

Lok Adalats: Access to Justice at Door-Steps

Abstract

Today a vast revolution is taking place in the judicial process; the law is fast changing and the problems of the poor are coming to the forefront. There is now increasing concern among the jurists to orient Indian jurisprudence and law on the core philosophy of our Constitution-its preamble, principles and postures, so that legal system becomes an instrument of peaceful changes and evolution with a capacity to meet new problems and challenges within the framework of rule of law and democratic institutions. As judicial system in India is over-burdened with a large number of court cases. Crores of cases pending before the courts are crying for urgent attention. A lot of time and money is wasted in dispensation of justice. In these circumstances, organization of Lok Adalats is an effort to bring cost effective and timely justice at the door-steps of the people.

Keywords: Access, Constitution, Justice, Lok-Adalats

Introduction

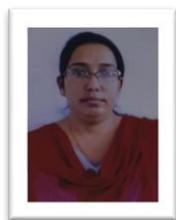
"Access to justice" in its general term, connotes an individual's access to court or a guarantee of legal representation. It may be expressed through identification and recognition of grievance, awareness and legal advice or assistance through camps accessibility to court or claim for relief, adjudication of grievance. Enforcement of relief however would most likely be the ultimate goal of a litigant. The concept of "access to justice" has two significant components. The first is a strong and effective legal system with rights, enumerated and supported by substantive legislations. The other is a useful and accessible judicial/remedial system easily available to the litigant public.

From the human rights perspective, persons belonging to the weaker sections are disadvantaged people who are unable to acquire and use their rights because of poverty, social or other constraints. They are not in a position to approach the courts even when their rights are violated; they are victimized or deprived of their legitimate due. Here lies the importance of access to justice for socially and economically disadvantaged people. When such people are denied the basic right of survival and access to justice, it further aggravates their poverty.

Therefore, even in order to eliminate poverty, access to justice to the poor sections of the society becomes imperative. It is the constitutional mandate and, therefore, the responsibility lies on all the players in the judicial system to provide access to justice to the persons in need. No citizen can be exploited and it is the bounded duty of the state to secure the operation of the legal system promoting justice, on the basis of equal opportunity and also to provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The term access to justice has been most commonly used to reform the lacunae and loopholes in state legal system to "ensure that every person is able to invoke the legal processes for legal redress irrespective of social economic capacity" and "that every person should receive a just and fair treatment within the legal system".

Objectives of the Study

1. To examine the concept of Lok Adalats.
2. To examine the constitutional as well as statutory provisions relating to Lok Adalats.
3. To examine the impact of Lok Adalats in expansion of access to justice.



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Review of Literature

In this article, the review of literature has been done mainly from the various articles in the Law journals, newspapers and official website of NALSA (National Legal Services Authority). The author observes the Constitutional as well as Statutory provisions of the Lok Adalats under the Legal Services Authority Act, 1987.

Tameen Zainulbhai in article "Justice for All: Improving the Lok Adalat system in India" (2016) throws the light on the insight origin and development of the concept of Lok Adalats through ages and its comparison with mediation. The author further highlighted the Lok Adalat is an effort to bring proper justice to all.

Various landmark judgments like Hussainara Khatoon, Centre for legal research and another v. State of Kerala, have also taken into consideration while formulating this paper. Nyaya Deep - the official journal of NALSA (2015-2018), study of these volumes gives insight knowledge of the working mechanism of the Lok Adalats in India.

Origin & Development of Lok Adalats

The admirable fact is that the institution of Lok Adalat has its origin not in any statutory law but it is a Para-judicial institution being developed by the people themselves as "*participatory instrument of democratic judicial making*". It may be termed as a child of necessity¹. The genesis of this institution can be said to lie in the reports of three different expert Committees set up by the Central Govt. and by the Govt. of Gujarat to make recommendation for improving justice delivery system and provide expeditious and cheap legal services to the poor¹.

The concept of Lok Adalat was started initially in Gujarat in March, 1982 and now it has been extended throughout the country. The reasons to create such an institution were to lower down the burden of courts and to give relief to the litigants who were in queue to get justice. Seekers of justice are in millions and it is becoming rather difficult for the courts to cope with the ever increasing cases which are pending with the present infrastructure and man power. Courts are clogged with cases. There is serious problem of overcrowding of dockets. Because of the ever increasing number of cases the court system is under great pressure. Therefore, if there, was at the threshold a permanent mechanism or machinery to settle the matters at a pre-trial stage, many matters would not find their way to the courts. Similarly, if there are permanent forums to which courts may refer cases, the load of cases could be taken off the courts. In order to reduce the burden of the courts or to reduce the heavy demand on court time, cases must be resolved by resorting to "*Alternative Dispute Resolution*" methods before they enter the portals of court².

Here comes the performance of Lok Adalats and which have showed its significance by settling huge number of pending cases. Except matters relating to offences, which are not compoundable, a Lok Adalat has jurisdiction to deal with all matters which are pending or at pre-trial stage, provided a reference is made to it by a court or by the

concerned authority or committee. In pursuance of it, the Parliament enacted *The Legal Services Authorities Act, 1987* and, one of the aims of this Act is to organize Lok Adalats to ensure the speedy justice on the basis of an equal opportunity³.

The Act gives statutory recognition to the resolutions of disputes by compromise and settlement by the Lok Adalats. It has been gathered from system of Panchayats, which has roots in the history and culture of this country. It has a native flavor known to the people. The provisions of the Act based on indigenous concept are meant to supplement the court system. They will go a long way in resolving the disputes at a very low cost to the litigants and with minimum delay. At the same time, the Act is not meant to replace and supplant the court system. The Act is a legislative attempt to decongest the courts from heavy burden of cases. There is a need for decentralization of Justice. Lok Adalats are certainly people's courts in this sense of the term. Their function is only to assist the certain poor persons and certain legally and socially handicapped persons for getting justice, but through compromise only⁴.

The term "Lok Adalat" is misnomer for people's court or a Panchayat in the oriental sense. It does not have the status of an Arbitration Tribunal even. It is a special type of legal authority empowered to conciliate and getting the parties to a compromise and on the basis of such compromise arrived at between the parties to pass a compromise decree. The only function of entitlement to pass a compromise decree gives it a partial status of a court, and it has also been given some powers of a court⁵. A Lok Adalat has some form as provided in chapter V of the Act under which it is constituted.

Constitutional Mandate

The resurgence of the concept of Lok Adalat is, no doubt, a virtue of necessity and taken into as good and useful a future account as humanly possible. It is purely in response to the spirit of justice imbibed in the Preamble of the National Charter. The Forty Second Amendment in the Indian Constitution, perhaps, the most extensive and exhaustive of the Amendments made so far, was brought into effect from 3.01.1977. The Amendment, suggested by the *Swaran Singh Committee* of All India Congress Committee to make the socialist content of the Constitution explicit, *interalia* inserted Article 39-A as a directive principle of state policy which aimed at delivering equal justice with the instrument of free legal aid. As one amongst the directives, this Article, on the face of it, may not appear to be capable of causing far reaching effects but the dynamic and humanistic interpretation of the Indian Judiciary helped this Article to bring about the revolutionary changes in the field of legal aid⁶.

Article 39 A obligates the state to secure that "*The operation of the 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 by reason of economic or other disabilities*⁷.

In *Hussainara Khatoon case*⁸ itself *Justice Bhagwati* observed:

We may also take this opportunity of impressing upon the government of India as also the state governments, the urgent necessity of introducing a dynamic and comprehensive legal service programme with a view to reaching justice to the common man. Today, unfortunately the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about changes in their life conditions and to deliver justice to them. The poor in their life contact with the legal system have always been on the wrong side of the life. They have always come across 'Law for the poor' rather than 'Law of the poor'. The law is regarded by them as something mysterious and forbidding-always taking something away from them and not as a positive and constructive social device for changing the social and economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community. It is, therefore, necessary that we should inject equal justice into legality and that can be done only by dynamic and activist scheme of Legal Aid Services.

Reminding the ever true words of *Mr. Justice Brennan* to the government and recalling what *Leeman Abbot* said years ago in relation to affluent America, *Justice Bhagwati* observed⁹:

We would strongly recommend to the Government of India and the State Governments that it is high time that a comprehensive legal service programme is introduced in the country. That is not only a mandate of equal justice implicit in Article 14 and the right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39-A.

In *Center for Legal Research and another. State of Kerala*¹⁰ it has been suggested that in order to achieve the objective of Article 39- A, the state must encourage and support the participation of Article 39-A, the state must encourage and support the participation of voluntary organizations and social action groups in operating the legal aid programmes.

Thus, Indian Constitution promises the trioka of justice to the community at large, the notion of justice is deeply engrained in the Preamble, Articles 14, 39-A & 40. Though Article 14 does not explicitly talk of Lok Adalats, but is implied from its spirit that state must create conditions whereby equality in its true perspective is established. The fighting creed of equal justice, regardless of adversarial legalistic is

best spelt out in Article 39-A which obligate the State to secure that the operation of legal system promotes justice, on a basis of equal opportunity and ensure that opportunities for securing access to justice is not denied to any citizen by reason of economic and other disabilities¹¹.

Institutional Framework

The Legal Services Authorities Act, 1987 creates three kinds of Legal Services Authorities viz. National Legal Services Authority, State Legal Services Authority and District Legal Services Authority.

The basic objective of the act is to constitute Legal Services Authorities to provide free and competent legal services to the weaker sections of the society and to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and also to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. The Legal Services Authorities Act, 1987 carved out a separate chapter viz.V, to deal with the Lok Adalats. The salient features of Legal Services Authorities Act, 1987 relating to Lok Adalats are enumerated below as:-

Section 19:- Organization of Lok Adalats¹²

1. Every State Authority, or District Authority, or the Supreme Court Legal Services Committee or every High Court Legal Services Committee, or as the case may be, Tehsil Legal Services Committee are responsible for organizing Lok Adalat as such interval and place.
2. Conciliators for Lok Adalat comprise the following:-
 - a. Serving or retired judicial officers.
 - b. Other persons as may be prescribed by the state Government in consultation with the Chief Justice of High Court.

Exception: Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

Section 20 - Reference of cases /Cognizance of cases by Lok Adalats¹³:

Cases can be referred for consideration of Lok Adalat as under:-

1. By consent of both parties to the disputes.
2. One of the parties makes an application for reference.
3. Where the court is satisfied that the matter is appropriate one to be taken Cognizance of by the Lok Adalat.
4. Compromise settlement shall be guided by the principles of justice, equity, fair play and other legal principles.
5. Where no compromise has been arrived at through conciliation the matter shall be returned to the concerned court for disposal in accordance with law.

On a cumulative reading of sections 19 and 20 of the Act, it transpires that before a case is heard by Lok Adalat, the court observed that the following conditions should be fulfilled:-

1. The Lok Adalat should have been organized by the competent authority.

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2. While organizing the Lok Adalat procedures as lay down in section 19 should have been observed.
3. While choosing a case for adjudication by Lok Adalat the consent of the parties must have been obtained.
4. That while disposing the case, the court should abide by the principles of justice, equity and good conscience.

In the present case neither a Lok Adalat was organized nor was its associated members nominated. The question of the authority having specified the place and date of Lok Adalat would not, therefore, arise. There was no agreement of the parties or an application of either of the parties for reference of the case to the Lok Adalat. The learned District Judge without taking note of sections 18 and 19 of the Act assumed into himself powers of the Lok Adalat and tried to decide the matter. He had no Jurisdiction to convene the Lok Adalat without the same having been organized by the District Authority. So the court below had erred in passing the judgment

Section 21:- Award of Lok Adalat¹⁴

After the agreement is arrived by the consent of the parties, award is passed by the conciliators. The matter need not be referred to the concerned court for consent decree. The Act provisions envisages as under:-

1. Every award of Lok Adalat shall be deemed as decree of civil court.
2. Every award made by the Lok Adalat shall be final and binding on all parties to the dispute.
3. No appeal shall lie from the award of the Lok Adalat.

Upholding the scope of this section, the Jammu and Kashmir High Court in **Nek Ram V. Solay Ram and Others¹⁵** observed that the decision given by the Lok Adalat is a decision based on compromise and so the appeal is not maintainable on the decision of Lok Adalat. Expanding the scope of the section, the Hon'ble Court further observed that even decree cannot be challenged in appeal.

Section 22:- Powers of Lok Adalats¹⁶

Every proceeding of the Lok Adalat shall be deemed to be judicial proceedings for the purpose of:-

1. Summoning of witness.
2. Discovery of documents.
3. Reception of evidence.
4. Requisitioning of public record.
5. Such other matters as may be prescribed.

Lok Adalats are not constituted under specific rules and regulations made under the legislations. The evolution of the structure of Lok Adalats has been a gradual process and the founders of the institution have not attached much importance to this aspect because their mind remained totally absorbed with the idea of resolving the disputes of the local people speedily and save their time, energy and easy access to justice so far as possible¹⁷. Generally, the composition of the Lok Adalat comprises of the Presiding Officers, Members and Assembly of the people present at the time of holding the Lok Adalat. The procedure followed by the Lok Adalat may be summed-up as under:

1. The Lok Adalat, at first instance, calls both the parties to the disputes for the presentation of their case before it.
2. It asks for the elucidation -n the points of disputes and affords an opportunity to both the parties to explain their view points about the dispute.
3. The members of the Lok Adalat endeavour to provide guidelines to both the parties for arriving at truth of the matter.
4. The Lok Adalat provides even a solution with regard to resolution of dispute in case of any difficulty faced by them in the decision-making process.
5. A Kararkhat is finally drawn on the basis of the free consent of the parties and is signed by the both parties in the presence of the members of the Lok Adalats.
6. The Lok Adalats take initiative to acquaint the regular court with the resolution of dispute and request for the execution of agreement arrived at between the parties.
7. Finally, the Lok Adalat request the Court to withdraw the case of the party on the lines agreed to by both the parties before the Lok Adalat.

So far as the implementation aspect of the decision of Lok Adalat is concerned, it is based on the extent of trust, faith and confidence enjoyed by it in the area of its operation and whatever sanction, it has got, is related to its capacity to serve the people of the area and its judicious and impartial handling of the disputes. The reality is that moral sanctity, popularity and approval enjoyed by the Lok Adalat have helped it in getting its decision executed and implemented by the disputants. The Lok Adalat does not believe in the coercive method but relies solely on its moral and social force to have its decisions carried out. To be brief, the whole base of the Lok Adalat system is mutual trust and confidence existing between the Lok Adalats and the disputants. Most of the disputant voluntarily take upon themselves the responsibility to fulfill the obligations imposed upon them by the Lok Adalat either because of public pressure upon them or because of the self-realization of any mistake or offence committed by them and the necessity of rectifying that mistake by fulfilling the obligation imposed by the Lok Adalat in that respect. Thus, the conception and practice of Lok Adalats as an important aspect of access to justice exemplifies features of the pure concept of justice¹⁸.

Lok Adalats: Expansion of Access to Justice

Access to justice means justice to all and not to a few or a favoured class. It does not introduce class conflicts, but seeks to improve and harmonies the society with a view to avoid the socio-economic imbalances. The readjustment of social claims may involve a transfer of resources from one section of the society to another, but the transfer is only an equitable reallocation of the resources and not a destruction of the structure itself. Lok Adalats demands preferential treatment of the weaker sections of the society, but that is only to correct the imbalances existing in the society and not to cause unnecessary harassment or

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Periodic Research

injustice to the advanced sections thereof. Thus, it seeks to remove the imbalances in the social, economic and political life of the people. There cannot be access to justice unless the society progresses in all the directions. In short access to justice helps to bring about a just society.

The right to access to justice may be defined as the right of the weak, aged, destitute, poor, women, children and other underprivileged and downtrodden segments of the society to the protection of the state against the ruthless competition of life. It seeks to give adventitious aids to the underprivileged, so that they may have an equal opportunity to compete boldly with the more advanced sections of the society. It is a bundle of rights; in one sense it is carved out of other rights; in another sense, it is a preserver of other rights. It is the balancing wheel between the haves and have-nots¹⁹.

The notion of access to justice is to be taken in a broader sense as highlighted upon in the beginning of this paper. Right of access to justice means essentially the aggrieved individual's right to litigate or defend a claim. In other words, that those in need and the under privileged are provided with legal aid in the form of a lawyer or the court fee /litigation expenses etc. However, this cannot be crafted as access to justice but only as an "access to courts". If we want to render justice to the poor that means fair solutions to the conflict thereby providing real access to "justice", Lok Adalat will play a major role. Lok Adalats is one such positive step towards the expansion of the scope of access to justice so as to inhere in it the complete notion of justice. Social context adjudication, after all, remains adjudication by the court and the outcome would depend upon the competence of the judge handling such case who should be equipped with proper mindset, training expertise and dexterity to provide just solutions²⁰.

Similarly, the main aim of Lok Adalat is not to pull down the advanced sections of the society, but only to uplift the backwards and the underprivileged sections. The Lok Adalats function purely on democratic basis. There is no compulsion to settle the disputes through Lok Adalats. If the parties agree to decide their dispute mutually on the basis of their free will and in a voluntary manner, only then Lok Adalats come to their assistance. Moreover, no pressure is exerted by the advocates of the parties. The presence of lawyer is not required in the process of conciliation and settlement; they are, however, not debarred from attending the Lok Adalat. The role of advocates in the Lok Adalat is simply of advisory nature and helps their clients to arrive at a compromise through their sweet efforts. Thus, a step forward is Lok Adalats which ensures a just solution acceptable to all the parties to dispute achieving "win-win" solution. It is only Lok Adalat that puts the parties in control of both their disputes and its resolutions.

Moreover, access to justice is not just access to judicial system, but it includes access to dispute resolution process for people. Thus, there is a special place for alternative dispute resolution process in access to justice. Because, the establishment of alternative means of dispute resolution could serve to

significantly reduce the number of disputes before the civil courts and thereby lead to an increase in overall efficiency. So, effective implementation of alternative means of dispute resolution explicitly eases the citizens "access to justice". The amendment has been brought forth keeping in view the sense of crisis in the administration of civil justice being troubled by excessive costs, delay and complexity. And, Lok Adalat is truly fulfilling the notion of justice by providing an effective remedial system and endorses the pure concept of justice. That leads to the conclusion that party-acceptability of outcomes is, and should be, the defining feature of justice in Lok Adalat. The party acceptable outcome is synonymous with fairness and the same is synonymous to justice. It therefore becomes the duty of all of us to strengthen the Lok Adalat mechanism thereby accessing justice through Lok Adalat and shaping a peaceful society.

Conclusion

The Lok Adalat is a unique institution which does not only handledisputes and points of contention but also contributes to access to justice in India in several ways. It meets the aspirations of the people by getting them economic and social justice. Their main aim is to settle the dispute in such a manner that the mutual relations of the disputants remain practically the same as existed before the commencement of such a dispute. They aim not only at the restoration of normal relations between the disputing individuals and families but also at a better and more lasting solution of the problem so that their future relations might not get strained at a slight provocation and a tense situation in the immediate future might be avoided. More so, Lok Adalat lays a great emphasis on the social aspect of the dispute also.

The Lok Adalat method is quite inexpensive. It discards the unnecessarily imposed financial burden on the disputants. It assists the poor people to get access to justice at the local level and affords opportunity to have easy access to the Lok Adalat. In this system one need not approach the advocates who are an unavoidable feature in law court. One even need not get the plaint drawn up. The Lok Adalat may take into consideration an oral submission made by the party before it. One is also saved of the expensive and the trouble, he has to take in getting the summons served on the opposite parties.

The disputants are saved of the complications of law and legal technicalities and cumbersome procedures adopted at various stages of litigations by the regular courts, in respect of the framing of the issue of the disputes, producing witnesses, pleadings and arguments put forth by the advocates before the courts and the final judgment and eventually execution of the decree awarded by the judge. The idea behind the entire concept of Lok Adalat is that it should enlighten the outlook of the disputants and inculcate in them a spirit of "forgive and forget" and enable them to look to their social problem from a new angle of vision and changed attitude of life.

From the above study of Lok Adalat it is now quite evident that the mechanism of Lok Adalat is not

E: ISSN No. 2349-9435

just a dispute resolution forum or a contrivance introduced to reduce court arrears, but a people's movement for orderly progress through rule of law and participation in Access to Justice in the cause of social justice. To quote *Professor Madhava Menon*²¹:

Lok Adalat has the potential for social reconstruction and legal mobilization for social change. It can influence the style of administration of justice and the role of lawyers and judges in it. It can take law closer to the life of the people and reduce disparity between law in the books and law in action. Of course, in wrong hands it has also the potential to undermine stability and respect for the system of justice and to act as yet another forum of exploitation of ignorant and poor masses. It may be used by self-seeking politicians, lawyers and judges to advance their own another bureaucracy if attempted to be stereotyped and made an appendage of the found Court system. The dangers are infinite and The Potentialities are limitless.

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Periodic Research