procedure of Permanent Lok Adalat.—The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872).

<sup>17</sup> Section 19(2) In The Legal Services Authorities Act, 1987

(2) Every Lok Adalat organized for an area shall consist of such number of—

(a) serving or retired judicial officers; and

(b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organizing such Lok Adalat.

<sup>18</sup> Dr B.S Hansai, *A Critical Study of Alternative Dispute Resolution System* (Bangalore: Karnataka Publishing House 2008)P 267

<sup>19</sup> 22A. Definitions- (a) "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (1) of section 22B.

(b) "public utility service" means any-

(i) transport service for the carriage of passengers or goods by air, road or water; or

(ii) postal, telegraph or telephone service; or

(iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi) insurance service, and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.

who may be equivalent to rank of district judge or equivalent or higher than District Judge and other two members nominated by Central or State Government who attain sufficient experience in matters of public utility.<sup>20</sup>

In *State of Punjab v Jalour Singh*<sup>21</sup> Supreme Court held that Lok Adalat does not attain an adjudicatory authority as its function is to facilitate compromise or adjustment between parties. It should obey principle of natural justice, equity and fair play. Judges need not be inclined to decide matter on merits or act like a regular court. Terms of settlement occurred between parties should be incorporated by courts.

In *Bar Council India v Union of India*<sup>22</sup>, Writ petition was filed by bar council of India under Article 32 of Constitution in which provisions of section 22A to 22E of LSA Act, 1987 were challenged. It was held that provisions of Act are valid and fair. These do not violate provisions of Constitution because of fact that there lies rule of 'no appeal' against the decision of Lok Adalat.

In *Anjan Dass v Subratta Bhattacharyya*<sup>23</sup>, Writ petition was decided. It was a dispute pertaining to partition & demarcation in which report was submitted by survey commissioner. But, Lok Adalat passed final order after making a perusal of Survey Commissioner's Report; even though matter was not referred to it. Under Sub-divisional LSA Act, 1987 temporary Lok Adalat was formed. Legal issues framed as

- Whether Lok Adalat can be organized by authorities or committees in a form rather than LSA Act, 1987?
- Whether Lok Adalat established under Section 19 of Act can state decision by adjudicatory method without any adjustment, concession or settlement in between parties?

Held: Lok Adalat may be conducted by LSA or committee for certain area or time, however there is no mention under Section 19 or 22B LSA, Act 1987 regarding establishment of temporary Lok Adalat. Thus, Lok Adalat so constituted as temporary Lok Adalat falls beyond jurisdiction of sub-divisional legal services committee. Also, Lok Adalat do not attain adjudicatory jurisdiction to decide matter in absence of compromise or settlement. In Toto, proceedings of Lok Adalat were quashed as record didn't revealed factum of compromise between parties.

#### APPRAISAL OF WORKING OF LEGAL AID AND LOK ADALAT

In the State of Punjab Courts are working in direction to uplift the welfare of litigants as most are poor, illiterate or ignorant. 'Access to Justice' is the theme towards which first move emerged as legal aid followed by protection of consumer interest and environment protection. More important lays in reducing huge backlog or pendency of cases.<sup>24</sup> It is worth mention that to avail the facility of legal assistance eligibility needs to be proved while for settling case through Lok Adalat there lays no such rule. Punjab State Legal Services Authority (PSLSA) maintains websites and update from time to time. It is much helpful for layman as full details of legal aid, Lok Adalat, how to move application of legal aid, various kind of Lok Adalat and its benefits. Dates of Lok Adalat are mentioned. Thus, many efforts are made up to uplift welfare of people.

<sup>20</sup> Section 22B Legal Services Authority Act, 1987

<sup>21</sup> AIR 2008 SC 1209

<sup>22</sup> 2012 AIR SC (Civil) 2382

<sup>23</sup> 2016 (4) Gau. 568

<sup>24</sup> M Cappelliti & B Garth Access To Justice Vol. 1 Article By Maurer Faculty 1978 P 58

Legal Aid has spread as a wider phenomenon in the State of Punjab. District Courts are working towards uplifting the welfare of poor. There are 50-52 lawyer entrusted with task of enforcing legal aid. It is allocated to poor or illiterate residing in rural or slum areas and those coming to court who cannot afford litigation expenses, lawyer fees and court fees. Camps are organized at door-step of people through which they are advanced about free assistance and pre-litigation settlement as well. Such camps are organized in school, colleges or hospital etc. by one lawyer and three para-legal volunteer. People are informed about settling matters in amicable manner by distributing pamphlets. State Legal Services Authority gives instruction to district authorities for arranging such seminars on some particular occasion. Some lawyers on panel conduct seminars while others provide legal aid to people in need and they also distribute pamphlets to general public regarding the Lok Adalats.

Lok Adalats are conducted on last Saturday of month. National Lok Adalats are conducted in the months of March, June, September and December to settle matters of People in amicable manner. 'Permanent Lok Adalats' are conducted monthly to resolve matters of public utility that is water, electricity, transport, telegraph or light etc. It is worth mention that monthly Lok Adalats are conducted w.e.f. february 2011. It helps people to get redressal of their grievances in short time. However, mostly pre- decided cases are kept on record of Lok Adalat as it is not feasible for courts to decide so many listed cases by compromise on single day. Courts are already overburdened with the pendency or arrears of cases and besides they are assigned with task of making settlement of cases by formulating terms of settlement and reformulating those after getting observation of parties. The mechanism of Lok Adalat is a dire need of the time to ensure speedy and cheap justice but lacks due to non-awareness of people, reluctant behavior of lawyer and overburdened judges. It is working as parallel to adversarial adjudication and needs to be independent one. The mediation centers working in Court needs to be made more authentic and efficient as being able to make people feel inclined towards amicable settlement. Lawyers should persuade people to opt for mutual adjustments as to save their energy, finance and resources.

## CONCLUSIONS

Welfare State needs an overall development of all the citizens, that is, poor along with rich. Various laws, legislation or rules remain futile if poor are unable to have access to Courts. Legal Aid means to assist poor litigants unable to afford the legal expenses. Earlier it was restricted to refunding court fees in civil cases, but with passage of time it includes providing assistance from lawyer, helping to prepare documents or witness diet money. As there exist facilities of free or Government Schools and Hospitals, so is the need to create free legal assistance. Amicable settlement of cases is the dire need of time so as to reduce burden of Courts and utilize energy or resources of litigants towards some better cause. Thus, not only should the poor have the right to come and go to Courts rather they should be able to afford legal services. Justice is the pillar of administration and implies an access to justice by each and every citizen in order to implement the rule of law.

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