FUNCTIONING OF LOK ADALATS IN INDIA WITH SPECIAL REFERENCE TO UTTAR PRADESH: A STUDY

Thesis

SUBMITTED TO THE
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY
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DECLARATION

I Manjari Rawal, hereby declare that this research work for the award of Ph.D. degree in Law entitled **"FUNCTIONING OF LOK ADALATS IN INDIA WITH SPECIAL REFERENCE TO UTTAR PRADESH: A STUDY"** has been done by me on the basis of original research material and information taken from other research works has been duly acknowledged.

I further declare that this is an original work and thesis is essentially free from all kinds of plagiarism and has not been previously submitted in part or full for any other degree or diploma in this or any other university.

Manjari Rawal

Dated: 02/11/19.

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CERTIFICATE

This is to certify that the thesis titled **"FUNCTIONING OF LOK ADALATS IN INDIA WITH SPECIAL REFERENCE TO UTTAR PRADESH: A STUDY"** submitted by Ms. Manjari Rawal, Enrollment No. 085/12, is an original research work and has not been previously submitted in full or part for award of any other degree of diploma to this or any other university.

This thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow, satisfies all the requirements as stipulated in the *Doctor of Philosophy (Ph.D.) regulation, 1999 as amended in 2013* and it is fit for submission and evaluation for the award of degree of Doctor of Philosophy of the University.

SKB 2.11.19

Supervisor

Dated:

Head of the Department

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I am also thankful to the staff of the Department of Human Rights, School for Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow, for their excellent co-operation in the completion of this research work.

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Dated: (MANJARI RAWAL)

PREFACE

The thesis analyses various aspects of the problem of litigation, Alternative Dispute Resolution Mechanism and Lok Adalats in India, specifically the functioning of Lok Adalats in India. It discusses the evolution of Lok Adalats in India and how it operates, especially for the protection of rights of the downtrodden. The thesis then examines the interplay between Lok Adalats and litigation. It is correct that there are substantial numbers of arrears pending in courts, but the Lok Adalats cannot substitute the adversarial system of courts. Lok Adalats are playing a very effective complementary role in the adjudication of disputes by the judicial system. This analysis addresses the problems conventional courts are facing for the past few years and looks into the alternatives available to decrease the increasing amount of arrears. The modern statutory Lok Adalat traces its root in the people's court of the ancient Hindu jurisprudence and the cardinal principles of the village self-reliance, gram swarajya, participatory justice, and societal comity.

The fundamental idea of Lok Adalat is to provide cheaper and quicker justice at the doorstep of the people so that access to justice becomes meaningful for all the people irrespective of their resources. During the last few years, there is an awakening about the Lok Adalats amongst the common masses. As a result of which person started taking an interest in the ADR Mechanism, Lok Adalats and approaching at the appropriate forum. The courts have also shown keen

interest to deal with problems of arrears genuinely. Some of the noteworthy decisions have been decided by the Supreme Court in the last few years propounding various principles and theories related to ADR and Lok Adalats. The study has been divided into seven chapters. The first chapter of this research study is 'Introduction'. In this chapter, the subject matter of the research work has been introduced. The second chapter is about problems of litigation being faced in recent times in India. The third chapter is related to, what is the need for Alternative Dispute Resolution Mechanism in India discussed. The fourth chapter gives a detailed note on Lok Adalats, its evolution and structure in India and examines how the Lok Adalat is a tool to reduce litigation in India. The fifth chapter of this thesis discusses the approach of the judiciary towards the Lok Adalats in India. The latest case law and legislative provisions have been cited at appropriate places. The sixth chapter is about the functioning of Lok Adalats in India and Uttar Pradesh. In the last chapter, which is chapter seven, some useful suggestions along with the conclusion of the study have also been given for proper understanding of the Lok Adalats in India.

It is an occasion for me to feel proud in presenting this research work. I hope and trust that this research work would be more useful for today as well as for the future. Although, I have put in my best efforts to avoid all the mistakes despite this, if any error has been left out ignorantly, for that I personally tender my apologies.

TABLE OF CASES

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ABBREVIATIONS

AAA	:	London and The American Arbitration Association
AIR	:	All India Reporter
ADR	:	Alternative dispute Resolution
A.P.	:	Andhra Pradesh
Bom.	:	Bombay
Cal.	:	Calcutta
Cri.L.J.	:	Criminal Law Journal
Co.	:	Company
CILAS	:	Committee for Implementation Legal Aid Scheme
CPC	:	Code of Civil Procedure, 1908
Cr.PC	:	Code of Criminal Procedure, 1973
Del.	:	Delhi
DLSA	:	District Legal Services Authority
FICCI	:	The Federation of Indian Chamber of Commerce and Industries

Gau.	:	Gauhati
Guj.	:	Gujrat
HC	:	High Court
ICADA	:	The International Center for Alternative Dispute Resolution
ICADR	:	International Centre for Alternative Dispute Resolution
ICC	:	The International Chamber of Commerce
ICA	:	The Indian Council of Arbitration
Ibid	:	Ibidem means "The same"
JILI	:	Journal of Indian Law Institute
Ker.	:	Kerala
Kar	:	Karnataka
Ltd.	:	Limited
LCIA	:	Rules of the London Court of International Arbitration
LSA	:	Legal Services Authority, 1987
LCIA	:	The London Court of International Arbitration
M.P.	:	Madhya Pradesh

MACT	:	Motor Accident Claim Tribunal
NALSA	:	National Legal Services Authority
NGO	:	Non-Governmental Organisation
ODR	:	Online Dispute Resolution
Ori.	:	Orissa
PLA	:	Permanent Lok Adalat
Punj.	:	Punjab
P&H	:	Punjab and Haryana
SC	:	Supreme Court
SCC	:	Supreme Court Cases
SCJ	:	Supreme Court Journal
SCR	:	Supreme Court Reporters
T.N.	:	Tamil Nadu
UPSLSA	:	Uttar Pradesh State Legal Services Authority
UOI	:	Union of India
v.	:	Versus
WIPO	:	The World Intellectual Property Organisation

CHAPTER I

Chapter I

INTRODUCTION

1.1 INTRODUCTION

The institution of Lok Adalat in India, as the name indicates, signifies the people's court. "Lok" means "people," and the word "Adalat" stands for court. The Lok Adalat has not been an unfamiliar institution of the Indian justice delivery system. Now, this is not an experiment in India, but it is seen as an efficient, productive, pioneering, and demulcent alternative mode of dispute settlement, which is being understood as a feasible, economical, effective, expeditious mode of dispute resolution.

Delay in justice is detrimental to the interests of the litigants, and it also lowers the faith of the common people in the efficacy of the judicial system. As per statistics available in India, it is unable to clear the backlog of cases. The backlog has been increasing at an average rate of 34 percent annually. This massive backlog of unsolved cases, experts claim, is directly proportional to a lack of judges. In India, approximately 30 million legal cases are pending. India is a country of 1.324 billion people. Presently, it has approximately 13 judges for every million people compared with roughly 107 per million in the United States, and Great Britain has around 150 judges per million of its population.

Courts in India are overburdened. There is more than one reason for the congestion in the courts. These reasons are: the increased institution of cases,

granting unnecessary adjournments, vacancies in courts, lengthy, rigid and formal procedures, and government being prime litigant, etcetera. Over 3 crores of cases happen to be pending in subordinate courts all across the country, and more than 74 lakh cases are pending in courts of Uttar Pradesh. The figures appear to be quite alarming and growing day by day. The Law Commission of India, in various reports, considered this problem in all its facets and has suggested some remedial measures to tackle the problem. There is no standardized or statuary definition of the term Lok Adalat; it is now widely accepted as an informal, voluntary, dispute settlement agency involving the people and public-spirited lawyers and citizens.

The entire mechanism of Lok Adalats designed and evolved is with the object of promoting justice. The preamble of our constitution devised 'justice' as one of the tools for achieving the ultimate goal of constitution i.e. fraternity, and further the constitution mandate of Article 21 as interpreted by judiciary, read with Article 39A which provides for equal justice and free legal aid to economically backward classes, setting an objective which needs to be achieved by a welfare state. The contemporary world has built a space in this regard, which needs to be bridged to achieve the vision of access to justice as a ground reality. The Alternate Dispute Mechanism, of which Lok Adalat is a part, is a contemporary adjudicatory attempt in the Indian context.

The Lok Adalat system in India is given a legal framework by the enactment of the Legal Services Authorities Act, 1987. This Act contains various provisions for the settlement of disputes through Lok Adalat and permanent Lok

Adalat both at pre-litigation and post-litigation stage at various levels (at Supreme Court, at High Courts, at District Courts and Sub-Divisional Levels). Lok Adalats have the authority to dispose of cases or referred to it solely based on compromise or settlement among parties. Accordingly, the jurisdiction exercised by the Lok Adalats to reach at a compromise or settlement amid the parties to any disputes coming under the jurisdiction of either civil, criminal, revenue court or any tribunal established under any law. It may be any case pending before the court or any matter, which is coming under the jurisdiction of the court but not yet produced before it. However, the offenses, which are non-compoundable under any law, do not come under the realm of jurisdiction of Lok Adalat

The very purpose behind the establishment of Lok Adalats was to quicken the process of justice, to provide access to justice for economically backward segments of the society, and thus to guarantee that the process of the legal system encourages justice-centered upon the equal opportunity.

1.2 STATEMENT OF PROBLEM

Delay in justice not only affects the interest of the litigants but also emaciate the functionality of the judicial system in imparting justice efficiently and effectively. The problem of delays and expensive litigation has engaged the attention and consideration of several legal luminaries, those connected with the management of the judicial system of the country. Courts in India are overburdened, and the figures appear to be quite alarming, and surprisingly, they are growing day by day.

Lok Adalat system was conceptualized in India for delivering speedy, efficient, and cost-effective justice, but unfortunately, justice has fallen victim to the desire for the speedy resolution. Instead of trying a genuine compromise, in some cases, Lok Adalats try to force an adjudicatory decision upon unwilling litigants. The right to a fair hearing, which is one of the basic principles of natural justice, is not fully available to the people. Many sitting and retired judges, while taking part in Lok Adalats as members, tend to lead the Lok Adalats like traditional courts, by listening and taking statements of parties and by Implementing their opinions on parties about what is and what is fair. Sometimes they turn away and continue to pass the order on merits even if there is no consensus or settlement. Instead of promoting alternative dispute resolution through Lok Adalats, such actions would encourage the litigants to escape from the Lok Adalats.

The justice delivery mechanism, as adopted by Lok Adalat, is alleged to be inferior in quality in comparison to the conventional adjudicatory process. Most of the time the parties are not willing to go to the Lok Adalats, there may not be any dispute for compromise or settlement between the parties, but even then, courts can refer matters to the Lok Adalat by coercing and pressurizing the parties, which is arbitrary and unreasonable. Another reason for selecting the topic is that the researcher is concerned about the functioning of Lok Adalats provided by the legal services authorities in the state of Uttar Pradesh, how far it is successful in the dispensation of justice.

1.3 OBJECTIVES OF THE STUDY

The objectives of the proposed study are as follows:

1. To find out the deficiencies prevailing in the areas of litigation & dispute reducing mechanism.
2. To find out the effectiveness of the process adopted by Lok Adalats and the Impact of Permanent and Continuous Lok Adalats in the justice delivery process.
3. To find the efficacy of the Lok Adalats in reducing litigation and to evaluate its overall functional success.
4. To review the Legal Services Authority Act and Constitutional and legislative provisions related to Lok Adalats.
5. To spell out challenges, obstacles, and solutions in the implementation of Lok Adalats in India.
6. To evaluate the functioning of Lok Adalats in Uttar Pradesh

1.4 HYPOTHESIS

For the purpose of research, the following hypothesis has been formulated:

1. Litigation in courts of law is complicated, costly, and often delayed.
2. Possibilities of compromise between the parties will be increased with the help of the Alternative Dispute Resolution Mechanism.
3. The Lok Adalat system is not working efficiently for disposing of the cases.
4. The Lok Adalat system is not substitute for the adversarial system of courts of law.
5. The creation of permanent and continuous Lok Adalat is a positive step to help the litigants at the pre-litigative stage.

1.5 REVIEW OF LITERATURE

Few Indian authors from the discipline of Law have contributed to the field of Lok Adalat. Few written material relating to the exhaustive concept of Lok Adalat is available in India. The Lok Adalat, it's working, legislations all these found in different books in scattered form. There are several research articles published by various Indian researchers from the disciplines of Law and Management in esteemed Research journals, and Various Reports published by the committees and commissions. These are as follows:

Justice H.R. Khanna, in his book "The Judicial System"[1], describes the judicial system in Ancient India. History of our Judicial System took us to the hoary past when Manu and Brihaspati gave us Dharam Shastras, Narada the Smrities, and Kautilya the Arthshatra. A civil judicial proceeding in ancient India is at present commenced ordinarily with the filing of a plaint as at present commenced ordinarily with the filing of a plaint or what was known as Purva Paksha before a competent authority.

B.L. Verma, in his book "Development of Indian Legal System"[2], Describe that the development of a legal system has, undoubtedly, proved to be an essential subject of study as it explains and distinguishes the present form the past. In the complex modern era, its utility is further strengthened as it provides for comparative research and guidance to law reformers, legislators, and scholars.

[1] H.R. Khanna, *The Judicial System*, Aruna Printing Press, New Delhi, 1980.

[2] B.L Verma, *Development of Indian Legal System*, New Delhi: Deep & Deep Publications, 1987.

R.C. Sekhar, in his book, "Indian Judicial System: Need and Directions of Reforms"[3], attempts to correct imbalances caused by the power structure in society and an obsession with markets, which pushes the law to minimalism concentrating only on the don'ts of ethics. Viewing discourse as essential to ethics and upholding merit in the ancient Indian system to sustain it. He commends moral education to all professions, most of all, to the judiciary using self-developed codes of conduct.

Madabhushi Sridhar, in "Alternative dispute Resolution- Negotiation and Mediation"[4], gave details about Lok Adalat as one of the modes of ADR the author had also explained the working and use of Lok Adalat as a way having popularity and its acceptance in the Indian society at large.

S.K. Sarkar's, "Law relating to Lok Adalats and Legal Aid"[5], explores the detailed knowledge about Lok Adalat and its Implementation in India through respective state legislation relating to legal services, the author has given the meaning and features of all the modes of alternative dispute resolution mechanism in simple words.

Dr.S.R.Myneni's "Public Interest Lawyering, Legal Aid and Para Legal Services"[6], is a book, which to a convincing extent covering the statutory

[3] R.C. Sekhar, *Indian Judicial System: Need and Directions of Reforms*, edited by S.P. Verma,: Kanishka Publishers, New Delhi ,2004.

[4] Madhabhushi Sridhar, *Alternative Disrupted Resolution: Negotiation and Mediation*, reprint, LexisNexis,Haryana, 2013.

[5] S.K. Sarkar, *Law relating to Lok Adalats and Legal Aid*, Orient Publishing Company, New Delhi, 2008.

[6] Dr. S.R. Myneni, *Public Interest Lawyering, Legal Aid and Para Legal Services*, Asia Law House Hyderabad, 2010.

provision of legal services provided by authorities. This work failed to explain the implementation of schemes by Authorities. Legal Aid provided by the Governmental Agencies was not covered.

Dr. N. V. Paranjapee, in his book on "Public Interest Litigation, Lok Adalats & Para-Legal Services"[7], described the role of public interest Litigation in the protection of life and liberty of persons and for the protection of the rights of women, child in detail. The provisions related to Lok Adalat are analyzed. The role of Para Legal Services in Legal Education with specific references in other countries was elaborated.

Sarfaraz Ahmed Khan, in his book "Lok Adalat: An Effective Alternative Dispute Resolution Mechanism"[8], discussed in detail Role of Lok-Adalat, as one of the alternative dispute resolution mechanisms. The author tried to analyze in-depth all aspects of Lok-Adalat, like its emergence, how the concept developed, and the reasons for its development as an alternative dispute resolution mechanism. The legal mechanisms of Lok-Adalat and how the institution is functioning in different parts of the country in general.

Sangeeta Dhingra Sehgal, in her book "Commentary on The Legal Service Authority Act"[9], laid out section-wise and appended with concise and crisp comments to enable the reader grasp the necessary nuances of relevant

[7] N.V. Paranjape , *Public Interest Litigation, Legal Aid & Services, Lok Adalats & Para-Legal Services*,Central Law Agency,Allahabad , 2007.

[8] Sarfaraz Ahmed Khan, *Lok Adalat: An Effective Alternative Dispute Resolution Mechanism*,APH Publishing Corp., Delhi, 2006

[9] Sehgal,Sangeeta Dhingra, *Commentary on The Legal Service Authority Act* (Universal law publishing Co. Pvt. Ltd., New Delhi 2012)

sections. To enhance its utility, State-wise Legal Services Authority Rules have been provided, with the view to provide a clear understanding of the rules and guidelines about his domicile.

N.R.Madhava Menon, in his article "Legal Aid and Justice for the poor"[10], has explained poverty, historical perspective of Legal Aid in India elaborately, and the need for publicity and promotion of Legal Aid Schemes by Para Legal Services.

Justice Dilip Raosaheb Deshmukh, in his article "Efficiency of Alternative Dispute Resolution Mechanism in Reducing Arrears of Cases"[11], explores an alternative mechanism to reduce arrears of cases. The author maintains that awareness needs to be created amongst people about the utility of ADR. He adds that in this way the widening gap between the common people and the judiciary will indeed be minimized.

Anurag K. Agarwal, in his Article, "Role of Alternative Dispute Resolution Methods in Development of Society: 'Lok Adalat' in India"[12], explains the functioning and mechanism of Lok Adalats in India. The article commences with a backdrop analysis of the history of ADR and Lok Adalats in India and then describes the advantages, related legislation, and method of Lok Adalats in India. The article wraps up with an assertive expression at the future

[10] N.R. Madhav Menon, "Legal Aid and Justice for the Poor", Article in Upendera Baxi (ed.) *Law & Poverty critical essays* (1988)

[11] Justice Dilip Raosaheb Deshmukh," Efficiency of Alternative Dispute Resolution Machanism in Reducing Arrears of Cases", *Nyay Deep*, New Delhi: National Legal Services Authority, Vol. X, Issue 2, April, 2009.

[12] Anurag K. Agarwal, "Role of Methods in Development of Society: Lok Adalth in India", *Indian Institute of Management* Ahmedabad, 2005.

of Lok Adalats and Potential challenges for the success of the Lok Adalat mechanism.

The magazine 'Nyaya Deep' published by NALSA and some other magazines published by different state authorities, e.g., 'J.T.R.I. Journal published by U.P Judicial Training & Research Institute and others were also helpful in providing data and information about activities and steps taken for implementing of Lok Adalat and various provisions related to the Legal Services Authority, Act 1987.

1.6 RESEARCH METHODOLOGY

Based on the nature of the topic, the methodology is a combination of primary and secondary methods. The researcher deeply analyzed the legal provisions, instruments, and constitutional provisions related to Lok Adalats in India. The study is mainly descriptive, analytical, and evaluative.

The researcher used the books available in various libraries in the country. She also went through Web-based resources related to the research, including some law-based databases and general search engines. For this purpose, data related to the functioning of the Lok Adalats are procured from National Legal Service Authority and U.P. State Legal Services Authority. The other sources of study include reports of the Law Commission of India, judgments, books, journals, and related websites. The researcher will also conduct one-to-one interaction with officials of Lok Adalat and Uttar Pradesh Legal Service Authority for the purpose of data collection.

1.7 SCHEME OF CHAPTERS

The research work is divided into 7 chapters. Chapter I is introductory, consisting of general introduction, significance, nature and scope of the problem. Apart from the review of literature, the chapter also contains the hypothesis on which present study proceeds, the objectives with which the study is undertaken and methodology adopted for the study.

Chapter II is devoted to the problems, and historical perspectives related to litigation, the researcher gives a brief introduction about the judicial system in India. The Indian judicial system is one of the oldest legal systems in the world today. It is part of the inheritance India received from the British after more than 200 years of their colonial rule. The present judicial system of India was not a sudden creation; it has been evolved as the result of a slow and gradual process and bears the imprint of the different periods of Indian history. Indian Courts are held in high esteem not only by developing but by developed countries as well. There is widespread praise for the quality of the judgments delivered and the hard work being done by the Indian judiciary. However, there is growing criticism, sometimes from uninformed or ill-informed quarters, about the inability of our courts to effectively deal with and wipe out the massive backlog of cases. Many countries world over are facing the problem of delay in dispensation of justice. It is a major problem being faced by the Indian judicial system. After the introduction of the judiciary, the researcher discussed the history of the adversarial Indian judicial system, which can be classified into

three stages, (i) Judicial system in ancient India (ii) Judicial system in British India (iii) Judicial system in the Republic of India.

(i) Judicial System in ancient India: India has documented legal history commencing from the Vedic era, and some civil law practice might have been in place during the Bronze age in India, that is around 3000 BC and the Indus Valley civilization, which may be the period between 2600 BC and 1900 BC. Law as a subject of religious prescripts and philosophical discourse has a glorious past in India. Originating from the Vedas, the Upanishads, and other religious holy texts, it was a productive territory decorated by practitioners and experts from various Hindu philosophical schools and afterwards by Jains and Buddhists.

The beginning of a regular system of state judicial administration may be traced to the pre-Mauryan age. The Mauryan period (326-185 BC) fills a gap between two great spells of administration of criminal justice in ancient India, namely, that as mentioned in the Dharma sutra on the one hand and that of Manu's code on the other. The old division of urban and rural judiciary was continued in Ashoka's reign. The Guptas (AD 320-550) created afresh a system of administration on imperial lines after the downfall of the Mauryan Empire. After the Guptas, in Northern India, King Harshvardhana (AD 606-47) created a sound and efficient administration. After the disintegration of the Harsha Empire, a veil of obscurity descends on the history of India, which does not lift till the Muslim invasion. Under the Mughal Empire, the country had an efficient system

of government with the result that the system of justice took shape. The Mughal period saw the compilation of the code of civil procedure; it was called Fiqha-e-Feroze Shahi then.

(ii) Judicial System in British India: The history of the present judicial system may be traced back to the year 1726 when King George-I issued a Charter for bringing about essential changes in the judicial administration of the Presidency Towns of Bombay, Calcutta, and Madras. The first pre-independence law commission of India formed by the Governor-general. The commissions' most noteworthy contribution was the Penal Code prepared under the guidance of Lord Macaulay. The third Law Commission proved to be the most successful of all the Commissions. The proposals of the first two Commissions resulted in the codification of the Code for civil and criminal cases in the year 1857 and 1861, respectively, and the enactment of the Penal Code in 1860. It drafted several codes in its seven reports, the important ones being the Indian Succession Act, Contract Act (1872), Evidence Act, the new Limitation Act, and the Divorce Act 1869. During British rule, it can be said that India went through a great deal of experimentation and experiential learning.

(iii) Judicial System in the Republic of India: The jurisprudence followed in India is almost the same as the one prevalent in England, though it has been cross-fertilized by typical Indian values. After the independence, the Constitution of India, has a similar hierarchy, with the Supreme Court the apex court (replacing the Federal Court of India) and the various State High Courts

(replacing the Provincial High Courts), with various other courts under the High Courts. The adversarial system, which is particularly one of the |finest legacies of the British rule in India, has performed reasonably well for hundreds of years. Although, in view, the docket explosion, the trust, and faith in the judiciary have experienced abundant corrosion. In India, the justice delivery system is exploding, and seams it may fall unless immediate corrective steps will not be taken

The researcher also discussed in this chapter what are the prime causes of delay in disposal of cases; the huge backlog of cases in various Indian courts is the biggest cause of worry. It has been the subject of a number of reports, debates in parliament and state legislatures, in judicial conferences, and the media nowadays. The Arrears Committee chaired by Justice V.S.Malimath in its report, identified various causes of accumulation of arrears of cases in the courts. Some of the principal causes are:

(i) Litigation explosion;

(ii) Accumulation of the first appeal;

(iii) Inadequacy of staff attached to the High Court;

(iv) The inordinate concentration of work in the hands of some members of the Bar'

(v) Lack of punctuality among judges;

(vi) Granting of unnecessary adjournments;

(vii) Indiscriminate closure of Courts;

(viii) Indiscriminate resort to writ jurisdiction;

(ix) Inadequacy of classification and granting of cases;

(x) Inordinate delay in the supply of certified copies of judgments and orders.

In *Salem Advocate Bar Association, Tamil Nadu v. Union of India*[13], the Hon'ble Supreme Court has observed, in a substantial number of cases, either the notice is not responded to or in the few cases where a reply is sent, it is commonly ambiguous and misleading. The outcome is that the object underlying Section 80 of the Code of civil procedure and related provisions get defeated. It not only gives rise to avoidable litigation but also occurs in massive costs and expenses to the exchequer as well. A proper response can result in the reduction of litigation amid the state and the citizens.

Further in this chapter, researcher under the head review of the justice delivery system discussed the experience of the Indian judiciary for the last more than a half-century, shows how it has been inseparable the struggle for judicial responsibility, accountability, and independence. Yet, there are serious concerns about the efficacy and ability of the justice delivery system to dispense speedy and affordable justice. Questions on the credibility of the judiciary are being raised due to mounting arrears of cases, delays in disposal, and high cost of obtaining justice. The growing population, increasing awareness of rights, and

[13] (2005) 6 SCC 344

abiding confidence of the people in the judiciary saw a litigation boom, which our judicial set-up was not sufficiently equipped to handle. We can rightly take pride in the quality and effectiveness of our judicial system. However, we cannot deny that it suffers from serious deficiencies, requiring immediate steps to improve its performance, to render prompt and inexpensive service to its consumers.

Further researcher discusses the efforts government took to speed up the justice delivery system under the head Government's efforts to speed up the justice delivery system, how government took initiatives on the recommendations of various reports of various committees and lastly in this very chapter researcher explained to search for a solution for delay in justice delivery system else, the system will collapse. We have no other choices but to vigorously and quickly devise effective alternative options to litigation to ease the present weight of judicial business. Alternative Dispute Resolution as known as ADR that encouraged the disputant to arrive at a negotiated understanding with a minimum of outside help.

Chapter III deals with the need for an alternative dispute resolution mechanism, in this chapter researcher, attempted to discuss the need for the different modes of alternative dispute resolution mechanism and its background briefly. The term 'Alternative Dispute Resolution' is often used to describe a wide variety of dispute resolution mechanisms. The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to

negotiate directly with each other before some other legal process, to arbitration systems or mini-trials that look and feel very much like a courtroom process. To overcome delay, and provide effective justice to the consumer of justice, it becomes necessary that the Alternative Dispute Resolution method should be resorted to determine dispute among the parties at an earlier date. The Supreme Court in *Salem Advocate Bar Association, Tamil Nadu v Union of India*[14] observed that, in some countries of the world where alternative dispute resolution has been well-turned to the amount that more than 90 per cent of the cases are resolved out of the court, it is necessary that the parties must indicate the method of ADR that they want to betake during the pendency of litigation.

In this very chapter, the researcher highlighted the evolution of the ADR mechanism how it came into existence in reference to the Indian society**.** Since the ancient India laws of arbitration were very popular and were highly accessible. The researcher also discussed the inception of the Arbitration Act, which amended, and replaced time-to-time, and about various laws, which was existed and existing in India, having guidelines, rules, and regulations related to ADR mechanism.

After that researcher discussed the method of dispute resolution, these dispute redressal methods are the methods, which are being progressively acknowledged in the field of law and commercial sectors at international and national levels both**.** The most common types of ADR for civil cases are

[14] *Ibid*

Arbitration, Mediation, Conciliation, Negotiation, and Lok Adalat. Let us have a bird's eye view of these aspects of ADRs.

Arbitration: Arbitration is one of the most widely known forms of ADR. Arbitration is a quasi-judicial procedure; it means a process of dispute resolution in which a neutral third party called arbitrator renders a decision after a hearing at which both parties have an opportunity to be heard.

The Arbitration and Conciliation Act, 1996, governs the 'arbitration procedures' in India. Part-I of the Arbitration and Conciliation Act, 1996, comprises of 43 sections spread over ten chapters, making detailed provisions relating to domestic arbitration and international commercial arbitration held in India under this Act. However, the Act does not define the term 'arbitration.' The definition of arbitration has been based on the definition mentioned in Article 2(a) of UNCITRAL Model Law; according to that provision, the term arbitration is a medium through which the parties resolve the matter with the interposition of a neutral third person. In the case of *Jivaji Raja Vs Khimiji Poonja & Company*, Bombay High Court defined that arbitration is the reference of dispute or difference between two or more parties to a person chosen by the parties or appointed under statutory authority, for determination of the same. In a broad sense, it is substitution of ordinary judicial machinery by a mutually chosen tribunal, i.e., an arbitrator or an arbitral institution.

Negotiation: Negotiation is the simplest and non-binding procedure involving direct interaction of the disputing parties, which is required to be

devised at the very beginning of the dispute. The only thing which needs to be conquered is 'egotism' by the parties to the dispute so that they can go for self-counselling to resolve their dispute.

Mediation: In simple terms, mediation nothing but facilitated negotiation. Mediation is an old concept to India, centuries before India had utilized a system called panchayat system where all the villagers respect the decisions of the panchas, who resolve the disputes of community. The same type of traditional mediation continues to be utilized even today. The court should refer to all such matters to mediation in which disputes relating to properties, partition, marriage, and custody of children, commercial, and business are involved.

Conciliation: The term conciliation is often used interchangeably with mediation. The main difference between conciliation and mediation proceedings is that the 'conciliator' can make proposals for non-binding settlement, while a 'mediator' refrains from making such a proposal.

Lok Adalat: It is a forum in which the matters pending before the court of law or at the pre-litigation stage are resolved amicably. It has been granted legal status under the Legal Services Authorities Act, 1987. According to the Act, the award delivered by the Lok Adalats is considered to be a decree of a civil court and is conclusive and obligatory on each party to the dispute, and no appeal shall be made against any such award before any court of law. If the parties to the dispute are not convinced with the award of the Lok Adalat however, there is no provision of appeal against such award, but they are free to initiate litigation by

following the necessary procedure, filing a case and approaching the court of appropriate jurisdiction, in the application of their right to litigation.

Afterword researcher explained the paradigm of Section 89 of the Code Of Civil Procedure, 1908. Section 89 was incorporated by Parliament in the year 1999 in Code, on the recommendations of the 129th report of Law Commission of India, and the report of Malimath Committee. Section 89 of the Code Civil Procedure renders provisions related to the settlement of disputes out of the court, the object behind this provision is to avoid multiplicity of litigation, save valuable time, money and expenses and permit parties to come at settlement amicably and to reduce the burden of the court. The committee suggested that it be made mandatory for the court to mention the dispute after the issues are framed for settlement, which may be acceptable by parties either by way of mediation, conciliation, arbitration, judicial settlement or via Lok Adalat and if parties to the dispute do not satisfy, the court will refer them to one or the other of the said methods or the suit shall proceed further. On perusal of the aforementioned provisions of Section 89, it mentions the five forms of ADR methods, arbitration conciliation, mediation, judicial settlement, and Lok Adalat. The intention behind Section 89 is to provide a quick and efficient remedy to the litigants and decrease the burden of pendency from the courts. The same Amendment Act incorporated the other three provisions, 1999 are contained in Rules 1A, 1B, and 1C of Order 10, of the Code of Civil Procedure. Section 89 should be read with Rule 1A of Order 10, which requires that the court to instruct

the parties to opt whichever of the five methods of alternative dispute resolution and refers the matter at their option. Rule 1B of Order 10 talks about the provision when the matter is mentioned under Rule 1A, the parties to the dispute shall show up before such forums for the settlement of the suit. Rule 1C of Order 10 renders that where a matter referred under Rule 1A and presiding officer of forum satisfied that it might not be appropriate in the interest of justice to continue with the matter furthermore, then he will then revert the matter to the court of law again and direct the parties to the dispute to appear before the court on the date fixed by him. In a landmark judgment, the Supreme Court of India in *Afcons Infrastructure Ltd. v Cherian Varkey Construction Co. (P) Ltd* has observed, that the provisions of Section 89 of the Code of Civil Procedure, 1908 which determines a responsibility on the court of law to motivate the parties to the dispute for settlement of their disputes by adopting any one of the alternative dispute resolutions methods.

The researcher also explained in this how could we identify cases, which are suitable for ADR. The Hon'ble Supreme Court categorized the cases considered suitable or not suitable for the ADR process. Lastly, in researcher elaborated the need for strengthening alternative dispute resolution in India that the existence of a properly functioning justice system increases citizens' confidence and their willingness to bring disputes to court. Unfortunately, the picture of the Indian legal system at present appears gloomy. There is a strong need to have an extremely effective, comprehensive plan required to be

formulated for the successful implementation of the ADR program. For the strengthening alternative dispute resolution in the India government as well as judiciary will have to undergo the process of judicial review on a structural and operational level both.

Chapter IV highlighted the evolution and structure of Lok Adalats in India. In this very chapter researcher centred upon the Lok Adalat as a mode of dispute resolution mechanism its advancement and brief layout of its structure. Lok Adalat has been playing an essential role in the dispute resolution since ages. The institution of Lok-Adalat has profound roots in Indian legal history and played a critical part in providing justice to Indian society. Lok-Adalat gained its statutory status from The Legal Services Authority Act, 1987, and constitutional mandate, as provided in Article 39A of the Constitution. The comprehensive object of Lok-Adalat is to provide free legal services to the downtrodden and weaker sections of the society to ensure that justice is not denied.

Under the head growth & development of the institution of Lok Adalat in India researcher discussed the brief history of Lok Adalat, The introduction of Lok Adalats in India presented the first chapter of the judicial system of the country. It provided a new forum for satisfying settlement of disputes for the disputants. Shri Harivallabh Pareek in the year 1949 to provide relief to these adivasis, in Rangpur, he started the alternative mode of Lok Adalat for dispensing justice and remained the same for many years. The current version of Lok Adalat has evolved from the concern expressed by the several committees

set up to betake to organizing legal aid to the poor and disadvantaged people and warning alarm made by the judicial circle on increasing numbers of arrears pending for an extended period at various levels in the court system. The Committee for Implementing Legal Aid Schemes (CILAS), established by the Ministry of Law and Justice in 1980, recommended creating the Lok Adalats.

In the year 1982, the first Lok Adalat was organized in the Junagarh district at village Una. Andhra Pradesh, Bihar, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Uttar Pradesh, and the Union Territories of Delhi, Pondicherry and other states also adopted the Lok Adalat system in there provinces after observing its successful working. The Legal Services Authorities Act, 1987, had given statutory recognition to the Lok Adalats, which were earlier performing its functions on an informal basis. The Act came into force on 9th November 1995 with various amendments.

Then, after the researcher discussed the objective of Lok Adalat as per the Legal Services Authority Act, 1987, the prime objective of the Lok Adalat as per Legal Services Authority Act, 1987, is to render an option to the mainstream conventional legal system. The Act establishes legal services authorities to offer free, and proficient legal services to the downtrodden and weaker sections of the society, to ensure that opportunities for securing justice are not denied for monetary or other social disadvantages, and to organize Lok Adalats to secure that the functioning of the legal system upholds justice on the grounds of equal opportunity.

Further, the researcher discussed the Constitutional directives for Lok Adalat under the head Preambular aspirations of the spirit of justice and Lok Adalat. The Preamble of the Constitution of India adequately determines to establish India as a sovereign, socialist, secular, democratic, republic. It directed for obtaining justice, not only social justice but economic and political justice, too, for the citizens of the country. Lok Adalat is one such instrument if used in the correct direction. Even though Lok-Adalat has not been said unequivocally under the provisions specified in the Constitution, it is understood in it on account of its rationality of giving justice similarly to all regardless of their status, which must be accomplished by the participatory type of dispute resolution mechanism.

Under the head equal justice, Lok Adalat and legal aid directives under part III & part IV of the Constitution, Article 14 of the Constitution of India not only promulgate but also guarantees equal justice to all, which includes the concept of legal aid and equal justice. Art.14 deals with equality before the law and equal protection of laws. The nature of the Article has made it clear that the legal aid has been received directly from this Article and has made it positive about implementing the legal aid plan, which is very much within the territory of India.

Article 39(A) directs the state to establish such legal machinery by which justice can be provided based on equal opportunity. It also mandates that free legal aid shall be provided so that the opportunity of ensuring justice which is not

denied to any citizen due to their financial and other inabilities. Though Article 39A is a directive on the state which is unjustifiable but once it is read with Article 21 and Article 14 which guarantees a fundamental right of equality before law and equal protection of laws within the territories of India to all its citizens, it can easily be visualized that provision for free legal aid to needy litigants cannot remain an idle direction. The Constitutional directives for forming Lok-Adalat, for the people and by the people, are implicit in the Preamble, Articles 14, 39A, 40, and other provisions of the Constitution. It is apparent that the organization of the Lok-Adalat is a mandate provided by the Constitution. The march towards making Lok-Adalat a great success is a Constitutional goal, for which everyone should fulfill.

Further in next head reports of various committees for implementation of legal aid in India researcher attempted to discuss briefly reports of multiple committees, which helps to implement legal aid in India (1) First Report Of Law Commission of India, (2) Committee of Justice Bhagwati on Free Legal Aid (3) Expert Committee on Legal Aid (4) Swaran Singh Committee and its Recommendation (5) Juridicare Committee Report (6) Committee for Implementing Legal Aid Schemes.

In this chapter researcher also discussed statutory recognition of Lok Adalat under the Legal Services Authority Act, 1987. The Legal Services Authorities Act, 1987, was enacted to provide a statutory foundation for legal aid programs in a similar format all across the country. On 9th November 1995, the

Act was eventually implemented following by several amendments included therein by Amendment Act of 1994. Provisions related to Lok Adalats and Permanent Lok Adalats have been given under section 19 to 22 (E) Chapter VI & VI A of the Act. As per Section 19 of the Act, Lok Adalats are customarily presided over by retired or sitting judicial officers and other persons such as social workers, etcetera. Cases referred to Lok Adalats either from the traditional courts by agreement of parties or directly under the order of presiding officer where he deems it proper. The cases, which have so far been dealt with by these Lok Adalats are the case involving matrimonial dispute, rent matters, motor accident claim cases, land acquisition matters, bank recovery cases, criminal compoundable cases, etcetera. The award of Lok Adalat has the force of decree of a court as per Section 21 of the Act because it brings the litigation to an end and no appeal against the award of Lok Adalat lies. The party, which has succeeded, can also even get back the court fee amount it had paid initially while going to traditional while going to the traditional court. No court fee is to be paid for getting the matter decided from Lok Adalat, and also strict rules of evidence do not apply.

In the year 2002, the legislature amended the Legal Services Authorities Act, 1987, by interpolating a new Chapter VI A, for setting up Permanent Lok Adalat to offer the procedure for settlement of the matters related to 'public utility services' at the pre-litigative stage. Act also provides under chapter II and III of Legal Services Authorities Act, 1987, for the constitution of the National

Legal Service Authority, State Legal Services Authority, District Legal Services Authority, Legal Services Committee of Supreme Court, Legal Services Committee of High Courts, and Taluk Legal Services Committee, can organizes Lok-Adalats according to such places and interludes as it may be deemed fit.

Some of the benefits that litigants derive by taking their disputes to such Lok Adalats are:

a) Generally, there is no court expense, and if the court expense is there already, it will be returned if the dispute decided by the Lok Adalats.

b) The essential characteristic of Lok Adalats is the procedural adaptability and expeditious trials of dispute, and there is no rigorous application of the procedural laws such as the Code of Civil Procedure, 1860 and the Evidence Act, 1872 while evaluating the claims by Lok Adalat;

c) The litigant will be getting speedy disposal in the process of Lok Adalat.

d) Disputes can be referenced to the Lok Adalat straight rather than approaching a formal court initially;

e) Parties are free to voluntarily compromise or settle through the process of "give and take".

f) The award passed by the Lok Adalat is obliging on the parties to the dispute.

g) No appeal can be entertained against the Lok Adalats order. The reason for this is that unlike a regular court whose final decision is based on the appreciation of evidence, in a Lok Adalat, the decision is mutual arrived at by both parties to the dispute. As the decision in the Lok Adalat is not imposed upon by a third agency, a case for appeal will not arise and is thus not allowed.

In view of the above facilities provided by the Act, Lok Adalats are blessings to the litigants, and litigants can get their dispute settled quickly, amicably, and free of cost.

Lok Adalat originated from the particular failure of the legal and judicial program to give powerful, quick, and cheap justice along with the litigant at the centre, particularly the immense arrears of cases, which usually took an extremely long period for disposal. In their conciliatory function, Lok Adalats are inspired by the principles of natural justice. Talking about the functioning of Lok Adalat in comparison to the conventional judicial system, fundamentally, Lok Adalats are less formalized and less expensive than the courts, and Lok Adalats has many advantages over the courts. The litigants have an additional significant range for participation amid the exceptional satisfactory resolution of their disputes. If it requires Lok Adalats can execute practice concurrently as conciliators, mediators, arbitrators, or adjudicators. As such, Lok Adalats performs many distinct roles, such as preventing conflicts keeping clashes from

rotting, negotiating, bargaining, compromising, and resolving disputes effectively and proficiently based on the circumstantial condition of the individual cases.

Initially, Lok Adalats were held just a few times each year on Sundays in towns all through the districts of India, and the subject matter jurisdiction was understandably boundless, this tradition still has been continued. Nowadays, the disputes related to civil and criminal in nature decided by the Lok Adalats frequently. The prisons also have been hosting Lok Adalats, from time to time resulting in the freeing of lots of prisoners or under-trials. It is entirely up to the conciliators at the Lok Adalats whether to acknowledge a petition or dismiss it. Since 2002, Lok Adalats are considered to be a beneficial mechanism in alternative dispute resolution in India. It is efficient and effective due to its progressive nature and cost-effective style. These types of panels have been referred to as a "revolutionary evolution of the resolution of disputes". As a result, Lok Adalats have now been extensively accepted and referred to as an extremely effective method of ADR mechanism for conciliating, negotiating and settling the disputes.

Talking about organizations and working of Lok Adalat The Legal Service Authority Act 1987 is the outcome, and the rule about Lok Adalat includes as a part of it. The rule of Lok Adalats is elaborately described in chapter six from Section 19 to 22. Section-19 laid down provisions related to the organization of Lok Adalats. Lok Adalats are organized by the concerned legal services authorities or committees, at such interims intervals and places, as it considers fit. These courts are generally presided by retired or sitting judges and other persons

as specified by that legal services committee or authority. The advantage of Lok Adalat is that lawyers need not be engaged, and the cases are mostly decided on a mutual agreement.

Provisions related to the cognizance of cases are under Section 20 of the Act. The court, before which the case is instituted, will refer the matter to the Lok Adalat for settlement if the parties agree to settle the dispute before the forum of Lok Adalat. However, when one of the parties to the dispute initiates a request to the court for reference of the case to the Lok Adalat for settlement of the dispute, even in such a situation, the court will undoubtedly refer to the matter to the forum of Lok Adalat to resolve the dispute. On the other hand, in this case, the additional necessity is that the court should be convinced first of all that there are possibilities of such a settlement. This Section also empowers the court to refer the matter to the forum of Lok Adalat by itself if it is convinced that the matter is suitable for taking cognizance of the matter by the Lok Adalat.

Section 21, of the Act, talks about the award of Lok Adalat proceeds and settles the matter by arriving at a compromise or settlement and adhering to legal principles of equity and natural justice. Finally, when the award declared by the Lok Adalat and all these kinds of the award shall be deemed to be a decree of the civil court. The parties to the dispute shall sign the award of Lok Adalat, and the panel forming the Lok Adalat is mandatory, as per regulation 33(1) of Legal Service Authority Regulations, 1988. Sections 21 prohibit the appeal against the award of the Lok Adalat. The purpose of the legislature in restraining an appeal against the award of Lok Adalat is to finalize the award so that unnecessary

further litigation could be saved. However, when the award is void from the initial stage, the parties to the dispute, who entered into a compromise had no authority to enter into compromise or settlement, or the compromise has been begun by playing fraud, then an appeal could be maintainable under Section 96 of the Code of Civil Procedure. Further, in this very chapter researcher also discusses the award passed by the Permanent Lok Adalat. Permanent Lok Adalats Under Section 22-E of the Act, the award passed by the Permanent Lok Adalat is irrevocable and obligatory on all parties, and it is also considered as a decree of the civil court like Lok Adalats.

Powers of Lok Adalats, It is given under Section 22, Lok Adalat and permanent have similar powers as vested in Civil Court under the Code of Civil Procedure. These both Adalats equally can summon the appearance of any witness and question him on oath; can order for the discovery and production of any document; can order for the reception of evidence on affidavits and such other matters as may be prescribed.

The researcher also discussed the award of Lok Adalat and judicial review under Article 227 of the Constitution of India. The High Courts have extensive power of administration over decisions over all courts or tribunals in India, with respect to which it exercises its jurisdiction. Lok Adalat is a tribunal of a Special category; therefore, awards made by Lok Adalats established under the Act within the territorial limitations of the respective High Courts are subjected to judicial review on the ground obtainable under Article 226, 227 of the Constitution of India; otherwise, the afflicted person would remediless. In *Shashi*

Prateek v Charan Singh Verma, Mahila Bhanwari Bai v. Kashmir Singh, Shashi Prateek v. Charan Singh Verma, Jai Devi Hans v. Beena Singh and many other cases Hon'ble High Courts laid down some grounds on which award of the Lok-Adalat is open to challenge and subject to judicial review:

(i) Fraud and misrepresentation.

(ii) Absence of free consent, absence of parities or any parties or consent not proper.

(iii) By coercion, or pressuring the parties to refer the matter to Lok-Adalat by court.

(iv) No dispute existed between the parties for resolving or settling.

(v) Impair the interest of the minor.

(vi) Totally arbitrary and unreasonable.

(vii) If the award is observed to be without the parties having deliberately, beyond their individual understanding, without any free will, have reached into a settlement.

(viii) Ex-partie or ex-facie judgment without compromise and settlement.

(ix) Production of succession certificate cannot be considered as consent.

(x) If the parties are not heard in the matter.

(xi) Procedural lapses.

(xii) Related to non-compoundable offence.

Under head Permanent Lok Adalats, whether it is an ADR mechanism or not? The researcher discussed that Permanent Lok Adalats are an ADR procedure as well, but it is the combination of Lok Adalats and conventional courts, possessing both adjudicatory and non-adjudicatory method and an alternative sense that it provides an alternative to traditional litigation, it clarifies the rigour and complexness of the traditional litigative procedure. A Permanent Lok Adalat is not a court, but a special tribunal and its judgment and awards are not subjected to consecutive appeals. The procedures Permanent Lok Adalats are slightly similar to Med-Arb. The Hon'ble Supreme Court has observed that the Con-Arb is the procedure followed by the Permanent Lok Adalats, which is popularly known in the United States of America; in 'Con-Arb' the parties to the dispute have access to a neutral third party or authority for conciliation or settlement. If it does not work out, such a neutral third party or authority authorizes to decide the dispute; such a decision is final and binding. The dispute resolution via Permanent Lok Adalat is unquestionably an ADR mechanism.

In the case of the machinery of permanent Lok Adalat, advocates can communicate very well to the culprits, if any. Despite this, if the party requires to betake to less costly resolutions, then is to be said that the law is anti-litigant since there is no such requirement that a person shall reach first Permanent Lok Adalat before approaching a court of law. Typically, Permanent Lok Adalats suffer from similar advantages and disadvantages as normal Lok Adalats do. Though, Permanent Lok Adalats operate continuously and require additional distinct expense. They render a new state-sponsored ADR mechanism, including

the scope and time to deal with a much more tremendous amount of cases and more complex cases than regular Lok Adalats.

After that researcher discussed some of the advantages and disadvantages of Lok Adalat system, the working of Lok Adalat seems to be both fruitful and successful however it has some drawbacks too, but it is trying to achieve those objectives for which it has been meant. Lastly, in this chapter, the researcher discussed under the head Lok Adalat: challenges ahead about the challenges, which are still faced by the Lok Adalat, like, speedy justice is one of the essential characteristics of Lok Adalat, but such speed must be reasonable etcetera.

Chapter V of the study is Lok Adalat and approach of judiciary, has been devoted to discussion on the provisions of the Act, which are designed to organize and constitute the Lok Adalats in the country in a uniform manner. It covers the organization and composition of Lok Adalats by various authorities and committees, the jurisdiction, cognizance, powers Lok Adalats, award Lok Adalats and Permanent Lok Adalats execution of awards of Lok Adalats and weaknesses of Lok Adalat. All these aspects of the Lok Adalat system have been examined in the light of judicial pronouncement made by the Apex Court and various High Courts while interpreting the provisions of the Act.

Chapter VI is the core of the thesis deals with the actual implementation of the Lok Adalat system in India and Uttar Pradesh. The chapter covers the result of the analysis based on relevant data collected from different sources. In the state of Uttar Pradesh, the Lok Adalat system is functioning for settlement of disputes since 1981. After enforcement of the Legal Services Authorities Act in

the state in 1997, various legal services authorities and committees are organizing Lok Adalats from time to time. From 1997 To July 2019, the state of Uttar Pradesh was leading in both organizing Lok Adalat and settling the dispute in such Lok Adalats. However, from the year 1997 to 2019 Uttar Pradesh still leads in settlement of the dispute in National Lok Adalats by settling a skyscraping figure of the case in number at 25,489,101 till 13th July 2019, which is the 40% of the total cases settled through the instrument of Lok Adalat throughout the country. These Lok Adalats are determining different kinds of cases such as MACT cases, insurance cases, family disputes, electricity cases, pension cases, civil and revenue cases, petty criminal cases, bank loan cases, labour disputes, pre-litigative cases, etcetera.

Finally, the chapter VII of the work deals with the conclusion of the study and some valuable suggestions on different aspects of Lok Adalat mechanism with a hope to improve and to meet the challenges of the time.

CHAPTER II

Chapter II

LITIGATION: PROBLEMS AND PERSPECTIVE

2.1 INTRODUCTION

The judicial system of India is one of the most traditional and established legal systems in the world. It is part of the legacy that India got from the Britisher's over 200 years of their colonial rule, and the same is apparent through the many similarities which the Indian legal system shares with the English legal system. The judicial system derives its powers from the framework laid down by the Indian Constitution.[1]

The existing judicial system of India was not a sudden creation; it has been advanced as the consequence of a slow and gradual process and bears the imprint of the distinctive periods of Indian history. Administration of justice is one of the integral parts of functions of the state.[2] The judicial system manages with the administration of the laws via the agencies, which are related to courts. This system provides machinery to the parties for resolving the disputes on account of which they approach the courts. Nothing bothers more than a glumness sense of injustice. Simply no society can allow the situation to

[1] *Available at:* http://www.silf.org.in/16/indian-judicial-system.htm, (accessed on 27/4/2016 at 12:25)

[2] S.D.Sharma, *Administration of Justice in Ancient India* 170 (Harman Publishing House, New Delhi, 1988)

develop where the particular impression prevails when there is simply no redress for grievances.[3]

In the whole world, not only by the developing countries but also by the developed countries Indian judiciary held the high esteem. Judiciary praised by the hard work done by them and the quality of judgment delivered by them. However, there is raising animadversion regarding the lack of ability of courts to efficaciously deal with the massive backlog of cases. Many countries world over are facing the same problem of delay in dispensation of justice as India does.[4]

The Constitution of India has, in its Preamble, defined and declared the common goal for its citizens as "to secure to all the citizens of India, Justice-social, economic and political". Article 14 guarantees equality before the law and the equal protection of the laws. Article 39A of the Constitution mandates the state to secure that the operation of the legal system promotes justice based on equal opportunity and ensure that the same is not denied to any citizen because of economic or other disabilities. All have equal rights, but unfortunately, all cannot enjoy the rights equally. Enforcement of the rights has to be through courts, but the judicial procedure is very complicated, costly, and tardy, putting the poor persons at a detachment. It is one of the essential duties of a welfare state, to provide judicial and non-judicial dispute-resolution

[3] *Id* at 72

[4] Lecture on "Delayed Justice" Delivered By Hon'ble Shri Y.K. Sabharwal, Chief Justice of India on Tuesday,25th July, 2006 at Justice Sobhag Mal Jain Memorial Lecture *available at*:http://highcourtchd.gov.in (accessed on16/04/2015 at 12:34.)

mechanisms to which all citizens have equal accesses for resolution of their legal disputes and enforcement of their fundamental and legal rights.[5]

For an effective justice dispensation system, at least three things are to be provided, i.e., access to courts, effective decision-making by judges, and the proper implementation of those decisions. Equal opportunity must be provided for access to justice. It is not sufficient that the law treats all persons equally, irrespective of the prevalent inequalities, but the law must function in such a way that all the people have access to justice in spite of economic disparities. The expression "access to justice" focuses on the following two primary purposes of the legal system: [6]

1. The system must be equally accessible to all.
2. It must lead to results that are individually and socially just.

However, before discussing the problems of the dispensation of justice in the present Indian context researcher shall discuss the history of adversarial Indian judicial system, which classified into three stages, (i) Judicial system in ancient India (ii) Judicial system in British India (iii) Judicial system in the Republic of India.

2.2 ADVERSARIAL JUDICIAL SYSTEM IN INDIA

The adversarial system is a legal system adopted in the common law countries where two persons known as pleader represent their parties' status

[5] Justice S.B. Sinha, "Judicial Reform in Justice Delivery System", (2004) 4 *SCC (Jour)* 35.

[6] Law Commission of India, 222nd Report, on Need for Justice–dispensation through ADR etc., 2009.

before a neutral person or group of people, normally a judge, who endeavor to decide reality of the case[7], and India follows the common law model prevailing in England. The law followed in India is nearly the same as the one predominant in England, although it changed according to the typical Indian values. India follows the adversarial system of law, and this indicates that the judge serves as a neutral arbiter sustaining the balance among the contending opponents without actively taking part in the legal argumentation in the court.

2.2.1 JUDICIAL SYSTEM IN ANCIENT INDIA

'Bha' means bhagwan and 'rathi' the attachment. Thus is Bharat or India where its people have attachment towards bhagawan.[8] India is known for its extravagant and dynamic legacy. The history of India is considered to be the beginning from the vedic era, The rigveda, considered to be the oldest text of Indians in Sanskrit, was followed by three more vedas, viz., the sama, atharva and yajur, each of which gives us a panoramic view of the life and times when they were composed, and during the bronze age, some civil law system in India can be traced nearby 3000 BC and the Indus valley civilization, which was the period between 2600 BC and 1900 BC. In a religious and philosophical view, India has a glorious history of law. Emitting from the vedas, the upanishads, and other holy religious texts, it was a productive area enhanced by experts'

[7] *Available at:* https://en.wikipedia.org/wiki/Adversarial_system, (accessed on 21/5/2016 at 16:45)

[8] *Availableat:*http://www.theindianculture.com/Indyaculture_history/history%20of%20india.htm(accessed on 20/5/2016 at 10:50)

specialists from various Hindu philosophical schools and later on by Jains and Buddhists.[9]

In the ancient days, the Indian subcontinent was inhabited predominantly by Hindus. In fact, the legal system took its colour from the Hindu religious and social practices. In that period, in consideration of tax paid by the people, the king performed the judicial functions as a judge. Nevertheless, the administration of justice did not form a part of the state's duties.[10] This could be found from many passages in ancient Indian Hindu literature, showing a condition of society without a king.[11] When there was legal wrong or injury caused to a person or determinate class of persons, then the aggrieved party, parties themself to take necessary steps to get the wrongs redressed.

The Hindu jurisprudence or the legal system is embedded in the dharma as propounded in vedas, puranas, smritis and other work on the topic.[12] According to Kautilya, who is recognized as the Prime Minister of the first Maurya emperor, there were four administrative units in the kingdom divided into sthaniya, dronamukha, khrvatika and sangrahana.[13] A sthaniya established

[9] *Available at:* http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the- united kingdom/ (accessed on 15/4/2016 at 13:17)

[10] *Available at:* http://www.theindianculture.com/Indyaculture_history/history%20of%20india.htm, (accessed on 20/5/2016 at 10:50)

[11] P. B. Mukherji, "The Hindu Judicial System", in S. K. De, *The culture Heritage of India*, *1969 Vol. I, P.434.*

[12] Justice Rama Jois, *Legal and Constitutional History of India*, Universal law publishing co., Delhi, 1st ed.Reprint (2009).

[13] The ancient equivalents of the modern districts, tehsils and Parganas.

in the focal point of eight hundred villages, a dronamukha in the center of 400 villages, a kharvatika in the midst of 200 villages, and a sangrahana established in the center of ten villages, courts of law were set up in each sangrahana, and also at the meeting places of district called janapadasandhishu. The court comprised of three legal specialists called dhramastha and three ministers called amatya.[14] This proposes the presence of circuit courts in each district of the kingdom.

According to Brihaspati, there was a hierarchical structure of courts in ancient India commencing with the family courts and ending with the court of the king. The family arbitrator was the lowest one. The next court of the higher level was that of the judge; the next of the chief justice who was known as praadivivaka, or adhyaksha; and at the highest level was the king's court. The jurisdiction of each area was decided by the of the significance of dispute, the lowest court decided the minors dispute, and the king's court decided the most critical questions related to the kingdom. The judgment of each higher court succeeded that of the court underneath. [15]

According to Katyayana smriti, the courts graded into six hierarchical structures. They were:[16]

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[14] Justice S S. Dhavan, The Indian Judicial System A Historical Survey, *available at:* http://www. allahabad highcourt .in/event /The Indian Judi cial System _SSDhavan..pdf (accessed on 15/5/2016 at 18:08)

[15] *Ibid.*

[16] Justice Rama Jois, *Legal and Constitutional History of India*, Universal law publishing co., Delhi, 1st ed. Reprint (2009).

1. Kula (family councils) - A group of older adults in the family to determine the dispute which arises within the family or group of families of the same origin
2. Shreni (councils of trade or profession) – An assembly of elderly and learned people who acknowledged as neutral among a group of traders, dealers, professionals and craft men to arbitrate the dispute.
3. Gana (assembly of a village) - This was a large assembly of elders in the village who are accepted by the people of the area as learned and neutral
4. Adhikrita (court appointed by the king) - kind authorized these courts for delivering justice in which people who are knowledgeable in the sutras and smrithis appointed as judges. According to their jurisdiction, these courts have various kinds. They are (i) Pratishtitha, these instituted at a specific village or town. (ii) Apratishtitha was the mobile court, which will assemble in a particular place to try a specific case as called upon by the king. (iii) Mudrita was a higher-level court, which was authorized to use the royal seal.
5. Sasita (king's court) – It was the apex court of law in the kingdom and preceded by the king. The chief justice called pradvivaka and a group of Judges called sabhyas who aid and assist the king.
6. Nripa (king himself) – The supreme authority in the legal process was the king himself and guided by the principles of dharma.

Kula, shreni and gana could trial all the civil and criminal disputes except for an offence of violence were usually known as sahasa. Violence ware to tried by the adhikrita, the king appoints this court. Corporal punishments are to be decided by the sasita, which is kings' court, but to be finalized by the king himself.[17] The restriction was the basic principle, underlying the award of punishment; this principle produces a feeling of fear between the citizens.[18] According to Mahabharata, punishment protects dharma, artha and kama. Dhandaneeti, well acquired in sastras and regarded as to be essential that without the king and his power to punish the criminals' human beings would have always been tormented by fear, insecurity, and a threat to life and property. It is hard to discover peoples who are consistently fair in all perspectives and an impediment is continuously required to reform the offender. [19]

Though ancient writers have also outlined the hierarchy of courts as having existed in remote past, the exact structure that obtained cannot be ascertained it any definiteness; but later works of writers like Narada, Brihaspathi and others seem to suggest that regular courts must have existed on a considerable scale.[20]

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[17] *Ibid*

[18] *Available at:* http://www.indianetzone.com/50/legal_syst em_ancient_india.html (accessed on17/3/2016 at 14:05)

[19] Mahabharata Shanti Parva, shlokas 15-31 cited by M. Rajendra Kumar, 'Concept of Judiciary in Ancient India'*GRA Volume : 2, Issue : 9, Sept 2013 • ISSN No 2277 – 8160* p.80

[20] Law Commission of India 14th Report on Reform of the Judicial Administration, 1958

The origin of a formal system of state judicial administration may be drawn to the pre-Mauryan age. The Mauryan era fills a cleft between two great spells of management of criminal justice in ancient India, viz, that as specified in the dharma sutra on the one hand and the of Manu's code on the other.[21] The few mentions in Megasthenes' Indica to the punishments for offences in Chandragupta's era breathe the spirit of the retributive law of the preceding period. From pillar edict IV of Ashoka, we discover that even after his regeneration to Buddhism, he proceeded with capital punishment for violations, only softening its gravity by giving the convicts three days' respite before execution. The system of justice of the first time frame seems to have been proceeded by the Mauryas.[22] The old division of urban and realm judiciary proceeded in Ashoka's rule.

The rule of the other dynasties of the pre-Gupta period is a vital scene in the historical backdrop of old Indian legal administration. The two new grades of judicial officers, namely mahadandanayakas and dandanayakas, introduced by the Kushanas to make the judicial system more efficient. Since the fall of the Mauryan Empire, the Guptas make a policy of administration on royal formations afresh. A sound and efficient administration created by the King Harshvardhana, after the Guptas in northern India. Harshvardhana also highly praised by the Chinese Buddhist pilgrim Hiuen Tsang for his love and devotion

[21] Dalbir Bharti, *The Constitution and Criminal Justice Administration* 14 (A.P.H. Publishing Corporation, New Delhi, 2002)

[22] *Ibid*

to justice, his unremitting industry in the discharge of his duties and his piety and popularity. [23]

After the dissolution of the Harsha Empire, a haze of uncertainty descends on the history of India, which does not raise until the Muslim incursion. The country once more has broken into small realms, but this did not appear in any significant change in the judicial system, which had taken roots during the past thousands of years. The ideals of justice affirmed in each empire, despite political divisions, the solidarity of civilization was protected, and the fundamental principles of law and procedure were practised all through the country. It indicated that the excellent commentaries on the law like, Mitakshara and Shukarneetisar were created during this period and delighted in an all India authority. However, a new chapter added to the judicial legal history of India in the establishment of Muslin era. A new religion, a new civilization and a new social system were brought to India by the Muslim conquerors; this could not but have a profound effect on the judicial system.[24]

The country had an effective and efficient system of justice and government, which took shape under the Mughal Empire. Fiqha-e-Feroze Shahi, which was called the code of civil procedure of that time, compiled in the Mughal era. The code prescribed subtle elements of the strategy and the law in several matters. Firstly the code was written in Arabic and afterwards translated into Persian by following the orders of Feroz Shah Tughlaq. Later it

[23] *Ibid*

[24] *Supra* note 9.

was replaced by the Fatawa-e-Alamgiri has written in 1670. According to fatawa-e-alamgiri, the qazi first prayed and asked God for help in the administration of justice, and he assisted by katib. It was obligatory for qazi to see that if the evidence accurately recorded. The plaintiffs and defendant of the case called muddai and muddaa allaih, respectively. The plaint was daawa while the istaghasa was the complaint in criminal. A pleader called vakil represents muddai and muddaa allaih's case.[25]

2.2.2 JUDICIAL SYSTEM IN BRITISH INDIA

We obtained our system of administration of justice and law from the Britisher's. The Portuguese, British, Danes, Dutch, and French all these nations reached India firstly as traders in the 17 century AD but just the British arrived in setting up their self and gradually conquered the entire sub-continent. British rule in India introduced a more or less unified legal system in the continent, which may be considered a major step in the globalization of laws. As a consequence of over a century of British rule, a substantial portion of Indian law and Indian legal institutions are based on British law, British legal system and the English language.[26]

Nobody was authorized to make laws except the Governor and company. However, it led to set up a new judicial system in India due to their

[25] R.C. Majumdar, *The History and Culture of the Indian People: The Mughal Empire* 545 (Bhartiya Vidya Bhavan, Vol. VII, Bombay 1974)

[26] *Ibid*.

limited legislative right.[27] The historical backdrop of the present judicial system might be followed back to the year 1726 when King George-I issued a Charter for effectuating the necessary developments in the judicial enforcement of the Presidency towns of Bombay, Calcutta and Madras. This Charter introduced the practice of appeals from India to the Privy Council in England in 1726.[28] The function of the Privy Council has been an extraordinary binding force and the instrument and epitome of the rule of law in India. In the year 1833, an Act passed by the British Parliament by this Act the Privy Council was made a permanent statutory committee of legal experts to hear appeals from the British Colonies. Thus, the Act of 1833 converted the Privy Council into a magnificent royal court of unimpeachable authority.[29]

The year 1861 also constituted a prominent milestone in the development of legal and judicial institutions in India. During this year the High Courts at Calcutta, Madras and Bombay were established. These High Courts were the best instrument of justice than the previous courts, but also represented to the incorporation of the until now existing two dissimilar and different legal system, the company's courts in the regions of Bengal, Bombay

[27] *Available at* http://articlesonlaw.wordpress.com (Accessed on 17/4/2016 at 13:15)

[28] Dr. Rakesh Kumar Srivastava, A Guide to India's Legal Research and Legal System, *available at:* globalex,http://www.nyulawglobal.org/globalex/India_Legal_Research.html. (accessed on 24/5/2016 at 22:05)

[29] *Ibid*

Madras, and the three Supreme Courts (set up by the royal charter) in the precedency town.[30]

The first Constitutional court was the Federal court, which established in India in 1937 of unrestricted jurisdiction and original jurisdiction in matters where there was a dispute between the provinces or federal States. The federal court was also the appellate court of orders, decree, the judgment passed by the high courts and subordinate courts. Hence, the Federal court of India had primary, appellate and consultative jurisdiction. The concept of precedent in India additionally had its profound roots in Federal Court, as the law pronounced by the Federal Court and Privy Council has given binding effect on all the courts in British India.[31]

The Charter Act of 1833 took an important step towards accomplishing the goal of ensuring a standard and uncomplicated method of law in India via the procedure of unification of the general system of codes. Section 53 of the charter provided for the appointment of a law commission in India, Later, the first law commission of India formed, and the Governor-general appointed its members. The most anamnestic contribution of the law commission was the enforcement of the Indian Penal Code prepared under the guidance of Lord Macaulay. The commission attracted its attention regarding the dissension of the non-Hindu and non-Muslims and therefore passed the lex loci reports in

[30] Rashika Chaddha, Evolution of Law: A short history of Indian legal Theory, Legal India, *available at*:http://www.legaindia.com/evolution-of-law-%E2%80%9Ca-short-history-of-indian-legaltheory% E2 %80 % 9D/.(accessed on17/5/2016 at 14:05)

[31] *Supra* note 21.

1837. It was proposed in the report that an Act should be done for all districts except for Hindus and Muslims, should be kept under English laws to the extent that it was favorable to Indian conditions. In the year 1853, the second law commission was formed and submitted two reports, the first report dealing with the reform of the judiciary and the second with the reform of the law. It suggested by the commission that the amalgamation of the Sadar Diwani Adalats and the Supreme Court in every one of the presidency towns and the enactment of uniform civil and criminal procedure codes.

The recommendation of law commissions resulted in codification of Code Of Civil Procedure in the year 1857 and Code Of Criminal Procedure in the year 1861, further the enactment of the Indian Penal Code in 1860 etcetera. The Third Law Commission ended up being hugely successful of all Commissions. In its seven reports commission drafted various like the Indian Succession Act, the Indian Contract Act, the Indian Evidence Act, the new Limitation Act and the Divorce Act. The Government considering issuing the Law Digest at that time but unexpectedly it ended up because of the dispute amidst its members. Though many branches determined until now, most of the branches of the law were still uncertain and uncodified, which resulted in many complexities. For this, Lord Halisbury suggested developing a small body to codify the rest of the laws, which resulted in the codification of Transfer of Property Act and other Acts and revision of the existing Codes. With the completion of the fourth law commission, the British Government has undertaken the codification on a large scale, and the then government

successfully enacted the essential laws, which suited the need of the country.[32] During British rule, it can be said that India has learnt a lot more experimental and empirically as well. India had some exceptionally positive effects on its legal system by British rule. The legal system existed in India was in extraordinary need of reform and Britisher's came to India and reformed our legal system, which we needed the most.

The legislation introduced by the British Rule brought about a perceptible change and uniformity in the administration of justice in India.[33] The influence of Britishers, after the fall of Muslim rule in India, made a massive structure of Indian law and jurisprudence resembling the height and symmetry and grandeur of the Common law of England. The 'Adversarial System' of justice was introduced in India, where two opposite parties are pitched against each other, both given level playing field and opportunity to present their case before the judge.[34]

2.2.3 JUDICIAL SYSTEM IN REPUBLIC OF INDIA

India follows the judicial system nearly the same as the one prevailing in England, although it has moulded according to typical Indian values.[35] After

[32] Rashika Chaddha, Evolution of Law: A short history of Indian legal Theory, Legal India, *available at*:http://www.legaindia.com/evolution-of-law-%E2%80%9 Ca-short-history-of-indian- legaltheor% E2 % 80% 9D/ (accessed on 17/5/2016 at 14:05)

[33] Dr. S.K. Puri, Indian Legal and Constitution History 45 (Lexus Nexus Butter Worth London, 1980).

[34] *Ibid*.

[35] B. N. Srikrishna, (2008) "The Indian Legal System," *International Journal of Legal Information*: Vol.36 : Iss.2, Article 8, *available at* : http://scholarship.law.cornell.edu/ijli/vol36/iss2/8, (accessed on 25/05/2016 at 15:05).

the independence, the Constitution of India following the same hierarchy which followed at the time of British rule, Supreme Court India being the apex court replacing the Federal Court of India, and the different state High Courts substituting the Provincial High Courts with the other various courts beneath the High Courts. It is opportune to note that the High Courts are not the subordinate court to the Supreme Court. The High Courts are empowered by Article 227 of the Constitution of India to exercise superintendence over all the subordinate courts and tribunals whereas as far as the Supreme Court concerned it has not been conferred with any power of superintendence by the constitution. If both the Supreme Court and the High Court considered as brothers in the administration of justice, however, the High Court has an extensive jurisdiction, but the Supreme Court remains to be the elder brother. [36]

The Constitution of India is the mother of all laws and the supreme law of the land. It not only laid down the powers, duties structures and procedures of various branches of state but also laid down the framework of Indian legal & judicial system. In addition to it, it defined the fundamental rights & fundamental duties of the people and citizens; it also provides the directive principles of state policy, which are the responsibility of the state to the citizens.[37] The most challenging task at the earliest stages of forming a constitution was to establish the establishment of an independent and impartial judiciary. The judiciary is given the power to assure that every component of

[36] Dr. Atul Lalasaheb More , *An Appraisal Of The Judicial System In India: A Critical Study On Judicial Independence vis-à-vis Judicial Accountability*, 2015, Laxmi book publication, Solapur.

[37] *Supra* note 1.

state works under their particular constitutional limits. Additionally, it is also the sole arbiter in all kinds of constitutional disputes and the sole interpreter of the constitution. India practices the adversarial method of legal procedure; this indicates that the judge serves as a neutral arbiter sustaining the balance among the contending opponents without actively taking part in the legal argumentation in the court.[38]

Chapter IV of Part V of the Constitution of India comprises the provisions related to the Supreme Court of India. Any law or judgment passed by the Supreme Court of India is binding on all the courts within the territory of India. Supreme Court derives its powers and jurisdiction from Articles 131 to 142 of the Indian Constitution. The jurisdiction includes original, writ, and appellate jurisdiction; Original Jurisdiction means the power of the court to perceive disputes when they arise for the first time. Supreme Court can hear disputes between, Government of India and one or more States, or Government of India & any State or States on one side and one or more States on the other, or two or more States, If there is a question of law or fact on which the existence or extent of legal rights is dependent. The Supreme Court has given the power to issue guidelines or orders under Article 32 of the Constitution, to enforce any of the rights granted under Part III of the Constitution. It is known as the writ jurisdiction of the Supreme Court, and it is also the part of original jurisdiction of the Supreme Court.[39] Talking about appellate jurisdiction, the

[38] *Supra* note 27.

[39] *Ibid.*

Constitution empowers the Supreme Court to hear appeals against any judgment, decree or order or sentence of a High Court in a constitutional, civil or criminal matter, where the substantial question of law exists of general importance. However, under Article 134A, the concerned High Court will have to confirm that the matter is suitable for the appeal to the Supreme Court.[40] Supreme Court also enjoys an extraordinary jurisdiction under Article 136, by way of special leave petition; it allows an appeal in any matter against the decision of any court or tribunal, except the tribunal related to the Armed Forces. The Supreme Court can withdraw the matter from the High Court or transfer it. It can review any judgment or order made by them. Article 141, laid downs that the law proclaimed by the Apex Court is obliging on all courts within the territory of India. Under Article 143, of the Constitution of India, the Supreme Court also has exclusive advisory jurisdiction regarding matters referred to it by the President of India about the question of public importance.

Chapter V of Part VI of the Constitution of India contains the provisions regarding the High Courts. There is to be High Court for each state or one High Court for more than one State, which is the apex of the State Judiciary. In addition to the final court of appeal in the Civil and Criminal matters, the High Court also exercises the extraordinary Constitutional jurisdiction under Article 227, since this power is exceptional; it is discretional on the part of the High Court to execute it. Article 226 empowered the High Courts to issue high prerogative writs in violation of fundamental rights and in other cases where any part of any state acts in any unlawful manner or without any jurisdiction

[40] *Ibid.*

injustice to a person that is irreparable. The High Court is also in charge of the administration of justice in the State, the power to appoint or to dismiss subordinate Judges is to be exercised by the State in consultation with and as recommended by the High Court while their promotion postings and other connected matters are exclusively within the High Court's domain. [41]

Provisions related to subordinate courts lay down by the Constitution under Chapter VI Part VI. Each state has a system of subordinate courts under the High Courts. The Constitution constitutes some provisions in Article 233 to 237 to ensure the independence of subordinate judges and also to regulate the organizations of these courts. The subordinate judiciary is an integral part of the judicial system because these are the courts where the judiciary comes close to the people. Therefore, to sustain the independence and integrity of the subordinate judiciary, it is essential.[42] There is a district judge in every district, who holds the charge of the justice administration in his respective district. He acts as the court of appeal in most cases and additionally as the court of original jurisdiction in a few matters with general financial levels. The district judge serves in an appellate court in respect of civil and criminal appeals arising in the District and also exercises the power of a court of sessions dealing with criminal trials of serious offences. Underneath the District Judge, there are of

[41] *Ibid.*

[42] M.P.Jain, *Indian Constitutional Law* 483 (lexis Nexis Butterworth Wadhawa, Gurgaon, 6th edn reprint, 2012).

judges, the rank of Civil Judges Senior division and Civil Judges Junior division, and Magistrates administering criminal courts.[43]

Part XIV-A of the Constitution of India comprises the provisions related to Tribunals. Article 323A and 323B implements the dissemination of the tribunal system in the country. Tribunals are formed under relevant statutory provisions and seen as an alternative forum for redressal of grievances and adjudication of disputes other than the courts.

Under Part IV of the Constitution incorporates the Directive Principles of State Policy. Under this part, Article 40 of Constitution of India lays down that States will take action to establish gram panchayats and provide them with the powers and authority, as they need to perform as part of self-government. The Panchayats was discharging judicial functions from ancient times, including the British rule. Panchayat is the smallest unit in our judicial system, which deals with small civil and criminals matters through the informal and straightforward procedure with the effort to make a compromise between the parties to the disputes.

The adversarial system of law is a legacy we inherited from British rule, which has been performing reasonably well for centuries. However, due to the accumulation of litigation, there has been a considerable drop in confidence of the judiciary. The working of the system is also being questioned in various

[43] B. N. Srikrishna, (2008) "The Indian Legal System," *International Journal of Legal Information*: Vol.36: Iss. 2, Article 8, *available at:* http://scholarship.law.cornell.edu/ijli/vol36/iss2/8,(accessed on 25/05/2016 at15:05).

frames due to procedural disputes, the substantial cost of litigation and inopportune delays included in it. The justice delivery system in India is exploding and may collapse unless urgent restorative measures will not be adopted, not only by the judiciary but by the legislature and the executive also.

2.3 PRIME CAUSES OF DELAY IN DISPOSAL OF CASES

The purpose of the administration of justice is that the innocent must be protected, the guilty must be punished and that there must be a satisfactory resolution of disputes. An effective judicial system is that where not only just results are reached but that they are reached swiftly. Faith in the judicial system is determined by its ability to provide accessible, speedy and cost-effective justice to all equally. It is a fundamental right of every citizen to get speedy justice, which also is the fundamental requirement of proper judicial administration. Right to speedy justice is extended under the right to life guaranteed by the Constitution.

'Delay' in the context of justice denotes the time consumed in the disposal of the case, over the time within which a case can be reasonably expected to be decided by the Court. In an adjudicatory system, whether inquisitorial or adversarial, an expected life span of a case is an inherent part of the system. No one expects a case to be decided overnight. However, the difficulty arises when the actual time taken for disposal of the case far exceeds its expected life span, and that is when we say there is a delay in dispensation of justice. Scanning of the figures would show that despite efforts being made

at various levels and a substantial increase in the output being given by the system, the gap between the expected and actual life span of the cases is only widening. [44]

The judiciary faces a large backlog of cases, which results in denial of real cases, access to the courts on account of delay that takes place in many cases in the dispensation of justice. The difficulty of disposal of pending cases in courts of law is not a new phenomenon; the courts have been struggling with it for a long time. The Supreme Court made it clear that this situation should be addressed: "A fair and efficient judicial system is one of the basic structures of our constitution. It is our constitutional responsibility to ensure that the pendency of cases reduced and attempts are made to increase the disposal of cases." [45] The delay in the disposal of cases has affected not only the ordinary type of cases but also those, which by their very nature, call for early relief. The enormous backlog of cases in various courts in India is the most significant cause of concern. It has been the subject of various Reports, debates in parliament and state legislatures, in judicial conferences and the Media nowadays.

Several Commissions and Committees have dealt with the problem and given their Reports. Although the recommendations, when implemented, have had some effect, the problem has continued. This problem has subjected the

[44] Speech delivered in China on 'Delay in Disposal of Cases' by Justice K.G. Balakrishnan Hon'ble Chief Justice of India on 6.11.2007 available at: http://www.supremecourtofindia.nic.in /speeches /spe eches 2007 /delay_in_ disposal_of_cases_in_china_on_6.11.2007.pdf accessed on 25/05/2016at16:10).

[45] All India Judges Association & Others. v. Union of India & Others. AIR 2002 SC 1752

judicial system to thorough damage. It has also shaken the confidence of the people, to some extent, in the competence of the courts to redress their grievances. For efficient discharge of the responsibilities of the courts, it is essential that the confidence, which the people have in them, the prestige and the respect they have enjoyed, should be maintained. The weakening of the judicial system may have the effect of undermining the foundations of the democratic structure.

According to Nani Palkhiwala "the greatest drawback of the administration of justice in India today is a delay, I do not know of any country in the world where litigation lasts as long as India".[46] Delay in the disposal of cases affects not only the standard type of cases but also those cases, which look forward to the quick dispensation of justice. It is an accepted fact that a person becomes litigant, remains a litigant for his entire life since the litigant has just a single life, yet litigation has many lives to witness its end. India is a motherland of more than a billion people; the primary question, which arises, is how to create such a justice delivery system, which can provide justice to everyone without delay? The possibility of the justice delivery system in the Indian circumstances and the impediments for dispensing justice in India is a critical discussion. Delay in justice administration is the biggest hindrance in getting justice, which should be tackled at war level.

[46] Nani A. Palkhivala, *We the nation – lost decade* 215 (UBS Publications, New Delhi, 1994)

The Law Commission of India[47] in its Report observed, "Unmanageable backlog of cases, mounting arrears and inordinate delay in disposal of cases in courts at all levels- lowest to highest- coupled with exorbitant expenses- have attracted the attention of not only the members of the Bar, consumers of justice, social activists, legal academics and Parliament but also the managers of the courts. The then Chief Justice of India has gone on record saying that 'justice system as in vogue in this country is about to collapse".

Delay in the disposal of cases has resulted in a huge backlog of pending cases in various courts of the country. In some cases, the delay may result in the denial of justice. If there is a delay, there is a possibility of a loss of substantial evidence, because of the fading of the memory or death of witnesses. In such cases, a party even with a strong case may lose the case, not because of any fault of its own but because of the tardy judicial process entailing the disappearance of material evidence. The Arrears Committee [48] chaired by Justice V.S.Malimath in its report, identified numerous causes of the backlog of arrears of cases in the High Courts. Some of the major causes are:

(i) Litigation explosion;

(ii) Accumulation of the first appeal;

(iii) Inadequacy of employees associated with the High Court;

(iv) The inordinate concentration of work in the hands of some members of the Bar.'

[47] Law Commission of India 114th Report on Gram Nyayalaya, 1986.

[48] The Arrears Committee (1989-1990) constituted by the Government of India on the recommendation of the Chief Justices' Conference.

(v) Lack of punctuality amongst judges;

(vi) Giving of unnecessary adjournments;

(vii) Indiscriminate closing of Courts;

(viii) Indiscriminate possibility to writ jurisdiction;

(ix) Inadequacy of classification and granting of cases;

(x) Undue delay in the supply of certified copies of judgments and orders

The committee drew attention to that the arrears can extensively reduce with better the management, computerization of court system, increased settlements by Lok Adalats, the effective use of provisions of the Civil Procedure Code with all its favorable amendments with the cooperation of the lawyers and staff of the court. Judges of the superior courts should evaluate the competence of the judges in terms of quality and quantity of disposal. There is a strong need for judicial reform; however, the judiciary itself is making efforts to tackle this situation but still it is a long way to go. In India there are some prime causes of delay in disposal of cases, which need to be cured, they are enumerated below:

2.3.1 DOCKET EXPLOSION

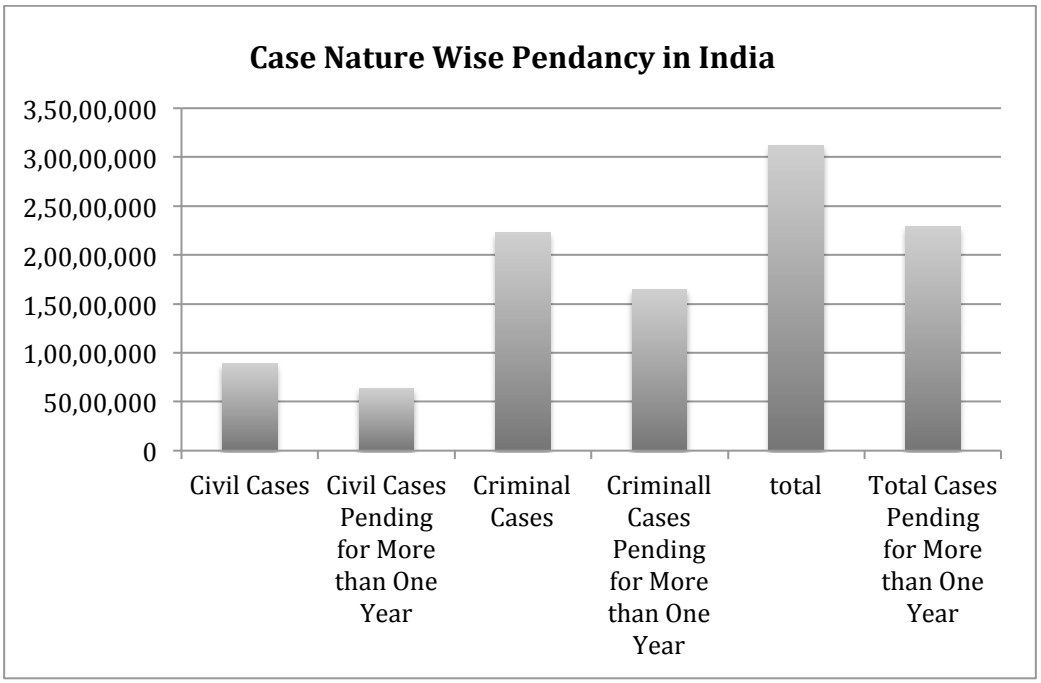
The number of institution cases in the courts is far higher than the number of their disposal. In the new world, change has become visible in the quality and quantity of litigation. There has been a remarkable growth in the number of institutions of

cases year-by-year leading to 'docket explosion'.[49] Litigation against the State and the State-like bodies has also grown substantially. Even though an increase in the number of courts and tribunals all over the country not only in the traditional areas of civil and criminal litigation but also in other fields like consumer protection, service matters, etcetera, no solution for early resolution of the dispute has been found out. But the increase in the number of courts and tribunals is not enough to deal with the increase in litigation by geometrical proportions.[50]

Before the independence of India, there was not extensive litigation because litigation between the government and citizens was limited. The first task our leaders after independence were to reconstruct the society into an egalitarian one. To realize the constitutional objective, laws were introduced and enacted on a considerable scale from time to time and were also challenged as an ultra virus by the vested groups. Moreover, the State extended its activities to the industrial and commercial fields through statutory corporations and public-sector undertakings. With the growth of the state's activities in the field of trade and commerce, a good number of disputes arose between citizens and Government, which carried to courts for adjudication. All these factors generated a superabundance of litigation, genuine commitment of development, which the courts were neither ready nor equipped to tackle, and this massive backlog of cases only makes justice less accessible.

[49]Justice S.B. Sinha, "Courts and Alternatives", *available at:* http://www.delhimediationcentre.gov.inarticles *(*Accessed on 08/06/2016 at 20:55).

[50] *Ibid.*



Total Pending Cases in India[51]

Above statistical information concerning pendency of both civil and criminal cases before lower courts in India as on 23-10-2019 and 8896139 civil cases and 22387856 criminal cases total 31283995 cases are pending. Civil cases which are pending for more than one year are 6400050, criminal cases pending for more than one year are 16515371, which makes a total of 22915421 cases which are pending for more than one year all over courts in India. In the courts of Utter Pradesh, 1735330 civil cases and 5724505 criminal cases total 7459835 cases are pending.[52] With an average time to settle each case put as10 years, we require 162 years to clear the enormous backlog of cases, but that is not it in the meantime we will get the same data of pending backlog cases again. Should we overlook this immense backlog of cases and still follow the traditional adjudicative process in the traditional courts?

[51] Figures *available at:* National Judicial Data Grid http://164.100.78.168/njdg_public/main.php (accessed on 23/10/2019 at 10:23).

[52] *Ibid*

2.3.2 STRENGTH OF JUDGES

The sanctioned number of judges is insufficient to manage the agglomeration of the cases at all levels of, over that there are vacancies, even in that number of judges in the courts all over India, this is additionally one of the prime reasons for the delay. There are two ways to cope up with the problem of lack of judges. Firstly, by filling up a large number of existing vacancies in the judiciary and secondly, increasing the sanctioned strength of judges. It is worth considering that as per the Constitutional directives that it is the responsibility of State Governments and High Courts to select and appoint the judges in subordinate courts.

As per figures available in India, it is unable for us to clear the backlog because it has been developing periodically at an average rate of 34 per cent. Experts claim that the massive backlog of pending cases is directly proportional to the lack of judges. India is a nation of 1.324[53] billion people, and approximately 30 million cases are pending. At present, there are approximately 13 judges for every million people compared with roughly 107 per million in the United States and Great Britain have around 150 judges per million of its population. Law Commission of India in it is in its 120th Report in the year 1988[54], suggested that "the state should immediately improve the proportion from 10.5 judges per million of the Indian population to at least 50 judges per million within the period of the next five years".

[53] *Available at* : http://mospi.nic.in/statistical-year-book-india/2018/171 (accessed on 29/10/2019 at 18:26)

[54] Law Commission of India 120th Report on Manpower Planning in the Judiciary: A Blueprint, Ministry of Law, Justice and Company Affairs, Government of India (1987).

Twenty-eight years have passed, but the recommendation of the Law Commission still not implemented yet. Without the additional strength of judges, this enormous backlog cannot be cleared, especially when the institution is likely to grow and not come down in the coming years.

The Hon'ble Supreme Court in the matter of *All India Judges Association vs. Union of India & Others*[55] directed that the number of judges should be increased by 50 per million, in the first instance by filling up the existing vacancies followed by an increase in the judge strength in a phased manner. In April 2012 the Supreme Court issued a direction in the case of *Brij Mohan Lal vs. Union Of India & Others*[56] that requiring that 10% additional posts should be created in the subordinate judiciary.

	Court's Name	Sanctioned Strength of Judges			Working Strength of Judges			Vacancies as per Sanctioned Strength		
A.	Supreme Court of India	34[57]			34			00		
B	High Court Allahabad	Pmt.	Addl.	Total	Pmt.	Addl.	Total	Pmt.	Addl.	Total
		76	84	160	70	31	101	06	53	59
C	All High Courts in India	Pmt.	Addl.	Total	Pmt.	Addl.	Total	Pmt.	Addl.	Total
		771	308	1079	551	108	659	220	200	420

[55] AIR 1992 SC 165.

[56] (2002) 5 SCC 1

[57] The sanctioned strength of Supreme Court of India increased from 30 to 33 (excluding CJI) vide Government of India Notification dated 09.08.2019

The above statement shows the Sanctioned strength, working and vacancies of judges in the Supreme Court of India and all High Courts in India as on01.10.2019.[58]

The than Chief Justice of India Mr. Justice T.S.Thakur addressing the inaugural session of combined Conference of Chief Ministers and Chief Justices of High Courts in India [59], said that "*since 1987, when the Law Commission had recommended increase in the number of judges from then 10 judges per million people to 50 judges per million in a period of five years, but "nothing has moved". Almost 28 years later, even that five-fold-increase target looks distant".*

2.3.3 UNNECESSARY ADJOURNMENTS

Adjournments do not just append delays in the disposal of cases; they likewise cause difficulty, trouble and expense to the witnesses and the parties. Judges ought to discourage the act of regular adjournment attempted by pleader to guarantee expedient justice. The problem of a litigant starts from it getting delayed in its matters, which starts from the lower courts to the level of the higher court. The process of district courts is slow and too costly that every sensible person tries his best to stay away from knocking the door of the court. There are several causes behind the disposal of cases in the courts; however, the predominant among them is rendered unnecessary adjournments of cases.

[58] Data *available at:* Department of Justice, Ministry of Law and Justice, http://doj.gov.in/appointment -of-judges/vacancy- positions (accessed on 16/10/2019 at 10:16)

[59] Joint Conference of Chief Justices of High Courts and Chief Ministers of States held on 24th April, 2016 at Vigyan Bhawan, in New Delhi.

One party is continually keen to delaying the disposal of cases and embraces every single conceivable technique for getting the case adjourned. Many cases have been adjourned only to comfort the advocates. According to the law, a judge can refuse to give an adjournment on the basis to comfort a lawyer, but in practice, they rarely do so. [60]

Before 1999 there was no limit on the number of granting adjournments by the court. The Amendment of 1999 in Civil Procedure Code, 1908 fixed an upper limit of three adjournments that courts could grant during the hearing of a suit. Although, in the 2005 case of *Salem Advocate Bar Association-II*[61], the Supreme Court explained that this limit of three adjournments is not curtailing the power of the court to permit more than three adjournments. This decision of the Supreme Court unwinds the particular timeframe embedded by the amendment, which proudly promulgates the court's inherent rights to adjourn endlessly.[62]

To solve this problem, the states' High Courts should come forward and issue-specific directions in this regard that any matter will not be adjourned even on the personal ground more than twice.[63] Recently Delhi High Court issued a circular to all the six district's courts, which declared that any adjournment asked by any party, whether a litigant or the investigative agency,

[60] *Supra* note 4 at 22

[61] (2005 (6) SCC 344)

[62] Brijesh Ranjan, "What causes judicial delay? Judgments diluting timeframes in Code of CivilProcedure worsen the problem of adjournments" *The Times of India (Blog),* 25th August, 2016

[63] Justice R. B. Mehrotra, "Court Management" *J.T.R.I. JOURNAL, First Year, Issue 3*(1995)

in events will attract a monetary fine. The circular has also toughened the rules for investigating agencies and said that any adjournment solicited by them would attract a fine, which they will have to pay from their own pockets.[64] As long as some extreme measures not taken, the problem of delay in the disposal cannot be resolved at any cost.

2.3.4 MISCELLANEOUS CASES

Miscellaneous cases are subject-wise classified and will call for consideration of disposal of miscellaneous applications in the suit. These miscellaneous cases emerge from petitions moved by the parties for the rebuilding of cases dismissed in default for substituting the legal hairs of a defunct party, applications for amendment in plaints, applications for setting aside the ex-parte decree etcetera. All these kind of applications settled based on the affidavit. The long-drawn pendency of these miscellaneous applications also results in a delay in the disposal of suits. For all these class of applications, a separate concise statement of principles of law should be available as a ready reckoner with every judicial officer laying down the guidelines for disposal of such cases. The outer limit for deciding these applications should be fixed. [65]

A positive approach should be adopted in disposing of these applications unless on particular facts of the case the court is satisfied that such application is mala fide or the order allowing such application is to result in injustice to the other party. The applications should be allowed, and the parties are permitted to

[64] Kanu Sarda, "Now, Unnecessary Court Adjournments to Attract Fine" *The Sunday Standard*, 06th March 2016.

[65] *Supra* note 49.

contest the case on merits. The courts should have an attitude of doing substantial justice and not insist on procedural technicalities.[66]

2.3.5 DISPOSAL OF OLD CASES

Delay in disposal of old cases[67] is another reason behind the massive pendency of cases in India, Most of the times the courts prefer to settle the matters with a focus on developing their quota as per criteria fixed by the High Courts for disposal of cases, instead of giving preference to decide old cases. Mostly the judicial officers complete their quota of disposal of cases by deciding suits ex-parte, Sessions trial and criminal cases were prosecution witnesses have turned hostile, or complainant has compromised, or civil suits where the parties have compromised, or there is an only formal contest. A total number of cases pending before Supreme Court of India for more than 10 years up to 19.02.2016 are 1,216, in High Courts, the number of total cases pending for more than 10 years as on 31.12.2014 is 777,630[68] and total 2289188 cases are pending from over 10 years in lower courts across the country.[69] The Courts must dispose of old cases on priority basis to reduce the pendency of old cases.[70]

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[66] *Ibid*

[67] Cases which are pending before the court for more than 10 years considered as old cases.

[68] *Available* on: http://pib.nic.in/newsite/PrintRelease.aspx?relid=137291 (accessed on 16/06/2016 at 17:57)

[69] Press Information Bureau Government of India Ministry of Law and Justice, Pending Court Cases *available at* : http://pib.nic.in/newsite/PrintRelease.aspx?relid=137291 (accessed on 14/06/2016 at 18:1)

[70] Available at: National Judicial Data Grid *http://164.100.78.168/njdg_public/main.php* (accessed on 06/11/2017 at 19:57)

Assortment and allocation of cases through the case management system will assist to guarantee that the old cases to be settled on the priority basis. There is a need to be initiated a continuous practice of agglutination of cases so that a case arising from the same subject matter and involving the identical question of law can be assigned to a judge. Better-enhanced classification will help the court to be able to adhere to the pre-determined deadline.[71] The High Court should issue explicit instructions that decision of cases of the category referred to above. The conference of chief justices of all High Courts which was held on 22nd, and 24th April 2016, proposed that all High Courts shall assign topmost priority for disposal of cases which are pending for more than five years. While prioritizing the disposal of cases subjudice in the district courts for more than five years, there should be additional incentives for the Judges of the district judiciary will be considered where feasible. It may encourage a decision of old pending cases.[72]

2.3.6 SYSTEM OF SERVING NOTICES

During court proceedings concerning petitions, appeals, complaints and many other additional applications need the court's interferences by summoning the parties to appear in the court by way of notices, summons,

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[71] Prime Minister Narendra Damodar Das Modi Addressed Joint Conference of Chief Ministers of State and Chief Justices of High Courts *available at* :http://pib.nic.in /newsite/Pr intRele as e .aspx? relid= 14 1106 (accessed on 10/06/2016 at16:15)

[72] Resolutions Adopted in The Chief Justices' Conference, 2016 held on 22nd & 23rd April, 2016 *available at:* http://supremecourtofindia.nic.in/outtoday/Resolution%20adopted%20in%20the% 20Chief %20Justices%20Conference,%202015.pdf. (accessed on 15/06/2016 at 19:48).

warrants etcetera, this procedure known as "process service".[73] Service of summons upon the parties and the witnesses is probably the most import step in progress of the case and consumes much time of the court. The cases frequently adjourned on account of non-service of the parties or witnesses. Complaints often made that the process server connives with one party to the case and on that account does not get the service affected. Most utmost of the times, the respondent is engaged in delaying the case, and in connivance, with him, the server executes a false statement like the person summoned not being available or the house having been discovered locked. Seldom the plaintiff who received an ex-parte injunction or other order, prejudice to the defendant, is not interested in getting service affected upon the opposite party to increase the span of ex-parte order. In such an occasion, it is not unusual for the plaintiff to receive a false report regarding the non-service of the defendant. Similar practices adopted for prolonging the trial by not allowing the service to be effected on the witnesses.

As far as the civil proceedings are concerned, the Code of Civil Procedure confers for the delivery of summons not only by registered mail but also by courier, fax or e-mail. Hence the court must not rely entirely on the process server and can liberally use the alternative methods of service. Regarding criminal cases, it has experienced that the inability of the prosecution to serve and produce the witnesses is the most significant cause for delay in the trial of criminal cases. Most of the time accused deliberately

[73] Research Paper on "Process Service" *available at*http://www.wbja.nic.in/wbja_adm/files/Brief%20note%20on%20process%20service%20in%20Courts%20prepared%20by%20National%20Mission.pdf .(accessed on 08/06/2016 at 21:57).

obstructs service of summons upon the witnesses in connivance with the process server of the police station. Sometimes it is done to gain time to win over the witness. Over time, sometimes the witness changes his place of residence and chances of serving the summons upon him become remote. The investigating officers get transferred by the time the case comes up for trial. Except for CBI, no other prosecuting agency appoints Multitude officers to pursue the case and make efforts to serve and produce the witnesses.[74] Process Service is an essential component of court procedures and any considerable improvement in this area will result in saving significant and valuable time of both the litigants and judiciary.

2.3.7 INDISCRIMINATE CLOSER OF COURTS

It is debated often in society that the indiscriminate closer of the higher judiciary should be decreased. As per the Supreme Court calendar, Supreme Court works for 193 days; High Courts currently work for 210 days and subordinate Courts for 245 days in a year. More than three crore cases are accumulated in the courts of India, but the courts closed for long summer vacation. That apart, the Supreme Court calendar (which applies to other High Courts) exhibits week-long sabbaticals for Holi, Dussehra, Muharram and Diwali apart from summer vacation and fortnight-long winter vacations for Christmas and New Year. Judiciary has been enjoying these privileges from the British days. However, is there any rule for this? A response received for an inquiry listed under the Right to Information Act has shown that there is no

[74] *Supra* note 2 at 20

official record with the Supreme Court, which has created this system, related to these long vacations.

It is recommended by the Law Commission of India in its report that, due to the enormous pendency of cases and the tendency of the lawyers to seek adjournments on inadequate grounds, the time allotted for court vacations should be re-evaluated. The vacation period of the whole Judiciary starting with the Apex Court should be shortened by at least 10-15 days. The attendance of the judges at international conferences should be taken in turns. If the working hours extended by even half-an-hour, the judges could make a real impact on the high rates of pendency.[75] In 2014 for the very first time, then Chief Justice of India Mr Justice R.M.Lodha on amid growing criticism from various quarters given the pendency of cases had curtailed the summer vacation from a maximum ten weeks to seven weeks. The declaration of shorter summer vacation for the Apex Court has notified by way of an official gazette notification on the new regulations, which to be called the Supreme Court Rules, 2013 replacing its Supreme Court Rules, 1966. The new rules had obtained the assent of the President of India.[76]

R.T.I. Activist, Subhash Chandra Agrawal filed an appeal[77] on his two-year-old query about long vacations of Supreme Court, heard by the Chief Information Commissioner on 10 February 2016. During the hearing, the

[75] Law Commission of India 230th Report on "Reforms in The Judiciary Some Suggestions", (2009).

[76] Prabhati Nayak Mishra, "Supreme Court, High Courts, unable to justify their month long summer vacation"Sun, 21 Feb 2016 *available at:* http://www.dnaindia.com *(*accessed on 17/06/2016 at 15:58).

[77] Appeal number CIC/SM/A/2013/001269

representative of the apex court stated that they "do not have the record related to how the tradition of summer vacation, began". Chief Information Commissioner upheld that "nobody in independent India has factual information regarding the start of the tradition of long-drawn summer vacations for judicial functioning at Supreme Court. However, the Chief Information Commissioner did not find it fit to refer to the R.T.I. Petition to Department of Justice for tracing the origin of long court-vacations which are said to be continued as some British legacy".[78]

In a single instance in the annals of the Indian judiciary took place in Hyderabad Andhra Pradesh where 200 judges of lower went on mass leave strike for 15 days, demanding justice for them against the provisional allocation of judicial officers between Andhra Pradesh and Telangana.[79] This is a sequel to the High Court of Judicature at Hyderabad on ordering the suspension of two judges of subordinate courts, who are the president and secretary of the belligerent Telangana Judges Association, on disciplinary grounds.[80] This is for the second time[81] in the history of Indian judiciary, where judges took such steps. The decision of judges to go on mass leave is against judicial correctness and infringes the prerequisites specified in the Constitution and all legal ethics.

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[78] Apoorva Mandhani,"No one knows how system of long summer vacations started in Supreme Court" February 16, 2016 *available at:* http://www.livelaw.in (accessed on 17/06/2016 at 10:54).

[79] Express News Service, "Telangana judges strike: High Court suspends nine more judges", *The Indian Express*, June 29, 2016.

[80] Express Web Desk, "200 judges go on mass leave after Hyderabad High Court suspends 9" June 28, 2016

[81] Twenty-five out of twenty-seven judges of the Punjab and Haryana High Court had resorted to on masse protest leave on April19 , 2004 having differences with Chief Justice B K Roy, who had asked an explanation from two of his co-workers for their having accepted membership of the controversial Forest Hill Country Club and Resort opposite which a case was pending in the high court.

These kinds of unprecedented actions of judges have caused irreparable damage to the indigent litigants and the judiciary as well.

On one hand judiciary have huge pendency and backlog of cases and on the other hand long vacations, strike by judges, which is indiscriminate closer of courts. However, to cut down these long vacations cannot be done without the consent of the Judiciary, It is not disputed that the courts should work punctually and should not dispel from work. Courts should play a significant role in judicial reforms in the reduction of arrears through the doctrine of self-restraint and self-discipline.

2.3.8 GOVERNMENT BEING PRIME LITIGANT

Government is the biggest litigant, whether as petitioner or respondent. A large number of appeals, revisions and other proceedings filed by the government dismissed as frivolous and unwarranted, thousands of Special Leave Petitions and appeals are filed after substantial delays and dismissed on the ground of delay only. In most cases, the government does not make an appearance before the court because the government does not find any interest involved in the case. According to a survey conducted in Karnataka in 65% of civil cases, the government was a litigant, and in 95% the appeals filed by it failed.[82]

Section 80 of CPC requires two months of prior notice to the government departments by a party who wish to sue the government. This

[82] Justice B.N. Agrawal, "Pendency Of Cases & Speedy Justice", Presidential address on 1-8-2007 at the Lecture Series organised by the Bar Association of Supreme Court available *at:* http://www.supremeco urtcases.com (accessed on 18/06/2016 at 10:11).

section aims to render time to the government to settle the matter with such party by taking proper and suitable action and in that way could avoid unwanted and unnecessary litigation. However, section 80 of C.P.C. mostly not utilized by the government departments for settling the matters out of the Court as no one wants to take responsibility for the judgment.

In the renowned matter of *Salem Advocate Bar Association, Tamil Nadu v. Union of India*,[83] in a substantial number of cases either the notice is not responded to or in the few cases where a reply is sent; it is commonly ambiguous and misleading. The outcome is that the object underlying Section 80 of the Code of civil procedure and related provisions get defeated. It not only provides rise to possible to avoid litigation but also occurs in massive costs and expenses to the exchequer as well. A proper response can result in the lessening of litigation among the State and the citizens".

The than Chief Justice of India Mr. Justice T.S.Thakur while criticizing the government for being the "biggest litigant" said that "A substantial amount of matters coming to court is an immeasurable sign in the insight that people still have confidence in the judiciary and its efficiency to deal with cases, but the judiciary and its effectiveness to handle cases, but a considerable number of increasing cases against the government, may not be a healthy sign of good governance".[84]

[83] (2005) 6 SCC 344

[84] Press Trust of India "Government Is the Biggest Litigant in The Country" The Indian Express *available at:* http://indianexpress.com/article/india/india-others/government-is-the-biggest-litigant-in-the-country- next- cji/ (accessed on 20/06/2016 at 08:50)

Governments should ensure that genuine cases are resolved at the pre-litigation stage itself at their level so that weak and helpless people may not be compelled to unnecessarily knock the door of courts and in this manner, a sizeable number of cases by or against governments and their instrumentalities can be reduced. Only those cases may be taken to courts where it is not possible to resolve the dispute because of legal intricacies. For this very reason government of India announced National Litigation Policy in October, 2009 which revised in 2015, The idea was to make the government a "responsible" and "efficient" litigant from compulsory "litigant" to reduce the pendency of cases in various courts in India under the National Legal Mission to overcome average pendency time from 15 years to 3 years. However, the Government's effort to initiate this policy is a welcome step, but still, the National Litigation Policy has failed to address pendency.

2.4 REVIEW OF THE JUSTICE DELIVERY SYSTEM

Judiciary performs a vital part in the administration of justice. The founding fathers of our Constitution set justice at the highest pedestal, and the Preamble of our Constitution significantly noticed justice higher than the other principles, i.e. liberty, equality and fraternity. Again, the Preamble demonstrates the precedence social and economic justice over political justice. People prefer the judiciary in search of justice. The Constitution sets down the structure and defines demarcates the performance and functions of every part of the State, including the judiciary and sets measures for their inter-relationships, checks and balances. The autonomy of judiciary is quintessential to the rule of

law.[85] The judiciary with the Supreme Court and 25 High Courts in the State exercise its tremendous powers given by the constitution of India. The judiciary not only decides civil and criminal cases but the judicial review safeguards civil and political rights of individuals and sometimes defines and controls the powers of every organ of the State.

The existence of the Indian judiciary for the last more than half-century shows how inseparable the struggle for legal responsibility, accountability and independence has been. There are grave concerns about the efficiency and capacity of the justice delivery system to dispense speedy and affordable justice. Questions on the credibility of the judiciary rose because of to increasing arrears of cases, delays in the disposal and high cost of getting justice. The expanding population, increasing consciousness of rights, and enduring confidence of the citizens in the judiciary saw a litigation boom which our judicial set-up was not sufficiently equipped to handle. With the enactment of a considerable number of laws, the quantity of work in courts has grown enormously without any improvement, let alone corresponding increase in the strength of judges at all levels. People have matured enough for their rights and are no longer willing to submit to arbitrariness anywhere. The natural fallout was an overburdened system, too choked to be able to provide expeditious or inexpensive justice. We can rightly take pride in the quality and effectiveness of our judicial system. However, we cannot deny that it suffers from serious

[85] Justice K.G. Balakrishnan, "Efficient Functioning of India's Justice Delivery System" 4 *SCC Jour* 35(2007)

deficiencies, requiring immediate steps to improve its performance, to render prompt and inexpensive service to its consumers.[86]

2.5 GOVERNMENT'S EFFORTS TO SPEED UP THE JUSTICE DELIVERY SYSTEM

The delay in the disposal of cases has attracted the notion of respective governments and law commissions of India; various commissions have made various suggestions in their different reports time to time about the said problem of delay, but the problem persists. It was observed by the law commission of India in its 54th Report that, "any system of procedure must sub-serve the ends of justice. The procedure is a means and not an end. When the means assume excessive influence and the outcome has missed the sight of or even seldom apt to be defeated in the process, citizens affected have a lawful right to make complaint, and it is the responsibility of the State to see that its legal system does not leave extent for processes which are expected to end or defeat justice".[87]

Specialized Tribunals have been established to take over the workload of the courts. District consumer disputes redressal forum at the district level, state consumer disputes redressal commission at the state level and national consumer disputes redressal commission at the national level established under the consumer protection act, 1986, to provide better protection of the consumers. The income-tax appellate tribunals are empowered to hear appeals under Section 253 of the Income Tax Act, 1961, the central excise and gold

[86] *Ibid.*

[87] Law Commission of India, 54th Report on The Code of Civil Procedure, 1908, 1973

appellate tribunal (presently acknowledged as Central Excise and Service Tax Appellate Tribunal) is authorized to hear appeals under Section 35(b) of the Central Excise and Salt Act, 1944. The debt recovery tribunals established up under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act 1993 has empowered to adjudicate cases relating to debts /loans of commercial banks and financial institutions. Government evolved tribunal system was in our country to provide an alternative to the regular courts. Tribunals are presided over by experts of the particular areas, and the adjudication mechanism is cost-effective, thus less expensive than regular courts, and they are effectively resolving the disputes by taking much less time in comparison to the regular courts.

The Legal Services Authorities Act, 1987 was introduced to render free and skilled legal service to the vulnerable and weaker sections of the society. Lok Adalats held under this Act, at various places in the country, and a large number of cases are being disposed of with lesser costs. Lok Adalats are an innovative form of voluntary efforts for amicable settlement of disputes between the parties.

In February 2007, the Government approved The E-Courts project, which is a much-needed step to increase access to justice to all. E-Courts project conceptualized based on "National Policy and Action Plan for Implementation of information and communication technology in the Indian Judiciary 2005",[88] for computerization of district and subordinate courts in the

[88] National Policy and Action Plan for Implementation of Information and Communication Technology in The Indian Judiciary by E-Committee, Supreme Court of India, 9th August, 2005

country and also the up-gradation of the information and communication technology (ICT) infrastructure of the Supreme Court and High Courts which will help to reduce the workload of courts, in the Phase I and Phase II are progressing currently, centralized filing stations, digitization of records, developing e-filing and of e-payment gateways to be established.

The Gram Nyayalayas Act, 2008 was enacted to render the establishment of gram nyayalayas at the primary level to render access to justice to the citizens at their doorsteps and to ensure that chances for securing justice not denied to any citizen due to social, economic or other disadvantages.[89]

The Legislature initiated a project in 2008-09 to meet the necessity of the task force on judicial impact assessment to assess the feasibility of Judicial Impact Assessment and the projects commissioned by it. The major goals of the scheme are to reduce the pendency and backlog of cases, to enhance the judicial productivity both quantitative and qualitative level and to make the justice delivery system affordable, accessible, cost-effective and transparent.

The Government of India through the Ministry of Law and Justice is executing a project on 'Access to Justice for Marginalized People' including United Nations Development Programme support. The interventions under the

[89] *Available at* : Department of Justice, Ministry of Law and Justice, http://doj.gov.in/other-programmes gram- Nyayalayas (accessed on 20/06/2016 at 15:23).

project concentrated on establishing access to justice for the poor, especially women, scheduled castes, scheduled tribes, and minorities.[90]

On the suggestion of 11th Finance Commission, the Government created 1734 fast track courts in the country for disposal of prolonged pending sessions and other cases. The central government provided financial assistance to states for fast track courts for eleven years from 2000-2001 to 2010-2011. The finance commission division, ministry of finance released funds directly to the state governments under the scheme of fast track courts. It was the primary responsibility of the state governments to establish these courts in consultation with the concerned High Courts.[91] The 13thFinance Commission recommended grants-in-aid for improvement in justice delivery in the year 2010. These funds earmarked for setting up of morning and evening & Shift Courts, including other types of temporary and specialized courts, set up to clear the backlog of cases.[92]

In 2009 the ministry of law and justice of the government of India to bring down the litigation from government agencies, which revised in 2015, formulate national litigation policy. The policy based on the recognition that the government and its multiple agencies are the preponderant litigants in

[90] *Available at* :Department of Justice, Ministry of Law and Justice, http://doj.gov.in/page/access-justice- Marginalized (accessed on 20/06/2016 at 16:16).

[91]*Available at:* Department of Justice, Ministry of Law and Justice, http://doj.gov.in /other programmes/fast -track -courts (accessed on 20/06/2016 at 16:25).

[92] Guidelines for release and utilisation of Grant-in-aid for Improvement in Justice Delivery as recommended byThe Thirteenth Finance Commission, *available at:* Department of Justice, Ministry of Law and Justice, http://doj.gov.in/sites/default/files/Annexure A-Part-I.pdf. (Accessed on 20/06/2016 at 17:59).

courts and tribunals of the country. It aims to transform the government into an efficient and responsible litigant. This policy also centered upon the recognition that it is the efficiency of the government to guard the rights of citizens; to respect fundamental rights and those in charge of the administration of government litigation should never forget this fundamental principle.

The government of India to provide speedy and effective justice to the citizens has enacted several provisions. Section 89 of the Civil Procedure Code introduced by the Amendment Act of 1999. It came into force on 01/07/ 2002, encompasses the provision of dispute settlement outside the court. Under Section 89, courts have been empowered to settle the dispute through the alternative means of resolution, e.g. Lok Adalats, arbitration, judicial settlement, mediation and conciliation.[93] The new Arbitration and Conciliation Act, 1996 replaced old Arbitration Act of 1940 after that the Act amended by the Arbitration and Conciliation (Amendment) Bill, 2015, to make arbitration a favoured method of settlement of commercial and industrial disputes and making India a heart of international commercial arbitration. Presently the government initiated the national judicial data grid, which endows the summary of pending and settled cases at the district court level.

2.6 JUSTICE DELAYED: SEARCH FOR SOLUTION

The most significant hurdle that the justice delivery system faces in India is the problem of an enormous accumulation of pending cases before

[93] *Available at:* Mediation Advisory Center http://www.mediationadvisory.in/html/cpc.html (accessed on 20/06/2016 at 20:35).

courts and tribunals constituted under multiple enactments. The bulging dockets are swelling up day by day, causing an unconscionable delay in the hearing and decision of cases.[94] It is now widely accepted that our litigation system requires drastic spring-cleaning. This massive pendency of cases led to an insight of hopelessness in people whose matters have stayed undisposed for years collectively and is commencing to loss of belief in the system itself. Whatever may be the causes for this sorry state of affairs and whosoever may be mostly responsible for it, the time has arrived, when it has become essential to think of some supplemental alternatives and implement it to the harassed people. Else, the system will faint despite promising observations made occasionally by people at the helm.[95] The researcher thoroughly discussed the need for A.D.R. in the coming chapter.

2.7 CONCLUSION

The societies, in the commencement, were rudimentary, and so were the laws of the societies. Laws have developed with the development of society. It builds a relationship between law and society, where the law is an instrument of social change, and as Pound would put it, the law must be stable, but it must not standstill. To comprehend and appreciate the existing legal system adequately, it is essential to obtain background information of the course of growth and expansion of the legal history. A unique characteristic of the legal development in India was that for long the government endeavoured to create a

[94] Justice V .K. Mehrotra, "Justice Delayed-Search For Solutions" *J.T.R.I. JOURNAL , Second Year, Issue 4 & 5*(1996)

[95] *Ibid.*

system of courts ever venturing to develop a body of law, and adequate precautions have been taken to help the judiciary to perform their functions effectively.

The legal fraternity has a great responsibility to ensure the proper functioning of the judicial process to achieve the real objects of justice for all. There are some issues about the areas of judicial reform, which needs to be cured like effective measure for strengthening the working of ethical components of all branches of the judicial system is necessary. The accountability of person contributing to the delays of the law, including judges and effective mechanism for enforcing justice, taking care to prevent misuse has to be devised. In the final analysis, it is the worth and dedication of operator of the mechanism, which will matter, and this is an area which needs to need to be strengthened along with improvement of the mechanism wherever necessary. [96]

[96] Dr. Subhash C. Kashyap, *The Citizen & Judicial Reform (Under Indian Polity)* 66 (Universal Law Publishing Co.Pvt.Ltd., New Delhi 2003)

CHAPTER III

Chapter III

NEED FOR ALTERNATIVE DISPUTE RESOLUTION MECHANISM

3.1 INTRODUCTION

In India, ADR methods have a very ancient legacy. Indian civilization expressly encouraged the settlement of differences by tribunals chosen by the parties themselves. An equivalent of it in the old Indian system is the 'Peoples Court' known as the 'Panchayat'. The position outside India was akin in a sense; submission of disputes to the decision of private persons was recognized under the Roman law known by the name of compromysm (compromise), arbitration was a mode of settling controversies much favored in the civil law of the continent. The Greeks attached particular importance to arbitration. The attitude of English law towards arbitration has been fluctuating from stiff opposition to moderate welcome. The common law courts looked jealously at agreements to submit disputes to extra-judicial determination.[1]

The term "Alternative Dispute Resolution" is generally used to explain an extensive range of dispute resolution mechanisms. This term can refer to all accessible settlement negotiations in which the disputants are encouraged to

[1] David St. John Sutton, Judith Gill, et.al. *Russell on Arbitration* 29,(Sweet & Maxwell, twenty second edition, 2003)

negotiate directly with each other before other legal processes like arbitration systems or mini-trials, which are particularly same as the court procedure.[2]

The Preamble of the Constitution declares, to secure to all its citizens, justice, social, economic and political; and equality of status and opportunity. Article 39A of the Constitution ensures that the operation of the legal system leads to justice based on an equal opportunity, and in particular, by proper free legal assistance or schemes or by any other means, economic or otherwise, no citizen is denied the right to get justice.[3] Alternative dispute resolution in India is a related attempt to obtain the "constitutional goal" of securing comprehensive justice in India by the legislators and the judiciary.

The object of justice is mainly two-fold: first, to determine the rights of parties and secondly to provide a remedy. Procedural justice has now acquired new dimensions and new look. The new slogan is: justice must be adequate, speedy, less costly and non-cumbersome. Indeed, justice should not be done in a manner, which would have the effect of doing away with justice. Our justice delivery system suffers from, procedural delay in disposal of cases, high-cost litigation, an insufficient number of judge's etcetera.[4] It has become essential that alternative dispute resolution mechanisms should be resorted to ending litigation between the

[2] Shivaraj S. Huchhanavar, "In Search of True Alternative To Existing Justice Dispensing System In India", vol- 1,number-7,*NLR*,2,(2013)

[3] Article 39A of Constitution of India.

[4] Sukumar Ray, *Alternative Dispute Resolution* 1-2 (Eastern Law House, Kolkata, 2012)

parties at an early date.[5] The Supreme Court in *Salem Advocate Bar Association Tamil Nadu v Union of India*[6] observed that, "In certain countries of the world, where Alternative Dispute Resolution (hereinafter referred as ADR) has been well-turned to the amount that more than 90 per cent of the cases are resolved out of the court, it is necessary that the parties must indicate the method of ADR that they want to betake during the pendency of litigation".

The fundamental question related to ADR is that, to what is it an alternative? One can say that literal interpretation of the term is that it is alternative to the often tedious, strictly formal legal proceedings in the Court of law. Although ADR is not an alternative to the conventional courts; yet, it just expected to accomplish the goal of reducing the pendency. The ADR mechanism techniques are extra-judicial; it is intended to cover negotiation, mediation, conciliation and arbitration. The International Center for Alternative Dispute Resolution (hereinafter referred as ICADR) is a unique center in the country, which is offering ADR services to parties not in India but all over the world. The ADR is intended to cover almost all disputes, including commercial, civil, labour and family disputes in which parties are entitled to conclude a settlement and to be settled by ADR procedure,[7] both the parties are not interested in settlement of the dispute. In this very chapter, the researcher attempted to discuss the need for an alternative dispute resolution mechanism in the present era.

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[5] *Ibid*.

[6] AIR 2003 SC 189.

[7] K.Jayachandra Reddy, "Alternative Dispute Resolution" in P.C.Rao & William Sheffield (eds.), *ADR What is and How It Works*, 80 (Universal Law Publishing Co. Pvt. Ltd., 1997 reprint 2008)

3.2 EVOLUTION OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

Since the ancient India laws of arbitration were very popular and were highly accessible. While dealing with such cases on arbitration, the awards were known as decisions of panchayats, commonly known as panchats. The decisions of panchayats were binding in law in force in those times.[8] In words of Martin, C.J., "arbitration was indeed a striking feature of ordinary Indian life, and it prevailed in all ranks of life to a much greater extent than was the case of England. To entrust matters to a Panch was one of the common ways of resolving several disputes in India".[9]

After that, The Arbitration Act, 1877 came in to force as a complete code in itself. It made rules as to appeals, and the Code of Civil Procedure did not apply to matters covered by the Arbitration Act, or the second schedule to the Code of Civil Procedure. The Code of Civil Procedure, 1859 (VII of 1859) was the first Civil Code of British India. The law relating arbitration incorporated in Chapter VI of the Code from Sections- 312 to 327. It was, however, not applicable to the Supreme Court or the Presidency Small Cause Courts or non-regulation Provinces. This Act repealed by Act X of 1877, which consolidate the law of Civil Procedure, which was further, replaced by Act XIV of 1882. This Code of Civil Procedure again

[8] O.P. Tewari, *The Arbitration & Conciliation Act with Alternative Dispute Resolution*, 4 (Allahabad Law Agency, Faridabad, 4th Edition (2005) Reprint 2007)

[9] *Ibid.*

replaced by the Code of Civil Procedure, 1908 (V of 1908), the present Code. The second schedule of the Code comprised the law regarding arbitration.[10]

The Arbitration Act, 1940 exhaustively consolidated and amended the law relating to arbitration. This Act repealed Section 89, clauses (a) to (f), of sub-section (1) of Section 104 and the second schedule to the Code of Civil Procedure 1908. The civil justice committee had endorsed several modifications in the Arbitration Law. Since the Arbitration Act of 1899 based on the English Law then in force, to which several substantial amendments were affected by the Amendment Act of the British Parliament in 1934. The recommendations of the Civil Justice Committee examined simultaneously, and the arbitration bill sought to integrate and standardize the law with the arbitration in the whole of British India. Bill obtained the concurrence of the Governor-General on the 11th of March 1940, and it was called the Arbitration Act, 1940. This Act was passed mainly to solidify and revise the law relating to arbitration, which existed in India then. [11]

The Arbitration Act, 1940 had been described in the case of *Guru Nanak Foundation vs. Rattan Singh and Sons*[12] as -

> *"However, how the procedures under the act are performed and without exception questioned in courts has made lawyers smile, and legal philosophers mourn. Reality displays and laws reports carry enough testimony*

[10] *Ibid.*

[11] *Ibid*

[12] AIR 1981 SC 2073

that the procedures under the Act have become extremely technical followed by unending over expansion, Provides a legal trap to the unwilling person at every stage".[13]

The Arbitration Act of 1940 dealt with only domestic arbitration, as far as international arbitration was concerned, there was no substantial law on the subject. However, in order to implement international awards in this country, there were two Acts, Arbitration (Protocol and Convention) Act, 1937 and Foreign Awards (Recognition and Enforcement) Act, 1961. Both of these two statutes, in their ends, except one section, i.e. Section 3 did not deal with international arbitration, but in India, only the conditions for 'foreign awards' have prescribed.[14]

A few years later, the Court suggested simplification of the arbitration law, in which the issue of law issued by the binding of the technical rules. In the case of *Food Corporation of India v. Joginderpal Mohinderpal*[15] the Hon'ble Court observed that, the law of arbitration must need to be uncomplicated, Less technical and expertly responsible for the certainties of the incidents, but should be open to the principles of natural justice, the arbitrator should stick to by such method and norms which will generate faith, not only deciding between parties but by creating insight that justice appears to have done.[16] The Arbitration Act of 1940, though a good piece of legislation, in its actual operation and implementation by all concerned the parties, arbitrators, lawyers and the courts- proved ineffective. The

[13] K.K.Venugopal, "Rendering Arbitration in India Swift Effective", Vol.6, Issue: 01,*Nyaya Deep*,125 (2006)

[14] K. A. Ganguli, "The Proposed Amendments To The Arbitration And Conciliation Act, 1996- A Critical Analysis", 45 *JILI* 3-4 (2003)

[15] (1981)2 SCC 349

[16] *Supra* note 12

new Arbitration and Conciliation Act, 1996, to keep pace with the globalization of commerce, replace the old Arbitration Act of 1940.

Alternative dispute resolution is being adopted rapidly in the area of law in addition to in the field of the commercial sector as well. The root cause of the origin of Alternative Dispute Resolution is the tedious and exhausting process of litigation, expensive and inadequacy of the court system. Due to its ability to provide cheap and quick relief, it became separated from the resistance of vested interests. In the previous quarter of the last century, there was unprecedented growth in science and technology; it executed a great impression on economic life by rising competition in the everywhere in the world, it also develops a sense of concern among the consumers for protection of their rights. The legal system did not respond to the problems of the commercial world and the new atmosphere. Thus ADR developed as a dominant weapon to resolve disputes at national and international levels. It is developing as an individual and independent branch of the legal system.[17] ADR offers to resolve issues of litigants, whether due to business or otherwise, which are not able to begin any process of negotiation and reach an agreement. ADR has started expanding its ground as against litigation.[18]

For the first time in modern India ADR as a method of conciliation has been effectively introduced and recognized by law was in Labor Laws, namely, the Industrial Disputes Act, 1947. Reconciliation has been legally recognized as an effective method of dispute resolution related to disputes between workers and

[17] Dr.Avtar Singh, *Law of Arbitration and Conciliation (including ADR Systems),* 392- 393 (Eastern Book Company, Lucknow, 7th edn. 2006),

[18] *Ibid*

management. All parties to an industrial dispute who have had the misfortune of going through litigation knew that it is a tedious process and one which could go well beyond the lifetime of some of the beneficiaries. It is this factor that has the emergence of alternative dispute resolution in the form of conflict management, and judicial reform has been one of the most notable movements, and it has turned into a worldwide requirement these days. Such machinery principally developed can also be considered as "Amicable Dispute Resolution" to show its non-adversarial purposes. In dispute occurring across national boundaries, including the area of private international law, ADR is of explicit significance to contest the barriers of applicability of laws and its implementation.[19]

Thus ADR has become an indispensable, outspoken, articulate and energetic frame of history. The concept and philosophy of Lok Adalat or "people's court" introduced by the Indian contributions. It has profound and intense roots not only in recorded history but also within the pre-historical era also. It has shown to be a competent and efficient alternative to litigation. Lok Adalat is one of the most successful and inspiring forums, which has been still playing an essential role in dispute resolution.[20] Out of courts settlement of disputes commenced in 1982 by way of Lok Adalats. The very first Lok Adalat initiated and held on the 14th of March 1982 in Gujarat and these days, it has been stretched all through the country. In the beginning, Lok Adalats performed as a voluntary organization |without having any legal support for its judgments. Through the enactment of the Legal

[19] *Ibid*

[20] Dilip Raosaheb Deshmukh, J. "Efficacy Of Alternative Disputes Resolution Mechanisms In Reducing Arrears of Cases", Vol. X, Issue: April ,*Nyaya Deep* 226-27 (2009)

Services Authorities Act, 1987, which enforced on 9th of November 1995, the institution of Lok Adalats received statutory status.

ADR is a voluntary system in nowadays, according to which the individuals enter into a methodized negotiation or refer their dispute to a third party to evaluate and resolve their dispute. In particular, the facts, that the justice system has flooded the disputes of extreme importance and that the parties almost ever threatened by the atmosphere in the court and the litigation process itself. ADR has now turned into an adequate and often preferred an alternative to judicial settlement and a powerful instrument for the reduction of arrears of case. Arbitration, negotiation, mediation, conciliation, judicial settlement and Lok Adalat are the prominent alternative modes of the dispute resolution.[21]

3.3 MODES OF ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute redressal methods are the methods are progressively acknowledged in the field of law and commercial sectors at International and National levels both. These methods usually involve a third party referred to as neutral, a skilled helper who either assists the parties in a dispute or conflict to reach at a decision by agreement or facilitates in arriving at a solution to the problem between the party to the dispute.[22] The prime goal of ADR enshrined in the

[21] *Ibid.*

[22] Tania Sourdin, *Alternative dispute resolution*, 4(Law book Co., N.S.W. Pyrmont, 3rd edn. 2008).

Constitution of India itself, which directs the State "to secure to all the citizens of India, justice-social, economic and political-liberty, equality and fraternity".[23]

ADR is usually less formal, less expensive and less time consuming then regular court proceedings. It can also give people more opportunity to determine when and how their dispute will be resolved. The most common types of ADR for civil cases are arbitration, mediation, conciliation, negotiation, and Lok Adalat. Let us have a bird's eye view of these aspects of ADRs.

3.3.1 ARBITRATION

Arbitration is one of the most widely known forms of ADR. Arbitration is a quasi-judicial procedure. 'arbitration' means, a process of dispute resolution in which a neutral third party called arbitrator, renders a decision after a hearing at which both parties have an opportunity to be heard.[24] The Arbitration and Conciliation Act, 1996 governs the "arbitration procedures" in India. Part-I of the Arbitration and Conciliation Act, 1996 comprises of 43 Sections spread over ten chapters, making detailed provisions relating to domestic arbitration and international commercial arbitration held in India under this Act. However, the Act does not define the term 'Arbitration'. The definition of arbitration has based on the definition mentioned in Article 2(a) of UNCITRAL Model Law, according to that provision the term 'Arbitration' is the method through which the parties to the

[23] The Preamble of Constitution of India.

[24] Black's Law Dictionary, 6th edn. (1990), West Publishing Co., p.105.

dispute get the matter resolved by the mediation of an agreed neutral third person.[25] According to Halsbury Laws of England 'arbitration' means the reference of dispute or disagreement among the at least two parties, for fixation, after judicially seeing and hearing both sides, by a person or persons apart from the competent court.[26] Hence, arbitration is a process for resolving the dispute through the arbitrator, who is an independent, neutral third person who listens and contemplates regarding the issues.

In arbitration, first of all, the disputants appoint the arbitrator often those who possess the specialization in the subject matter concern and who will act impartially and fairly. The appointed arbitrators initiate the arbitral proceedings by adopting the less formal procedure or such procedural rules which may be formed by the concerned parties. The arbitral tribunal provides the opportunity to each party to present, examine and argue the evidence before it. After the hearing of the parties, the tribunal endeavors to make an agreement among them on such dispute and if no settlement is possible, in such circumstances, the tribunal is empowered to decide the matter based on evidence and arguments produced before it and pass the arbitral award as per law. However, the tribunal, while settling or deciding the matter, is bound to follow the principles of natural justice. The award is binding, however,

[25] United Nations Commissions on International Trade Law, Model Law on International Commercial Arbitration which was adopted in 1985.

[26] S.C. Tripathi, *Arbitration and Conciliation Act,1996 with Alternative Means of Settlement of Disputes*, 344-345(Central Law Publication, Allahabad 7th edn., 2015)

subject to review on limited grounds.[27] The process of arbitration is generally utilized in commercial and labour disputes.

In the case of *Jivaji Raja vs Khimiji Poonja & Company*[28], Bombay High Court observed that arbitration is the reference of dispute or difference between two or more parties to a person chosen by the parties or appointed under statutory authority, for determination of the same. In a broad sense, it is substitution of ordinary judicial machinery by a mutually chosen tribunal, i.e., an Arbitrator or an Arbitral Institution. Depending on the terms of the arbitration agreement, the subject matter of the dispute in arbitration can be classified into different types, such as ad-hoc arbitration, domestic arbitration, international arbitration, statutory arbitration, foreign arbitration, fast track arbitration, look –sniff arbitration, flip–flop arbitration etcetera. The above classification of methods is not exhaustive; the parties can choose methods according to their needs, which will fulfill their objectives of an amicable resolution of the dispute for the betterment of all.

Depending on the terms of an arbitration agreement, the subject matter of the dispute in arbitration, and the laws governing such arbitrations, arbitrations can be classified into different types, such as[29]:

- **Ad-hoc Arbitration:** The Ad-hoc Arbitration is agreed to and arranged by the parties themselves without recourse to an arbitral institution. It is to get

[27] See the Arbitration and Conciliation Act, 1996.

[28] AIR 1934 Bom. 476.

[29] Indu Malhotra & OP.Malhotra, *The Law and Practice of Arbitration And Conciliation*, 115 (Thomson Returns India, 3rd Edn 2014)

the justice, in the balance of the un-settled part of their dispute only. It may be either International or Domestic arbitration[30]

- **Domestic arbitration:** The Domestic arbitration means, an arbitration which takes place in India, wherein parties are Indians, and the dispute is decided in accordance with substantive law in India
- **International Arbitration:** An Arbitration, which may take place either within India or outside India but, where there are ingredients of foreign origin in relation to the parties, or the subject matter of the dispute. In this process, the dispute is decided in accordance with substantive law in India or any other country, depending on the contract in this regard and the rules of conflict of laws are termed as International Arbitration.
- **Institutional Arbitration:** It means, arbitration conducted by an arbitral institution in accordance with the prescribed rules of the institution. In such kind of arbitration, there is a prior agreement between the parties that in case of future differences or disputes arising between the parties during their commercial transactions, such differences or disputes will be settled by arbitration as per clause provided in the agreement and in accordance with the rules of that particular arbitral institution. The arbitrator or arbitrators, as the case may be is appointed from the panel maintained by the institution either by disputants or by the governing body of the institution. The Arbitration and Conciliation Act, 1996 gives recognition and effect to the

[30] David St. John Sutton, Judith Gill, et.al. *Russell on Arbitration* 29,(Sweet & Maxwell, twenty second edition, 2003)

agreement of the parties to arbitrate according to institutional rules and subject to institutional supervision. Some of the leading Indian institutions providing for institutional arbitration are, The Indian Council of Arbitration (ICA), New Delhi, The Federation of Indian Chamber of Commerce and Industries (FICCI), New Delhi and The International Center for Alternative Dispute Resolution (ICADA). Some of the leading international institutions are the International Chamber of Commerce (ICC), Paris, The London Court of International Arbitration (LCIA), London and The American Arbitration Association (AAA). The World Intellectual Property Organisation (WIPO) is an agency of the United Nations, which is offering its services exclusively for intellectual property disputes. WIPO is based in Geneva.[31]

- **Statutory Arbitration:** It is a necessary form of arbitration, which is imposed on the parties by operation of law. It is conducted in accordance with the provisions of an enactment, which specifically provides for arbitration in respect of disputes arising on matters covered by the concerned enactment bylaws or rules made thereunder having the force of law. In such a case, the parties have no option as such but to abide by the law of the land. It is apparent that statutory arbitration differs from the other types of arbitration for the reason that, the consent of parties is not necessary, it is necessary form Arbitration, and it is binding on the Parties as the law of the land. As an example to it, Sections 24, 31 and 32, of the Defense of India

[31] Indu Malhotra & OP.Malhotra, *The Law and Practice of Arbitration And Conciliation*, 115 (Thomson Returns India, 3rd Edn 2014)

Act, 1971 and Section 43(c) of The Indian Trusts Act, 1882 are the statutory provision, which deals with statutory arbitration.

- **Foreign Arbitration:** When arbitration proceedings are conducted in a place outside India, and the award is required to be enforced in India, it is termed as foreign arbitration.
- **Fast Track Arbitration or Documents Only Arbitration:** The Documents only arbitration is not oral and is based only on the claim statement and statement of defense, and a written reply by the claimant if any. It also includes the documents submitted by the parties with their statements along with a list of reference to the documents or other evidence submitted by them. The written submission may take the form of a letter to the tribunal from the party or his representative or maybe a more formal document produced by lawyers.[32] The parties may agree upon, or in default, the tribunal may adopt the procedure to resolve the dispute only based on the documents submitted to the tribunal and without an oral hearing or cross-examination of the witnesses.[33]
- **Look –Sniff Arbitration:** Institutions specialized in special types of disputes have their own special rules to meet the specific requirements for the conduct of arbitration in their specialized areas. Look-sniff arbitration is a hybrid arbitration, and also known as quality arbitration. It is a combination of the

[32] David St. John Sutton, Judith Gill, et.al. *Russell on Arbitration* 29,(Sweet & Maxwell, twenty second edition, 2003)

[33] In shipping and Grain Trade Disputes , this method of arbitration is used.Rules of London Maritime Arbitratirs Association(LMAA) and Grain and Feedstock Trade Association(GAFTA).

arbitral process and expert opinion. On the bases of the evidence and inspection of goods or commodities that are the subject matter of the dispute placed before the arbitrator, who is selected based on his specialized knowledge, expertise and experience in a particular area of trade or business, the arbitrator decides the dispute and makes his award. The award may relate to the quality or price of the goods or both. There is no formal hearing for taking evidence or hearing oral submissions. For example, Rules of the London Court of International Arbitration (LCIA) permit the arbitrator, on his own, to ascertain the quality of goods and their prevalent price.[34]

- **Flip –Flop Arbitration:** This type of arbitration has its origin in a United States arbitration case, which dealt with a baseball player. In such arbitration, the parties formulate their respective cases beforehand. They then invite the arbitrator to choose one of the two. On the evidence adduced by the parties, the arbitrator decides which submission is the correct submission, and then makes an award in favour of that party. After both parties have submitted their respective cases to the arbitrator, he makes an award either favoring the claimant of the respondent. He cannot pick and choose from a party's case. If a party inflates its claim, then it may change everything. This type of arbitration is also known as 'pendulum arbitration'.[35]
- **International Commercial Arbitration:** Section 2(1)(f) of the Arbitration and Conciliation Act, 1996 defines an 'International Commercial Arbitration'

[34] Indu Malhotra & OP.Malhotra, *The Law and Practice of Arbitration And Conciliation*, 115 (Thomson Returns India, 3rd Edn 2014)

[35] Andrew Tweeddale and Keren Tweeddale, *Arbitration of Commercial Disputes, International & English Law and Practice*, 2728 (Oxford press1st edn, 2005)

as the one in which at least one of the parties is a resident of a country other than India, or a body corporate incorporated in any country other than India, or a company or association or a body of individuals whose central management and control is exercised in any country other than India. Arbitration with the government of a foreign country is also considered to be international commercial arbitration.

Thus, the above classifications of the process under different heads reflect that the process of arbitration is flexible enough so that, it can be altered and modified according to the dispute to its best form, by the disputed parties. Thus, it is a fact that the above classification is not exhaustive. The best method or the form of arbitration is to be chosen by the parties according to their requirement, which can help them fulfill the objective of an amicable resolution of the dispute for the betterment of all.

3.3.2 NEGOTIATION

Nothing is indeed more satisfying and more soothing than a cordially negotiated amicable settlement because; it protects and preserves personal and business secrets, relationships and reputations that might otherwise be impaired by the adversarial process. The process of negotiation does not fall either in the concept of ‘arbitration’ or ‘conciliation’. Strictly, negotiation by itself is not an alternative dispute resolution procedure, because it is a bipartite process and does not require a third party to facilitate and promote the settlement. In contrast, alternative dispute resolution methods mainly involve a third person for facilitating

the resolution of the dispute by settlement. However, it is the most fundamental way of dispute resolution and is generally treated as one of the main components of alternative dispute resolution processes. It is only when the process of negotiation does not succeed that it transforms into an alternative dispute resolution method by the intercession of a neutral and more structured process framework.[36]

Justice Krishna Iyer J accentuated the need for settling disputes between parties particularly in commercial matters, by mutual negotiation in preference to court litigation in the following languages, 'commercial causes…, should, as far as possible be adjusted by non-litigative mechanisms of dispute resolution since forensic process, dilatory and contentious , hamper the flow of trade and harm both sides, whoever wins or loses … A legal adjudication may be flawless but heartless, but a negotiated settlement will be satisfying, even if it departs from strict law'.[37] The parties should be encouraged, so far as possible, to settle their disputes without reference to litigation.[38] The Arbitration and Conciliation Act, 1996 gives legislative recognition to this concept under Section 30, Section 30 provides that, ' It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties; the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement'. In India, the process of negotiation as a preferred dispute resolution method is yet to make an impact.

[36] Henry J.Brown and Arthur Marriott, *ADR: Principles and Practice,*47-48,(Sweet & Maxwell, South Asian Edition, 2013)

[37] Agarwal Engineering Co Vs. Technoimpex Hungarian Machine Industries, Foreign Trade Co.1977 (4)SCC 367.

[38] Cutts Vs Head 1984 Ch 290.

Nevertheless, in many countries, it has made a remarkable impact. In Sweden, the disputed parties meet in a spirit of determination to agree, and they are said to consider the non-arrival at an amicable settlement almost a disgrace to themselves.[39]

Negotiation is a method, which has no established rules but practices a predictable model, where parties to a dispute hold discussions or dealings about a matter to reconcile differences and establish areas of agreement, settlement or compromise.[40] Negotiation is the most uncomplicated and non-binding procedure, which requires the initial interaction between the parties to the dispute, which is required to devised in the very beginning of the dispute. The only thing, which needs to conquer, is 'egotism' by the parties to the dispute so that they can go for self-counseling to resolve their dispute.

It is as old as humankind and usually precedes all other forms of dispute resolution. Every person learns in his early ages how to negotiate in the society. The parties to a dispute negotiate or talk among themselves to resolve the conflict or to work out a compromise. Negotiation is the simplest and very often, the quickest way of settling commercial disputes because the parties themselves are in the best position to know the strengths and weaknesses of their cases. In this mode, the parties begin their talk without the interference of any third person. The aim of negotiation is the settlement of disputes by the exchange of views and issues concerning the parties. Negotiation is a verbal process where two or more parties

[39] O.P.Malhotra, *The Law of Industrial Disputes* 16 (LexisNexis 6th edn, Vol I 2004)

[40] *Ibid*

seek to reach an agreement over a problem between them, in which they seek, as far as possible, to preserve their interests.[41]

Negotiation is an interaction of influences. Such interactions, for example, include the process of resolving disputes, agreeing upon courses of action, bargaining for individual or collective advantage and of crafting outcomes to satisfy various interests.

The process of negotiation gives the parties an option to go over a wide range of issues. In business disputes, the disputed parties try to reach a settlement by adopting a give and take process, understanding each other's point of view, as they best know the strength and weakness of their respective cases and the parties have their market reputation at stake. It gives a higher chance of reaching an amicable settlement by negotiations.

Negotiation involves three essential elements: process, behavior and substance. The 'process' refers to how the parties negotiate, the context of the negotiations, the parties to the negotiations, the tactics used by the parties, and the sequence and stages in which all of these play out. 'Behavior' to the relationships among these parties, the communication between them and the styles they adopt. The 'substance' refers to what the parties negotiate over: the agenda, the issues in their respective positions and more helpfully in the interests of the parties, the options, and the agreements reached at the end by them.[42]

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[41] Margaret Wang , "Are Alternative Dispute Resolution Methods Superior to Litigation in Resolving Disputes in International Commerce?" Volume 16 Issue 2 *Arbitr Int*, 191(2000), *available at* https://academic .oup.com/ arb itration/article-abstract/16/2/189/191783/Are-Alternative-Dispute ResolutionMethods? redirectedFrom=fulltext (accessed on 10/03/2017 at 15:35).

[42] *Available at:* http//en.wikipedia.org/Negotiation (accessed on 20/10/2019 at 15:51)

Skilled negotiators may use a variety of tactics ranging from a straightforward presentation of demands or setting of preconditions to more deceptive approaches such as intimidation and salami tactics may also play a part in arriving at the outcome of negotiations. The key to negotiation is information.

Emotions have the potential to play either a positive or negative role in negotiation. During negotiations, the decision as to whether or not settle rests in part on emotional factors. Negative emotions can cause intense and even irrational behavior and can cause conflicts to escalate and negotiations to break down, while positive emotions facilitate reaching an agreement and help to maximize joint gains.

The negative effect has detrimental effects on various stages in the negotiation process, though various negative emotions affect negotiation outcomes. Angry negotiators plan to use more competitive strategies and to cooperate less, even before the negotiation starts. These competitive strategies are related to reduce joint outcomes. During negotiations, anger disrupts the process by reducing the level of trust, clouding parties' judgment, narrowing parties' focus of attention and changing their central goal from reaching an agreement to retaliating against the other side. Angry negotiators can pay less attention to the opponent’s interests and can be less accurate in judging their interests, thus achieve lower joint gains.

Moreover, because anger makes negotiators more self-centered in their preferences, it increases the likelihood that they will reject lucrative offers. Anger does not help in achieving negotiation goals either: it reduces joint gains and does not help to boost personal gains, as angry negotiators do not succeed in claiming

more for themselves. Moreover, negative emotions leads to acceptance of settlements that are not in the positive utility function but instead have a negative utility. However, expression of negative emotions during negotiation can sometimes be beneficial: legitimately expressed that anger can be an effective way to show one's commitment, sincerity, and needs.

A negotiated settlement is conducive in preserving relations between the parties as also their market reputation, which justifies the preference of the process of negotiation over other alternative dispute resolution methods. The process of negotiation and the negotiated settlement is possible at any time, even after the other methods of dispute resolution have been initiated.[43] The negotiated settlement is based on bipartite agreements and is superior to any procedure involving third party intervention in the matters that mainly concern the parties.

As against 'arbitration' and 'conciliation', the process of negotiation is most flexible and informal and provides ample scope for the parties to direct the proceedings suited to the facts and circumstances of the case. For instance, parties are free to choose the location, timing, agenda, subject matter and the participants. It is quick, inexpensive, private and less cumbersome in comparison to other dispute resolution methods. It is a voluntary and non-binding process, wherein the parties control the result and the procedure for coming to an amicable agreement. The main advantage of negotiation can be said to be that, a settlement by way of negotiation is always possible, even after other methods of resolving the dispute have been set in

[43] The Arbitration and Conciliation Act, 1996 Section33 and Section 73.

motion or having been set in motion, have not resulted in an amicable settlement of the disputes.[44]

It is a common practice for the parties to an international contract to stipulate that before embarking upon arbitration, the parties will endeavour to settle any dispute by negotiation or some other form of alternative dispute resolution method. The essence of negotiation that it is a business deal involving the reluctant exchange of commitments where both parties want to yield less and get more. It is akin to the practice of diplomacy.

The evolution and adoption of the modern systems of Information, communication technologies and the concept of the cyber era have made the business and trade negotiations a highly sophisticated science, involving a complex interchange of ideas combining arguments, horse-trading and bluff. The businesspersons and traders use negotiation as a device for trying to persuade the other to give him what he needs or wants and gives up something in return.

The process of negotiation can sometimes become highly complicated, mainly because the process of negotiation has emphasized a higher and extensive possibility for joint gains and interest base outcome. The outcome of negotiation would depend upon the art, skill and dexterity of displaying strength by one party to the other. Where the other determinants of strength are reasonably balanced, a conviction can easily be the decisive factor.

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[44] Alen Redfern, martin Hunter, *et.al*., *Redfern and Hunter on International Arbitration*, 35(Oxford Press 4th edn., 2004)

The process of negotiation can start with easy bargaining slowly adopting a pleading manner, or in some cases, the parties may hector, cajole or threaten the other party. The dominant party to the dispute has an option to use the tactic of avoiding the process of negotiation or withdrawing from the situation, which involves confronting others in resolving differences. Thereby the party may use the threat of withdrawal as a strategy in its favour and disadvantageous to that of the opposite party.[45] Negotiations can culminate into an amicable settlement only if the parties have a genuine eagerness and will, followed by earnest, honest efforts and cooperation, to settle the dispute. However, it is unlikely to succeed unless those involved are capable of a certain degree of detachment and objectivity. In long term agreements it is common to find a formula that the, in the event of a dispute arising, the parties will first endeavour to settle their differences by negotiations 'in good faith'. Lord Ackner in *Walford v Miles*[46] has said that 'an agreement to negotiate, like an agreement to agree, is unenforceable… because it lacks the necessary certainty. A duty to negotiate in good faith is as unworkable in practice as it is inherently inconsistent with the position of the negotiating parties'.

Negotiation is an interaction of influences. Such interactions, for example, include the process of resolving disputes, agreeing upon courses of action, bargaining for individual or collective advantage, or constructing outcomes to satisfy various interests. Negotiation can thus be considered as another form of

[45] Shirley Shipman, Ben Waters, et.al., *Brown and Marriott's Alternative Dispute Redressal methods Principles and Practice* 103 (Sweet & Maxwell 4th edn.,2018)

[46] (1992) 1 All ER 453

alternative dispute resolution mechanism along with that of arbitration, conciliation and mediation mechanisms.

3.3.3 MEDIATION

In order to emphasize the need for mediation in the process of resolving the disputes, it is significant to know the characteristic features of this method. At the simplest mediation is an informal, voluntary process in which an impartial person, trained in facilitation and negotiation techniques, helps the parties to reach at a mutually acceptable resolution.[47] It can also be defined as a process of resolving the dispute by which the 'mediator' a neutral person, works with the parties to a dispute to bring them to an agreement that they can all accept.[48] It is thus, impracticable to provide a final definition of the process of mediation.

The former President of India Dr A.P.J. Abdul Kalam has been supportive of amicable settlement of disputes and has advocated the need to encourage mediation as an alternative dispute resolution mechanism in the following words[49],

> *"Mediation and Conciliation is a faster method of dispute resolution compared to the conventional Court processes. The only thing is that we have to have trained mediators and conciliators, who can see the problem objectively without bias and facilitate affected parties to come to an agreed*

[47] Shirley Shipman, Ben Waters, et.al., *Brown and Marriott's Alternative Dispute Redressal methods Principles and Practice* 5 (Sweet & Maxwell 4th edn.,2018)

[48] Ruth Charlton and Micheline Dewdney, *The Mediators Hand Book* 8 (Law Book Company,Sydney, 3rd edn. 2000)

[49] The 12th Justice Sunanda Bhandare Memorial Lecture, Judiciary and its multi-dimensions. (1st November, 2006).

solution. In my opinion, this system of dispute resolution is a cost-effective system for the needy... Mediators must possess the qualities of being a role model in the society, impeccable integrity and ability to persuade and create conviction among the parties".

In some situations, mediation is a form of negotiation carried out with the assistance of a third party. The mediator, in contrast to the arbitrator or judge, has no power to impose an outcome on disputing parties. Despite the lack of 'teeth' in the mediation process, the involvement of a mediator alters the dynamics of negotiations.[50] Thus, the role of the 'mediator' is restricted to that of a 'facilitator', and the process of 'mediation' is a way of settling disputes by a third party who helps both sides to come to an agreement, which each considers acceptable. Prof. Robert Baruch Bush and Prof. Joseph Folgen in his book stated that,

"In a transformative approach to mediation, mediating persons consciously try to avoid shaping issues, proposals or terms of settlement, or even pushing for the achievement of settlement at all. Instead, they encourage parties to define problems and find solutions for themselves and they endorse and support the parties' own efforts to do so".[51]

On studying, the above definitions concerning the characteristic features of mediation can be evaluated that mediation, as one of the alternative dispute redressal methods is flexible and creative. The process varies from case to case

[50] Stephen B. Goldberg, Frank E.A et.al., *Negotiation, Mediation and other processes* 123 (Aspine Law & Business, Gaithesburg and New York, 3rd edn. 1999)

[51] Prof. Robert Baruch Bush and Prof. Joseph Folgen, *The Promise of Mediation: The Transformative Approach to Conflict* 136 (Jossey-Bass, Revised edition, 2004)

depending mainly on the parties' needs and the mediator's style. Usually, the parties meet to discuss the issues face to face. The mediator helps the discussions remain focused and productive. The mediator may hold private caucuses with each party separately, and carry the messages, clarifications, questions, proposals, offers, and counteroffers back and forth between them. The mediator can use private group or the discussion groups and other techniques to facilitate the process of negotiation among the disputed parties.

A mediator does not impose a solution but creates a conducive atmosphere, in which the parties to the dispute can find a resolution to their problems. Mediation in India is still at its formative years, though it has existed and still exists in India from vedic periods in some form or the other and with different names, which is evident from the study of the evolutionary history of dispute redressal methods in India.[52] However, the fact is that still no code or enactment exists in India, which specifically pertains to the process of mediation. Mediation is a dispute has to be adopted, as a primary method of resolving the conflict, mainly the government, and the public authorities who are the main litigants before the Courts of law should include these processes in the establishment of the legal order and encourage the quick settlement of disputes.

In simple term, mediation is nothing but facilitated negotiation. Writer Simon Roberts has observed that in most societies, even early nomadic hunters, “meeting and talking” has been used to resolve some disputes and in stateless societies, with

[52] Robert D. Benjamin, Mediation as a Subversive Activity: Remembrances of Times Past - A Brief History and the Origins of Mediation , *available at* http://www.dcba.org/art10998.htm (accessed on 10/03/2018 at 17:18)

no central authorities to make or enforce third part decisions, mediators would have been used "actively coaxing parties towards settlement,[53] neutral person in between the parties called mediator advocates for settlement.[54] Mediation is an old concept to India, centuries before India had utilized a system called panchayat system where all the villagers respect the decisions of the panchas, who resolves the disputes of community. The same type of traditional mediation continues to be utilized even today in Indian villages.

According to the Black's Law Dictionary, "*mediation is the action of a third person that intervenes among two challenging parties expecting to mitigate them or influence them to resolve or settle their dispute*".[55] Mediation is a successful management technique for resolving complex disputes among the disputants.[56] It is a structured process of dispute resolution in which a mediator, a neutral person trained in the process of mediation, functions among the parties to the dispute, to get them to a mutually acceptable agreement. The mediator does not decide the dispute or give an award. He is only a facilitator and in charge of the process of mediation.[57] Thus, Mediation can be said to embraces the philosophy of democratic decision-making.

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[53] S.Roberts, order and disputes : *an Introduction To Legal Anthropology*,(London: Penguin,1979),p.26 as quoted in Henry J.Brown and Arthur Marriott Q.C., *ADR: Principles and Practice*,153,(Sweet & Maxwell, South Asian Edition, 2013)

[54] Tom Arnold, "Mediation Outline: A Practical How-to Guide for Mediators and Attorneys" in P.C.Rao &William Sheffield (eds.), *ADR-What is and How It Works*, 211 (Universal Law Publishing Co. Pvt. Ltd.,1997 reprint 2008)

[55] The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. *Available at* http://thelawdictionary.org/mediation/ (accessed on 22/02/2017 at 19:40).

[56] Ashwanie Kumar Bansal, *Arbitration and ADR* 20 (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2005).

[57] Sunil Ambwani,J., "Alternative Dispute Resolution" 17 *J.T.R.I Journal* 35 (2012).

In the Bhagavad Gita the holy book of Hindu's it is stated, "when meditation is mastered, the mind is unwavering like the flame of a lamp in a windless place." Lord Buddha who spread the message of peace and unity has also stated that "meditation brings wisdom; lack of mediation leaves ignorance. Know well what leads you forward and what holds you back, and choose the path that leads to wisdom". Pantanjali taught the method of uniting the body, mind and soul with the practice of yogic living has also pointed out, that the progress in mediation comes swiftly for those who try there hardest.[58]

The process of mediation incurs minimal procedural and evidentiary requirements while providing an unlimited opportunity for the parties to exercise flexibility in communicating their underlying concerns and priorities regarding the dispute."[59] Thus, mediation can be practiced in various ways. For example, in the United States of America, the purest of its form is still considered to be facilitative. Undoubtedly, many practitioners and scholars differ on the 'role' of mediator in mediation. One view is that the process of resolving disputes shall be called mediation only if the mediator limits his or her role to that of a facilitator.[60] Whereas in the evaluative method, the mediator assumes more control of the

[58] *Available at* www.mediationinlaw.org/html (accessed on 13/02/2017 at 13:53)

[59] Brien Wassner, A Uniform National System of Mediation in the United States: Requiring National Training Standards and Guidelines for Mediators and State Mediation Programs *Available at* https://cardo zojcr. com/issues/volume-4-1/note-1/ (accessed on 13/02/2017 at 15:35)

[60] Mediation is a private and consensual process in which an impartial person, a mediator, works with disputing parties to help them explore settlements, reconciliation, and understanding among them….The primary responsibility for the resolution of a dispute rests with the parties….A mediator shall respect and encourage self-determination by the parties in their decision whether, and on what terms, to resolve their dispute, and shall refrain from being directive and judgmental regarding the issues in dispute and options for settlement….He may assist them in making informed and thoughtful decisions, but shall not impose his judgment for that of the parties concerning any aspect of the mediation [N.C. Standards of Professional Conduct, 1996]

process and the parties may be ordered to participate in a particular way that may influence the outcome of the process.[61]

Moreover, from the standpoint of the Court's responsibilities, the use of mediation reduces the heavy caseload so common with litigation.[62] The disputes referred to mediation can be settled in accordance with reason, equity, and the actual circumstances of the case. Both equity and mediation offer a form of "individualized justice" unavailable in the official legal system. However, through the mediation process, a resolution or result to the dispute can be achieved without a right-wrong determination and a factual finding.[63] Thus, mediation, when adopted as alternative dispute redressal method, helps in dissolving bitterness and rivalry and creates the circumstance, which helps in the amicable development of the concept peace and unity through the win-win situation among the disputants.

The mediation is recommended in all such matters in which the relations between the parties have to survive beyond litigation. The court should refer all such matters to mediation, in which disputes relating to properties, partition, marriage and custody of children, commercial and business are involved. The mediation also succeeds in consumer disputes, suppliers, contractors, banking, insurance, labour matters, doctor and patients, landlord and tenant and in cases relating to intellectual property rights. Mediation is not recommended, where

[61] The Process of resolving a dispute with the assistance of a mediator outside of a formal Court proceeding. Okla. Stat. Ann. tit. 12 1802 (West 1993)

[62] Kwang-Taeck Woo, "A Comparison of Court-Connected Mediation in Florida and Korea", 22 *Brooklyn Journal of International Law* 605, 606 (1997).

[63] Kimberlee Kovach, Teaching a New Paradigm: Must Knights Shed their Swords and Armor to Enter Certain ADR Arenas? 1 *Cardozo Online Journal of Conflict Resolution* 3 (2000)

questions of law are involved in being adjudicated by the court, or in which offences of moral turpitude and fraud are involved. Mediation is also not recommended when there is a severe imbalance between the positions of the parties, in which fair negotiation is not possible.[64] In India, there is no comprehensive legislation on mediation; however, section 89 of the Code of Civil Procedure, 1908 distinctly recognizes mediation as an available ADR mechanism.

3.3.4 CONCILIATION

The concept of conciliation has now been given statutory recognition under the Arbitration and Conciliation Act, 1996. However, the expression conciliation is not defined in this Act. It only states that conciliation could take place not only in contractual and commercial disputes but also in all disputes arising out of the legal relationship. Conciliation is "the method through which the assistance of an unbiased third party used to reduce disputes and arrive at an amicable resolution or agreed solution; this is a process of reasonable discourse arranged under the supervision of the conciliator".[65] In other words, conciliation is a process where a conciliator meets with the parties in dispute and explores ways to settle the dispute by non-binding agreement, which has no legal standing. The term conciliation is often used interchangeably with mediation.

A conciliator is different from that of a Judge or an Arbitrator. The role of the conciliator is to assist the parties to reach their own negotiated settlement, and

[64] *Ibid*

[65] Definition of 'conciliation' formulated by the ILO (1983) concepts as quoted in Shivaraj S. Huchhanavar, "In Search Of True 'Alternative 'To Existing Justice Dispensing System In India, 7 *NLR* 1 (2013)

he may make suggestions as to appropriate. The conciliator does not impose a decision on the parties but, on the contrary, his role is to assist the parties to resolve the dispute themselves. He may give an opinion on issues in dispute, but his primary function is to assist in achieving a negotiated solution. A conciliator can suggest terms upon which a settlement can be arrived at, but cannot impose a settlement conceived by him on the parties. His role is merely advisory and not creative or decisive, as the role of an arbitrator or an adjudicator.[66] The main difference between conciliation and mediation proceedings is that the 'conciliator' can make proposals for non-binding settlement, while a 'mediator' refrains from making such a proposal.

After UNCITRAL had adopted the UNCITRAL Conciliation Rules, 1980 and the General Assembly had recommended the use of these rules where dispute arises, Parliament of India therefore in the year 1996 enacted the Arbitration and Conciliation Act, 1996 on the basis of the UNCITRAL Model Law on International Commercial Arbitration, 1985 and UNCITRAL Conciliation Rules, 1980. The Act segregated conciliation from mediation and codified statutory recognition in India with the enactment of the Act of 1996, and part III (Sections 61 to 81) of the Act deals with conciliation process comprehensively however it does not define

[66] OP Malhotra, Arbitration of Labour Disputes: Labour Adjudication in India, 2001, Journal of the Indian Law Institute, pp31-32

'conciliation'.[67] Thus the meaning of 'conciliation' as can be gathered from the 1996 Act has to be read into Section 89, [68] of the Code of Civil Procedure.

3.3.5 LOK ADALAT

The Lok Adalat is a significant mode of alternative dispute resolution mechanism. It is an old form of adjudicating system prevailed in ancient India whose validity has not been taken away even in the modern days too. It is interesting to note that the Lok Adalat system settles disputes by way of negotiation, persuasion, mediation and conciliation with the active involvement of the advocates, judges, eminent social workers and concerned parties. So, it is worthy to say that the procedure as follows in Lok Adalat is like to implement the views of our nation's father Mahatma Gandhi as he said,

> "*I had learned the true practice of law. I had learnt to find out the better side of human nature and to enter hearts; I realized that the true function of the lawyer was to unite parties given as under. The lesson was so indelibly burnt into me that the large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby, not even money, certainly not my soul also."*[69]

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[67] P.C. Rao, "Arbitration and Conciliation Act, 1996: The Context" quoted in P.C.Rao &William Sheffield (eds.), ADR- What is and How It Works, 33(Universal Law Publishing Co. Pvt. Ltd., 1997 reprint 2008)

[68] Section 89 of the Civil Procedure Code was repealed by the Arbitration Act, 1940, It was believed after the enactment of the Arbitration Act, 1940, the law had been consolidated and there was no need of Sec89.However, it got reincarnated with the passing of the Code of Civil Procedure (Amendment) Act, 1999.

[69] Anurag K. Agarwal, "Strengthening Lok Adalat Movement in India," *AIR Jour* 33 (2006).

Abraham Lincoln also appreciated the persuasion method, which is an important tool of Lok Adalat system for settlement of disputes.[70] As it is a known fact that the Indian courts are overburdened with the backlog of cases and the regular courts are to decide the cases involve a lengthy, expensive and tedious procedure. In such a situation, the emergence of Lok Adalat is a ray of hope for the need of justice. The institution of Lok Adalat has multifarious advantages and people also have faith upon it as an apparatus for social change, it bears the signature of social justice. Lok Adalats, therefore, devise for imparting expeditious and inexpensive justice as an alternative dispute resolution forum.

Lok Adalats were established by the government to settle disputes through conciliation. Camps of Lok Adalats initially started in Gujarat in March 1982, and now it has been extended throughout the country. Lok Adalat is a platform where pending cases can be settled amicably, whether cases are at the pre-litigation stage or sub-judice in the court of law. The Lok Adalats have been given legal status under the Legal Services Authorities Act, 1987. According to the Act, The award passed by Lok Adalats is deemed to be the final decree of a civil court and obligatory on all parties to the dispute, and no appeal can be done before any court of law contrary to the award granted by the Lok Adalats. There is no provision for an appeal toward this kind of award if the parties to the dispute are not acquiescent by the award granted the Lok Adalat, but they are free to begin litigation by filing a

[70] Abrahim Lincoln – "Discourage litigation persuade your neighbours to compromise whenever you can. Point out to them the nominal winner is often a real loser; in fees, expenses and waste of time. As pacemaker, the lawyer has a superior opportunity of being a good person".

case in the court of appropriate jurisdiction by following the necessary procedure, in the exercise of their right to litigate.[71]

The principal object of designing and evolving the mechanism of Lok Adalats is to promoting justice. The concept of Lok Adalat is an integral part of the Indian Constitutional scheme mentioned in Preamble, Part III and Part IV of the Constitution. The Preamble of the Constitution, devised 'justice' as one of the tools for achieving the ultimate goal of Constitution i.e. fraternity and further constitutional mandate of Article 21[72]as interpreted by judiciary, read with Article 39A[73] which provides for equal justice and free legal aid to economically backward classes, setting an objective which needs to be achieved by a welfare state.

The Lok Adalat system fulfills the requirement of justice of the poor, backward and illiterate people who are often intimidated and confused by the greasy, semantics and substantive and procedural laws and provides them with this available system to resolve their disputes while securing justice. It is observed by Justice A.S. Anand that, the Lok Adalats are providing an effective solution to the three main drawbacks facing Indian justice delivery system, which is catalogued in the first three alphabets of English language. These are A- access to courts, B-backlog in courts resulting in delays, and C-cost of litigation. [74]

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[71] *Available at* http://nalsa.gov.in/lok-adalat (accessed on 10/03/2017 at 21.01)

[72] Article 21 – "No person shall be deprived of his life or personal liberty except according to a procedure established by law"

[73] Article 39A- "The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunities, and shall in particular provide free legal aid by sustainable 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"

[74] A. Subrahmanyam and A.S. Raju, "Distributive Justice: India Perspective," 20 *AIR Jour* 16 (2004)

These drawbacks were putting fear in the mind of a weakened section of society that they cannot get justice in the ordinary court's mechanism. But Lok Adalats are proving such means, which provide justice without delay and many costs to the socially and economically backward people residing in distant villages. In this sense, it is a legal instrument, which significantly helps us to achieve the goal of access to justice to all. The Lok Adalats also bring consciousness among the poor regarding the benefits made available to them by the central and state Governments. It is an institution to serve the poor through dispensing justice for the reason that the poor need not go out of his village, spend hard-earned money and waste weeks and months in town in litigation and be exploited by lawyers.[75] In the present judicial system, the rich people are in a position to win the legal battle in the courts, whereas the poor class feels frustrated due to the expensive and lengthy legal process. However, the Lok Adalat brings joy on the faces of indigent litigants when the court fee is refunded to them if Lok Adalat settles their matter. Similarly, in pre-litigation cases filed directly in Lok Adalat, no court fee needs to be paid. In this sense, the Lok Adalat system provides almost free justice to all.

The purpose behind the Lok Adalat is to invoke the consciousness of the community to maintain local unity and to secure equitable and substantial justice. The amicable settlements by the Lok Adalats are not necessarily according to the legal principles. They have their eyes always on social goals like ending feuds rather pending disputes, restoring peace in the family, community and the locality

[75] S.S. Sharma; Legal Service, Public Interest Litigations and Para Legal Services, 186 (Central Law Agency, Allahabad, 2nd edn.2003)

and ultimately providing for destitute law or no law, and also inculcating a nature of amicable settlement of disputes among the people.[76]

Lok Adalats involve the people in its proceeding which infuse the spirit of unity, amity and peace among the litigants. Apart from being a method of mobilizing and involving the people in the judicial process at the grass-root level, the Lok Adalat has the social advantage of seeing the parties returning happily to their respective homes relieved from bickering and enmity lingering on up to generations.[77] Because if the disputes are resolved through Lok Adalats, parties may be saved from protracted litigation, anxiety, botheration and bitterness, the large number of expenses or court fees and other expenses which they are likely to incur in future litigation by way of further appeal, etcetera. The Lok Adalats have a direct impact on the people's mind disclosing that the common man yearning for justice leaves the place of Lok Adalat with happiness and satisfaction. In Lok Adalat, there is neither victor, nor a vanquished, but there is a victory for both because of concert and conciliation resulting in peace, that a case ends in the Lok Adalat the enemy disappears. By the settling of a dispute, the old friends and family members re-appear.[78] Therefore, the Lok Adalat does not only provide the happiness to the disputants by resolution of their dispute but also bring unity, peace and order in the society.

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[76] *Ibid.*

[77] R.K. Mahajan; "Practical Evaluation of Himachal Pradesh Experiment," 136 *AIR Jour* (1988)

[78] S.S. Sharma; Legal Service, Public Interest Litigations and Para Legal Services, 186 (Central Law Agency, Allahabad, 2nd edn.2003)

The Lok Adalat is a unique institution, which does not only handle the disputes of the parties but also contributes to their well being in several other ways. It meets the aspirations of the people by getting them economic and social justice. The main focus of Lok Adalats 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 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.[79]

Moreover, the Lok Adalat also lays great emphasis on the social aspect of the dispute. Obviously, it holds that the aim of justice is not to pronounce a barren decision on the basis of law of evidence only but that it should also have two aims and objectives in its decision-making process: (a) The wrongdoer might repent and mend his ways and may not repeat the wrong, and (b) the tension between the two parties may be minimized so that their mutual relations might again get normalized. It always aims at the removal of misunderstanding at the initial stage so that any trivial disputes might not grow into proportions and reach a point of no return.[80]

Therefore, the study reveals that these are the significant methods of ADR, which effectively functions intending to implement the Constitutional pledge of justice social, political and economic.

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[79] Awadh Prasad and G.N. Gupta, Lok Adalat, *A Probe Into its Organisation and Working Process*, 43(1976).

[80] M.N. Morje, "Lok Nyayalaya," 55 *AIR Jour* (1984).

3.4 LOK ADALAT AND OTHER DISPUTE RESOLUTION SYSTEMS

Delay in justice and the expensive legal procedure has been perennial features of the justice delivery machinery of the country. As a result, there are various other systems involved in the process of dispensation of justice such as Gram Nyalalaya, Khap Panchayat and Plea Bargaining. They have some similar features with the Lok Adalat. They also emphasize on the settlement of the dispute with the purpose to reduce the workload of the courts and to render justice to the disputants at their locality or village. It is desirable to mention here about the comparative study of these systems with the Lok Adalat system.

3.4.1 GRAM NYAYALAYA AND LOK ADALAT

Gram Nyayalaya and Lok Adalat are two different forums constituted with the object to impart justice to the disputants at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen because of social, economic or other disabilities.

The Gram Nyayalaya Act, 2008 was enacted by Parliament to establish the Gram Nyayalayas at the grass-root level. The Act governs the constitution, establishment, powers, jurisdiction procedure and position of Gram Nyayalayas. The State Government is authorized to establish Gram Nyayalayas for every Panchayat or a group of contiguous Panchayats.[81] Such nyayalayas are empowered to decide both kinds of matters civil and criminal in the manner and to the extent

[81] Section-3, The Gram Nyayalaya Act, 2008.

provided under this Act.[82] The Gram Nyayalaya up to some extent shall follow the various provisions of the Limitation Act, 1963, Code of Criminal Procedure, 1973 and Code of Civil Procedure, 1908 during its proceeding.[83] The applicant must pay the prescribed fee for the institution of the civil case before the Gram Nyayalaya; it will apply the particular procedure for deciding the civil disputes.[84] It will not follow the provisions of the Evidence Act, 1872 strictly while receiving as evidence, any report, statement, document, information or matter about its admissibility or relevancy.[85] It is also empowered to dismiss any case for default or to proceed ex-party and to set aside such order. It is bound to dispose of the civil suit within six months from the date of its institution.[86] The judgment in every suit, trial, claim or dispute shall be pronounced in open court by it after the completion of the hearing.[87] Where there is a reasonable possibility for settlement of the civil dispute, then Gram Nyayalaya must make efforts for conciliation and settlement of such dispute.[88] Plea bargaining proceeding can be initiated before Gram Nyayalaya as per the provisions of the Criminal Procedure Code.[89]

The Gram Nyayalaya is empowered to execute its judgment, which shall be deemed to be a decree of the Civil Court. For this purpose, it shall have all the

[82] *Id* at Section-11.

[83] *Id* at Section-15,18,19,21,,23

[84] *Id* at Section-24

[85] *Id* at Section-30

[86] *Id* at Section-24

[87] *Id* at Section- 22, 24

[88] *Id* at Section-26

[89] *Id* at Section-20

powers of a Civil Court. It shall not be bound by the procedure of the Civil Procedure Code while executing the decree, but the principles of natural justice shall guide it.[90] An appeal shall lie against the judgment, order and sentence of Gram Nyayalaya to the Court of Session in criminal cases and District Court in civil cases only in accordance with the provisions of the Gram Nyayalaya Act, 2008.[91] It means the limited right of appeal is provided to the affected party against the decision of Gram Nyayalaya. So, it can be said that the establishment of Gram Nyayalaya is a welcome step to dispense justice at the village level, which was the great noble wish of Mahatma Gandhi. The success of Gram Nyayalayas will be evaluated in the future based on its working because now it is like a newborn child who has to grow.

On the other hand, Lok Adalats are working effectively as one of the alternative tools for dispute resolution in accordance with the provisions of the Legal Services Authorities Act, 1987. Lok Adalats are organised by various legal services authorities or committee [92] at such intervals and places and for exercising distinct and separate jurisdiction over areas as it thinks fit.[93] It has the power to determine the civil, revenue and compoundable criminal cases; even these are pending before courts or at pre-litigation stage. Permanent Lok Adalat is established for the settlement of disputes related to public utility services, and compoundable

[90] *Id* at Section-25

[91] *Id* at Section- 33,34

[92] Every State Legal Services Authority, Supreme Court Legal Services Committee, High Court Legal Services Committees, District Legal Services Authorities and Taluk Legal Services Committees.

[93] Section- 19(5) of the Legal Services Authorities Act, 1987.

criminal offences, which have not brought before the courts.[94] It is a participatory justice mechanism in which serving or retired judges, advocates and social workers become the part of Lok Adalat or the Permanent Lok Adalat and persuade the parties to settle the dispute in a friendly atmosphere.

Lok Adalat and Permanent Lok Adalat, both try to settle the dispute amicably, but if the dispute is not settled then, the Lok Adalat has no power to decide it. While the Permanent Lok Adalat can decide such dispute on merit if not settled.[95] Principles of natural justice guide both kinds of Lok Adalats, objectivity, fair play, equity and other principles without being bound by the Code of Civil Procedure and the Evidence Act. It enjoys the same powers as that of a civil court.[96] The award passed by Lok Adalat or Permanent Lok Adalat is deemed to be a decree of civil court and final and binding on the parties to the dispute, and no appeal is provided.[97] It means the litigation comes to an end if Lok Adalat determines the case, while Gram Nyayalaya does not end the litigation process due to appeal provisions in the Act. Lok Adalats main focus is only to make a compromise among the parties to the dispute while Gram Nyayalaya decides the matters based on evidence as other formal court does. Keeping in view the constitution, powers, procedures and jurisdiction of Gram Nyayalaya, it seems that it is a court, which is established at Gram Panchayat level.

[94] *Id* at Section – 22(B)

[95] *Id* at Section – 22(C)(8)

[96] *Id* at Section – 22

[97] *Id* at Section – 21, 22(E)

3.4.2 KHAP PANCHAYAT AND LOK ADALAT

Khap Panchayats are in the news because of several cases in which these panchayats have openly defied the law of the land by issuing illegal diktats, which has increased manifold. Attack on young people and progressive minded people have become the order of the day. These panchayats are not working against female feticide, increasing drug addiction problem in youth, the problem of dowry, increasing costs of marriages and social and family functions, criminals, unemployment, inflation, even in connection with the crisis in agriculture and other socio-economic problems.[98] But they are only challenging the law of democratic government bypassing the orders of social boycotts and excommunication based on feudal values. They proclaim to represent themselves as the voice of society. Now, the Khap Panchayats are pressurizing the government to grant them the status of Lok Adalats so that these are endued with judicial powers.[99]

Keeping in view these developments of Khap Panchayats, it becomes essential to describe the constitution and nature of these panchayats and compare to it with the Lok Adalats. In this context, it may be submitted that according to one social activist Khap Panchayats are caste panchayats, but the anthropologist M.C. Pradhan regards them as clan council and multi village panchayat. However, both of them agree that they are traditional panchayats,[100] but not as the elected Panchayats

[98] Jagmati Sangwan, "Khap Panchayat: Signs of Desperation" *available at*: http://beta.thehindu.com/opinion/ lead/article 424506.ece.(accessed on 10/6/2017 at 09:18)

[99] The Tribune, dated August 2, 2010 *available at:* https://www.tribuneindia.com/2014/forms/archive.htm (accessed on 20/04/2017 at 12:03)

[100] Ranbir Singh, "Khap panchayats continue to have a strong hold over Jat-dominated villages in Haryana" *available at:* http://www.hinduonnet.com/thehindu/fline/fl2617/stories 20090828261701700.htm- (accessed on 20/04/2017 at 14:28)

under the Panchayati Raj Act. The Khap Panchayat was organized and constituted based on gotra or several closely related gotras, which administered in the republics of the northwestern Indian states such as Haryana, Rajasthan and Uttar Pradesh since ancient times.[101] Khap is a term for a social-political group, which also used in a geographical sense. The Sarv Khap Panchayat represents all the khaps. In ancient time, it was a political organization, composed of all clans, communities and castes of the region. But, now, the peculiar feature of Khap Panchayats is that they are institutions of Jat community, which represents all the gotras of the community. It is a social body, which helps in settlement of disputes out of courts within the boundaries of laws and social norms.[102]

Whenever there is a problem or dispute, a gathering of the Khap Panchayat is called, and every member of Khap has a right to attend, express his views and casts his vote for or against the proposal. All decisions of these Panchayats are taken after open hearing, full and voluntary expression of views and consensus on votes. Even if one of the contending parties considers the Panchayat decision unfair but it is accepted and complied with without any question.[103] In the ancient and medieval period, the Khap Panchayats worked effectively as a dispute resolution system and provided justice speedily and without cost to the litigants and participated in various

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[101] *available at:* https://en.wikipedia.org/wiki/Khap (accessed on 20/04/2017 at 18:15)

[102] Jagmati Sangwan, "Khap Panchayat: Signs of Desperation" available at: http://beta.thehindu.com/opinion/lead/article 424506.ece.(accessed on 10/6/2017 at 09:18)

[103] *available at:* https://en.wikipedia.org/wiki/Khap (accessed on 20/04/2017 at 18:15)

battles in the region.[104] But, in the 21st century, it is being criticised on the grounds of its involvement in illegal activities and disturbing peace of the whole society.

It is true; that the Khap Panchayat functions as a dispute resolution institution but only based on the feudalistic approach and generally, against the modern, democratic and secular political system. These Panchayats follow their own rules, and they adjudicate not according to laws of the land but summarily according to their own law which they deem fit. The decisions of these Panchayats cannot be enforced by law but can only be implemented due to social pressure and some time due to physical force used by members of these Panchayats. It is not a Constitutional or statutory body, so any statute does not govern it. If these bodies do not follow the Constitutional mandates such as equality, justice, integrity fraternity and the principle of the rule of law, then these bodies must be declared as unconstitutional and illegal.

On the other hand, Lok Adalats are supported by, people, judges, lawyers, social workers and other institutions. These are governed by, the Legal Services Authorities Act, 1987. These bodies provide quicker and cheap justice to the people following the provision of the Act and rules and regulations made for the purpose to implement the objectives of the Act. Thus, Lok Adalat is a statutory body whose decision can be enforced by law as the decision of the court of law.

3.4.3 PLEA BARGAINING AND LOK ADALAT

[104] *Ibid*.

Plea-bargaining as a method of disposing of pending cases and rendering justice is exceptionally new to the Indian criminal justice system. To reduce the delay in disposal of criminal cases, as recommended by the Law Commission of India in its 154th Report and also by the Malimath Committee Report on reforming criminal justice system, the provisions of Plea-bargaining have been incorporated as a new chapter XXI-A, into Code of Criminal Procedure through the Criminal Law Amendment Act, 2005. A Plea-bargaining is an agreement in a criminal case in which a prosecutor and a defendant arrange to settle the case against the defendant. The defendant agrees to plead guilty or no contest in exchange for some agreement from the prosecutor as to the punishment. A Plea-bargaining can also include the prosecutor agreeing to charge a lesser crime, and dismissing some of the charges against the defendant. In most cases, Plea-bargain is used to reduce jail sentence, time or fines associated with the crime being charged with.[105]

It is needful to make a mention that the chapter related to Plea-bargaining is applied in respect of an accused against whom, if the report about the commission of an offence has been forwarded by the police officer under Section 173 of Cr.P.C. or if a magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or punishment for life or of punishment for a term exceeding seven years has been provided.[106]But, the system of Plea-

[105] Saumya Mishra, "The Criminal Justice System and Plea Bargaining in India, "145, Cr.P.C Jour (2008).

[106] Section - 265A of the Code of Criminal Procedure, 1973.

bargaining does not apply in socio-economic offences or the offences against a woman, or a child below the age of fourteen years.[107]

In the process of Plea-bargaining, firstly, an accused files an application, which contains the brief description of the case and offence, in the court where the trial is pending. Such application accompanied by an affidavit of accused in which he states that he has voluntarily preferred the plea bargaining after understanding the nature and extent of punishment provided under the law for the offence committed by him and that he has not previously been convicted by a court in a case for the commission of the same offence. After receiving the application, the court calls to the public prosecutor or the complaint and to the accused to appear on the date fixed for the case. Then on a fixed date, the court examines the accused in-camera to ascertain whether the application has been filed voluntarily. If the court is satisfied that the application has been filed voluntarily, it provides time to the public prosecutor or the complainant and accused to work out a mutually satisfactory disposition of the case voluntarily which may include the compensation and other expenses to the victim by the accused.[108] If a settlement is reached, the court can award compensation based on it to the victim and then hear the parties on the quantum of the punishment. The court may release the accused on probation or may sentence the accused to half of such minimum punishment; if the offence committed does not fall within the ambit of the above, then the accused may be sentenced to

[107] *Ibid.*

[108] Section -265B of the Code of Criminal Procedure, 1973

one-fourth of the punishment provided or extendable for such offence.[109] The court then delivers the judgment in open court according to the terms of the mutually agreed disposition and the formula prescribed for sentencing.[110]

It is essential to note here that the judgment is final and no appeal lies other than filing a writ petition under Articles 226, 227 and 136 of the constitution.[111] The statements or facts disclosed by an accused in an application for Plea-bargaining cannot be used for any other purpose. The system of Plea-bargaining is merely applicable in limited criminal cases, and not in serious crimes such as murder, rape, dacoity, etcetera and socio-economic offences. The Plea-bargaining provides an opportunity to accuse who feels contrite and wants to make amendments or is honest and candid to plead guilty in the hope that the community will enable him to pay the fine for the crime with a degree of compassion. He deserves to be treated differently from the accused that seeks trial involving considerable time, cost and money at the cost of the community.[112] Therefore, Plea-bargaining is the concept, which is only concerned with the settlement of criminal cases and does not bring the civil cases in its scope.

On the other hand, the Lok Adalat system has jurisdiction to settle both kinds of disputes such as civil and criminal. But serious criminal offences are kept beyond its domain. Lok Adalat only strives to make a compromise between the parties while Permanent Lok Adalat also has the power to adjudicate the dispute if the

[109] *Id* Section- 265E

[110] *Id* Section- 265F

[111] *Id* Section- 265G

[112] Saumya Mishra, "The Criminal Justice System and Plea Bargaining in India,"147, Cr.P.C Jour (2008).

parties make no settlement. The Lok Adalats are authorized to deal with the disputes at pending as well as the pre-litigative stage. The resemblance between these two systems, Plea-bargaining and Lok Adalat is that both emphasize on the amicable compromise between the disputants in their respective field.

In the light of the comparative study of Lok Adalat system with other systems, it is observed that Lok Adalat is a unique institution, which is supported by all the segments of people such as judges, lawyers, law teachers, social workers litigants and common masses also. It does not only stress to end the dispute between the parties but also strongly convince the parties to harmonize their relation, which will strengthen the unity of society.

3.5 ONLINE DISPUTE RESOLUTION IN INDIA

Decisions based on law, which do not meet the needs of the changing dynamic environment of society, we do not require such decisions. Thus, a purposive, modernized and a continuing interpretation of the courts is necessary because the interface of the justice delivery system with the information technology is becoming inevitable. Law is not static; it must change with the changing social concepts and values for the maintenance of social order in society. Otherwise, either the old law suppresses the growth of the society and choke its progress, or if the society is vigorous enough, it cast away the law, which stands in the way of its growth. Law must, therefore, always keep on adapting itself to the fast-changing

society and not lag behind.[113] It is a requirement of the society that the law must respond to its need. The greatest virtue of the law is flexibility and adaptability; it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day. Thus, the justice delivery system cannot afford to take the information technology revolution lightly.[114] The judiciary in India has not only recognized this need but has also utilized the information technology to do complete justice. The Supreme Court has, on various occasions, encouraged the use of information technology to meet the ends of justice and to grant complete justice. The Supreme Court has encouraged the use of alternative dispute redressal methods in India and very soon, the same will be extended to online dispute redressal method as well. The need and necessity of online dispute redressal method are short. If the Indian government and the people are encouraging online dispute redressal method, it is thereby assisting in the attainment of a speedier, cost-effective and convenient justice system. Thus, the sooner online dispute redressal method is adopted, the better it will be for the nation in general and the justice seeker in particular.

Dispute resolution can take place on-line by using information technology in some instances. Online dispute resolution is a growing field of dispute resolution, where newer forms of communication technologies can be used to solve disputes. Online Dispute Resolution is also called as "ODR". Online dispute resolution or ODR also involves the application of traditional dispute resolution methods to disputes, which arise online.

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[113] Mr. Justice P.N. Bhagwati in *National Textile Worker's Union v. P.R.Ramakrishnan*, (1983) 1 SCC 228

[114] Praveen Dalal, "Justice through electronic governance", *available at:* http://legalsolutionsindia.com.html accessed on 14/03/2018 at 11.20)

The swift growth of e-commerce and web site contracts has increased the potential for conflicts over contracts, which have been entered into online. It has necessitated a solution that is compatible with online matters with the use of Internet technology. This challenging task can be achieved by the use of an online dispute redressal method in India. It can be used to resolve such e-commerce and web site contracts disputes that are crucial for building consumer confidence and permitting access to justice in an online business environment.

The online dispute redressal method is not part and parcel of the traditional dispute resolution machinery popularly known as "judiciary", but is an alternative and efficacious institution known as an alternative dispute redressal mechanism. Introduction of information and communication technology in the traditional courts has given way to the introduction of the concept of e-courts.

NEED FOR ONLINE DISPUTE RESOLUTION

The alternative form of dispute redressal mechanisms can be effectively used to settle online disputes by modifying it as per the needs. It is time effective and cost-efficient. The unique feature of this method is that it can also overcome the geographical hurdles. However, the effective implementation of this method requires the need for personnel with knowledge of information technology, the different alternative dispute redressal methods and law, technical concerns, legal sanctity of proceedings, industry support etcetera. The use of alternative dispute redressal methods for resolving online disputes is to be increased day by day. Several web sites provide for a different type of online dispute resolution method

like arbitration, conciliation and mediation with certain conflict management services. The demand for these services will increase as the Arbitration and Conciliation Act, 1996 has given paramount importance to "party autonomy" by accepting the intention of parties as a platform for a form of dispute resolution. Thus, what law will be applicable and depend on the intention of parties. If the parties have adopted the mechanism of online dispute redressal method, then it will definitely apply with necessary minor modifications. The language used in various sections of the 1996 Act, as evident from the last chapter on Arbitration and Conciliation Act, 1996, gives options to the parties to opt for the procedure as per their agreement during the arbitral proceedings before the arbitrator.[115] However, the appellate procedure would be governed as per the statutory provisions and parties have no right to change the same.[116]

There is a rapid growth of e-commerce, e-business and web site with the easy prologue of Internets at every domestic and business front. Contracts entered through the internet; communications have increased the potential for conflicts over contracts that have been entered into online. It has necessitated a solution that is compatible with online matters. This challenging task can be achieved by the use of an online dispute redressal method in India. The use of an online dispute redressal method to resolve such e-commerce and web site contracts disputes are crucial for building consumer confidence and permitting access to justice in an online business environment.

[115] *Ibid*.

[116] *N S Nayak v.State of Goa*, 2003 (6) SCC 56

Thus, it is high time that for understanding and building a base for offline alternative disputes redressal mechanism as well as online dispute redressal methods in India. It must be noted that every new project needs time to mature and become successful. Thus, the success of alternative dispute redressal mechanisms and online dispute redressal methods depends upon a timely and early base building by creating awareness of the use of such new reliable dispute redressal methods for the present global economy.

3.6 PARADIGM OF SECTION 89 OF CODE OF CIVIL PROCEDURE

Section 89 of the Code of Civil Procedure, 1908 embodies the legislative mandate to the court to refer sub judice disputes to various ADR mechanisms enunciated therein where it finds it appropriate to do so, to enable the parties to finally resolve their pending cases through well-established dispute resolution methods other than litigation. Section 89 CPC has, therefore, recognized the need and importance of ADR even at the post-litigation stage. In order to understand section 89 Civil Procedure Code in detail, it is essential to refer to its text, which is as under:

"Section 89. Settlement of disputes outside the Court –

(1) Where it appears to the court that there exist elements of a settlement, which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for –

a) Arbitration;

b) Conciliation;

c) Judicial settlement including settlement through Lok Adalat;or

d) Mediation.

(2) Where a dispute has been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authorities Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply as if thedispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

Thus the court can refer the parties to arbitration, conciliation, mediation, Lok Adalat or judicial settlement in terms of section 89 of the Code of Civil Procedure, 1908 for resolution of their disputes at the post litigative stage. In fact

the Delhi High Court in the case of Bawa *Masala Co. v Bawa Masala Co. Pvt. Ltd*[117] has gone one step forward and held that, there is no reason why 'Early Neutral Evaluation' (ENE), which is a different form of ADR though similar to mediation, cannot be resorted to towards the object of a negotiated settlement in pursuance of Section 89 of the Code of Civil Procedure, 1908 specially when the parties volunteer for the same.

Parliament incorporated the above section in the year 1999 in Code of Civil Procedure, 1908 on the recommendations of the report of Malimath Committee and the 129th report of Law Commission of India. The of Code Civil Procedure under section 89 provides for the settlement of disputes outside the court, the object behind this provision is to avoid multiplicity of litigation, save valuable time, money and expenses and permit parties to come to a settlement amicably and to reduce the burden from the court of law. The committee suggested that it be made mandatory for the court to refer the dispute subsequently the issues framed for settlement, which may be acceptable by parties either by way of arbitration, conciliation, mediation, judicial settlement or by means of Lok Adalat and if parties to the dispute do not come to an agreement, the court shall send them to one, or the other mentioned modes or the suit shall proceed further.[118]

[117] AIR 2007 Delhi 284

[118] Law Commission Of India 238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions (December, 2011)

In *Salem Advocate Bar Association v Union of India*[119] the Hon'ble Supreme Court of India explains the purpose of incorporating section 89 in the following words:

> *"Section 89 is included to examine and understand that the matters which are registered in court do not need to inevitably be resolved by the court on its own. Considering the delay and the limited number of judges, which exist. It has now become imperative that the resort is accompanied by an alternative dispute resolution mechanism to conclude litigation between the parties on the initial date…If the parties to the dispute consent for arbitration, then provision of the Arbitration and Conciliation Act will implement and that matter will move outside the court but will not resort to conciliation or judicial settlement or mediation to settle the dispute, would not ipso facto accept the matter outside the judicial system. This means that an agreeable settlement between the parties should be attempted, but if conciliation or mediation or a judicial settlement is not likely to possible, the case will eventually go to trial, despite being attempted."*

On perusal of the provisions as mentioned earlier of Section 89, it clearly states that it alludes to five modes of ADR process, arbitration, conciliation, mediation, judicial settlement and Lok Adalat. The purpose of incorporating Section 89 is providing expeditious and efficient relief to the litigants and conquering the

[119] AIR 2005 SC 3353 as quoted in Sukumar Ray, *Alternative Dispute Resolution* 124 (Eastern Law House, Kolkata, 2012)

pendency and pressure upon the Courts.[120] Section 89 of the Code of Civil Procedure begins with the sentence "where it seems to the Court that there exist elements to a settlement". It explains that such cases, which are not appropriate for ADR, ought not to be mentioned under it. The court requires forming an assumption that the case is one that it is proficient of being referred to a settlement through any five of the ADR processes given in the section.[121] There are three other provisions, which have been included by the same Amendment Act, 1999, contained in rule 1A, 1B and 1C of 1C, of order 10 of the Code of Civil Procedure. Section 89 should read with Rule 1A of Order 10[122] of Code of Civil Procedure which, requires that The court directed the parties to the dispute to choose one of the five methods of alternative dispute resolution and see the matter at their option. This rule does not expect the court to prepare the conditions of the settlement, before or after obtaining the comments of the parties, make such conditions of settlement to the parties for reforming the conditions of the possible settlement. Therefore, the only practical way to read Section 89 and Order 10, Rule 1A is that right after the finalization of pleading, and after looking for acceptance or rejections whosesoever needed, and before framing issues, the court of law will take the support of Section 89 of the Code of Civil Procedure. For such these recourse, the court requires documenting

[120] R.V. Raveendran,J., "Alternate Dispute Resolution under Section 89 of the Code of Civil Procedure: Guidelines"*Available at* http://www.legalblog.in/2011/09/alternate-dispute-resolution-under.html (accessed on 16/03/2017 at 19.02)

[121] Sunil Ambwani,J., "Alternative Dispute Resolution" 17 *J.T.R.I Journal* 33 (2012).

[122] Order 10 Rule 1-A. Direction of the Court to opt for any one mode of alternative dispute resolution. — After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub- section (1) of section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties

and acknowledging the character of the dispute, familiarizing the parties to the dispute with the five accessible options and noting their preferences and afterword refers them to one of the alternative dispute resolution methods.[123] Rule 1B[124] of Order 10 talks about the provision Where the suit specified under Rule 1A, the parties shall be present in front of such forum for the settlement of the matter. It has specified in Rule 1C[125] of Order 10 that where a suit referred to under Rule 1A, and the presiding officer of such forum is satisfied that it would not be appropriate in the interest of justice to proceed with the case further, it would refer the case again to the court and present it to the parties immediately. The court on the date fixed by it.[126]

Section 89 experiments with both the words "shall" and "may" whereas Order 10 Rule 1A only utilizes the word "shall" but on friendly reading of these provisions it clears that the use of word "may" in section 89 may administer the features of reformulation of the term of a potential settlement and its guide to one of ADR methods.[127]

The Supreme Court of India in landmark Judgment *M/S Afcons Infrastructure Ltd. v M/S Cherian Varkey Construction Co. (Pvt.) Ltd*[128] has discussed, in detail, that the provisions of Section 89 of the Code of Civil

[123] R.V. Raveendran,J., "Alternate Dispute Resolution under Section 89 of the Code of Civil Procedure:Guidelines" Available at http://www.legalblog.in/2011/09/alternate-dispute-resolution-under.html (accessed on 16/03/2017 at 19.02)

[124] Order 10 Rule 1B : Appearance before the conciliatory forum or authority.

[125] Order 10 Rule 1C: Appearance before the court consequent to the failure to effort of conciliation.

[126] Sukumar Ray, *Alternative Dispute Resolution* 129 (Eastern Law House, Kolkata, 2012).

[127] *Ibid.*

[128] 2010 (8) SCC 24

Procedure, 1908 which casts a duty on the courts to encourage parties for settlement of their disputes using alternative dispute resolution. The court, while examining the various aspects of the said provision, has also laid down some guidelines for courts to follow for the effective implementation of Section 89 of the Code of Civil Procedure:

- *When the pleadings are concluded, prior to formulation the issues, the court will set a preliminary hearing for the appearance of the parties to the dispute. The court should familiarize itself with the details of the case and the characteristics of the dispute amid the parties to the dispute.*
- *The court must first recognize whether or not this matter comes into the category of any matter that should be tried by the courts and does not need to fit in the context of any ADR procedures. If it determines that the case falls under any prohibited category, it should file a brief order mentioning the nature of the matter and why it does not fit in the context of ADR procedures. It will then continue with the determination of issues and trial.*
- *In other different matters (which can be referred to ADR procedures) the court ought to describe the option of five ADR procedures to the parties to the dispute to exercise their choice.*
- *The court must first find out whether the parties are ready for arbitration. The court must inform the parties to the dispute that arbitration is a supporting method by a selected private forum and that the relating to the arbitration will be enduringly taken out of the purview of the court. The parties should also be acquainted that they will pay the expense of*

arbitration. Only if both the parties to the dispute consent to arbitration, and also to the arbitrator, the matter should be assigned to arbitration.

- *If the parties to the dispute do not agree to arbitration, the court must determine whether or not the parties agree in terms of conciliation, which will be administered by the provisions of the Arbitration and Conciliation Act. If all parties to the dispute consent for the reference to conciliation and concur upon the conciliator, the court may refer the matter to conciliation pursuant to Section 64 of the Arbitration and Conciliation Act.*
- *If the parties to the dispute do not agree for arbitration and conciliation, which in most cases are likely to lead to consensus, the court taking into account the preferences of the parties should refer the case to one of the other three ADR Methods:*

  (a) Lok Adalat;

  (b) Mediation by a neutral third-party facilitator or mediator; and

  (c) A judicial settlement, where a judge helps the parties to arrive at a settlement.
- *If the matter is simplistic which can be concluded in a single session, or matters relating to a case where the legal principles are apparently established and there is no individual enmity among the parties (such as in the case of motor accident claims), The court might refer to the case in Lok Adalat. In the case in which the issues are complex or matters that may need multiple rounds of negotiation, the court might send the matter to mediation. Where mediation facilities are not obtainable or where the parties to the*

dispute choose for the supervision of a judge to arrive at a settlement, the court may refer the matter to some other judge to attempt a settlement.

- *If the reference to the ADR method does not work out, upon receipt of the ADR Forum report, the court will continue to proceed with the trial of the case. If there is an agreement, the court shall examine the order of disposal and may deliver a decree with reference thereto, taking into account the principles of Order 23 Rule 3 of the Code of Civil Procedure*
- *If the settlement involves disputes, which are not the subject matter of the suit, the court may order that the same be administered by section 74 of the Arbitration and Conciliation Act. (If it is a conciliation agreement) or section 21 of the Legal Services Authorities Act, 1987 (if it is a settlement by Lok Adalat or mediation which is considered as a Lok Adalat). If the settlement is through mediation and it relates not only to disputes, which are the subject matter of the suit, but also other disputes involving persons other than the parties to the suit, the court may adopt the principle underlying Order 23 Rule 3 of the Code of civil procedure. This would be necessary because many settlement agreements deal not only with disputes, which are the subject of the suit, or processes in which the reference is presented, but additionally other disputes, which are not the subject matter of the suit.*
- *If any settlement is previously illegal or inaccessible, the court should bring the attention of the parties to the dispute to avoid further lawsuits and disputes about the execution.*[129]

[129] *Ibid*

SECTION 89 AND IT'S MANDATORY NATURE AND PROCEDURE FOR REFERRAL:

Section 89 CPC makes it obligatory for the courts to explore the possibility of resolution of the dispute however; the precondition for referring the matter is the satisfaction of the court that there exist elements of the settlement. The court has to form an opinion that a case is one that is capable of being referred to and settled through any of the ADR processes. Simultaneously Order X Rule 1A CPC mandates that the court to direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89 CPC and on the option of the parties, the court has to fix the date of appearance before such forum or authority as may be opted by the parties.[130]

The provisions[131] when harmoniously construed indicate that the need of the having a hearing after completion of pleadings, to consider recourse to ADR process under section 89 CPC is mandatory. But the actual reference to an ADR process in all cases is not mandatory. Where the case is unsuited[132] for reference to any of the ADR process, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under section 89 CPC. In other cases, the reference to ADR is mandatory. The court need not elaborate the

[130] R.V. Raveendran,"Section 89 CPC: Need for an Urgent Relook" 4 *SCC Journal* 23 (2007)

[131] S. 89(1) and Order X Rules 1A, 1B and 1C, Code of Civil Procedure, 1908.

[132] Cases which are normally considered to be not suitable for ADR process are representative suits under Order 1 Rule 8 CPC, disputes relating to election to public offices, cases involving grant of authority by the court after enquiry, for example, suits for grant of probate or letters of administration, cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc., cases requiring protection of courts, for example, claims against minors, deities and mentally challenged and suits for declaration of title against government and cases involving prosecution for criminal offences. See *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction Co. (P) Ltd.,* JT 2010 (7) SC 616.

terms of the proposed settlement nor is there any requirement to give detailed reasons for concluding the existence of elements of settlement and the court may describe the nature of the dispute and the existence of the elements of settlement in three or four lines very briefly. However, duty is upon the court to consider whether it is possible to refer the parties for a settlement. [133]

During the course of legal proceedings after recording the admissions and denials, the court has to direct the parties to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89 CPC by mutual consent and on the option of the parties, the court has to fix the date of appearance before such forum or authority as may be opted by the parties.[134] If the parties are not able to opt for a particular mode of ADR provided in section 89 CPC then the court has to refer the matter itself to a suitable ADR mechanism in terms of section 89 CPC except for arbitration and conciliation, which require the express consent of the parties.[135] In this respect section, 89 CPC has introduced the concept of mandatory ADR.[136] After that, the parties are supposed to appear before such forum or authority for settlement of the case.[137] However, if the matter is not settled, the matter is again referred back to the court.[138] If the matter is settled, the settlement is

[133] *Basheer* v. *Kerala State Housing Board,* AIR 2005 Kerala 64 .

[134] Order X Rule 1A of the Code of Civil Procedure, 1908

[135] *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.,* JT 2010 (7) SC 616.

[136] However such mandatory court referred/ court annexed ADR should be complemented by education and other steps to increase the general awareness regarding the ADR processes and their benefits. See Dorcas Quek, "Mandatory Mediation: An Oxymoron? Examining the Feasibility of a Court Mandated Mediation Program", 11 *Cardozo J. Conflict Resol.* 479 (2010).

[137] Order X Rule 1B, Code of Civil Procedure, 1908.

[138] Order X Rule 1C, Code of Civil Procedure, 1908.

recorded by the court, and the matter is disposed of.[139] Where the court refers the parties to the suit to any one of the modes of settlement of dispute referred to in section 89 CPC, and the matter is settled and disposed of the plaintiff is entitled to refund of court fees.[140] Even if the matter is settled in appeal, the appellant is entitled to refund of court fees.[141] It is an added incentive for taking recourse to the provisions of section 89 CPC.

THE ROLE OF REFERRAL JUDGES:

Section 89 CPC is an essential step towards popularizing the employment of ADR methods for settlement of cases pending before courts. The reference to ADR mechanisms is mandatory in cases, which are found to possess elements of the settlement. The responsibility of deciding whether a case possesses elements of settlement has been put on the shoulders of the trial judge who is also referred to as the referral judge since it his on his orders that a case is referred to anyone of the ADR mechanisms enunciated in section 89 CPC. It is the referral judge who determines which case is suitable for being referred to ADR in terms of section 89 CPC. The key to success depends on judges referring appropriate cases, and conversely, failure is dependent on referring inappropriate cases.[142]

The second responsibility upon a referral judge is to refer the dispute to the

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[139] Except in case of arbitration where an arbitral award on merits is passed by the arbitral tribunal.

[140] Section-16 of the Court Fees Act, 1870 (again inserted by Act 46 of 1999, s. 34).

[141] *Vallabh Das Gupta v Geeta Bai,* 2004(4) R.C.R.(Civil) 85

[142] Guidelines for referral judges *available at:* http://www.delhimediationcentre.gov.in/ (accessed on 18/03/2017 at 12.20). However these need to be reworked in light of the *Afcons* judgment

most appropriate ADR process[143] in terms of section 89 CPC where the parties are not able to arrive at a consensus. If the case is simple which may be completed in a single sitting, or cases relating to a matter where the legal principles are settled, and there is no personal animosity between the parties (as in the case of motor accident claims), the court may refer the matter to Lok Adalat. In the case where the questions are complicated or cases, which may require several rounds of negotiations, the court may refer the matter to mediation. Where the facility of mediation is not available or where the parties opt for the guidance of a judge to arrive at a settlement, the court may refer the matter to another judge for attempting settlement.[144]

To discover as to which case is apposite for being referred to anyone of the ADR mechanisms enunciated under section 89 CPC, when the pleadings are complete the referral judge should sift through pleadings of the parties and should hold a preliminary hearing with the parties. The court should accustom itself with the facts of the case and the substance of the dispute between the parties to discharge its duty in a fair and efficacious manner.

After all reference of a case is the first important stage in the entire dispute resolution process in which the success of section 89 CPC depends. In that regard, necessarily intense training[145] must be imparted to the referral judges to enable them

[143] One of the most challenging problems in the field of alternative methods of dispute resolution (ADR) is deciding which process or processes are most appropriate for a particular dispute. See Frank E. A. Sander, Lukasz Rozdeiczer, "Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading to a Mediation Centered Approach", 11 *Harv. Negot. L. Rev.* 1 (Spring 2006).

[144] *Afcons Infrastructure Ltd. v Cherian Varkey Construction Co. (P) Ltd.,* JT 2010 (7) SC 616.

[145] Some training programs are conducted by the Delhi Mediation Centre at various court complexes for referral judges on referral of cases for mediation and court management. See Delhi Mediation Centre, 4 (2)

to identify the causes which may be considered fit for a referral to any of the ADR mechanisms.[146] The message and philosophy of Section 89 CPC, if rightly appreciated and purposefully utilized, would shift the judge from back seat to the driving seat holding the steering from day one.[147]

MECHANISMS OF ALTERNATIVE DISPUTE RESOLUTION AVAILABLE UNDER SECTION 89 OF CODE OF CIVIL PROCEDURE:

There are five methods provided under section 89 of the Code of Civil Procedure for settlement of dispute outside of the court; we have already discussed the arbitration, conciliation, mediation, and Lok Adalat. We will be discussing here below about the fifth method, i.e., judicial settlement in the light of section 89 of the code:

JUDICIAL SETTLEMENT

The expression Judicial Settlement suggests that it is some judge-mediated settlement of a dispute. Judicial settlement is a term, which is in vogue in the west, particularly the United States of America. There we have what is known as judicial settlement conferences. A judicial settlement conference is an informal process in

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Mediation Newsletter (February 2010). These training programs, however need to be more comprehensive coupled with detailed refresher courses on ADR.

[146] M.M. Kumar, "Relevance of Mediation to Justice Delivery in India", a paper presented in the National Conference on Mediation, organised by the Mediation & Conciliation Project Committee, Supreme Court of India, held on July 10, 2010 at New Delhi, *available at:* http://highcourtchd.gov.in (accessed on 19/03/2017 at 18:32)

[147] Justice R.C. Lahoti, Keynote address at the Valedictory Session of two days Conference on "ADR, Conciliation, Mediation and Case Management" organised by the Law Commission of India, *available at:* http://lawcommissionofindia.nic.in/adr_conf/Justice_ Lahoti_Address (accessed on 19/03/2017 at 20:22)

which a judge[148], trained in mediation and settlement conference skills, actively facilitates a process whereby parties in conflict may reach a mutually satisfactory resolution.[149] The term judicial settlement, therefore, refers to a settlement of a civil case with the help of a judge who has been not assigned the duty to adjudicate the dispute.[150]

Thus judicial settlement conference is presided over by a judge who uses fair settlement techniques to enable the parties to arrive at an amicable settlement. The archetypal role of the settlement is to evaluate the case on the merits roughly and to assist the bargaining of settlement proposals by the judge. In some settlement judges also use mediation techniques in the judicial settlement to improve communication among the parties, probe barriers to settlement, and help formulate resolutions.[151] A settlement judge has, however, no power to force the parties to arrive at a settlement. An essential feature of the judicial settlement conference is that the judge who presides over the judicial settlement conference does not conduct the trial of the case on merits.[152] Either the case is marked to a different judge for a settlement conference or the trial judge after conducting a settlement conference

[148] In some jurisdictions we have sitting judges who are designated as judicial conference judges. In others like Virginia (USA) we have retired judges who conduct judicial settlement conferences.

[149] *Available at :* http://www.courts.state.va.us (accessed on 21/04/2017 at 10:52).

[150] *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction Co. (P) Ltd.,* JT 2010 (7) SC 616 .

[151] Elizabeth Plapinger & Donna Stienstra, ADR and Settlement in the Federal District Courts: A Sourcebook for Judges and Lawyers*, available at*: http://www.fjc.gov (accessed on 24/05/2017 at 13:34).

[152] Justice Sunil Ambwani, "Alternative Dispute Resolution: National Judicial Excellence Enhancement Programme (JEEP) First Visit", Speech at National Judicial Academy, Bhopal on September 11th, 2011, *available at:* www.allahabadhighcourt.in/event/speech_on_ADR (accessed on 10/03/2017 at 15:35).

does not proceed with the trial.[153] The intent is that a judge who conducts trial is not prejudiced by the conduct of a party during judicial settlement proceedings.[154]

JUDICIAL SETTLEMENT IN INDIA

As far as Indian Law is concerned, the expression judicial settlement was introduced into the Code of Civil Procedure, 1908 through Section 89 CPC.[155] Section 89 CPC provides judicial settlement as a mode of ADR. The court can refer a dispute to judicial settlement in terms of section 89 CPC to a suitable institution or person, and such institution or person is to be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 are applicable.[156]

To implement the objectives of section 89 CPC under the directions of the Supreme Court in the *1st Salem Bar Association* case,[157] a committee headed by Justice M. Jagannadha Rao was formed and the committee placed before the Supreme Court the Draft Civil Procedure ADR and Mediation Rules, 2003 which

[153] Roselle L. Wissler, "Court-Connected Settlement Procedures: Mediation and Judicial Settlement Conferences", 26 *Ohio St. J. on Disp. Res.* 271 (2011).

[154] In *B.P. Moideen Sevamandir* v. *A.M. Kutty Hassan,* 2009 (2) S.C.C. 198 the Supreme Court held that when deciding a matter on merits of a case, if a court carries any prejudice against a party on account of his conduct before an ADR forum, it will violate the inviolable guarantee against prejudice or bias in the decision making process.

[155] Inserted by the Code of Civil Procedure (Amendment) Act, 1999 with effect from 01.07.2002.

[156] The relevant provision i.e. S. 89(2)(c), Code of Civil Procedure, 1908 reads as under: "...(2) Where a dispute has been referred: …...
(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act…….".

[157] *Salem Advocate Bar Association* v. *Union of India,* AIR 2003 SC 189.

were considered by the Supreme Court in the *2nd Salem Bar Association Case*.[158] The Supreme Court, after that, directed the respective High Courts to examine and finalise the said rules. Under the said draft Civil Procedure - ADR and Mediation Rules, 2003 judicial settlement was defined as:

'Judicial settlement' means a final settlement by way of compromise entered into before a suitable institution or person to which the court has referred the dispute and which institution or person are deemed to be the Lok Adalats under the provisions of the Legal Service Authority Act, 1987 (39 of 1987) and where after such reference, the provisions of the said Act apply as if the dispute was referred to a Lok Adalat under the provisions of that Act.

Where all the parties to the suit decide to exercise their option and to agree for judicial settlement the court has to refer the matter to a suitable institution or person which shall be deemed to be a Lok Adalat.

Thus for judicial settlement as provided under section 89 CPC, the court is supposed to refer the dispute to a suitable institution or person. However, there is no indication in the statute, that to which institution or person the matter is to be referred to. That person may be a judge or may not be a judge. He may be a person of legal background or may not be a person of legal background. The dispute may also be referred to some external private institution offering institutionalized conciliation or mediation services. There is no indication as to what are the guidelines, practice directions for referring the matter. Thus section 89 CPC is silent on these aspects. It renders judicial settlement a *sui generis* settlement procedure. It

[158] *Salem Advocate Bar Association* v. *Union of India (II)*, AIR 2005 SC 3353.

is because the term judicial settlement *per se* gives as an indication that it is a judge mediated settlement and this is also the plain meaning of judicial settlement as is understood in the west. However in India by virtue of section 89 CPC any person or institution may conduct judicial settlement and such institution or person is deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 apply to such proceedings as if the dispute was referred to a Lok Adalat under the provisions of that Act.

JUDICIAL SETTLEMENT – POST AFCONS JUDGMENT

The legislative description ascribed to the term judicial settlement by Section 89 CPC is manifestly not in sync with the ordinary meaning of judicial settlement as a settlement device as understood all over the world. This anomaly was noticed by Justice R.V. Ravindran and he considered and reviewed clauses (c) and (d)[159] of section 89 (2) CPC in his article[160] and opined that there is a mixing up of the meanings of the terms judicial settlement and mediation due to a clerical or typographical error in drafting, resulting in the two words being interchanged in clauses (c) and (d) of sub section (2) of section 89 CPC.

The Supreme Court of India after that considered this issue in the famous *Afcons judgment* in the year 2010.[161] The Court also acknowledged the fact that there is an error in the provision. It was held that a proper interpretation of section 89 of the Code requires a change from a dull and literal reading of the section and

[159] Section 89(2)(d), Code of Civil Procedure, 1908 provides that for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

[160] Section 89 CPC: Need for an Urgent Relook, 4 *SCC Journal* 23 (2007).

[161] *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction Co. (P) Ltd.,* JT 2010 (7) SC 616

the definitions of `judicial settlement' and `mediation' in clauses (c) and (d) of section 89(2) shall have to be interchanged to correct the draftsman's error. The Supreme Court also unequivocally directed that the above changes made by interpretative process should remain in force till the legislature corrects the mistakes so that section 89 CPC is not rendered meaningless and infructuous.

If the two clauses are interchanged, judicial settlement acquires an altogether different meaning. Section 89 (2) (d) CPC would read:

(d) for "judicial settlement", the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The Supreme Court has thus stepped into the picture to correct the apparent error in the legislative provision. After the rectification affected by the Supreme Court, both the terms, i.e. mediation and judicial settlement, acquire their natural meanings. Judicial settlement postulates a process where the court has to affect a compromise between the parties and follow such procedure as may be prescribed. It aligns with the natural meaning of the expression judicial settlement and as it is understood in the west.[162]

JUDICIAL SETTLEMENT – NEED FOR OUTLINING PROCEDURE

The expression judicial settlement, according to the *Afcons* judgment is to be understood in the modified form as enunciated by the Supreme Court that in case of judicial settlement the court has to affect a compromise between the parties and follow such procedure as may be prescribed.

There is a severe lacuna in law as there is no procedure at all which has been

[162] *Available at:* http://www.courts.state.va.us/courtadmin/aoc/djs/programs/jsc/jsc_brochure(accessed on 21/05/17 at 22:49).

prescribed for a judicial settlement. How the compromise is to be affected is not expressly mentioned, but it indicates that the court is to play a decisive role in steering the disputant parties to arrive at a mutually acceptable solution. The need for a detailed procedure is accepted by all, but who will prescribe the procedure is also a perplexing question. Either the procedure would have to be prescribed by the Supreme Court or the High Courts on their judicial side. The High Courts can also prescribe the procedure by framing rules under Part X of the Code of Civil Procedure. [163] The legislature may also step in to prescribe the procedure for a judicial settlement. Until and unless such a procedure is prescribed, it would not be possible for the judges and parties to take resort to judicial settlement as a mode of dispute resolution in terms of section 89 CPC.

NEED FOR AMENDMENT OF SECTION 89 CPC

It is, therefore, seen that the Supreme Court in the text of section 89 CPC has pointed out various shortcomings and therefore there is an urgent need that section 89 CPC be amended to eliminate the anomalies. The Supreme Court had unequivocally directed that the changes made by the Supreme Court in section 89 CPC by interpretative process shall remain in force till the legislature corrects the mistakes so that section 89 is not rendered meaningless and infructuous.[164] There cannot be a more unequivocal assertion of the fact that section 89 CPC needs to be

[163] In Delhi in case of applications for plea bargaining the case is referred by the magistrate to the ACMM who marks it to another magistrate for disposal of the plea bargaining application. A similar roster can be devised for judicial settlement also where the case is marked to the Incharge, Judicial Settlement who further assigns it to another judge for conducting judicial settlement proceedings. If the matter is settled a compromise decree can be passed straight away. In case the matter is not settled the same is sent back to the referral court.

[164] *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction Co. (P) Ltd.,* JT 2010 (7) SC 616.

amended. In fact, instead of amending the provision we may have a separate comprehensive legislation dealing with ADR in all respects.[165]

The Law Commission of India has considered the judgment of the Supreme Court in *Afcons* case and[166] has also opined that Section 89 CPC, which provides for settlement of disputes outside the court is inappropriately worded and the language adopted has created difficulty in giving effect to the provision. Therefore Section 89 CPC should be recast.

3.7 IDENTIFYING CASES SUITABLE FOR ADR

Though ADR said to be the best remedy to the problems causes by the adversarial system, but still, it offers only alternative options to the litigation. There are still a large number of vital areas, including constitutional law and criminal law, regarding which there is no alternate for court judgments. There need to have some criteria, which can divide the type of cases, which can be dealt with by this very mechanism. The Supreme Court classified cases that are considered as not suitable and suitable for the ADR process. Following are the cases, which are suitable for ADR, are:

(1) All cases relating to trade, commerce and contracts including money claims, consumer disputes, banking disputes, tenancy matters, insurance matters etcetera;

[165] Eg. The Alternative Dispute Resolution Act, 1998 in the United States of America deals with the use of ADR processes in district courts of the United States of America; The Alternative Dispute Resolution Act, 2004 of the Republic of Philippines comprehensively deals with ADR in all respects.

[166] Law Commission of India, 238th Report, Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions (December, 2011).

(2) All cases arising out of the strained or soured relationship (social issues) including matrimonial, maintenance, custody matters; family disputes such as partition/ division, and disputes amongst partners;

(3) All cases in which there is the requirement for the extension of pre-existing relationship Despite the disputes such as easementary rights, infringements, nuisance, landlord and tenant, employer and employee matters, and disputes concerning members of organizations, societies, associations:

(4) All cases which are related to tortious liability such as motor accident and other accident claims;

(5) All consumer disputes, including disputes with traders, suppliers, service providers, who are keen to maintain their reputation, credibility or product popularity.[167]

It was observed by the Hon'ble Supreme Court that the following categories are generally not considered to be suitable for the ADR process concerning their nature, these are:

(1) Representative suits under Order 1 Rule 8 of the Code, involving Public interest or interest of individuals, who are not parties before Court;

(2) Disputes relating to election to public office, except those, where two groups in case of a dispute of management of societies, clubs, associations are identifiable and represented;

[167] Sunil Ambwani,J., "Alternative Dispute Resolution" 17 *J.T.R.I Journal* 32 (2012).

(3) Cases involving granting relief in rem, such as letters of administration or grant of probate;

(4) Cases which involves severe accusations of fraud, fabrication, forgery, impersonation, intimidation, coercion etcetera;

(5) Cases which involves the protection of courts for minors, deities, psychologically ill persons and suits for declaration of the title against the government;

(6) Cases, which involves the prosecution of criminal offences, etcetera.[168]

3.7 NEED FOR STRENGTHENING ALTERNATIVE DISPUTE RESOLUTION IN INDIA

The Constitution of India spells out egalitarian urges with socioeconomic goals, imposing upon all the organs of the state the responsibility to promote the Constitutional ethos and the goals. The existence of a properly functioning justice system increases citizens' confidence and their willingness to bring disputes to Court. Unfortunately, the picture of the Indian legal system at present appears gloomy, the masses filled with dismay and frustration. Courts are becoming outmoded; litigative justice has come to a grinding halt. The impatience and anxieties have to be checked by providing more straightforward methods of dispute resolution. One of the answers is to evolve ADR methods as an adjunct of the judicial system. In order to cope with the needs of the people and provide them with the inherent right of access to justice, the task is to empower the existing ADR

[168] Law Commission Of India 238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions (December, 2011)

systems with more strength. The accelerated pressure upon the judicial system would also be reduced with empowering ADR system.[169] There is a need to have beneficial comprehensive plan required for the formulation of the successful implementation of ADR program, which would include the expenses which are required to be incurred both to raise the requisite infrastructure as well as expenditure to be included for the smooth functioning of ADR.[170]

Justice S.B. Sinha[171] in his article observed that the institution like courts must be brought three stages framework first is to bring 'awareness' amongst the masses to flourish. The ADR regarding the existence, availability and advantages of various ADR mechanisms, the second is, 'acceptance' in this regard extensive mandatory training would also be necessary to impart to those who intend to act as a facilitator, mediators, and conciliators. So far the judicial officers are concerned, imparting of training on different facets of ADR should be made a part of continuing education. Lastly third is, to 'implement' the ADR. For this purpose, judicial officers must be trained to identify cases, which would be suitable for taking recourse to a particular form of ADR. Judicial officers must be able to identify cases which are capable of bringing resolve through the ADR mechanism and that too which one of them would be suitable for the said purpose having regard

[169] Bhumika Sharma, "Suggestive Measure to Strengthen ADR in India" *Available at* https://www.indianbarassociation.org/suggestive-measure-to-strengthen-adr-in-india/#.WNTVj6znKzE.mailt (accessed on 20/03/2017 at 22.17)

[170] S.B. Sinha, "ADR and Access to Justice: Issues and Perspectives" *Available at* www.hcmadras.tn.nic.in/jacademy (accessed on 20/03/2017 at 13.20)

[171] *Ibid.*

to the fact and circumstances obtaining therein.[172] For strengthening ADR in India government as well as judiciary will have to undergo the process of judicial review on a structural and operational level both.

3.8 CONCLUSION

The concern of widening between the people and the judiciary is a severe cause for concern for all who are dealing with the administration of Justice. The methods of Alternative Dispute Resolution should profoundly imbue in the opinions of the parties, lawyers and the judicial officers, to secure that in the despondency of justice methods related to ADR are regularly adopted. The productive use of Alternate Dispute Resolution mechanism will help eliminate the flaws, which hinder the path of justice. Though, Alternative Dispute Resolution mechanism in India is in its infancy phase, attitude towards it of the professional, industrial and commercial groups are yet to developed. The beginning of a professional attitude and approach to the subject are, however, discernible. It is hoped that the coming years will be characterized by a search for alternative means of resolving disputes.

Section 89, of the Code of Civil Procedure, is an essential and effective method to resolve the dispute between parties where there is the scope of out of court settlement. The objective of the section is to reduce the burden of the court, ensure a compromise is arrived at between parties and move towards an expeditious and effective method of administrating justice. Alternate Dispute Resolution under section 89, is a means of increasing access to justice without compromising the

[172] *Ibid.*

quality of justice. Section 89, has given a massive boost to the ADR revolution and has helped in developing a settlement culture, which is the essential aspect to be taken care of as has been highlighted by the then Chief Justice of India.[173] The concept of employing ADR has undergone a sea change with the insertion of Section 89 in Code of Civil Procedure[174] and it has resulted in a paradigm shift. The journey so far has been pleasant; however, there is still scope for improvement and a need for progress.

[173] Justice S.H. Kapadia, Chief Justice of India. See "Let litigation make way for settlement culture:Kapadia", The Hindu, New Delhi, July 11 2010 *available at:* https://www.thehindu.com/news/national/Let-litigation ma ke-way-for-settlement-culture-Kapadia/article16192207.ece (accessed on 18/03/2017 at 16.10)

[174] S.B. Sinha, "ADR: Mechanism and Effective Implementation",*available at*: http://bombayhighcourt.nic.in /medi ation/index_articles.htm (accessed on 18/03/2017 at 14.15)

CHAPTER IV

Chapter IV

LOK ADALAT IN INDIA: EVOLUTION AND STRUCTURE

4.1 INTRODUCTION

In the previous chapter, the researcher attempted to discuss briefly, the need for the different modes of alternative dispute resolution mechanism and its backgrounds. In this very part researcher will center upon the Lok Adalat as a mode of dispute resolution mechanism its advancement and structure. The introduction of Lok Adalats in India presented the first chapter of the judicial system of the country and provided a new forum for satisfying settlement of disputes for the disputants. Lok Adalat is a remarkable initiative of legal aid program because it is planning to take measures for equal protection of law and access to justice to all people particularly the poor who require pounding at the door of justice.[1]

Lok Adalat is one of the well-known components of ADR, which has been playing an important role in the dispute resolution since ages. The institution of Lok-Adalat has profound roots in Indian legal history and played a critical part in providing justice to Indian society. Lok-Adalat gained its statutory status from The Legal Services Authority Act, 1987 and constitutional mandate as provided

[1] N.C.Jain, "Legal Aid, Its Scope and Effectiveness of Legal Aid Rules in This Regard," 185 AIR 1996 *JOUR* as cited by Dr. Deepa Pravin Patil in "Minor Research Project on -A study on Lok Adalat wit special reference to the Satara City" *available at* http://www.imlc.ac.in/docs/DPPMRP.pdf. (accessed on14/04/2016 at 16. 54)

in Article 39A of the Constitution of India. The ubiquitous object of the Lok Adalat is to render free legal services to the weaker segments of the society and to guarantee that access to justice is not declined.

4.2 GROWTH & DEVELOPMENT OF THE INSTITUTION OF LOK ADALAT IN INDIA

ADR has been an essential piece of conclusive past. Like the zero, the idea of Lok Adalat is a progressive commitment to world law.[2] The idea of Lok Adalat relies upon the underlined preposition of resolving disputes by mutual compromise. In Lok Adalat, deliberate endeavors are made to realize settlement of the dispute between the parties through convincing endeavors without adhering to rigid details of procedural laws. In a literal sense, the term, Lok Adalat signifies people's court. In its expressiveness, both these words in particular, "Lok" and "Adalat" are equally thoughtful, significant and influence object of each other. The expression, "Lok" is of ample essence; it connotes the people as general and passes on the abiding sense of ultimate authority of people. Then again, the expression, "Adalat" means a sense of exhaustive, impartial and expert deliberation of issues before it, so that its decisions inspire characteristic trustworthiness.[3] To put it clearly, "Lok" recommends the aspect of public

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[2]Anurag K. Agarwal, "Role of Methods in Development of Society: Lok Adalats in India", I.I.M. Ahmedabad, Research & Publication Department, Working Paper No. 2005-11-01, November 2005 *available at* http://www.iimahd.ernet.in/ publications/data/2005-11-01anurag.pdf.accessed on 20/03/2017 at 22.17)

[3] Dr. Vijaykumar Shrikrushna Chowbe and Priya S. Dhonkar, "Lok Adalat – A Strategic Forum for Speedy and Equitable Justice", 21 Febuary 2011 *available at* SSRN: https://ssrn.com/abstract=1766237 (accessed on 27/04/2017 at 12.07)

sensitive while "Adalat" proposes the precise and through thought perspective and both collectivities connote a foundation entirely dedicated to subserve the desires of expedient justice of people with an evangelist enthusiasm.[4]

Legal Services Authorities Act, 1987 gave statutory recognition and status to the Lok Adalats. The awards given by Lok Adalats considered as the award of a civil court under this Act, and there is no provision of appeal against such awards before any court of law. The chairperson of Lok Adalat is sitting judge or retired judicial officer presided the Lok Adalat with two other members usually a lawyer or social worker. The parties will get help by the members of Lok Adalats in an independent and unbiased way to achieve the settlement of their dispute. The Lok Adalat may not determine the matter suggested to it at its instance, and Preferably the similar would be chosen based on the agreement or settlement amid the parties to the dispute.[5]

The objective of the Lok Adalat is only to conformity with support of the events according to how the parties enter into a settlement. Hence the Lok Adalat shall stand as the court of compromise and settlement still; this is acceptable up to the expectation it shall attach to the above in conformity with these goals.[6]

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[4] *Ibid*

[5] *Available at* http://nalsa.gov.in/lok-adalat (accessed on 11/05/2017 at 13.27)

[6] Dr. Vijaykumar Shrikrushna Chowbe and Priya S. Dhonkar, "Lok Adalat – A Strategic Forum for Speedy and Equitable Justice", 21 Febuary 2011 *available at* SSRN: https://ssrn.com/abstract=1766237 (accessed on 27/04/2017 at 12.07)

4.2.1 BRIEF HISTORY OF LOK ADALAT

4.2.1.1 LOK ADALATS IN ANCIENT INDIA

In ancient India, during the evolution of Hindu judicial system, there were two sets of courts available to the litigants:

i) The courts which were directly under the authority of the State,

ii) Courts which were of popular character constituted by the people themselves either through local Sabha or panchayat or village councils or even family or tribal councils

The different kinds of courts have been enumerated by various thinkers as Kautilya, Manu, Narad, Yajnavalkya and Brihaspati, etcetera. But, there was a fundamental distinction between the courts contemplated by Kautilya in his Arthasastra and those conceived by Manu in his dharmasastra. According to scheme of Kautilya, for the administration of justice, king's courts were to be appointed in the samgrahana, which meant a group of ten villages, the dronamukha, which meant a collection of 400 villages and the sthaniya, which meant the assemblage of 800 villages and also at the meeting places of the districts. The courts were to consist of those dharmasthas, i.e., men versed in the sacred law and three amatyas, i.e. the ministers of the king. But, he did not give much importance to popular courts. Manu, on the other hand, continued the sabha system, which was found to have been in existence from the rigvedic times. According to the Manusmriti, the king appointed a headman for each

village and headman for the groups of villages. He further provided that "the governor or the headman of the village shall try all cases of offences occurring therein, cases which he is not able to decide, he shall refer to the governor or headman of ten villages. In cases of doubt or incompetency, the head of the ten villages shall refer such cases to the head of twenty villages and the latter to the head of hundred villages, and he too under similar circumstances to the head of thousand villages". The later dharmasastras of Narada, Yajnavalkya, Brihaspati and Katyayana also followed the scheme of Manu.[7] Besides of this courts system, Brihaspati stated another classification of courts as Pratisthita, Apratisthita, Mudrita and Sasita as above stated.

Henry Thomas Colebrooke the first great Sanskrit scholar in Europe also found that there existed two different sets of courts in ancient India, they were (i) state's courts (ii) people's courts. The state's courts, where people could go for redress, were: (i) the court of the sovereign assisted by the learned brahmins as assessors. This was known as king's court or king-in-council, (ii) The tribunal of the chief justice or the pradvivaka appointed by the king and sitting with three or more assessors, not exceeding seven. It was the stationary court held at an appointed place, (iii) the subordinate judges appointed by the sovereign's authority for local areas. From there decisions appeals used to lie to the court of chief justice and thereafter to the king-in-council. Besides these state's courts, the

[7] U.C. Sarkar, *Epochs in Hindu Legal History*, 247(Vishveshvaranand Vedic Research Institute,1958)

people's courts were also functioning which used to deliver justice to the people with the help of respectable persons of the locality where the courts functioned.[8]

In the very vedic period, the constitution of the Hindu society was organized on the basis of autonomous villages as its units. In this time, we come across some terms, such as sabha, samiti and parisad, which were conceived more or less on the units of villages. But, it was generally believed that the sabha was a sort of village council consisting of the assemblage of learned and respectable persons who contributed to the national judicature. The judges were always helped by sabha in the justice delivery process as in modern world, the jury helps the court. However, the sabha was not an outcome of the king's household but of the vedic folk-assembly.[9]

Similarly, when we study dharamastras and the dharamasutras, we find certain terms of tribunals such as gana, kula, sreni, puga, vrata, etcetera, as discharging some judicial functions along with the State Courts. The existence of these different kinds of judicial tribunals indicates that perhaps the country hardly had any central judicial structure. Altekar says that the governments in ancient India appreciated and encouraged the people's courts and guilds courts. Because these courts encouraged the principle of self-government and reduced the burden of central administration. They also helped the cause of justice. The members of popular court or guild court had more or less reliable knowledge of the facts in

[8] U.C. Sarkar, *Epochs in Hindu Legal History*, 247(Vishveshvaranand Vedic Research Institute,1958)

[9] A.S. Altekar, *State and Government in Ancient India*, 254 (Motilal Banarasidass, Banaras,1977).

disputes because the parties belonged to their guild or locality. It was difficult for a witness to come to a village court and tell a brand lie in the presence of his compeers whose respect he will be thereby forfeiting.[10] The people's court knew about the disputants, the witnesses and the facts of the dispute, so, it was easy for them to decide the dispute speedily and effectively.

Bhrigu also emphasizes about the effective working of popular courts and states that there were ten tribunals common to all men, viz., (i) the village people, (ii) the assembly of the citizens of the capital, (iii) gana, (iv) sreni, (v) men learned in the four vedas, (vi) vargins, (vii) kulas, (viii) kulikas (ix) judges appointed by the king, and (x) the king himself. According to him, there did exist a peculiar judicial system for the dissolution of disputes amongst the people. The people living in forest used to get their disputes settled by foresters, members of caravans by other members, soldiers by a tribunal of soldiers and those who stayed in the village as well as in the forest could get their disputes settled either by villagers or foresters by mutual agreement and that five tribunals for foresters and other were kulikas (high officers or head of the families), sarthas (members of carvans), headmen, villagers and citizens.[11] Similarly, it is also evident that the disputes about the boundaries of the villages and about fields in a village, four, eight or ten neighbors were to settle the boundaries.[12]

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[10] *Ibid.*

[11] S.D.Sharma, *Administration of Justice in Ancient India* 170 (Harman Publishing House, New Delhi, 1988).

[12] *Ibid*.

Various kinds of people's courts functioned in different parts of the country, in which manram, avai and avaikalam were the popular courts in the Sangam age. During the Vijayanagar era, besides the regular courts, there were a number of irregular but popular courts, which were recognized by the government and allowed to dispense justice in cases, which arose within their jurisdiction. The reason behind the existence of these popular courts was lack of easy and quick communication in the country and therefore it was not possible for all people to seek justice through the regular courts which were few and located at distant places. Further, cases, which required a good or effective knowledge of the differing local customs and practices of the people could more easily be enquired into by men of the locality. Thus, these local courts enjoyed all the judicial and magisterial authority of a regular court.[13]

We have discussed that various grades of popular courts were working in ancient India. The different views were given by various thinkers about the kinds of these courts. Yajnavalkya and Brihaspati said that popular courts were of three types, namely: (a) puga, (b) sreni, and (c) kula.[14]

On the other hand, in the smriti chandrika, there has enumerated fifteen different descriptions of sabhas, courts or assemblies. They are as follows:[15] (i) aranyasabha, an assembly of foresters; (ii) sarthiksabha, that composed of

[13] T.V. Mahalingam, *South Indian Policy,* 213 (University of Madras, 2nd edn. 1967)

[14] A.S. Altekar, *State and Government in Ancient India*, 254 (Motilal Banarasidass, Banaras,1977).

[15] H.S. Bhatia, *Origin and Development of Legal and Political System in India*, 46 (Deep & Deep Publications,1976)

merchants; (iii) senikasabha, the members of which were appointed from among military men; (iv) ubhayanumatasabha, that chosen by the parties themselves; (v) gramavasisabha composed partly of the villagers and partly of strangers, or of civil and military persons together; (vi) gramasabha a village court in which the mahajenams, or heads of castes are assembled to settle disputes arising in the village: (vii) purasabha, a town or city court; (viii) ganasbha, an assembly composed of all the four classes indiscriminately; (ix) srenisabha, an assembly composed of all the inferior classes, or castes such as washermen, barbers, etcetera, and for deciding causes among their own tribes; (x) chaturvidyasabha, that composed of persons learned in all the four sastras; (ix) vargasabha, an assembly of irreligious men; (xii) kulasabha, a meeting composed of persons of the same family; (xiii) kulikasabha, in which the relatives of the plaintiff and defendant meet to discuss the matter; (xiv) niyuktasabha, a court held by a deputy, or chief judge, regularly appointed by the king with the sabhasads, or assessors. This was sometimes called mudritasabha, as it was presided by the pradvivaka or the chief judge, in virtue of the king's mudra or seal with which he was entrusted; and sometimes also, pradvivakasabha, after the name of the presiding officer; (xv) nripasabha, or kings court which was also called sastrita, because the king was assisted by persons skilled in sastras, and all decisions passed here were final. These fifteen descriptions of courts, the first three are called apratishthita, unsettled because they were only occasionally held, and were liable to be removed from place to place; and all the rest except the two last, are called pratishthita, fixed or permanent. An appeal lies from an inferior to a

superior court in regular succession, or directly to the king's court. The popular courts above described, from the number of persons of whom they were composed, and the facilities which they must have afforded in ascertaining the facts, they were called to judge, present something like a jury, and appear to have produced all the advantages peculiar to that mode of trial, without the delay and vexation attending the forms introduced in more regular courts.[16] It is revealed from the study that people's courts with different names had a significant place in ancient Indian culture and history, to dispense justice as a part of judicial administration. Colebrooke also classified the popular courts into three categories, these were:[17] (i) puga, (ii) sreni and (iii) kula. Therefore, the prevailing popular courts of justice, in ancient India, were enumerated in the following order:

Puga: The word 'puga' or 'gana' had denoted the local corporations of town and villages. The pugas were of communities residing in villages or in towns. They comprised of persons dwelling in the same place irrespective of their castes or employments. They were competent to decide cases in which the local public was interested. Yajnavalkya mentions that the puga court consisted of members belonging to different castes and professions but staying in the same village or town.[18]

[16] *Ibid*.

[17] R.C. Majumdar, *Corporate Life in Ancient India,* 128 (Calcutta university, Calcutta, 1969)

[18] *Ibid*.

In regard to the nature and composition of puga courts that the members of puga court were of different tribes and profession but they inhabited in the same village or town. If the sabha or village assembly of vedic period was occasionally settling the village disputes, such sabha court would be the earlier prototype of the puga court. The gramavriddha court of the arthasastra would also be the forerunner of the puga court. Puga court later became known as gota court in Maharashtra and dharamasasana in Karnataka. The mahajanas (elder) of the village and twelve village servants were represented upon it and it used to decide private disputes.[19]

The puga courts enjoyed an appellate jurisdiction in all cases decided by the subordinate popular courts, viz. sreni and kula. It has been studied that the decisions of the puga courts were enforced by the state and executed the decrees of the puga courts with a view to encourage the principle of self-government to reduce the burden of central administration.[20] It is thus evident that puga court as the highest people's court had played a prominent part almost throughout the country in the long course of the history.

Sreni: The term sreni was used to denote the courts of guilds, which became a prominent feature of the commercial life in ancient India. Generally, the sreni was represented by companies of traders or artisans or persons belonging to different tribes, but subsisting by the practice of the same merchant guilds. These appeared to be industrial courts or the courts of profession or courts

[19] A.S. Altekar, *State and Government in Ancient India*, 254 (Motilal Banarasidass, Banaras,1977).

[20] *Id.* At 254.

of disciplinary bodies of different merchant guilds. Modern friendly societies and trade unions have analogous functions and bear almost a historic origin from the srenis. The basic feature of the sreni courts was that its members belonged to the same caste as a rule, but they could also came from different castes who had same profession. Sreni courts were competent to decide matters relating to their special callings or trade[21]These courts had their own executive committee of four or five members and it was likely that these committees functioned as the sreni courts for settling the disputes among their members, when the effort at family arbitration had failed.[22] The sreni courts are the courts of guilds continued to function down the eighteenth century and remained in existence through the length and breadth of India.[23]The sreni court had appellate jurisdiction and the appeal of litigants lied against the decision of Kula courts in the sreni courts and sreni courts decided those appellate matters.

Kula: The kula court was the informal body of family elders. It was the lowest people's court, which was headed by kingsmen. According to Mitaksara, kula was a group of relatives of the parties to the dispute. All social matters concerning that particular community could be investigated and decided at this level.[24] This was a meeting of persons collectively related by blood as of a family or tribe. They could also be related distantly by marriage. Kulas or joint families

[21] M.K. Sharan, *Court Procedure in Ancient India* 17 (Abhinav Publications, Hauz Khas, Delhi,1978)

[22] *Ibid*.

[23] A.S. Altekar, *State and Government in Ancient India*, 254 (Motilal Banarasidass, Banaras,1977).

[24] M.K. Sharan, *Court Procedure in Ancient India* 27 (Abhinav Publications, Hauz Khas, Delhi,1978)

were often very extensive in ancient India; if there was a quarrel between two members, the elders used to attempt to settle it. These courts had power to take cognizance of quarrels arising in family units of ten, twenty or forty villages.[25]

Thus, this was the hierarchy of the people's courts in which kula was at lowest and the puga was at highest level. These courts were vested with judicial powers on the basis of the sovereignty of the people. The basic idea behind functioning of these courts was that the administration of justice was not the sole concern of the king alone but the people also shared the burden of the State in dispensing of justice. These popular courts not only helped to reduce the burden of the central administration of justice but also provided justice to the residents at their doorsteps.

STRUCTURE AND POWERS:

The main object of every judicial administration is to be just, honest and make available speedy remedy to the aggrieved persons, who seek the assistance of the courts. The same was the aim of ancient Indian Judicial system. It has been pointed out that the legal life of small towns and villages was not under the direct control of the king and remained under the jurisdiction of its representatives as long as no appeal was made against the judgments given by them, to the king, who was the highest and supreme authority in the state. In ancient India, the village administration was self-contained. It functioned smoothly, whoever might be the king at the center. The central government did not interfere with local

[25] *Ibid*.

administration but exercised only general control, being mainly concerned with the subject of the land revenue, security and defense. The village community functioned as miniature state having even the power of administering civil and criminal justice".[26] But it is also necessary to mention here that the entire judicial administration functioned under the indirect control and supervision of the king and the courts derived their authority from him. The king was the dispenser of justice as a last resort, in case, justice was denied to a person by the king's tribunals or people's courts.

As it has been discussed, that in order to provide speedy and proper justice to the aggrieved persons, there existed popular or people's courts in the small towns and villages, which had a systematic and efficient judicial set up. In villages, the local village council or kulani, similar to modern panchayat, consisted of a board of five or more members to dispense justice to villagers.[27] Brihaspati said in respect of the constitution of popular courts, that there were two to five persons selected as advisors and their advice was required to be followed by the villagers, the guilds, the corporations and others. He recommended that with the object to resolve the disputes, a court should be held in forest, for persons roaming in the forest, for warriors in the camp, and for merchants in the caravan.[28]

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[26] R.C. Majumdar, *The History and Culture of the Indian People: The Classical Age,* 359 (Calcutta university, Calcutta, 1970)

[27] V.D. Kulshreshtha, *Landmarks in Indian Legal History and Constitutional History*, 6 (Eastern Book Co, Lucknow, 2nd edn. 1968)

[28] M.K. Sharan*, Court Procedure in Ancient India* 17 (Abhinav Publications, Hauz Khas, Delhi,1978)

Each village had its local court, which was composed of the headman and the elders of the village. Such courts decided minor criminal cases such as petty thefts, as well as civil suits of trifle nature, like disputes relating to the boundaries of lands situated within the village. Their powers, it seems, were limited to the transfer of the possession of property and inflicting of small fines. Decisions in the courts were given in accordance with the opinion of the majority of honest persons composing the courts. The Sukraniti says about the efficiency of these judges, that they are the best judges of the merits of a case, who live the place where the accused person resides and where the subject matter of the dispute has arisen.[29] Dr. P.N. Sen says, that popular courts had been in existence even from before the organization of the royal courts. They grew out gradually according to the needs and circumstances of the different people to be comprised by them. Hence, these institutions are quite congenial to the soil and atmosphere of the country.[30] The principle underlying these lower and local courts is that in cases of disputes the best men of the locality concerned can alone be the proper judge.[31]

Similarly, in order to deal with the disputes amongst members of various guilds or association of traders or artisans, various corporations, trade-guilds were authorized to exercise an effective jurisdiction over their members. These tribunals consisting of a president and three or five members were allowed to

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[29] *Ibid*.

[30] U.C. Sarkar, *Epochs in Hindu Legal History*, 248 (Vishveshvaranand Vedic Research Institute,1958)

[31] *Ibid*.

decide their civil cases regularly just like other courts. No doubt, it was possible to go to appeal from the tribunal of the guild to a local court, then to royal judges and then finally to the king but such a situation rarely arose. At that time, the joint family system was prevailing in the society, so family courts were also established. Puga assemblies made up of groups of families in the same village decided civil disputes amongst family members. Brihaspati points about justice delivery mechanism in these words:

> "*First come the family arbitrators: the judges are superior to the families; the chief justice is superior to the judges; the king is superior to all of them and his decision become law."*[32]

It is revealed from the study of ancient literature that even in ancient India the decision of each higher court superseded that of the court below. Each lower court was bound to show full respect to the decision of each higher court. As such the king's decision was supreme.[33] It was also a significant rule of the administration of justice, that justice should not be administered by a single individual. A bench of two or more judges was always preferred to administer justice. It is true that justice was administered in the name of the king, who was the fountain of justice, but he could not dispense justice by himself

[32] V.D. Kulshreshtha, *Landmarks in Indian Legal History and Constitutional History*, 45 (Eastern Book Co, Lucknow, 2nd edn. 1968)

[33] *Id* at 7.

alone. He had to do so with the help and guidance of others competent and learned in law.[34]

So, it is evident from Hindu texts that there were a number of popular courts which were mainly held by the village assemblies, trustees, guilds, soldiers, merchants and the caste elders. These were empowered to investigate and to dispense justice in cases that arose within their jurisdiction. These courts had jurisdiction to decide the civil disputes and minor criminal cases. These did not come under the direct control of the king and so, dispensed justice freely to disputants.

PROCEDURE OF COURTS IN OLDEN DAYS:

The courts in ancient India were not bound by any technical procedure for rendering justice to the aggrieved persons. The basic consideration was upholding dharma and to avoid needless and vexatious litigation. The rules of these local bodies must mean the rules and principles as understood and acted upon by them.[35] It is a general principle of law that a complaint must be made by the aggrieved person. But in these courts, it was not necessary in all cases that the complaint was to be filed by the actually aggrieved, the courts were also empowered to initiate judicial proceedings suo-moto, if circumstances so warranted. Kautilya says that, *"where the interest affected pertained to God, to Brahmins, to ascetics, to women, to minors, to aged persons or to diseased or*

[34] S.D.Sharma, *Administration of Justice in Ancient India* 170 (Harman Publishing House, New Delhi, 1988).

[35] U.C. Sarkar, *Epochs in Hindu Legal History*, 245 (Vishveshvaranand Vedic Research Institute,1958)

helpless person, the judges shall take cognizance and give redress even though not complained".[36] It is also pointed by Brihaspati, that in the case of people, with immature minds, idiots, mad men, old and sick people, women, etcetera, the complaint could be made on their behalf by any relative or well wisher of theirs' whether authorized or not.[37] This process of cognizance of matters by court itself and making of complaint by well wishers, is similar to concept of Public Interest Litigation in modern days. When a plaint was filed or cognizance taken by the courts, the courts were required to investigate the matter and satisfy themselves about the genuineness of the matter complained of before summoning the other party to answer the charges.[38]

There was no limit to the jurisdiction of popular courts in civil matters. They could not, however, try criminal cases of serious nature. In general social interest, certain types of suits were not maintainable in the courts, namely, suits between teacher and pupils, husband and wife, father and son, and master and servant. The dispute, which arose between these persons, might be settled or corrected by their seniors or elders. But there was no absolute prohibition of litigation between such parties. The text of Gautama dealing with the power of a teacher, father, husband and master in the matter of correction, stated how such person was to be punished by the king if he exceeded his power. Then, a pupil, a son, a wife or a servant could not be prohibited from suing. But if the pupil or

[36] S.K. Puri, *Lectures on Indian Legal and Constitutional History*, 12 (Allahabad Law Agency,Allahabad, Paper Back, 2003).

[37] *Ibid*.

[38] *Ibid.*

son violated his duty and the teacher or father being weak was not able to correct him, it was consistent with commonsense that he should then apply to the king.[39]So, the son, wife or a student could initiate judicial proceeding against father, husband or teacher if they acted beyond their power. Similarly, in some circumstances, the father or husband or teacher was also authorized to move in the court against the son or wife or student respectively.

In modern India, the courts follow several technical procedural laws such as Civil Procedure Code, Criminal Procedure Code and the Evidence Act, etcetera, but there were hardly any rigid and complex procedural laws dealing with the disputes in popular courts. The local courts of cultivators, artisans, money lenders, trade guilds, religious mendicants and even robbers were empowered to resolve their disputes according to the rules of their own profession. Similarly, families, craft guilds and local assemblies were authorized by the king to dispose lawsuits among their members except such as concerned violent crime.[40] These people courts decided the dispute on the basis of principles of natural justice, equity and fairness.

PARTS OF TRIAL:

It is necessary to discuss here about the parts of a suit and Brihaspati says the suit was divided into four parts which were: (i) the plaint (poorva-paksha); (ii) the reply (uttar): (iii) the trial and investigation of dispute by the court

[39] M.K. Sharan, *Court Procedure in Ancient India* 17 (Abhinav Publications, Hauz Khas, Delhi,1978)

[40] Birendra Nath, *Judicial Administration in Ancient India* 62 (Janaki Prakashan,Patna,1979).

(kriyaa); and (iv) the verdict or decision (nirnayaya).[41] In ancient legal system, generally a suit or trial consisted of four parts:[42]

a)The plaint (bhasapada or pratijna)

b) The reply (written statement or uttara pada)

c)The proof or evidence on behalf of the plaintiff and defendant

d) The decision or judgment.

The plaintiff, who was called as prasnin, started the suit by filing the plaint before the court and submitted himself to the jurisdiction of the court. The court was then entitled to issue an order to the defendant who was known as abhiprasnin to submit his reply on the basis of allegations made in the plaint. If defendant admitted the allegations leveled against him in the plaint, the business of the court was only to decide the case on the basis of such admission. Where the defendant contested the case before the court, it was the duty of the court to provide full opportunity to both the parties to prove their claims. After examined the parties, the court gave final decision. During the course of proceedings both parties were required to prove their case by producing evidence. Ordinarily, the evidence was based on any or all the three sources, namely, documents, witnesses and the possession of incriminating objects.[43] Other means of proof

[41] P.V. Kane, *History of Dharmasastra*, 277 (Bhandarkar Oriental Research Insitute, Pune, Vol. III, 1973).

[42] Deshta, Sunil, *Lok Adalats in India : Gensis and Functioning*, 25 (Deep & Deep Publications, New Delhi, 1995).

[43] *Ibid*.

consisted of reasoning (yukti) and ordeals (divyas).[44] The documents, witness and possession fell under the head of human proof, while ordeals were included under the head of divine proof. The court delivered its judgment when both the parties had submitted their evidence.[45]

The popular courts were empowered to decide civil matters and petty criminal offences only according to the procedure established by law and on the basis of principles of natural justice.[46] In civil cases while examining the witness the court always enquired into the social status and qualification of the witness. In criminal cases, sometimes the circumstantial evidence was sufficient to punish the criminal or to acquit him. The accused was allowed to produce any witness in his defense before the court to prove his innocence. In some cases, no evidence or witness was adduced by the party and it became very difficult for the judge to ascertain the truth. In such cases, religious aid was taken by applying two special kinds of trials, A) trial by oaths and B) trial by ordeals.

A) TRIAL BY OATHS:

In ancient Hindu law, it was a popular belief that no wise man must swear an oath falsely, even in a trifling matter for he who swore an oath falsely; he was lost in this world as well as in the next.[47] It is revealed from the study of Hindu

[44] Birendra Nath, *Judicial Administration in Ancient India* 45 (Janaki Prakashan,Patna,1979).

[45] *Ibid*.

[46] V.D. Kulshreshtha, *Landmarks in Indian Legal History and Constitutional History*, 8 (Eastern Book Co, Lucknow, 2nd edn. 1968)

[47] M.K. Sharan*, Court Procedure in Ancient India* 145 (Abhinav Publications, Hauz Khas, Delhi,1978)

texts that sanction of trial by oaths acted as a deterrent for checking false statements in the court. The trial by oath was widely practiced in ancient India because the religious faith became intimately connected with oath and began to be regarded as charges with super natural power and effective due to sanctity of God.[48] Manu and Narad both had justified the method of trial by oath. Manu says with regard to trial by oath that, "if two disputants quarrel about matters for which no witnesses are available and real truth cannot be ascertain, the judge may discover it by oath".[49] Narad says that false witnesses were condemned to go to a horrible hell and stay there for a kalpa.[50] Therefore, the trial by oath was become the major method to decide the cases when no evidence was produced before the court. Then the court applied this method.

B) TRIAL BY ORDEAL:

Trial by ordeal was also a significant method to determine the guilt of a person. The ancient Indian society, which was largely dominated by religious faith in God, considered the trial by ordeal as a valid method of proof. Ordeal was like an appeal to the immediate judgment of God. In such trials supernatural aid was invoked in the place of evidence. It was the basic idea of the ordeals that God helps the just and punishes the unjust.

[48] Birendra Nath, *Judicial Administration in Ancient India* 126 (Janaki Prakashan,Patna,1979).

[49] M.K. Sharan*, Court Procedure in Ancient India* 144 (Abhinav Publications, Hauz Khas, Delhi,1978)

[50] V.D. Kulshreshtha, *Landmarks in Indian Legal History and Constitutional History*, 8 (Eastern Book Co, Lucknow, 2nd edn. 1968)

The ordinary rule was that ordeals were to be administered to the defendants. But Yajnavalkya gives an option that anyone of the two litigants may by mutual agreement undergo an ordeal and the other should agree to pay on defeat. The practice to conduct trial by ordeals was based on the belief in personal God, who if fervently invoked with religious favour, would declare the innocence or guilt of a person charged with a grave crime.[51] A detailed study of ordeals point out that only in cases of high treason or very serious offences the trial by ordeal was used. In other petty case, it was sufficient to prove the truth by taking an oath.

There were some limitations on the application of use of trials by ordeals as it could be resorted to only where any concrete evidence on either side was not available. However, no ordeals should be administered to persons observing vows, those performing austerities, distressed persons, ascetics, diseased, women, minors and aged.[52] Narad discloses that no ordeals should be conducted unless the opponent of the party undergoing the ordeals declared himself ready to undergo punishment in case of being defeated by reason of the party coming out successful from the ordeal though this rule does not apply to cases of high treason.[53] It was the greatest drawback of trial by ordeal that sometimes, a person proved his innocence by death, as the ordeal was very painful and dangerous.

[51] M.K. Sharan*, Court Procedure in Ancient India* 150 (Abhinav Publications, Hauz Khas, Delhi,1978)

[52] *Id* at 147.

[53] *Id* at 167.

There were various kinds of ordeals, which were administered with regard to the nature of the case in dispute. Some important types[54] of ordeals were: (a) ordeal by balance, (b) by fire, (c) by water, (d) by poison, (e) by the cosha, (f) by rice, (g) by boiling oil, (h) by red hot iron, (i) by plough share, and (j) by images. Some of these were as follows:

(a) Ordeal by Balance: This type of ordeal was consisted of weighing the accused in balance. A large balance was set up on which the accused was weighed against weights placed in other pan. The height of the pan in which defendant or accused was set rose, and then it was marked on the post setup beside it. After he was weighed, he got down and pandits pronounced mantras and wrote the substance of the accusation on a piece of paper, bind it on head. Then he was placed on the balance once again. If he weigh more than first time weigh then he was held guilty; if less, innocent; if exactly the same, he would be weighed a third time; when as it has been written in Mitakshra, there will certainly be a difference in his weight. Guilt would be based upon such difference of weight of the person.

(b) Ordeal by Fire: In this process, nine hands long, two spans broad, and one span deep, is made in the ground, and filled with a fire of pippal wood; into this the accused must walk bare-footed; and, if his foot be unhurt, they hold him blameless; if burned, he is held guilty. It means in this process the guilt was depend upon the burning of feet of accused person.

[54] H.S. Bhatia, *Origin and Development of Legal and Political System in India*, 33-25 (Deep & Deep Publications,1976)

(c) Ordeal by Water: Water ordeal is performed by causing the person accused to stand in a sufficient depth of water, and a brahmin is then directed to go into the water, holding a staff in his hand; a soldier shoots three arrows on dry ground from a bow of cane; a man is next dispatched to bring the arrow which has been shot farthest; and after he has taken it up, another is ordered to run from the edge of water; at which instant the person accused is told to grasp the foot or the staff of the brahmin, who stands near him in the water. The accused must remain under water till the two men, who went to fetch the arrows, are returned; for, if he raises his head or body above the surface, before the arrows are brought back, his guilt is considered as fully proved.

(d) Ordeal by Poison: In this ordeal after certain rituals, the poison is eaten by the accused and then the accused is kept in the shade and watched for the rest of the day. If by that time, the accused discloses no signs of the effect of poison, then he is innocent otherwise he is found guilty.

(e) Ordeal by Cosha: In this process, the accused is made to drink three draughts of the water, in which the images of the sun, of devi, and other deities, have been washed for that purpose; and if, within fourteen days, he has any sickness or indisposition, his crime is considered as proved.

(f) Ordeal by Hot Oil: In this kind of ordeal, the oil is heated sufficiently, then the accused thrusts his hands into it, and if he is not burned, then he is held innocent.

Thus, it was very common to use the method of trial by ordeal in cases when no human means of proof were available

FEATURES OF JUDICIAL SYSTEM:

As we have discussed that the ancient judicial system was based on vedas, dharmasastras and smrities, etcetera. The king, judges and people's courts performed their functions and dispensed justice in accordance with these Hindu texts. The judicial system had some significant features, which were as follows:

1. Truth as basis of justice.
2. Justice within reasonable time
3. Independent judicial system
4. Free from corruption
5. Court fee

1) TRUTH AS BASIS OF JUSTICE

It is quite evident from the study of Hindu texts that the basic object of the trial was to ascertain truth at all cost and on the basis of such truth, dispense justice to the disputants. For this purpose, the procedure took every possible precaution, consistent with the conditions of knowledge of the time, to secure the discovery of the truth. In the earlier times, it was the duty of the parties concerned to produce the witnesses but later on the judges also could compel the party to make their appearance in the courts. Judges had power to put questions to the witnesses. They were directed to watch the behavior of the witnesses and decide on its reliability. The judgments given by the courts in the matters agitated

before them were required to contain full facts of pleading and reasoning based on facts and evidence.[55] The matters were decided on the basis of principles of natural justice and not on procedural laws as in modern legal system.

2) JUSTICE WITH IN REASONABLE TIME

In Hindu legal system, it was necessary that the matter or dispute must be adjudicated within reasonable time because delayed justice was considered most dangerous to the state. As Kautiya discloses that, the delay may cause the fall of the king and his kingdom.[56] Therefore, "justice delayed is justice denied" is not a new legal principle but this was the maxim, which was well known to the jurists of ancient India. In order to avoid the delay in the administration of justice, Hindu jurists had laid down strict rules as to adjournments and prescribed the time limits for deciding matters.[57] In ancient Hindu judicial system, there was no existence of any separate institution of lawyers for representing a party and to place his case before the court. [58]At that time, the litigant himself produced before the court and tried to prove his claim without the help of any legal representative. In this way, the matter was decided within reasonable time.

[55] S.K. Puri, *Lectures on Indian Legal and Constitutional History*, 13 (Allahabad Law Agency,Allahabad, Paper Back, 2003).

[56] S.D.Sharma, *Administration of Justice in Ancient India* 191 (Harman Publishing House, New Delhi, 1988).

[57] *Id* at 190 to 194.

[58] V.D. Kulshreshtha, *Landmarks in Indian Legal History and Constitutional History*, 7 (Eastern Book Co, Lucknow, 2nd edn. 1968)

3) INDEPENDENT JUDICIARY

The judiciary in ancient India was independent and impartial. The other organ of state i.e. executive never interfered in the administration of justice. Nobody is above the law, has been the governing principle of Indian jurisprudence since the rigvedic period, and therefore, the kings and judges were equally liable for lapses made by them during the administration of justice. The chief judge and the sabhas were prohibited to hold conversation in private with any one of the litigants while the suit was pending.[59] The Sukraniti says, about the responsibility of the king and judges with regard to privacy of trials: "Neither the king nor the members of the judicial assembly should ever try cases in private".[60] Trials were always held in public.

4) FREE FROM CORRUPTION

An equal and evenhanded justice is a cherished ideal of administration of justice. In order to ensure fair and impartial justice to all, deterrent provisions were applied to make the administration of justice free from corruption. Kautilya prescribed fines and even corporal punishments for judges who corruptly gave wrong decisions.[61] Yajnavalkya says, if the sabhas give a decision, which is opposed to smriti and usage, through friendship, greed or fear, each member of

[59] S.D.Sharma, *Administration of Justice in Ancient India* 188 (Harman Publishing House, New Delhi, 1988).

[60] M.K. Sharan, *Court Procedure in Ancient India* 30 (Abhinav Publications, Hauz Khas, Delhi,1978)

[61] S.D.Sharma, *Administration of Justice in Ancient India* 188 (Harman Publishing House, New Delhi, 1988).

sabha was liable to be fined twice as much as the fine to be paid by the defeated party.[62] So, in ancient judicial system, various efforts had been made to prevent the judicial system from corruption at all levels. Cases were taken up for disposal either in the order of their respective applications, or of their urgency, or of the nature of the injury suffered, or of the relative importance of the castes of suitors. The royal officers were strictly forbidden to take any part either in the commencement or in the subsequent conduct of a suit. The judges were punished or estreated if they found involve in corruption.

COURT FEES:

In ancient India, it appears that in disputes of a criminal nature, no court fees had to be paid. The person found guilty had to pay to king the fine declared in the smritis for offences or awarded by the court. As regards civil disputes also nothing had to be paid at the inception of the suit. Kautilya, Yajnavalkya, Vishnu, Narad and others prescribed certain rules, with regard to payments to the king by the debtor and the creditors after the suit was decided. These payments in the form of fine or fee were regarded courts fees as well as a source of income to the kings and their judges[63] It has been disclosed that the fee for hearing and deciding upon causes was, no doubt, charged and collected in cash, also, in ancient and medieval period in India, but not in advance. The judge then received his etlak, chauth or pachotra, a perquisite of his office, only after the amount

[62] *Ibid*.

[63] M.K. Sharan, *Court Procedure in Ancient India* 31 (Abhinav Publications, Hauz Khas, Delhi,1978)

decreed by him was recovered from the judgment debtor. But, this practice was abolished in India, at the close of 18th century, by Warren Hastings and replaced by the present system of court fee stamp by Sir John shore in 1797.[64] So, there was court fees levied only after the decision of civil disputes.

4.2.1.2 LOK ADALATS IN MEDIEVAL INDIA

In the Mughal Era, law and political theory are considered to be as much derived from divine revelation, as is religious dogma. Islam did not recognize the institution of kingship to start with. It believed in the democracy of the people. Hence the absence of any particular rules in the holy Quran for the guidance of kings, who are subject to the same laws as others. There is no distinction between the canon law and the law of state. Law being of divine origin demands as much the obedience of the king as of the peasants.[65] So, it is the duty of a king to uphold the authority of the Islamic law and to keep himself within the four walls of it. Holy law served as an effective check on the sovereign authority.[66]On the basis of this idea, in India, the Muslim beginning was made by Mohammud-bin-quasim in 712 A.D, he came to India as invader and returned thereafter. The real penetration into India was made by Qutubuddin-aibek who, in reality established his supremacy in the whole of northern India. The Muslim, thereafter continued to rule over India for centuries till the year 1857, when the last Mughal king

[64] *Ibid*.

[65] H.S. Bhatia, *Origin and Development of Legal and Political System in India*, 184 (Deep & Deep Publications,1976)

[66] *Ibid*.

Bahadur Shah Jafar, was dethroned by the Britishers and they established themselves as the next rulers of India.[67]

JUDICIAL STRUCTURE IN MUSLIM PERIOD

The judicial structure which existed in India during Muslim rule can be studied under two separate periods' viz., the 'Sultanate period' starting from 1206 A.D. to 1526 A.D. and the 'Mughal period' starting from 1526 to 1680 A.D.87 In the Muslim period, the judicial structure was same in both dynasties. The king was the supreme authority and the entire executive, legislative, judicial and military powers were resided in him. In the administration of justice he was considered as the 'fountain of justice'.

The judicial system was organized on the basis of administrative divisions of the empire. There was a systematic classification and gradation of the courts existed at the seat of the capital, in provinces, districts, parganahas and villages for deciding civil, criminal and revenue cases.[68] The hierarchy of courts during Muslim period was as follows:

a) Central Courts
b) Provincial Courts
c) District Courts
d) Parganah Courts

[67] S.K. Puri, *Lectures on Indian Legal and Constitutional History*, 21 (Allahabad Law Agency,Allahabad, Paper Back, 2003).

[68] Muhammad Bashir Ahmad, *The Administration of Justice in Medieval India A Study in outline of the Judicial System under the Sultans and Badshahs of Delhi,* 104-105(Cosmo Publications, 2015)

e) Village Courts

The judicial structure also gave place to the then existing legal institutions in India, such as village panchayats, which served an extremely useful purpose in settlement of disputes during ancient India.

POSITION OF LOK ADALATS IN MUSLIM RULE

Muslim rulers established their own courts system for providing justice to all. But the local courts or Gram Panchayats, as dispute resolution institutions continued functioning with minor variations even in Muslim rule in the Medieval India. During Muslim rule, the royal courts existed in administrative centers, but these did not produce a unified national legal system of the kind that developed in the west.[69] The law made by the Muslim rulers did not penetrate into the villages. Throughout the Muslim rule, there was no direct or systematic state control of the administration of justice in the villages where most of Indian lived. The link of the local courts with the king at the last resort was not to be found in the Muslim rule.[70] Muslim rulers created courts of judicature totally at variance with traditional system. In government courts, kazis, muftis and mir adils were appointed to dispense justice. However, these courts mostly functioned at the district level or above, leaving lower village level functioning of people's courts mostly untouched. It means that the Muslims rulers had not shown interest to redesign the local courts or village panchayats as they designed their royal courts.

[69] Upendra Bakshi and Marc Galanter, "Panchayat Justice: An Indian Experiment in Legal Access", in M.Cappelletti (ed); *Access to Justice and the welfare state*, 343 (Springer Publishing co.Vol. III 1979)

[70]U.C. Sarkar, *Epochs in Hindu Legal History*, 250 (Vishveshvaranand Vedic Research Institute,1958)

So, the disputes in villages and even in cities were not settled by the royal courts, but by the Lok Adalats of the caste, of guilds and of associations of traders and artisans within which the dispute arose.[71] These tribunals were empowered to adjudicate in accordance with the custom or usage of the locality, caste, trade, or family.[72] Therefore, the traditional dispute resolution system through Lok Adalats was not very much affected by the introduction of 'Qazi' as the social adjudicatory system. The Lok Adalats with the name panchayats were regularly performed their functions as they worked in ancient India. The village Panchayat was a body of five leading men who were called as panches, to look after the executive and judicial affairs in the villages.

It may also be noted that the people's courts became important instruments and began to serve the legal purpose of Hindus almost exclusively, so far as the civil side atleast was concerned. The Hindus would feel shy to approach the Muslim rulers or the royal courts presided over and assisted by Muslim officers; the conditions for the regular administration of justice also were not perfectly favorable and above all the rulers themselves also were very much relieved when they saw that the administration of civil justice was being carried on by the popular courts of the Hindus themselves.[73] Therefore, people's court played the important role for all specially for Hindus during Muslim rule. There were also many other factors to the survival of popular courts during this period. The royal

[71]Upendra Bakshi and Marc Galanter, "Panchayat Justice: An Indian Experiment in Legal Access", in M. Cappelletti (ed); *Access to Justice and the welfare state*, 344 (Springer Publishing co.Vol. III 1979)

[72] *Ibid*.

[73] U.C. Sarkar, *Epochs in Hindu Legal History*, 250 (Vishveshvaranand Vedic Research Institute,1958)

courts and the kings could be hardly accessible by the ordinary litigants; the court-officers and employees were corrupt and they harassed the litigants. Moreover, there were not so many royal courts, which could be within the easy reach of the people.[74] Hence Sir Jadu Nath Sarkar observed that, "the Indian villagers in the Mughal empire……had to settle their differences locally by appeal to the caste courts or the panchayats or the arbitration of an unpartial umpire (solis)." [75]

It is revealed from the study that the Indian villagers settled their dispute through the panchayats, which dispensed justice independently. These panchayats were not directly connected with the royal courts. However, the Muslim rulers traditionally enjoyed and occasionally exercised a general power of supervision over all these popular courts. In theory, only the Royal Courts were empowered to decide the criminal cases as well as to execute punishments. These popular courts could pronounce decrees in civil cases at village level and invoke Royal power in order to enforce them. But while some adjudication might be enforced by governmental power and most depended on boycott and ex-communication as the ultimate sanctions.[76] So, the study shows that even in Muslim rule, the disputes at the lowest level were disposed of by the panchayat or the people's courts. The people were satisfied by the decisions of these popular courts because the matters were decided by their own representative. In this way,

[74] *Id* at 250-251.

[75] *Ibid*.

[76] Jadhunath Sarkar, *Mughal Administration* 29 (M.C. Sarkar & Son's, Calcutta, 1935)

these courts relieved the government to a very great extent of its judicial functions.

JUDICIAL PROCEDURE IN LOK ADALATS

In Muslim rule, the village (Dehat) was the smallest administrative unit, at this level; the Panchayat or the people's court was authorized to administer justice in all petty civil and criminal matters. The Panchayat held it's sitting in public places where they administered justice and maintained peace and tranquility in the village. It was presided by five Panchas who were expected to give a patient hearing to both the parties and deliver their judgment in the Panchayat meeting. The decision of the Panchayat was final and binding. Village Panchayats or people's courts while dispensing justice were governed by their customary laws and were not strictly according to law of the empire because there was no interference in the working of the Panchayats.

The procedure followed by the people's court was quite simple, systematic and primitive. There was no regular administration of justice, no certain means of filing a suit and fixed rules of proceeding after it had been filed.[77] There were no hard and fast technical procedural laws obeyed by these courts for administering justice. There was also no regular and full-fledged legal profession. Nor were there any elaborate provisions for the law of evidence.

[77] Mukherji; "The Hindu Judicial System" in S.K., (ed); *The Cultural Heritage of India*, Vol. II, 252 (1969).

Hence, the justice could be delivered speedily and effectively.[78] Qazis as the authority of royal courts were concerned more with ecclesiastical matters among the Muslims. The Hindus were generally governed by their customs and the provisions of Shastras. When the public trial of the accused person was deemed necessary, the Amil could take the assistance of the people's court for this purpose. Many factors were taken into consideration for arriving at the truth after setting every item of the evidence adduced. Civil and criminal disputes were decided by castemen or village elders and popular courts in the form of caste-courts, guild or religious heads.[79]

During Muslim period, there was very little interference by the Muslim rulers in the working of popular courts though from the popular courts, appeal could ultimately lie before the king. It is apparent from the study that the villagers had a judicial system of their own which was familiar to and respected by them. These courts settled the affairs of everyday life. In case of grave crime or when the condemned party refused to obey the judgment of local courts, the court of king was concerned with litigation. Pitama says about the order of appellate courts, "A suit should first tried in the village court; then it should be tried in town (in appeal) and last of all the King should give the final decision as the highest appellate tribunal. There is no retiral of any case once it has been decided by the King….rightly or wrongly, further, he remarks that between the

[78] *Id* at 242.

[79] R.C. Majumdar, *The History and Culture of the India People: The Mughal Empire,* 545-550 (Calcutta university, Calcutta, 1969)

parties of the same country, town, societies, cities or villages, the adjudication should be made by following their own convention and usages; but when the dispute is between these persons and strangers the law of the Dharmasastra should be applied".[80]

The decisions of the Panchayats or people's courts were almost invariably unanimous and the punishments inflicted were fines, public degradation or reprimand or excommunication. No sentence of imprisonment or death was awarded, because there was no proper authority to execute these sentences, and also because there was no jails in the villages. The fear of public opinion was one of the most potent factors responsible for the prevention of crimes and hardly did any case go out of the boundaries of a village. The law administered by the Panchayats or people's court was usually caste and tribal usage and the customary law of the land.[81]

After studying the general outlook of the judicial structure of Muslim rulers in medieval period, we find that the establishment of peace and order was supposed to be the major aim of the rulers. Therefore, they developed a systematic structure of courts from central level to pargana level to provide justice to all. However, at village level, there were popular courts, which decided all civil and petty criminal cases of local nature and maintained law and order in the villages. These courts dispensed justice on the basis of customary laws and

[80] U.C. Sarkar, *Epochs in Hindu Legal History*, 244-245 (Vishveshvaranand Vedic Research Institute, 1958)

[81] R.C. Majumdar, *The History and Culture of the India People: The Mughal Empire,* 545 (Calcutta university, Calcutta, 1969)

principle of natural justice. They did not follow any technical procedural law for administering justice. These courts did not come under the direct supervision of the rulers. These courts were famous particularly among Hindus because they did not relish approaching the Muslim royal courts. Thus, the exclusive jurisdiction of these courts over the Hindus became much more prominent and was serving a useful purpose. The local courts in the form of Panchayat thus played a very significant part during the Muslim rule.

4.2.1.3 LOK ADALATS IN BRITISH INDIA

It is quite evident from the historical facts that the Britishers entered in India with the purpose to establish their trade and business. But, gradually, they started to interfere in the governance and administration of the country and developed their own administrative and judicial system. So, t he philosophy of the administration of justice during British period has initially a different history. In the beginning the Magestrial functions were delegated to the native people due to reason that Britishers were not acquainted with local languages and the local laws. Besides, there was a lurking fear in the mind of the Britishers that the act of punishment of the members of the native population could lead to agitation at any time. The result, therefore, was that they inducted Indians to discharge the judicial functions in the early days of company rule. There is ample evidence to show that an Indian in the service of company since 1614 exercised the powers of the Magistrate in the earliest days of Madras settlement.[82] However, it was only after the court reorganization in 1861 that justice was administered at higher level

[82] V.N.S. Rao, *A Sketch of Three Centuries of Courts in Madras (1640-1947), 82* (Lawyer, 1984).

by judges trained in common law. The result of the induction of British judges in the Indian judicial system shaped the entire working of the local courts. The people's courts thus entered into an era of lessening importance, until, it went into eclipse, as a result of British policy of feudalistic control of the countryside.[83]

POSITION OF LOK ADALATS IN BRITISH RULE

It is true that the Britishers applied their own justice system through which they established formal courts in India. But the study shows that in beginning in the rule of East India Company, some local courts were also found which are functioning almost on the line of village Panchayats. These courts were remodeled, from time to time by the company as according to its interest. The company also sometimes established new courts of minor jurisdiction on the model of village tribunal or panchayats for administering justice. These courts were necessarily of minor jurisdiction, which followed the simple and speedy procedure unattended by any rigid formality or technicality. Reference may be made in this connection to them choultry court at Madras, the court of conscience in Bombay and the court of requests at each of the Presidency towns of Calcutta, Madras and Bombay.[84]

[83] R.C. Majumdar, *Corporate Life in Ancient India,* 533 (Calcutta university, Calcutta, 1969)

[84] U.C. Sarkar, *Epochs in Hindu Legal History*, 253-254 (Vishveshvaranand Vedic Research Institute, 1958)

CHOULTRY COURT:

In the village of Madras Patnam, a choultry court was established by the Hindu ruler on the basis of the village administrative unit and the court was entrusted with judicial functions. The village headman who also called as adigar, was presided over the court. This was the only court for the residents of the Black Town at Madras Patnam. Adigar decided both civil and criminal cases in petty matters of the natives. For serious offences the reference had to be made to the native Raja. The choultry court was re-organized in 1678 by the company. Formerly, an Indian officer was to preside over this court, but after the re-organization it came to be presided over by the English servant of the company. There was no regular procedure followed by the court in civil and criminal matters and punishment executed differed from case to case. This court had jurisdiction to decide civil cases up to the value of 50 pagodas and criminal offences of minor nature. After the creation of mayor's court at Madras, the jurisdiction of choultry court was much diminished. Its civil jurisdiction was limited to only two pagodas and the appeals from the choultry court would lie to the court of governor and council, which came to be known as the High Court.[85]

COURT OF CONSCIENCE:

The court of conscience was created at Bombay under the judicial system of 1672. The court had jurisdiction to decide petty civil cases up to 20 xeraphins, summarily and without a jury. The court sat once a week, charged no fees, and

[85] M.P. Jain, *Outlines of Indian Legal History*14-26 (LexisNexis, Nagpur 1972).

provided a forum to dispense justice to poor litigants expeditiously and without any cost.[86] The court also performed its functions on the pattern of village panchayat.

COURT OF REQUESTS:

The charter of 1753 created a new court, called the court of requests, at each presidency town of Calcutta, Bombay and Madras to decide, cheaply, summarily and quickly, cases up to the value of 5 pagodas or fifteen rupees. The idea underlying the creation of the court was to help the poor litigants with small claims that could not defray the expenses of litigation at the mayor's court. The court was to sit once a week, and was to be manned by commissioners, among 8 to 24 in numbers. Three commissioners were to sit by rotation on every court day. The court of requests in each town did much useful work. The court was of great help to poor litigants mostly, Indians, who used to be involved in petty disputes.[87]

The creation, working and the functions of the above courts of petty jurisdictions were directly or indirectly influenced by the conceptions of the popular courts or the Panchayats. These courts were established with the purpose to provide justice to the poor litigants without much delay and cost.

[86] S.K. Puri, *Lectures on Indian Legal and Constitutional History* 54 (Allahabad Law Agency,Allahabad, Paper Back, 2003).

[87] M.P. Jain, *Outlines of Indian Legal History* 56 (LexisNexis, Nagpur 1972).

IMPACT OF BRITISH RULE ON LOK ADALATS

It is quite evident that the British rulers did not, initially, interfere in the Panchayat system but the establishment of adjudicatory courts in the course of time brought about the formalization of the justice system. There were also several factors weakened the working of people courts and affected the faith of people upon these courts. The administration of villages by the agencies of the central government, extension of the jurisdiction of the civil and criminal courts with their adversary system of adjudication which was unknown and new to village population, increase in the means of communication, progress of English education, police organization, migration of people from village to towns, growing spirit of individualism resulting from new education system, growing pursuits of individual interests and consequently lessening of community's influence over the members may be said to be some of the main factors which gradually contributed towards the decay of the people's courts in India.[88]

It is necessary to disclose that the English men brought with them the concept of ruler and the ruled and the sense of superiority over the local men. Therefore, they were not bound to follow the local laws and the local system of justice, which bound only the local people. Gradually, they established the adjudicatory process which became more and more formal with the introduction of Anglo-Saxon system of jurisprudence and when India came to be a part of the British Empire under the direct suzerainty of the crown, a full-fledged adjudicatory setup on the basis of British judicial system with the development of

[88] K.N.C. Pillai, "Criminal Jurisdiction of Nyaya Panchayats," *JILI*, 439(1977).

new courts system the legal formalities and technicalities were introduced into the Indian justice system. Due to this reason the legal system became so complicated and it could not be approached without the services of trained personnel i.e. the lawyer. So, it became highly profession-oriented. The cost of litigation and lawyer's fees gave rise sharply making access to justice even more difficult.[89] The net effect was that the poor man found it difficult to enter into the portals of the court and the rich man was able to use the legal process as an instrument of harassment of his poor adversary. Moreover, it became time consuming because of technical procedural laws.

Consequently, the judicial administration during British period became more complexes, both in terms of substance and procedure.[90] Our law administration shaped by the Britishers and enshrining values not wholly indigenous or agreeable to Indian conditions, scaring away or victimizing the weak through slow motion justice, high priced legal service, by distant delivery centers, mystiques to legalize and lacunose laws and Processual pyramid made up of teetering tiers and sophisticated rules and tools.[91] The result of these weakness was that the judicial administration at the lower level turned to be an instrument of exploitation of common man who was at the victim end. In this way the British rulers moulded the Indian legal system according to their vested interest and gradually led to the decline of people's court.

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[89] A.M. Ahmadi, "Access to Justice in India", 11 *Legal Aid Newsletter*,17(1992).

[90] C.D. Gunninghan,"Legal Ethics - A Gandian Perspective," 15 *Indian Bar Review*, 69 (1988).

[91] V.R.K. Iyer, "The Indian Lawyer, His Social Responsibilities and Legal Immunities," 120 *Indian Bar Review*, 15 (1988)

However, it is revealed from the study that some efforts were made by the British rulers to revive the functioning of people's court, as for example, in Madras in 1816, on the initiative of Lord Munro; the panchayats were used to dispose of some petty cases. He tried to restore the everyday administration of civil justice into the hands of people. He tried to legalize the panchayat system.[92] The other important steps in this direction were the landmark decisions such as Mayo resolution of 1870 on decentralization, Lord Ripon's Resolution of 1882 emphasized for decentralization of administration through the establishment of a large network of local self - government, the report of royal commission upon decentralization in India which recommended the constitution and development of village panchayats with certain administrative and judicial powers, the Government of India Resolution of 1915 and the Montague Chelmsford Report of 1918.[93] However, the spirit of these landmarks decisions reflects that these were actually not intended to reproduce the true characteristics of the old time people's courts or panchayats.

On the basis of recommendations of above stated Reports and Resolutions, the village administration as it developed from 1920 to 1947 consisted primarily of panchayat bodies performing municipal, administrative and judicial functions.[94] However, in actual practice the functioning of this institution remained extremely unsatisfactory for several reasons. Prof. Tinker has highly

[92]U.C. Sarkar, *Epochs in Hindu Legal History*, 277(Vishveshvaranand Vedic Research Institute,1958)

[93] Upendra Baxi, *The Crisis of the Indian Legal System*, 296 (Vikas Publishing Co., New Delhi ,1982)

[94] Law Commission of India 14th report on Reform of Judicial Administration,(1958).

indicated in his survey that the people's courts could not fulfill the expectations in most of the provinces, because of the indifference shown by the officials and the people of the villages as well.[95] But, these courts did not function effectively throughout the country because they were not developed on the basis of Indian culture and heritage but only established as the lowest administrative units.

Early nineteenth-century the British rulers made efforts to revive the function of the people's court. However, they never intended to revive the essential features, which were in existence in the old-time people's courts. This is revealed in Lord Hailey's statement:[96] "It was deliberately designed to exercise a new and formative influence on the relations between the ruling powers and people of India. On a more immediate plan it was intended to secure the increased assistance of Indian in the administration of the country: On a wider plane, it was to be an instrument of political and popular education in the use of self-governing institutions".

Thus, it can be said that the people's court had played a significant role in administration of justice in ancient India as well as in medieval India under Muslim rule. Muslim rulers were the foreigners but they did not destroy the people's court system. But the Britishers not only developed their formal court system on the basis of English jurisprudence but also shattered the structure of people's courts. From the ancient period, these courts decided the matters at local level, speedily, cheaply, without the help of lawyers and in accordance with the

[95] H. Tinker; Foundations of Local Self-Government in India, Pakistan and Burma, 199 (Frederick A. Praeger Publishing House, 1954).

[96] *Ibid*

principles of natural justice. These courts provided justice to the litigants at their doorsteps. But in British era this people oriented justice system had been damaged and there came to an end of a glorious chapter of panchayats in the Indian history.

4.2.1.3 LOK ADALATS IN REPUBLIC OF INDIA

India attained freedom on August 15, 1947, following by long struggle; freedom fighter dreamed that the commencement of independence would bring a glowing golden era to the people of India. The freedom to use justice at the grassroots level through the reconstruction of the judicial system regarded as one of them. Therefore, the founding fathers of the Constitution noticed that the Anglo-Saxon judicial system need to be reorganized thus to make legal aid easily approachable to the poor, backward and downtrodden in villages. Similarly, Mahatma Gandhi also stressed upon to the requirement of changing of Indian judicial system mainly because according to him "India lives in her villages.[97] Gandhi compared the ram-rajya to gram-rajya; therefore, he strongly supported the development of the Panchayat justice system and desired that the Panchayat would be the unified legislatures, the judiciary and the executive.[98] Jayaprakash Narayan, Professor N.G.Ranga, D.S. Seth, H.V.Kamath, along with other

[97]Report of Committee on National Juridicare : Equal Justice , Social Justice (1977) 32 as cited in S,Sajisivan "People's Court: Historical Antecedence Of Lok-Adalat"*IJLDAI available at* http://ijldai.thelawbrigade.com/ wp-content/uploads/2016/03/sajisivan.pdf. (accessed on 12/04/2017 at 22.45)

[98]M. Venkitarangian and Patabiraman, Local Government in India (1969) 247 as cited in S,Sajisivan "People's Court: Historical Antecedence Of Lok-Adalat"*IJLDAI available at* http://ijldai.thelaw brigade.com/ wp-content/uploads/2016/03/sajisivan.pdf. (accessed on 12/04/2017 at 22.45)

thinkers, also recognized the Gandhian theory associated with the notion of Panchayati Raj.[99]

Consequently, there was a demand for reconstitution of the nyaya panchayat system from all corners of the nation for the object of providing expeditious, inexpensive and qualitative justice to all at based on traditional principles and values and to implement the aspirations of the freedom fighters to establish the philosophy of equality and justice.[100] At the commencement of the post-independence epoch, nyaya panchayats served efficiently in most of the states of the country and incorporated many peculiar features. There were distinct advantages of conceding participation of people in the administration of justice at the grassroots by the institution of nyaya panchayats. As the influence of the members of nyaya panchayats, and knowledge of social, economic conditions helped for dispensing effective and efficient justice. Moreover, the decisions of nyaya panchayats experienced a real belief and acceptance amongst the villagers and the litigants. To enhance the working of the nyaya panchayat system, the report of the Mehta Committee[101] has suggested that the nyaya panchayats should have an extensive jurisdiction. The committee additionally proposed that the gram panchayats ought to recommend panels of names from which sub-divisional magistrate or the district magistrate should select persons, who

[99]S,Sajisivan "People's Court: Historical Antecedence Of Lok-Adalat"*IJLDAI available* at http://ijldai. The law brigade.com/ wp-content/uploads/2016/03/sajisivan .pdf.(accessed on 12/04/2017 at 22.45)

[100] *Ibid.*

[101] Committee On Panchayati Raj Institutions,1978 *available at* http://www.panchayatgyan. gov.in/ documents /30336/0/Asoka+Mehta+Committee+Report.pdf/41d384c3-bab7-4957-8ea0 69d8d5f 4fc08. (accessed on 02/03/2017 at 10.51)

constitute the nyaya panchayat, having the purview to adjudicate upon the issues of both civil and criminal nature.[102] The committee stress upon the use of local knowledge in determining the disputes by the gram panchayats. It furthermore suggested that nyaya-panchas should exercise some caution and ought to have a degree of humility in the discharge of their duties. At the same time, they should remain courageous and follow justice in such a manner that respect for the law should be maintained.[103] Even in independent India, nyaya panchayat system was prevailing in some of the States, but it failed due to some drawbacks in the system. Law commission of India[104] of India also envisioned the issue of administration of justice in contemplation of the spirit vested in the Article 39A.[105]

The report of Law Commission shows that the commission did not concur with the possibility of abrogation of nyaya panchayats while focused on that they ought to reinforce by embracing the proper safeguards. It additionally recommended the introduction of conciliation as the means of determination of

[102] S,Sajisivan "People's Court: Historical Antecedence Of Lok-Adalat"IJLDAI *available at* http/ijldai. thelaw brigade.com/ wp-content/uploads/2016/03/sajisivan.pdf. (accessed on 12/04/2017 at 22.45)

[103] *Ibid.*

[104] Law Commission of India 129th Report of on Urban Litigation Mediation As Alternative To Adjudication (August 1988), in this report Law commission of India visualized the need for decentralisation of the system of administration of justice by –

(i) Establishing, extending and strengthening in rural areas the institution of Nyaya Panchayats orother mechanisms for resolving disputes;
(ii) Setting up of a system of participatory justice with defined jurisdiction and powers in suitable areas and centres;
(iii) Establishing other tiers or systems within the judicial hierarchy to reduce the volume of work in the Supreme Court and the High Courts.

[105] Article 39A of Constitution of India – "The State shall 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".

disputes to be initiated at the discretion of nyaya panchayats. The commission also induced by the working of Lok Adalat, which was successfully providing justice in Gujarat under the rules and regulation of an organization Anand Niketan Ashram. Shri Harivallabh Pareek executed an experiment this new kind of Lok Adalat in the State of Gujarat for the very first time; he was distraught with the pitiful conditions of tribal Aadivasis of Rangpur owing to their involvement in numerous litigation, which severely affected their lifestyle and especially their economic situation. In the year 1949, to provide relief to these Adivasis, in Rangpur he started the alternative mode of Lok Adalat for dispensing justice and remained the same for many years. The system was extremely effective and was praised by all affined.[106] Shri Harivallabh Pareek started a padayatra from village to village and expanded this movement; as a result, Anand Niketan Asharam came into existence as an institution. This form of Lok Adalat was people-oriented and participated forum which dispenses justice to the deprived litigants at their doorsteps without any cost.[107]

The current version of Lok Adalat has evolved from the concern expressed by the several committees' set up to betake to organizing legal aid to the poor and disadvantaged people and warning alarm made by the judicial circle on increasing numbers of arrears pending for an extended period at various levels in the court system. The Committee for Implementing Legal Aid Schemes

[106] S.S. Sharma, "Legal services, Public Interest Litigation and Para-legal services" 184, (2003) as cited in S,Sajisivan "People's Court: Historical Antecedence Of Lok-Adalat"*IJLDAI available at* http://ijldai. the lawbri gade.com/wp-content/uploads/2016/03/sajisivan.pdf. (accessed on 12/04/2017 at 22.45)

[107] *Ibid*

established by the Ministry of Law and Justice, in 1980, endorsed the establishing of Lok Adalat under the chairmanship of Justice P.N. Bhagwati and afterwards on under the chairmanship of Justice R.N. Mishra. Consequently, in March 1982, the Lok Adalat movement started in Gujarat as a strategy for legal aid movement.

In Junagarh district at village Una, the first Lok Adalat organised in the year 1982. Andhra Pradesh, Bihar, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Uttar Pradesh, and the Union Territories of Delhi, Pondicherry and other states also adopted the Lok Adalat system in there provinces after observing its successful working.[108] The Legal Services Authorities Act, 1987 had given statutory recognition to the Lok Adalats, which were earlier performing its functions on an informal basis. The Act came into force on 9th November 1995 with various amendments. There are detailed provisions about the establishment of Lok Adalats, their jurisdiction, powers, procedure and functioning, etcetera, in this Act. The Parliament has amended[109] the Act again intending to constitute 'Permanent Lok Adalat' to decide disputes related to 'public utility services'.[110] The reason for bringing this Act into

[108] P. Bhargava, Lok Adalat : Justice at the door steps (1998) 16-17 as cited in S,Sajisivan "People's Court: Historical Antecedence Of Lok-Adalat"*IJLDAI available at http*://ijldai.the lawbri gade.com/wp-content uploads/2016/03/sajisivan.pdf. (accessed on 12/04/2017 at 22.45)

[109] The Legal Services Authorities (Amendment) Act, 2002. This amendment introduced Chapter VI-A with the caption Pre-Litigation Conciliation And Settlement. Section 22-B envisages establishment of "Permanent Lok Adalats" at different places for considering the cases in respect of Public Utility Services.

[110]According to Section 22-A (b) "Public Utility Services means any transport service for carriage of passengers or goods by air, road or water; postal telegraph or telephone services; supply of power, light or water to the public; system of public conservancy or sanitation; services in hospital or dispensary and insurance services. The Central or the State Government is also given power to issue notification declaring any other service also as a PUS in public interest".

existence was to develop additional ways to reach the poor and create a speedy and less extensive as well as less expansive system of justice administration. Nowadays, the Lok Adalat system is functioning in as per the provisions laid down by the Act.

4.2.2 OBJECT OF LOK ADALAT AS PER LEGAL SERVICES AUTHORITY ACT, 1987

The object of Lok Adalats is to accelerate the dispensation of justice and bring about a compromise between litigant parties as best as possible. As it already discussed that the arrival of the Legal Services Authority Act, 1987 has given a statutory status to the Lok Adalats, according to constitutional mandate in Article 39-A of the Constitution of India, contains various provisions for the settlement of disputes through Lok Adalat. The Act establishes Legal Services Authority to bestow fair and efficient legal services for weaker segments of society. To ensure that due to financial or other social inefficiencies, no citizen of India is denied the possibility of obtaining justice, and Lok Adalats are organized to ensure that the functioning of the legal system promotes justice on an equal opportunity basis. The prime object of the Lok Adalat as per the Legal Services Authority Act, 1987 is to render an alternative to the adversarial legal system. The purpose of enduring Lok Adalat for disputes prevails in the increasing discontent with the present legal system and the necessity for quick relief. The requirement of immediate redressal and speedy disposal of the dispute was felt as most acutely in the present socio-legal circumstances. Given these circumstances, an attempt was made to bring justice to the doorsteps for those who are in need.

In short Lok Adalats are being organized to provide speedy justice, to generate awareness among the public regarding the conciliatory mode of dispute settlement and legal sanctity of Lok Adalat, to encourage the public to settle their dispute outside the formal set-up, to empower the public to participate in justice delivery system.[111] The Lok Adalats system has the following objectives:[112]

- To reduce huge arrears in the court of law and to make the administration of justice under the existing system meaningful and relevant, delivering motivation, thereof, from the directive principle of equal justice and free legal aid.[113]
- To deliver instantaneous justice at the grass root level and to translate into reality the internal humanitarian principles of equal, impartial, free and fair justice to all in a society governed by rules of law. It intended to deliver instantaneous and substantive justice through law emulating the consistent application of nature upon all without discrimination and irrespective of their decent, domicile, race, religion, caste, creed, age, sex, or socio-economic status.[114]
- Another objective of Lok Adalat is resolution and settlement of the dispute by conciliation both in matters already pending before courts and pre litigative stage. It secures satisfaction to both the sides to a dispute, as

[111] *Available at* http://dcw.delhigovt.nic.in/Lok%20Adalat.htm (accessed on 23/05/2017 at 12.54)

[112] Prabha Bhargava, *Lok Adalat justice to the door steps* 8 (Ina Shree Publisher, Jaipur, 2006)

[113] Verma J.S; 1989 First Lok Adalat, Bilaspur,Souvenir, M.P.Legal Advisory Board Bhopal,p.2. as cited in Prabha Bhargava, *Lok Adalat justice to the door steps* 27 (Ina Shree Publisher, Jaipur, 2006)

[114] *Ibid.*

the conciliation based on a persuasive element without the element of a contest and there is neither winner nor vanquished. Besides reducing the huge backlog pendency in courts, the parties saved from long delays and enormous expenditure.[115]

Lok Adalats takes justice at the doorsteps of people. Legal awareness and legal literacy campaign and para-legal legal cadre tanning have been making peoples conscious of their rights and claim. Numerous social legislations are enacted to the benefit of the weaker section to get rid of individual and social disability. This trend of delivering speedy and inexpensive justice becomes a reality to the poor downtrodden and deprived class of people. According to Justice Bhagwati, *"when justice is not melted out the poor feel that the law is their enemy. Therefore it is our duty to see that justice is delivered to rural masses at the earliest"*[116].

4.3 CONSTITUTIONAL DIRECTIVES FOR LOK ADALAT

Equal justice for all is a fundamental principle, on which the whole arrangement of administration of justice is centered. This is so deeply rooted in the body and spirit of common law as well as civil law jurisprudence that the very meaning, which we ascribe to the word, justice, embraces it. We cannot imagine justice, which is not fair, and equal not based on the principles of natural

[115] K.M.H Rayappa, , Lok Adalat: Objectives Pre Requisites, Strategies and Organisation, Indian Barn Review, Vol.XIV(2) 1987 New Delhi, p.33 as cited in Prabha Bhargava, *Lok Adalat justice to the door steps* 27 (Ina Shree Publisher, Jaipur, 2006)

[116] Prabha Bhargava, *Lok Adalat justice to the door steps* 27 (Ina Shree Publisher, Jaipur, 1999 reprint 2006)

justice, which is given to one and the other is denied. It is embedded in Indian ethos of justice & dharma equally.[117] The Constitution of India outlined the fundamental object for its citizens as "to secure to all the citizens of India, justice social, economic and political; liberty; equality and fraternity". We are all bound to uphold the constitutional values and principles of democracy. The message is clear if we do not save democracy; democracy will not save us. The enduring value of constitutionalism is the rule of law, which has three aspects, that is, the role following the law and the rule in accordance with the law.[118]

No one can deny the fact that the great principle of justice as inscribed in the Magna Carta and which is the basic principle of all national charter, has not been translated into reality. Though, It did not inaugurate an era of absolute freedom and equality of justice.[119] Even in England the author of the 'Justice and The Poor in England' F. C. G. Gurney Champion, felt so strongly about the non-fulfillment of the promise of providing equitable justice, that he printed an appendix to his book, a draft bill, to repeal the aforesaid section of the 'Magna-Carta' in so far as the poor persons were concerned.[120]

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[117]Justice K. Ramaswamy, Settlement of disputes through Lok Adalat is one of the effective dispute resolution on statutory basis, In, P.C.Rao, A.D.R: What it is and How it works, (1997), P 96, as cited in Sarfaraz Ahmed khan, *Lok Adalat: An Effective Dispute Resolution Mechanism*, 28 (APH Publication Corporation, New Delhi 2006)

[118]Keynote address delivered at the Conference of the Chief Ministers of States and the Chief Justices of High Courts, Vigyan Bhavan, New Delhi on September 18, 2004. Envisioning justice in the 21st century by Justice R.C. Lahoti, (2004)7SCC (J) 13, *Available at* http://www.india.com/lawyer/articles/2004_7_13 .html (accessed on 29/05/2017 at 20.07)

[119] K. Ramaswamy, Settlement of disputes through Lok-Adalat is one of the effective ADR on statutory basis, in P.C.Rao &William Sheffield (eds*.), ADR-What is and How It Works*, 211 (Universal Law Publishing Co. Pvt. Ltd.,1997 reprint 2008)

[120] Reviewed Work: Justice and the Poor in England by F. C. G. Gurney Champion Review by: Reginald Heber Smith *The Yale Law Journal* Vol. 35, No. 6 (Apr., 1926), pp. 771-776

Indian Constitution is primarily, a social document that expresses the wishes and ambitions of the people. Granville Austin called it a cornerstone of social change.[121] Keeping in mind, in order to render equal justice, the creators of the Constitution inscribed the requirement for economic, political and social justice in the Constitution of India. While the chapter on Fundamental Rights incorporates the idea of political and equal justice, the chapter on Directive Principles of State Policy along with Preamble incorporates economic, social and cultural justice. These provisions are the constitutional obligation of all the three organs of the state to engage in the constitutional progression in the direction of achieving equal and social justice for all.

Thus, in order to fulfill the Constitutional mandate of providing equal justice, all machinery of State attempted to find out the means of providing justice. The ways and forms of providing justice, particularly in disputes, through the adversarial mechanism, made justice inaccessible to a large number of masses. Such performance of adversarial system made despair to the legal fraternity. If the constitutional mandates have to fulfill, which is fundamental to governance, the means for providing justice has to evolve. The institution of Lok Adalat evolved, as a tool to fulfill the Constitutional obligation, to provide justice to all by making it accessible to all. Thus, a clear mandate and directive for such instrument subsist in the Constitution.

[121] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Classic Reissue, Oxford IndiaPaperbacks 1999)

4.1.1 PREAMBULAR ASPIRATIONS OF SPRIT OF JUSTICE AND LOK ADALAT

The aims and objective of the constitution summarized by the preamble of the constitution. Its put socialism in the Constitution as it is guiding principle and Master Slogan. A Government founded on anything except liberty and justice cannot stand.[122] It has been proposed by the members of the Constitutional committee that the generosity of law must belong to everyone, not as of now, to those who use the Constitution for unconstitutional ends. The Preamble of the Constitution itself signifies the ambitions of the people. Though, to materialize for such aspiration, the Government has to move in the direction of the appreciated object of justice, as inducted in the Preamble of the Constitution of India. The Preamble impressively determines to constitute India as a Sovereign, Socialist, Secular, Democratic, Republic. It directs for securing justice, not only social justice but economic and political justice too, for the citizens of the country. It embellishes the freedom of expression, thought, belief, faith and worship. It commands equality of status and opportunity. It also pioneers for encouraging brotherhood, to promote the dignity of every citizen and the unity and integrity of the nation.

The Constitution of India unquestionably goal-oriented, policy-oriented, and welfare state-oriented and pervaded all the laws of the land and it is Preamble which determines the human temper and strength of the Constitution, which visualize other matters, justice, equality and dignity of persons. It is

[122] V. R. Krishna Iyer, Law Versus Justice: Problems and Solutions 16 (1981), as cited in, Sunil Deshta, *Lok- Adalat in India: Genesis and Functioning*, 51-52 (Deep & Deep Publications, New Delhi, 1995).

needless to state that the Constitution is that the lighthouse for all the navigators and its interpretation should be in line with its aim and objectives. Law no doubt is definitely for the man, for the society for the advancement towards those fundamental objects, which explicitly expressed in the Preamble by the "we the people of India", and the Preamble comprises ambitions and hopes of the citizens of India.[123] The preamble of the Constitution of India talks with regards to social economic and political justice and of equality of status and opportunity.

The Constitution inscribes justice as the first promise of the republic, which means that state power will execute the pledge of justice[124] in favour of the millions who are the republic. Justice and social justice are from one family itself but one is the genus, and one is species, social justice originated from justice; social justice is people's justice where the oppression of power converted into the democracy of social good. In a general sense, justice involves man's ideas and principals but is forms are not in order such as social justice, natural justice, legal justice, democratic justice, political justice, totalitarian justice, etcetera. These divisions of justice considered for understanding the very nature and content of justice.

The clause 'social and economic justice' includes the notion of 'distributive justice', which suggests the eradication of economic inequalities and amending the injustice occurring from the actions among the unequal in society. Hence, social justice perceives more than reducing inequalities through

[123] M.G Chitkar and P.L Mehatha, *Lok Adalat and the poor: A socio-Constitutional Study*, 104, (Ashish Publishing house, Delhi 1993).

[124] The term 'justice' is introduced from Latin jus, law. This again related to jussum, which means what is directed or ordered

differential assessment, providing debt relief or regulation of contractual relations. It means that the restoration of properties has given to those people who have been deprived of them by unreasonable bargains, it can further exercise the form of limited redistribution of money as a means of obtaining a decent division of material resources amid the members of the society. The idea of economic justice is to make the balance of the situation meaningful, and it is worth living at its best-eliminating imbalance of inequality and status-social, economic and political.[125]

The concept of social justice consists of diverse principles essential for the orderly growth and development of the personality of every citizen. Social justice is a dynamic way to overcome the sufferings of the poor, vulnerable and disadvantaged segments of society and elevate their lives to the level of equality to live with honor. Social justice is not only a direct view of a society but is an indispensable part of an intricate social change to assuage the poor and needy, to deal with obstacles related to poverty and to create a sounder living for society at large. While in other words, social justice intend to achieve a decent degree of social, economic and political equality, which is the reasonable expectation and constitutional purpose. As a flexible controversial process of social justice is to render justice to all sections of society, by implementing the concerns of constitutional law to secure the dignity of individuals. Therefore, the constitution commands the state to provide equal justice to all sections of society in all areas

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[125] Meenakshi Gupta, *Labour Welfare and Social Security in Unorganised Sector,* 95 (Deep & Deep Publications, New Delhi, 2007)

of rational activity. The notion of social justice establishes equality to the character and brings the practical content of life alive. Social justice and equality both should preserve their vitality because they interconnected to each other. Therefore the rule of law is a powerful means of social justice to bring for equality.[126]

It is a stark reality today that a large number of men, women and children who constitute the bulk of the population are living in sub-human conditions. They accept social and economic exploitation and denial of legal rights as their fate. Ergo, millions of people have lost their trust over the current legal system. Therefore, fundamental right as a vested in the Constitution of India became meaningless to those millions of people of the Country. Therefore, equal justice in reality for them is not just a formal promise.[127] The Apex court showing concern about these dark realities said

> *"The rule of law does not mean that the protection of laws must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them 'also, though today it exists only on papers and not in reality... so far the Courts have been used only for the purpose of vindicating the rights of*

[126] *Ibid.*

[127] Peoples Union for Democratic right & other V. Union of India & other AIR 1982 SC 1473 at P 1478, Bandhua Mukti Morcha V. Union of India. AIR 1984 SC 802 as cited in Sarfaraz Ahmed khan, *Lok Adalat:An Effective Dispute Resolution Mechanism*, 41 (APH Publication Corporation, New Delhi 2006)

the wealthy and the affluent. It is only those privileged classes who have been able to approach the Courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the door of justice They (poor) have been crying for justice but their cries have so far been in the wildness: They have been suffering injustice silently But time has now come when the Courts must turn out to be the Court for weak and poor people of the country... It is true that there are large arrears pending in the Courts but that cannot be any reason for denying access to Justice to the poor and weaker sections of the community. No state has right to tell its citizens that because a number of cases of the rich and the well-to-do are pending in our Courts, we will, not help the poor to come to the Courts for seeking justice until the staggering load of cases of people who can afford, is disposed of".

Thus in this manner, in the present situation, if the objective of giving equivalent justice must be satisfied, it is required to develop a participatory form of justice dispensation system. If used in the correct direction, Lok Adalat is one such instrument. Despite the fact that Lok-Adalat has not been said unequivocally under the provisions specified in the Constitution, it understood in it on account of its rationality of giving justice similarly to all regardless of their status, which must be accomplished by the participatory type of dispute resolution mechanism.

4.1.2 EQUAL JUSTICE, LOK ADALAT AND LEGAL AID DIRECTIVES UNDER PART III & PART IV OF THE CONSTITUTION

Part III of the Constitution dispenses Fundamentals Rights to the persons and citizens, which are enforceable by the judicially. Under Article 14, 21 & 22 the Constitution of India not only promulgate but also guarantees equal justice to all, which Includes the concept of legal aid and equal justice. Art.14 deals with equality before the law and equal protection of laws. The nature of the article has made it clear that the legal aid has been received directly from this article and has made it positive about implementing the legal aid plan, which is very much within the territory of India. Equal justice demands access to law and justice for both the poor and the rich. Equal justice requires an equal opportunity and human dignity, which requires considerable reconfiguration of the perspective of the legislators and the public so that no discrimination is made against individuals either substantially or procedurally. However, in reality, economic inequality has made justice beyond the reach of the weaker section of the people.

The fundamental rights are the heart of the Constitution, which has given to every citizen and some of them given to the persons also and for the excellent administration; there are directive principles of state policy, which guides the executive and legislative for the governance of the nation. The object behind them is to guarantee that citizens have certain necessary rights so that they are not at the sympathy of changing the opinion of legislators,[128]Dr.B.R.Ambedkar has the assumptions that the incorporation of fundamental rights in the

[128] Mainstream Weekly *Available at* https://www.mainstreamweekly.net/article639.html (accessed on 30/05/2017 at 14.28)

Constitution is twofold primarily, every citizen should be in a situation to claim those rights, secondly, they should be obligatory upon each authority.[129]

The fundamental rights are not absolute but come under the ambit of some reasonable restrictions are there so many exceptions have gobbled up the right alternative. Constitutional provisions directed at fundamental rights with the object of restricting the discrimination and promotion of social justice.[130] If the equality vanishes from the boundaries of the court, then the justice will be orphaned. Consequently, 'access to justice' in the Constitution has conquered the highest pedestal of the fundamental right. The basic principle related to legal aid centered upon the social, economic and political concerns. It is a constitutional mandate; citizens and governments are striving to establish a parallel society, in which there is a guarantee of absolute and equal justice despite any situation deployed in life.

The Constitution of India does not merely proclaim but also ensures equal justice.[131] Apart from this, there are multiple entries in legislative lists, which adequately provide legal aid to the poor and indigent people. Under entry 3 of the state list, there are necessities to be recognized within the framework, the need to providing legal aid to indigent and the destitute. Which states that the prime liability of the state to render legal aid or assistance to those peoples, who cannot bear to go to the court of law due to their low economic conditions.

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[129] K Kabir,Fundamental Rights, *Available at* http://www.publishyourarticles.net/knowledge-hub/political - science/fundamental-rights/895/(accessed on 31/05/2017 at 15.11)

[130] Constitution of India, 1950, Articles 14, 15& 23.

[131] Constitution of India, 1950, Articles 21 and 22

Under the entry 20 of the concurrent list, the legal aid plan can also be developed as a part of the economic and social planning. Some jurists also emphasized that legal aid is not a subject matter of State under the concurrent list. The Expert Committee supported this view that there should be a partnership between the Union Government and the State Government, for social action. The concept of equality inducted in Article 14 is a dynamic and developing concept, of which has many aspects, it included not only in Article 14 but also in Article 15-18 of Part III, and also Article 38, 39-A, 41 and 46 Part IV of the Constitution of India. All these provisions aspire to achieve the social, economic and political justice, which depicted in the preamble and which is the total of the hopes included in part IV. In a society where social injustice, economic imbalances between people and exploitation, inequality of status and opportunities exist, there is no point for equality before the law. The profound essence of the legal aid program is to provide equality, justly fairly and reasonably.

Under Article 14 of the constitution of India, the right to equality has also extended to the foreigners and as well as to the legal personalities such as companies in certain conditions. The legal aid is a tool to attain equality before the law, equality is the foundation of any democracy and concept of administration of justice, and democracy provides equality before the law and equal protection of the laws.[132] Equality before the law is the elemental principle of the English common law. Learned academician and scholar Prof. A.V. Dicey writes about the principle of equality before the law: No one is above the law, but

[132] A.V. Dicey: Introduction to the Study of the Law of the Constitution 193 *available at*http://files.liberty fund .org/ files/1714/0125_Bk.pdf (accessed on 31/05/2017 at 16:00)

every person here who has his rank or status is under the general law of region and is responsible for the jurisdiction of the general tribunal. In England, the concept of legal equality administered by the common courts has reached its maximum limit. With us every official like the prime minister, a constable or a collector of taxes, under the equivalent obligation for each act done without legal justification as any other citizen of the country. [133]

The legal aid is only an efficient approach to guarantees that any person shall not be deprived of equal protection of the law because he is indigent. Equality before the law mainly includes the notion that all parties asked for justice, they should have equal opportunity to reach the court and present their cases in court. However, in any case, access to the courts relies on the payment of fees of court and fees of the experienced lawyers. As far as a person is unable to get into court due to poverty to defend or to protect himself against criminal charges, justice will become inequitable and laws, which are for their protection, have no meaning and are failing in their goal to this extent. Where there is some provision meant for giving support to the poor and indigent people for the payoff of lawyer's expenses and additional eventualities of the suit, they have not dismissed equality in the probability of getting justice.

There is a demand for equal law and justice for both poor and rich. However, some concession also is given to the poor and needy. Legal aid is a creation of equality is the law, assurances of equal justice under the law, is an indispensable requirement of precise democracy, and it is necessary for such

[133] *Ibid.*

principles that capable and scrupulous legal aid is available to all persons according to their needs, despite the fact that they through their financial resources are unable to secure it.[134] If equality is not functional before the law it is readily available and accessible in the way of the complaint about the poor or assertion of its right; then it is also fiction for those who have the privilege to represent themselves before the law. Unless poor enjoy the equal protection of the law, it will be useless to talk about the blessings of freedom. The object behind the free legal service and legal aid is to guarantee equal, just, fair and uniform justice for the poor. The paragons of equal justice, legal services and legal aid are an instrument to understand equality before the law and to preserve the same law, as it is the prime aspect of the administration of justice.

Now moving to Part IV of the constitution. since it had long been considered necessary to enjoin the legislatures to obtain apparent instructions from the Constitution concerning how they should perform the function as Legislature to eliminate inequality among the litigants in the Courts of the law, so that the poor and needy litigants may possibly not feel helpless and reduced out of justice, at all levels. With this aim, Directive Principles of State Policy were added as Part IV and Article 39 (a) was inserted through the 42nd amendment of the Constitution, which directs the State to establish such legal machinery by which justice can be provided based on equal opportunity. It also mandates that free legal aid shall provide so that the opportunity of ensuring

[134] *Id* at 65.

justice which is not denied to any citizen due to their financial and other inabilities.

The 42nd Constitutional amendment, which made explicit the guidelines providing the opportunity to secure justice on the basis, of equality, was implicit in Article 14 and Preamble of the Constitution. Though Article 39A is a directive to the State which is unjustifiable,[135] but once read with Article 21 and Article 14 which guarantees a fundamental right of equality before law and equal protection of laws within the territories of India to all its citizens, it can easily be visualized that provision for free legal aid to needy litigants cannot remain an idle direction. Issuing Part III, Articles 14 & 21, of the Constitution, may guarantee its enforceability.

The judiciary, in India, is expected to be the sentinel, sword and shield of rights of the humblest millions with an assurance to bring social salvation of the weaker section. That is why Article 39A likewise obligates the State, which includes the Judiciary, to ensure that justice is exercised in the legal system, based on an equal opportunity, so that opportunities for securing justice cannot be denied to any citizen due to economic and other disabilities.[136]

[135] Art 37 of the Constitution of India, Application of the principles contained in this Part. The provision contained in this Part shall not be enforceable by any Court, but the Principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these Principles in making laws.

[136] Sunil Deshta, *Lok- Adalat in India: Genesis and Functioning*, 51-52 (Deep & Deep Publications, New Delhi, 1995).

Article 40 of the Constitution[137] directs the state to organize and empower gram panchayats in such a way that they can function as an autonomous unit. Law Commission of India [138] suggests the formation of gram nyayalaya for decentralization of the system of administration of justice and to make effective the participatory form of dispute settlement mechanism. The genesis of Lok Adalat can be found in our traditional panchayat system.[139] Article 40 of the Constitution of India directs the state to establish and empower gram panchayats in such a way that they can function as self-government units. The philosophy behind 'Article 40 is that village Panchayat as a unit of self-government would go a long way in ensuring democratic decentralization and creating an exhilarating feeling and sense of confidence among the villages in the sphere of decision' making.[140] In the Parliament the report presented by the then minister of law & justice in the year 1959 also reminds the fact that small controversies should be decided by Panchayat system or by institutions such as Lok Adalat To quote:

> *"There is no doubt that the system of justice which obtained today is too expensive' for the common man. The small disputes must necessarily be left to be, decided by a system of panchayat justice call it people's Court, call it popular Court call it anything but it would be certainly*

[137] Article 40 of the Constitution of India talks about Organisation of village Panchayat: "The State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as unit of self-government."

[138] Law commission of India, 114th Report on Gram Nyayalaya (August 1986)

[139] Abul Hasan V. Delhi Vidyut Board. AIR 1999 Del

[140] Sibnath Bhattacharya, Rural Poverty in India, 137 (1989) as cited in Sarfaraz Ahmed khan, *Lok Adalat: An Effective Dispute Resolution Mechanism*, 41 (APH Publication Corporation, New Delhi 2006)

subject to such safeguards as we may desire in the village level that the common man can be assured of a system of judicial administration which would not be too expensive for him and which would not be too dilatory for him."[141]

The modern concept of Lok Adalat appears up on the concern shows by changed bodies on the disappointment of Anglo-Saxon legal framework to provide justice with a more significant number of people and on the recommendation of various committees for advancing participatory form of administration of justice, especially the CILAS. The Constitutional directives for forming Lok-Adalat, for the people and by the people, are implicit in the Preamble, Articles 14, 39A, 40 and other provisions of the Constitution. It is apparent that the organization of the Lok-Adalat is a mandate provided by the Constitution. The march towards making Lok-Adalat a great success is a Constitutional goal, for which everyone should fulfill.[142]

4.4 REPORTS OF VARIOUS COMMITTEES FOR IMPLEMENTATION OF LEGAL AID IN INDIA

In order to implement the basic fundamental rights to the citizens and in order to give effect to the constitutional mandate of the right to life and personal liberty particularly for the poor and needy individual, some discussions took place in various conferences and committees these are:

[141] Rajya Sabha. DEB, 1959 Vol. 27, No. 3, Col 388, p.71 - 72 as cited in Sarfaraz Ahmed khan, *Lok Adalat: An Effective Dispute Resolution Mechanism*, 41 (APH Publication Corporation, New Delhi 2006)

[142] Sarfaraz Ahmed khan, *Lok Adalat: An Effective Dispute Resolution Mechanism*, 41 (APH Publication Corporation, New Delhi 2006)

4.4.1 REPORT OF LAW COMMISSION OF INDIA (1955-1958)

The First Law Commission of India (1955-58) under the chairmanship of M.C. Setalvad addressed itself more seriously to the question of equal access to justice in the context of constitutional background. The Committee devoted a chapter on Legal Aid stressing that providing legal aid to the poor litigants is not an insignificant difficulty of procedural law but a difficulty of a fundamental character. The governments of the states have not been enthusiastic about proposals calculated to enlarge the scope of legal aid. Mr. Setalvad made the following recommendations on legal aid:

> *"Free legal aid to the poor persons of limited means is a service which modern state and in particular a welfare state owes to its citizens. The state must, therefore accept this obligation and make available funds for providing such legal aid to poor persons of limited means".*[143]

The legal profession must in the main, if not entirely, accept the responsibility for the administration and working of schemes of legal aid. The profession should discharge this responsibility by organizing and by assisting the bodies which will render legal aid, and representing in courts poor persons or persons of limited means on the payment of only a proportion of the fees. The legal profession owes a moral and social obligation to poor members of society, which must be discharged, by every member of the profession doing a certain amount of legal work free for indigent persons. The scheme for legal aid to

[143] Dr. Dhyani S .N., Law Morality and Justice Indian Developments 125 (Metropolitan Book Co. Ltd, New Delhi, 1' Ed.,1984)

impoverished and persons of limited means outlined by the Committee on Legal Aid and Advice, appointed by the Government of Bombay in 1949. The scheme outlined by the West Bengal Committee should with suitable modifications made in the light of local needs and conditions, be adopted by all states as soon as financial conditions permit. Measures in furtherance of legal aid should be adopted immediately. Bar associations should take immediate measures to render legal aid voluntarily.[144] The Law Commission, therefore, envisaged the need for legal aid when it stated that

> *"...equality is the foundation of all new system of justice and administration of justice.... In so far as, a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice will become inequitable and laws, meant for the protection, has no meaning and to that extent fail in their purpose."*

Unless provision is made to assist the poor person for payment of court fees and other expenses of litigation and other contingencies, then he is deprived of equality in search of justice. Thus Bhagwati Committee 1949 from Bombay, the Trevor Harris Committee1950 from Calcutta coupled with recommendations of the First Law Commission in 1958 prepared the necessary background for introducing legal aid scheme in India. The Fourteenth Report of the Law Commission of India submitted a two-volume report on Reforms in the Administration of Justice. Following are some of the observations:

i. Law Commission observed, "unless the provision is made to help

[144] Sujan Singh, Legal Aid Human Right to Equality 91 (Deep &Deep Publications, New Delhi,Ed.,1996)

the poor to pay court fees and attorney fees and other contingencies of litigation". Providing Legal aid to the poor indigent litigant is not an insignificant difficulty of procedural law, but the subject to the fundamental character.[145]

ii. The Law Commission accepted the reports of both the Bombay Committee and Trevor Harris Committee partly.

iii. It recommended that the legal aid first extended to a person accused of crimes of serious nature, preference is given to persons belonging to S.C, S.T and legal aid should be given to indigent persons first and then those of modest means.

The other recommendations made by the Law Commission were that there should be a representation by the lawyer at state expense to all accused persons without means in cases coming before session's courts, to applicants for maintenance under Section 488 of the Code of Criminal Procedure, 1898 and to convicts who had sent jail appeals. The word pauper recommended to be replaced by the words poor person or assisted person.[146]

In early 1960, the Central Government drew up an outline of a scheme for legal aid to the poor and forwarded it to various existing legal aid organisation and the states for comments. The scheme providing for the constitution of the State Legal Aid Committee, the State Capital Legal Aid Committee, District Legal Aid Committees and the Taluka or Tehsil Legal Aid Committee, proposed for making benefit of legal aid available in civil cases, to the plaintiffs and

[145] D.V. Mukherjee, "Legal Education For Service To The Poor", 27 *AIR Jour*.1982

[146] *Ibid*

defendants, the appellants and respondents and the petitioners and the opponents. For criminal cases, the scheme provided that every applicant accused of an offence punishable with imprisonment was to be granted legal aid. Besides, it provided that a complainant could be given aid only if the complaint was in respect of an offence punishable with imprisonment. The applicant, however, was required to qualify the means test, prima facie case test and the test of reasonableness. The package of legal aid proposed by the scheme provided:

a) The professional assistance

b) Remission of court fees

c) Remission of process fees

d) Remission of subsistence and travelling allowance to witnesses

Free certified copies of judgment and orders and free preparation of appeal paper books, including the printing and translation of documents, whenever necessary, should be made available to such persons.

It was also proposed in the scheme that remission of court fee should be absolute and should not be recoverable even if the assisted person succeeded in the case. The provision for partial legal aid was also made in the scheme. Under miscellaneous provisions of the scheme, it was mentioned:

i) The legal aid scheme should be given statutory force

ii) Every legal aid committee should have an office opened during the entire office hours

iii) The legal aid committee should grant a formal certificate to an applicant admitted to legal aid, but such certificate should be liable to cancellation

if the committee at any stage, believes, that the legal aid is being misused

iv) The period for which an application for legal aid is pending with the legal aid committee shall be excluded from the computation of the period of limitation.

In 1962, the third all India law conference further considered the question of legal aid. In 1970 a national conference on legal aid was convened to consider the problem of legal aid to the poor. With this view, India established the National Legal Aid Association in March 1970 to promote voluntarily, legal aid with the assistance of Central and State Governments to provide legal services to the indigent. It is in 1970 that the Free Legal Aid Bill was introduced in Lok Sabha by Mr Madhu Limaye to highlight the need for legal aid to the poor. In the 1970s, the State Governments were moved to initiate concrete action on this subject.

4.4.2 COMMITTEE OF JUSTICE BHAGWATI ON FREE LEGAL AID (1971)

Another significant step towards giving free legal aid occurred with the constitution of a four-member committee appointed under the chairmanship of Justice P.N. Bhagwati in the year of 1971.[147] The report, running into 271 pages and presented in 14 parts, dealt with the subject of legal aid in all its possible length and breadth. Justice P.N. Bhagwati observed:

[147]Committee of Justice Bhagwati on Free Legal Aid constituted in the year 1971 as cite in Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 11 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

"Even while retaining the adversary system, some changes may be effected whereby the judge is given greater participatory role in the trial so as to place poor, as far as possible, on a footing of equality with the rich in the administration of justice."

Committee on Free Legal Assistance of Justice Bhagwati constituted in the year 1971, the committee's focus was the indigent person who is seeking to access justice. The report clearly shows that there cannot be any rule of law except the common man whether rich or poor is truthful, has the capacity affirm and second to the advantages provided to him by the law. It expressed that building up and creating a viable, effective system of the legal aid programme can uproot the fluctuations between rich and poor in the administration of justice. Legal aid and advice ought to be viewed not as an issue of charity but rather as an issue of right. The obligation of the state fixed for providing legal assistance to poor and indigent by expressing that this commitment because of Article 14 and 22 (1) is constitutional not just financial or political. The report document dealt with true scope and extent and of the legal aid and pressed for setting up a legal aid fund for giving cost and expenses of litigations. Additionally, in detail, the work of the constitution and the various legal committees was expressed in the report, for example, (a) The District or Taluka Legal Aid Committee, (b) The State Legal Aid Committee. Committee also proposed for implementation of the innovation and legal research, institutional development and organization of the poor etcetera.[148]

[148] Varun Pathak, "A Brief History of Legal Aid" *available at* http://www.legalserviceindia.com /articles/

4.4.3 EXPERT COMMITTEE ON LEGAL AID (KRISHNA IYAR COMMITTEE REPORT 1973)

The Report Of Justice Bhagwati Committee proved to be a milestone in the legal aid movement of the country. After perusal of the report, the State of Gujarat initiated a Programme for legal aid to the poor, and a pilot project initiated in the state from 5th November 1972. Since then legal aid and advice scheme has been extended to the whole of the State of Gujarat. The recommendations of this report not only stimulated the Government of India to appoint an expert committee on legal aid in October 1972 but also the Report Of Justice Bhagwati Committee proved to be a stepping stone for the Expert Committee which submitted its Report in 1973. The Government of India on 27th October 1972, appointed an eleven-member Expert Committee under the chairmanship of Justice V. R. Krishna Iyer.

The terms of reference required the Expert Committee[149] –

i. To examine the question of providing limited means to the weaker sections of the society and individuals with the insufficient means in in general and citizens relating to the socially and educationally underprivileged sections in particular facilities for:
    a. Legal advice to bring awareness of constitutional and legal rights among them and just obligations and for the avoidance of vexatious and unnecessary litigation and

laid.htm (accessed on 18/03/2017 at 10.19)

[149] Notification of Govenunent of India, Ministry .of Law and Justice, No. F6(10) 72-j dated 27 October 1972, para 3

b. Legal aid procedures before civil, criminal and revenue courts to execute justice a lot more effortlessly, obtainable to all sections of the society.

i. To formulate having regard to the resources available a scheme for legal advice and aid for aforesaid and

ii. To recommend the time and manner in which the scheme may be implemented.

Recommendations of the Expert Committee

In the report submitted to the Government of India on 27th May 1973, it is required to note that, it set to rest the controversy of liability of the government, which hindered the implementation of legal aid services in India.[150] The committee agreed with the report Of Justice Bhagwati Committee on the involvement of Nyaya panchayats, need for qualifying the means test and the prima-facie case test before getting the benefit of legal aid during trials as well as appellate stages of both civil and criminal cases and seeking legal advice.

The report laid distinct emphasis on the requirements of legal aid for women, workers and the dwellers of tribal areas.[151] The Report suggested the establishment of the legal aid centers, employing lawyers for legal advice, to extend legal guidance to villages. In the opinion of the Expert Committee, such advice may prevent litigation, fights, family discords and worse evils.

[150] Report of the Expert Committee on Legal Aid, *Processual Justice to the People*, (May, 1993) 8, Government of India

[151] *Ibid*

Justice Krishna Iyer Committee had shown special concern for legal aid movement for remedying the agonies of the unorganised and agricultural workers, who are exploitable in the absence of morale-boosting legal aid and advice.

For the members of scheduled castes the report stressed that a sensitive assistance by legal aid lawyers to the complainant or accused, civil suitor or defendant or petitioner before administration is a necessity and that socio-legal research into the flaws of the relevant laws and wrongs needing redress were the therapeutic measures to heal the traumatic social lesions' of centuries. It desired that legal activism must relieve the burden on the social conscience. Recommending the enlargement of the ambit of legal aid the report suggested amendment of Order XXXIII and Order XLIV of C.P.C. to enable a court to assign a pleader at the expense of the state to an indigent suing or even defending a suit.

In criminal cases, the report recommended for denial of legal aid to habitual offenders and those involved in election, defamation and adultery cases. It was suggested that Legal aid be made available in maintenance and genuine private criminal complaint cases.[152]

Providing for a well-devised organisation structure of the legal aid agencies at the national, state and local levels, the Expert Committee recommended for the active involvement of lawyers, voluntary agencies and the law schools. Recommendations for the institutions or Legal Clinics in Law

[152] *Ibid*

Colleges, the Committee desired them to produce legal literature for mass circulation, permitting students and law teachers to appear in courts on behalf of the indigent person.

The report further suggested an amendment in the Advocates Act by inserting section 33-A, Teachers of a Law School, which provides full-time instruction for the professional LL.B degree and which maintains a Legal Aid Clinic as part of its teaching programme, where poor persons receive legal aid, advice and related services. Students of third-year LL.B class of law school who are participating in the clinic's activities and who have been certified by the Dean or Principal of law school under rules made therefor by it, but it is only in the recommendation stage. Provided such representation in the case of students shall be under the supervision of lawyers associated with the said legal aid clinic and with the approval, of the judge in whose court the student appears.[153]

Justice Krishna Iyer Committee inter-alia recommended for the enactment of a comprehensive Legal Aid and Advice Act by Parliament and permitted making the scheme of legal aid flexible to suit the needs of each state. The committee also recommended for implementation of the suggestion in a phased manner.

4.4.4 SWARAN SINGH COMMITTEE AND ITS RECOMMENDATION (1975)

The Government of India appointed a committee in 1975 involving some members from the National Forum for Lawyers, under the chairmanship of Mr Swaran Singh, a former union minister. This committee made exhaustive

[153] *Ibid*

recommendations for amending the Constitution, which was incorporated by way of the 42nd Amendment to the Constitution. The Amendment, with its wider amplitude, also inserted legal aid in the Indian Constitution.[154]

4.4.5 JURIDICARE COMMITTEE REPORT (1977)

Another committee of two judges Justice P.N.Bhagwati and Justice Krishna Iyar was set up for providing adequate legal service programme in all states on a uniform basis. This committee in its final report popularly known as "Report on national Juridicare: Equal Justice- Social Justice" submitted in the year 1977 stressed upon the requirement for a new conception of the legal service program to be prepared in light of the prevailing socio-economic conditions in the country. It further states that the conventional legal service program, which is court or litigation oriented, cannot satisfy the particular requirements and problems of the poor in the country. In its report, the committee also included draft legislation for legal services in the name of National Legal Services Bill, 1977 and gave it the name of social Action Legislature. It has also recommended that the legal services organization should be an independent body which should be supervised by the judge of Supreme Court having presentations from the Supreme Court Bar Associations, together with the government, the parliament and the judiciary, deliberate organizations and social workers and it will be a multi-level arrangement for legal aid organizations. The report's content points out that it was in the addition of a report of 1973, which included a

[154] Dr. S .N. Dhyani, *Law Morality and Justice Indian Developments* 125 (Metropolitan Book Co. Ltd, New Delhi, 1' Ed.,1984)

comprehensive amendment, updating, re-evaluation, and addition.[155]

4.4.6 COMMITTEE FOR IMPLEMENTING LEGAL AID SCHEMES (CILAS)

In 1981, the Government of India appointed a Committee in the name and style of Committee for Implementing Legal Aid Schemes (CILAS). Justice P.N. Bhagwati headed this committee, the then Chief Justice of Supreme Court of India. Justice Bhagwati stated that because of "the socio-economic conditions" Prevailing in the country, a court-oriented or litigation-oriented program is wholly inadequate. He then enumerated the following tasks of the legal aid program.

i) Promotion of legal literacy and creation of legal awareness among the weaker sections of the community,

ii) Organization of legal aid camps by the State Legal Aid Boards for carrying legal services to the doorsteps of the people,

iii) Training of para-legal persons to provide support to the legal aid program,

iv) Setting up legal aid clinics in universities and law colleges to utilize the untapped resources of the student community in constructive channels for providing legal aid to the poor,

v) Introduction of the subject, 'law and poverty' in LL.B. curricula with the active support and co-operation of the Bar Council of India,

[155] Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 11 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

vi) Exposure of students to the socio-economic realities of Indian life and the use of law for the improvement of the lot of the common man and as "an instrument of socio-economic change" and

vii) Use of law for public interest litigation through class actions.

Thus the report concentrated more on the promotion of legal literacy, organization of legal aid camps to carry legal services to the doorsteps of people, training of Para-legal persons to support legal aid programs, establishing legal aid clinics in law colleges and universities, and bringing class actions by way of public interest litigation. Further, the chairman of CILAS accepted the significance of the educational process in its task by observing: "Educational efforts must become a significant factor contributing to the social development of the poor."[156]

4.5 LOK ADALAT AND ITS STATUTORY RECOGNITION: LEGAL SERVICES AUTHORITY ACT, 1987

A new chapter has been added to the justice dispensation system of the country soon after the introduction of Lok and succeeded in implementing the new forum for the litigants for cordial settlement of their disputes and access to justice was made less formal and straightforward. At the same time, the court expostulates the Center and the State Government to present a complete and comprehensive legal service program in the country.[157]

[156] Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 19 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

[157] *Id* at 53

The Legal Services Authorities Act 1987 was enacted to provide a statutory foundation for legal aid programs in a similar format all across the country. On November 9, 1995, the Act was eventually implemented following by several amendments included therein by Amendment Act of 1994. Provisions under the Act deal with matters like legal aid, legal literacy and legal awareness besides holding the Lok Adalats. Provisions related to Lok Adalats and Permanent Lok Adalats have been given under section 19 to 22 (E) Chapter VI & VI A of the Act. Lok Adalats usually are presided over by retired or sitting judicial officers and other persons such as social workers etcetera, as per section 19 of the Act. Cases referred to Lok Adalats either from the traditional courts by agreement of parties or directly under the order of presiding officer where he deems it proper. The cases, which have so far been dealt with by these Lok Adalats are cases involving matrimonial dispute, rent matters, motor accident claim cases, land acquisition matters, bank recovery cases, criminal compoundable cases etcetera. The award of Lok Adalat has the force of decree of a court as per section 21 of the Act because it brings the litigation to an end and no appeal against the award of Lok Adalat lies. The party, which has succeeded, can also even get back the court fee amount it had paid initially while going to traditional while going to the traditional court. No court fee is to be paid for getting the matter decided from Lok Adalat, and also strict rules of evidence do not apply. Ever since the Act has come in to force, the Lok Adalat all over India has disposed of off millions of cases. Access to justice in speedy, less expensive and expeditious manner has achieved statutory recognition. Lok Adalat

experiment has met with astounding success in the country and has gone far ahead in providing speedy and inexpensive justice to the litigants. Besides providing quick justice to the litigants, Lok Adalats are playing a pivotal role in reducing the burden from the courts.[158]

In the year 2002 legislature amended the Legal Services Authorities Act, 1987 by interpolating a utterly new Chapter VI A for the establishment of a permanent Lok Adalat to provides for the mechanism for conciliation and settlement of subject concerning to "public utility services" at the pre-litigative stage.[159] The setting up of Permanent and Continuous Lok Adalats in all districts of the country will go a long way in making access to the justice possible. Providing to the litigants a forum where they may sit across the table and sort out their dispute by way of conciliation in the presence of the presiding officer of the Lok Adalat who would be guiding them on technical legal aspects of the controversies. The amendment introduced that if both the parties went to Lok Adalat either directly or through a reference from the traditional court, a party might not be allowed to opt out if it appears to the presiding officer that the effort to opt out is not bona fide but a view to prolong litigation.

Act also provides under Chapter II and III of Legal Services Authorities Act, 1987, for the constitution of the National Legal Service Authority, State Legal Services Authority, District Legal Services Authority, Legal Services Committee of Supreme Court, Legal Services Committee of High Courts, and

[158] Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 53 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

[159] *Id at* 19.

Taluk Legal Services Committee, can organizes Lok-Adalats according to such places and interludes as it may consider fit.[160]

Some of the benefits that litigants derive by taking their disputes to such Lok Adalats are:

a) Generally, there is no court expense and if the cost of the court is already there if the dispute is resolved in the Lok Adalat, it will be refunded;
b) The quintessential feature of Lok Adalats are the procedural flexibility and speedy trials of dispute, and there is no strict applicability of procedural laws like the Code of Civil Procedure, 1860 and Evidence Act, 1872 while evaluating the claim of Lok Adalat;
c) The litigant will be getting speedy disposal in the process of Lok Adalat;
d) Disputes can be referenced immediately to the Lok Adalat rather of coming first to the conventional court;
e) Parties are free to voluntarily compromise or settle through the process of "give and take";
f) The award is binding on the parties to the dispute, which is delivered by the Lok Adalat;
g) No appeal can be filed in opposition to the Lok Adalats order. The reason for this is that unlike a regular court whose final decision

[160] *Ibid*

based on the appreciation of evidence, in a Lok Adalat, the decision is mutual arrived at by both parties to the dispute. As the decision in the Lok Adalat is not imposed upon by a third agency, a case for appeal will not arise and is thus not allowed.

Given the above facilities provided by the Act, Lok Adalats are blessings to the litigants and litigants can get their dispute settled quickly, amicably and free of cost.[161]

4.6 LOK ADALAT: A TOOL TO REDUCE LITIGATION

The government concerning righteousness is the fundamental task of the judiciary being one of the quintessential organs of the state. India has a unified judicial system along with a hierarchy of courts in a pyramidal structure, in which the Supreme Court stands just like a fence on the qui vive at the apex level, below which are High Courts and subordinate courts there exists a vast network of subordinate courts. The courts within India have flourished as an essential institution in interpreting the Constitution and thereby assuring justice to the common man. The principle concerning equal and social justice, which is indeed enshrined in the Constitution of India and in particular, of the directive principles of state policy's goal in removing social or pecuniary anomalies out of the conventional set-up and the credit for countenancing this principle, must be given to the judiciary.[162] Nevertheless, in recent time, the community world over

[161] P.T. Thomas v. Thomas Job AIR 2005 SC 3575 as cited in Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 54 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

[162] Dr. Vijaykumar Shrikrushna Chowbe, Priya S. Dhanokar, "Lok Adalat – A Strategic Forum For Speedy And Equitable Justice" *Available* at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1766237 accessed on 20/06/2017 at 21:45.

has turned out to be a lot more conscious respecting their rights. They frequently resort to redress via courts of law by means of litigation, when their rights have encroached. Because of the complexities of the present way of life, disputants want matters to be decided as fast as feasible. This resulted in "litigation explosion" across various Courts in the country. Especially, civil litigation in India is well known for docket explosion simply by adjournments, revision, appeals, cross-appeals etcetera. [163] Lok Adalat originated from the particular failure of the legal and judicial program to give powerful, quick and cheap justice along with the litigant at the center, particularly the immense arrears of cases, which usually took an extremely long period for disposal. Lok Adalats, in their conciliatory role guided by the principles of natural justice. Researchers discussed diverse aspects of Lok Adalats like organization, jurisdiction, cognizance, procedure, award and finality of these awards of Lok Adalats and Permanent Lok Adalats in the light of Legal Service Authority Act 1987.

4.7 FUNCTIONING OF LOK ADALAT IN COMPARISON TO THE CONVENTIONAL JUDICIAL SYSTEM

The judicial system in India is procrastinatory and dilatory. Sometimes in the court hearing of cases is adjourned without any cause or sometimes on insufficient grounds. It would not be an exaggeration if it said that the provisions of the sections of civil and criminal procedure code are not appropriately

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[163] *Ibid*

applied.[164] In comparison to the conventional judicial system fundamentally, Lok Adalats are less formalized and less expensive than the courts, and Lok Adalats has many advantages over the courts. The litigants have the additional significant range for participation amid the exceptional satisfactory resolution of their disputes. If it requires Lok Adalats can execute practice concurrently as conciliators, mediators, arbitrators or adjudicators. As such, Lok Adalats performs many distinct roles such as preventing conflicts keeping clashes from rotting, negotiating, bargaining, compromising and resolving disputes effectively and proficiently based on the circumstantial condition of the individual cases. Lok Adalats can be viewed as a current articulation of this pattern in legal populism. The advantages of customary debate determination that has proceeded in India since vedic period, which represented after autonomy and follows its underlying foundations back to the Britisher's endeavors to build up local panchayats that would handle the small disputes related to the individual matter. Initially, Lok Adalats were held just a few times each year on Sundays in towns all through the Districts of India, and the subject matter jurisdiction was understandably boundless.[165] Lok Adalats dealt with dispute emerging from the tehsil the subdivision of an area in which the town has located. This tradition still has been continued. Nowadays, the disputes related to civil and criminal in nature decided by the Lok Adalats frequently and almost daily. However, the Lok Adalats are not able to decide any issue relevant to an offence not compoundable

[164] Sukumar Ray, *Alternate Dispute Resolution along with Gram Nyayalayas Act,* ,87, (Eastern Law House New Delhi 2012)

[165] Legal Services Authorities Act, 1987, Sec 19(3).

under any law even if the parties involved therein agree to settle the same.[166]The advantages of Lok Adalats include no court fee, and if a court fee has paid in the court, it will be refunded when the disputed settled in a Lok Adalat. There is undoubtedly direct consultation with a judge without procedural obstacles; an extremely abbreviated listening to schedule and the final decision by the Lok Adalat is binding. The disputants incline toward Lok Adalat, as trade-off position regularly comes to, and the issue of judicial stagnation immediately calls for disentangling methods and expanding their adaptability.

There is a pattern to have Lok Adalats to organised, including purchaser commissions for lacks in benefit, gave by temporary workers, specialists and insurance agencies, to a dedicated motor vehicle accident and general public utility service disputes.[167]

The prisons also have been hosting Lok Adalats, from time to time resulting in the freeing of lots of prisoners or under-trials.[168] It is entirely up to the conciliators at the Lok Adalats whether to acknowledge a petition or dismiss it. Since 2002, Lok Adalats have been considered a productive and profitable tool of alternative dispute resolution mechanism in India. It is well-recognized successful and efficient due to its developing characteristics and cost-effective style. These types of panels have referred to as a "revolutionary evolution of the

[166] In particular, cases may be referred for consideration by Lok Adalats by: (1) consent of both parties to the dispute; (2) consent of one of the parties, who then makes an application to refer the matter to an LA; (3) if the Court is satisfied that the matter is appropriate for an LA; and (4) if a compromise settlement is reached, then the matter is returned to the concerned Court for disposal in accordance with the law. Such awards are deemed as decrees of a Civil Court, and are final and binding.

[167] S. Arunajatesan, Consumer commission holds first Lok Adalat, THE HINDU , Jan. 29, 2006

[168] 35 prisoners ordered released, THE HINDU , May 13, 2007.

resolution of disputes".[169] As a result, Lok Adalats have now extensively accepted and referred to as an extremely effective method of ADR mechanism for conciliating negotiating and settling disputes.[170]

4.8 ORGANISATIONS AND WORKING OF LOK ADALAT

The organizational aspect of an institution like Lok Adalat is an important one to witness success or failure of its functioning.it is an arrangement of the people of various categories as assembled at a place in a given time frame, endeavoring to an amicable resolution of disputes. Whatever great ideas and goals of the institutions set, they remain unaccomplished unless there is an organisation appropriate to the goals. An attempt has been made keeping this in mind, to discuss the organizational aspect and working of Lok Adalat system. The Legal Service Authority Act 1987 is the outcome, and the rule about Lok Adalat includes as a part of it. The rule of Lok Adalats elaborately described in chapter six from section 19 to 22.

ORGANISATION OF LOK ADALATS[171]-

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, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.*

[169] Bhatt, Jitendra N. (Judge, High Court of Gujarat, and Executive Chairperson, Gujarat State Legal Services Authority, Ahmedabad), A Round Table Justice through Lok Adalat (People's Court): AVibrant ADR in India, 1 Supreme Court Cases (Journal) 11(2002)

[170] Under Section 89 of the Code, Courts have been empowered to explore the possibilities of settlement of disputes through Lok Adalats, arbitration and conciliation

[171] Section 19 of legal service authority Act 1987

2) Every Lok Adalat organised 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, organising such Lok Adalat.

3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised:

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

COGNIZANCE OF CASES BY LOK ADALATS[172]-

1) Where in any case referred to in clause(i) of sub-section (5) of section 19,-

(i) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriation to be taken cognizance of by the Lok Adalat, the Court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause(b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

2) Notwithstanding anything contained in any cither law for the time being in force, the Authority or Committee organising the Lok

[172] Section 20 of legal service authority Act 1987

Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

3) *Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.*
4) *Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.*
5) *Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub- section (1) for disposal in accordance with law.*
6) *Where no award is made by the Lok Adalat on the ground that no*

compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.

7) *Where the record of the case if returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section(1).*

AWARD OF LOK ADALAT[173]-

1) *Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).*

2) *Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.*

POWERS OF [LOK ADALAT OR PERMANENT LOK ADALAT][174]

[173] Section 21 of legal service authority Act 1987

1) The [Lok Adalat or Permanent Lok Adalat] shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

a) the summoning and enforcing the attendance of any witness and examining him on oath;

b) the discovery and production of any document;

c) the reception of evidence on affidavits;

d) the requisitioning of any public record or document or copy of such record or document from any court or office; and

e) such other matters as may be prescribed.

2) Without prejudice to the generality of the powers contained in sub-section(1) every [Lok Adalat or Permanent Lok Adalat] shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

3) All proceedings before a 2[Lok Adalat or Permanent Lok Adalat] shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every[Lok Adalat or Permanent Lok Adalat] shall be deemed to be a Civil Court for the purpose of section195 and Chapter

[174] Section 22 of legal service authority Act 1987(Subs. by Act 37 of 2002, s. 3, for "Lok Adalat" (w.e.f. 11-6- 2002).

XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)

The organizational part of a foundation like Lok Adalat is an imperative one in order to access its functioning. Whatever high the beliefs and objectives of the establishment set; they remain unaccomplished unless there is a proper organization which are appropriate to such goals. The Lok Adalats are organised by the concerned Legal Services Committees or Authorities as the case may be at such interim intervals and places and for such areas, as it deems fit. These courts are usually presided by retired or sitting judges and other persons as specified by that Legal Services Committee or Authority. Cases referred to the Lok Adalats either from traditional courts by agreement of parties or directly under the order of the presiding officer where he deems it proper. The advantage of Lok Adalat is that lawyers need not be engaged and the cases mostly decided on a mutual agreement.[175] For the most part, the date and place of arranging Lok Adalats are settled about a month ahead of time. Information for the same given wide publicity through the press (both electronic and print media), posters, banners, pamphlets etcetera.

In case of *Dr. Smt. Shashi Prateek v. Charan Singh Verma and Another*[176] Court while illuminating the farthest point of the purview of the Lok-Adalat remarked, The court handling the case may resolve a question for the settlement of the Lok Adalat, where either party agrees to such reference or where the court, or the Authority, sort the Lok Adalat, On the use of either party to dispute, in

[175] Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 53 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

[176] Dr. Smt. Shashi Prateek v. Charan Singh Verma and Another AIR 2009 ALLAHABAD 109 Para13, 16 & 17.

order to affect the fair opportunity for the parties to hear, or where the Court itself mentioned that issue like this should be decided by the Lok Adalat, in such an event they may allot any matter before the Lok Adalat. scilicet, the power of the court before which any dispute is pending or any authority to conduct the Lok Adalat, encompassed by provisions stated under section 19 (5) and section 20 (1) and (2) of the Legal Services Authorities Act. These prerequisites are the mandatory condition for making a substantial suggestion before Lok Adalat established under section 19 of the Act. Accordingly, until these conditions adhered, Lok Adalat established under section 19(1) does not have jurisdiction to take notice of any matter, even if it is referred by a court or authority to conduct a Lok Adalat.[177]

Furthermore, under section 19, 20 (3), the Lok Adalat has the right to settle the matter referred to it exclusively on the basis of compromise or settlement between the parties to the dispute. If no compromise could be reached between the parties to the dispute, no award can be made by the Lok Adalat, and the dispute must be returned to the Court, which referred the dispute to the Lok Adalat under section 20 (5) of the Act. Hence, while determining the application transferred by the petitioner, the Lok Adalat was expected to investigate the problem as to whether or not the parties to the dispute had entered into a compromiseIf it is found that they did not get in to compromise as affirmed by the petitioner, he/she was not present before the Lok Adalat nor signed the compromise agreement which was claimed to have been entered into by the

[177] *Ibid*.

parties to the dispute before the Lok Adalat, In that case the Lok Adalat could not deliver an imposed award. Hence, it was essential for the Lok Adalat to call off the award and revert the matter to the court from which it was referred, But the Lok Adalat has not done so and declined the petitioner's above-mentioned application as it is not maintainable even on merits, such a view of Lok Adalat is contrary to law.[178]

The Lok Adalats has no jurisdiction in respect of any matter concerning an offence, which is not compoundable under any law. In short, it is inappropriate for the Lok Adalat to enter into or compromise relating to a matter in relation to an offence punishable under sections 326,397,302,307 of the Indian Penal Code. The Lok Adalat is not authorized to issue directions to an inspecting officer in a particular manner to file a report on the basis that the complaint initiated on misinterpretation or mistake of fact.[179] Lok Adalats do not have any adjudicatory functions, and they are not intended to pressurize people and induce the pressure on public officials. Lok Adalat holds no jurisdiction for award less than the contractual rate of interest affecting the interest of the creditor as well as the interest of the society by adopting the approach of "flexible and pragmatism". It is keeping their eye revetted on the disposal figures of the cases and on the encomiums to be received in print media and from concern interest groups. Lok Adalats have no adjudicatory or judicial functions. Its role is solely associated

[178] *Ibid*.

[179] State Of Kerala v Eruakulam District Legal Service Authority AIR 2008 Ker 70 as cited in Sukumar Ray *Alternate Dispute Resolution along with Gram Nyayalayas Act,* ,90, (Eastern Law House New Delhi 2012)

with the conciliation.[180] A Lok Adalat at its instance sets the reference on the basis of a compromise or settlement of a dispute among the parties to the dispute and affixes its confirmation by producing an award with reference to the compromise or settlement. Meanwhile, when the Lok Adalat is not able to settle compromise, no award will be made and the matter will be returned to the court of law from where it was the received, for disposal according to the law. No Lok Adalat has the power to listen to the parties and decide cases like the courts. It discusses that the subject matter with the parties to the dispute and convinces them to reach at a reasonable settlement.[181]

Under section 20 of the Act, when the matter is filed and presented before the court of law, shall refer the matter to the Lok Adalat for settlement of the dispute, if the parties agree to resolve the dispute before the forum. Still, when particularly one party applies the court, regarding the matter in the Lok Adalat for settlement of the dispute, even in a situation like that, the court shall refer the dispute to the Lok Adalat for its settlement. However, in this case, the further requirement is that the court should be satisfied at first that there is a possibility of such a settlement. So far as section 20 (1) (ii) authorizes the court to refer the matter to the Lok Adalat itself if it is convinced that the matter is proper to take cognizance of by the Lok Adalat.[182]

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[180] Union of India Bhavnagar v M/s Narendra Plastics Bhavnagar AIR 1992 Guj 67.

[181] State of Punjab v Jalour Singh AIR 2008 SC 1209

[182] Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 53 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

The Madras High Court in the case of *M.I. Ibrahim Kutty v Indian Overseas Bank*[183] To give effect to the objective of the Act, the following guidelines were issued and to execute the awards given by the Lok Adalats in its letter and spirit-

1) Whenever the case is referenced to the Lok Adalat, the order sheet should explicitly determine the adherence with the provision of section 20, i.e. the parties have been given a reasonable opportunity of being heard in mentioning the case to the Lok Adalat;
2) When the court referenced the case to the Lok Adalat, it should be precisely documented that the case was referenced to the Lok Adalat under section 20 (1) of the Legal Services Authority Act. If it is feasible (matters different from motor accident claim cases), the format may be kept in the court of law for the gratification of the court and also that the parties agree to refer the case to the Lok Adalat and before-mentioned format confirmed and signed by the parties to the dispute as well as by the presiding officer;
3) If the case is resolved, on receipt of the documents, the presiding officer must record the statement in the document sheet and also pronounce that the lawsuit has ordered as per the award passed by the Lok Adalat;

[183] AIR 2005 Mad 335 as cited in Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Ac* 54(Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

4) While the matter was not resolved by the Lok Adalat, the records of the case revert back to the court of law, under section 20(5) of the Act, for settlement of the dispute in as per the law, the same shall be documented by the court in order sheets, notes etcetera, that not resolved by proceeding to deal with the case which was arrived before this reference.[184]

When the Court references the case to the Lok Adalat, the Lok Adalat is supposed to examine the case whether or not all the parties to the suit are getting into compromising or settlement. Since if every party to the dispute are entering into the settlement, because if all parties of the dispute does not get into compromise, in that case, no award can be made by the Lok Adalat on the basis of any compromise or settlement got in to between only some of the parties concerned. The parties mean all parties concerned. Lok Adalat must see that all parties are present before it. If one party have entered in to compromise or settlement and others not intending for compromise or settlement, consequently, the Lok Adalat has no jurisdiction to pass the decree since the dispute is not settled. In that situation, Lok Adalat cannot pass any award as per section 20(5)[185] of the Act. This section indicates that the jurisdiction of a Lok Adalat is

[184] *Ibid*.

[185] Section 20 (5)- Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub- section (1) for disposal in accordance with law.

to pass the award based on settlement or compromise arrived between all the parties to the dispute.[186]

The Act neither favors nor requires any adjudicatory judicial decision, but the non-adjudicatory judicial decision is laid down by the parties to the dispute in the Lok Adalat based on the supervision and assistance received from the Lok Adalat. The award passed by the Lok Adalat does not determine the judgment or opinion that reached by any judgment making process. The passing the award is simply an official action of including the terms of settlement accepted by parties to the dispute in front of the Lok Adalat, as an executable order under the signature and seal of the Lok Adalats. Where there is no compromise or settlement confirmed by the parties to the dispute and the order of the Lok Adalat does not refer to any settlement, but directs the defendant to either agree to the order to pay, or to knock the door of the High Court to dispose of the appeal on merits If it is not consentient upon, then it is not an award of the Lok Adalat. Although in section 21 (2)[187] It is described that an award passed by the Lok Adalat in the context of a settlement reached among the parties, it is becomes conclusive and obligatory the parties settle to the dispute and becomes executable like a decree of a civil court. No appeal will lie against the award of Lok Adalat in any court of law. However, If either party wishes to challenge the award on the basis of settlement, it can only be accomplished by filing a writ petition under

[186] Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 54(Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

[187] Section 21 (2)Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

Articles 226 and 227 of the Indian Constitution on limited grounds.[188] The High Court might intervene with the award made by the Lok Adalat in the following:

(i) Where Lok Adalat has passed an arbitrary and unreasonable order.[189]

(ii) The court can proceed into the legitimacy of the order, which is passed by the Lok Adalat if they are against the objective of the Legal Service Authority Act 1987.[190]

(iii) Wherever the Lok Adalat decided the matter without jurisdiction and in violation of principles of justice, equity and fair play.

The award passed by the Lok Adalat is considered to be for a decree of the civil court. Magnetize of a formal decree by the court where originally the case was filled is not essential. The award passed by Lok Adalat cannot be revised or changed by any other Lok Adalat or any court of law.[191] In case of *Sreemanthula Kesavchari v Yayyavuru Vallamma*[192] Hon'ble court held that the production of a succession certificate is obligatory and the award of the Lok Adalat cannot be a replacement for succession.

[188] Bhargavi Constructions v Kothahapu Muthyam Reddy decided on 2017(Civil appeal no. 11345 of 2016 A.P.)

[189] M/s Paras Holidays Pvt. Ltd. v State Of Haryana AIR 2009 P&H 9.

[190] Dinesh Kumar v Balbir Singh AIR 2008 HP 59.

[191] Divisinal Manager United India Insurance Co.Ltd v Muktamani Prem AIR NOC 2616 Ori.

[192] Sreemanthula Kesavchari v Yayyavuru Vallamma AIR 2008 AP

4.9 JURISDICTION OF LOK ADALATS

Where a reference has been made to a Lok Adalat, it becomes charged with the responsibility of proceeding to dispose of the case and arrive at a compromise or settlement between the parties. It has to do it with utmost expedition. In this respect, the Lok Adalat has to proceed taking guidance from principles of justice, equity, fair play and other legal principles.[193]

Lok Adalats have no adjudicatory or judicial functions. Their functions are mainly relating to the conciliation. Lok Adalats are judicial bodies set up for the purpose of facilitating peaceful resolution of disputes between the litigating parties. They have the powers of an ordinary civil court, like summoning witnesses and enforcing their attendance and examining them on oath; discovery and production of any documents; the reception of evidence on affidavits etc. The Lok Adalat can call for any public documents from any public office or courts.[194] The Lok Adalats have been given the power to specify their procedure for determination of disputes coming before them.[195] Lok Adalat is adversarial inasmuch as the primary focus is on right/wrong and compensation, although there is a secondary element of collaboration that is involved in the limited negotiations that take place. Communications are directed to the Lok Adalat judge, with very limited, if any, direct communication between parties. Due to the time constraints of Lok Adalat and the judge's role as an authority figure, there can be, at times, an element of coercion or perceived pressure to settle. The

[193] Section 3(1) of the Legal Services Authorities Act, 1987.

[194] *Id* at section 22 (1)

[195] *Ibid*.

parties keep the right to agree or disagree to a settlement proposed by panelists. However, in practice, Lok Adalat judges/panelists exert considerable influence over the decision to settle. Lok Adalat is essentially an evaluation process in which a panel of neutral lawyers, judges, and prominent citizens proposes a settlement after hearing the facts and claims involved a dispute. Limited negotiations may take place during Lok Adalat. There is rarely any direct communication between the parties or any extensive give and take regarding their settlement offers.[196]

A bench comprising Justice R.V. Raveendran and Justice D.K. Jain said, "Thousands of Lok Adalats are held all over the country every year. Many members of Lok Adalats are not judicially trained. There is no fixed procedure for the Lok Adalats and each Adalat adopts its own procedure. Different formats are used by different Lok Adalats when they settle the matters and make awards."[197] The Supreme Court of India in this case directed the National Legal Services Authority to formulate uniform guidelines for effective functioning of Lok Adalats. Accordingly, the National Legal Services Authority (Lok Adalat) Regulations, 2009 were made and notified in the Gazette of India on 20th October, 2009. This has brought a uniform pattern for organizing and conducting of Lok Adalats in the country.

No Lok Adalat has the power to 'hear' parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to

[196] Gregg Relyea, Niranjan J. Bhatt, Comparing Mediation And Lok Adalat: Toward An Integrated Approach To Dispute Resolution In India, available at : http://www.mediate.com/ articles/ relyeaGbhatt n.1.cfm?nl=215, (accessed on 17/11/2017 at 18:19)

[197] *B.P. Moideen Sevamandir & Anr. v. A.M. Kutty Hassan*, (2009) 2 SCC 198

arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and good conscience. When the Legal Services Authorities Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non- adjudicatory determination based on a compromise and settlement arrived at by the parties, with guidance and assistance from the Lok Adalat. The award of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat in the form of an executable order under the signature and seal of the Lok Adalat.

Lok Adalats have twofold purposes to fulfill first of all, to grant justice and the other, to do so in a speedy and economical process. Thus, Lok Adalats are allowed to follow a rationalized procedure. It is a recognized opinion of law that technical strictness has to bend before substantive justice. However, at the same time, those technical safeguards that are meant to ensure a fair trial cannot be done away with in the name of suitability. The duty of the Lok Adalats is to achieve a "balancing act" between the opposing requirements of technical safeguards and expediency.

The most significant feature to be considered while deciding the cases at the Lok Adalat is the consent of both the parties. It can not be made obligatory on any party that the matter has to be decided by the Lok Adalat. In several instances, the Supreme Court has held that if there was no consent the award of

the Lok Adalat is not executable and also if the parties fail to agree to get the dispute resolved through Lok Adalat, the regular litigation process remains open for the contesting parties.

Settlement at the Lok Adalat is by mutual understanding. A Lok Adalat determines a reference on the basis of a compromise or settlement or settlement between the parties at its instance and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise no award is made and the case record is returned to the court from which the reference was received for disposal in accordance with law.[198] And if no award is made on the ground that no compromise or settlement could be arrived at between the parties in pre-litigative matters, the Lok Adalat shall advice the parties to seek remedy in a court.[199] The court, to which the matter goes back, has to dispose it off taking it from the stage which it had reached at the time when it was referred to the Lok Adalat.[200]

In his inaugural address at the second annual meet of the State Legal Services Authorities, 1999, the then Hon'ble Chief Justice Dr A.S. Anand discussing his views stated:

> "*There will be no harm if Legal Services Authorities Act is suitably amended to provide that in case, in a matter before it, the Judges of the Lok Adalats are satisfied that one of the parties is unreasonably opposing a reasonable settlement and has no valid defense whatsoever against the*

[198] Section 20 (5) of the Legal Services Authorities Act, 1987.

[199] Section 20 (6) of the Legal Services Authorities Act, 1987.

[200] Section 20 (7) of the Legal Services Authorities Act, 1987.

claim of the opposite party, they may pass an award on the basis of the materials before them without the consent of one or more parties. It may also be provided that against such awards, there would be one appeal to the court to which the appeal would have gone if the matter had been decided by a court. This course, I think, would give relief to a very large number of litigants coming to Lok Adalats at pre-litigative stage as well as in pending matters. "[201]

4.10 AWARD OF LOK ADALAT AND PERMANENT LOK ADALAT

Section 21 of the Legal Service Authority Act 1987 talks about the Award of Lok Adalat and section 22E of this very Act about the Award of Permanent Lok Adalats. The Lok Adalats proceeds and disposes of the case and reach at a compromise or settlement by following the principles of natural justice. Eventually when an award passed by the Lok Adalat, every such award would be considered the judgment of the civil court or, as the case may be is final. The award of the Lok Adalat is formally regarded as a decree of the civil court; consequently, the courts have all the powers regarding it as it related to the decree passed by it. The award conferred by the Lok Adalats is the judgment of the court, although entered in a suitable mode of conciliation rather than the process of debates and arguments in court but the effect is the same.[202] When a

[201] AIR 2000 M.P. 301.

[202] P.T.Thomos v Thomas Job, AIR 2005 SC 3575 as cited in Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 66 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

judgment and order passed by the civil court and reference to Lok Adalat was made in the execution process, there is no quandary that the award of the Lok Adalat being a decree of the civil court, which already had the effect of interchanging the decree, passed by the civil court. When a matter is settled between the parties before the Lok Adalat after the matter was referred by the executing courts to the Lok Adalat, the award passed therein would be an award which is executable as an order passed by the executing court based on the decree already passed by the civil court. For that purpose, the award shall be deemed to be a decree. It only means that it can be enforced as a decree. Thus a compromise arrived at between the parties in an execution petition before the Lok Adalat is not a decree, though it shall be deemed to be a decree for a particular purpose.[203]

As provided in section 21[204] of the Act the award of Lok Adalat will be considered to be a decree of a civil court or, as the situation may be, an order and judgment of any other court. The deeming provision in section 21 does not mean that the award given by the Lok Adalat will be a decree passed in substitution of decree already passed in the suit. It is not necessary that a matter is coming up for consideration before the Lok Adalat should be a case referenced by the court of law. Any court, which may also include a civil court, could refer the matter to the Lok Adalat. Section 19(5) uses expression "Court", it does not say civil court.

[203] Ambika Rajanv Basheera Beeri, AIR 2009 Ker 151 as cited in Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 66 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

[204] Section 21 1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870). 2)Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award

Definition of "Court" makes a position clear. The award of the Lok Adalat to be considered as the decree of the civil court, should be referred by the court to the Lok Adalat. In relation to cases referred to by other courts, section 21 stated that it should be considered as "an order of any other court".[205]

It is mandatory that the parties shall sign every award of Lok Adalat to the dispute and the jury forming the Lok Adalat, as per regulation 33(1) of Legal Service Authority Regulations, 1988. If one party to the dispute only signs the award, the award will be illegal.[206]

When a reference made from the civil court or criminal to the Lok Adalat, that Authority is exercising power enjoyed by the reference court in passing an award. The Lok Adalat constituted under the Legal Service Authority Act on a case referred from the court, civil or criminal can only pass an order, which the reference court is competent to pass in the matter. A criminal court cannot pass a decree. When a criminal case referred to the Lok Adalat, and it settled there, the passed award has to be treated only as an order of that criminal court and cannot be executed as the decree of a civil court. An award passed by the Lok Adalat on the reference of a criminal case by the criminal court, as already indicated can only be construed as an order by the criminal court, and it is not a decree passed by a civil court. However, an award passed on an independent application

[205] Ambika Rajanv Basheera Beeri, AIR 2009 Ker 151 as cited in Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 66 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

[206]Shreedharan T. v Sub inspector of Police, Balussery Police Station, AIR 2009 Mad 180. as cited in Sangeeta Dhingra Sehgal, *Commentary on The Legal Service Authority Act* 67 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012).

irrespective of the reference of the complaint from the criminal court could have been executed as a decree as if the civil court had passed the same.[207]

An appeal against the award of Lok Adalat is not maintainable. In other words Sections 21 of the Act forbids the appeal toward the award of the Lok Adalat if the authorities have legitimately passed the award. The object of the legislation obstructing the appeal against the award of the Lok Adalat is to finalize the award to avoid further undesirable litigation. Though, when the award is illegal because of the parties to the dispute, who get into a compromise, could not enter into it and they have entered into compromise by playing a fraud. In such circumstances, that the award could be said to be a void and admittedly, the compromise has entered before the Lok Adalat in accordance with the provisions of Civil Procedure Code and when the order was void in that circumstances, an appeal could be maintainable under section 96 of the Civil Procedure Code.[208]

In case of Debashish Jana v Rajendra Kumar Das[209] Hon'ble court observed that wherever the compromises and settlement wrote by the court and it was sent to the Lok Adalat for taking decree, it cannot be said that the matter which decided by the Lok Adalat pursued by a decree.

[207] K.N. Govindan Kutty Menon v C.D. Shaji, AIR 2010 Ker 97

[208] Mahila Banwari Baiv Kashmir singh, AIR 2009 MP 232.

[209] Debashish Jana v Rajendra Kumar Das AIR 2008 Ori. 49.

Now moving on to the Permanent Lok Adalat, in the case of *Abdul Hassan v Delhi Vidhyut Board*[210] High Court of Delhi clarified the necessity for Permanent Lok Adalat in the under-mentioned words:

There are a large number of cases pending in various courts, and the staggering pendency is disturbing. It must be noted that in this country there are only 10.5 judges per million populations. The situation intensified by the scarcity of sufficient amounts of support staff and facilities. Under the existing situation, there is not only an immediate necessity of extending the number of courts commensurate with the growing population and ever is increasing litigation, there is additionally, a predominant requirement to appoint Permanent Lok Adalat where the Specialization of retired judges and judicial officers and other suitable fit persons could be used in the determination of cases by conciliation. Once again, the Hon'ble Court remarked that it is in the well being of the citizen of India that Permanent Lok Adalats are established and held continuously so that the objective for which the Act was passed can be attained. It seems that until permanent and continuous Lok Adalats are established, it might not be possible to decrease pendency in the courts all over India. Apart from the solitude of the parties held for a day or two before Lok Adalat, it may not be sufficient for compromise or settlement. The need of the hour to establish the Lok Adalat on a Permanent and continuous basis. Whatever we do now will shape our future.

Talking about the award passed by the Permanent Lok Adalat, a close look at section 22E Act shows that the award passed by a Lok Adalat is

[210] AIR 1999 Del 88

conclusive, irrevocable and obligatory on all parties to the dispute, and the persons claiming under it, and cannot be called in question.[211]

AWARD OF PERMANENT LOK ADALAT TO BE FINAL[212]-

1) *Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.*
2) *Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.*
3) *The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.*
4) *Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.*
5) *The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.*

Award of Permanent Lok Adalat is decisive and compulsory on all the parties to the dispute. It would be deemed to be a decree of the civil court like

[211] Sumer Singh v Shaukat Hussain, AIR 2008 Raj 107.

[212] Section 22 E of legal service authority Act 1987

Lok Adalats. Power of the civil court to question any award passed by the Permanent Lok Adalat is prohibited. It possesses jurisdiction and power to transfer any award to a civil court to and it is mandatory for the civil court to execute the order as if it were a decree by the court. The award passed by the permanent Lok Adalat is executable as a decree of the civil court. There will be no appeal against such award.[213]Where the award passed by Permanent Lok Adalat based on compromise, duly signed by the counsel for the claimant alternatively, counsel for the opposite party, such award is valid and binding. It cannot be challenged on the ground that before entering into compromise, the counsel did not seek instructions from the client.[214]

4.11 AWARD OF LOK ADALAT AND JUDICIAL REVIEW

The authority of judicial review over legislative action is an indispensable characteristic of the Constitution of India; it is also an essential component of the fundamental structure of the Constitution. The authority implicit in the High Court under Article 227 of the Indian Constitution, to execute the judicial supervision above the judgments of all subordinate courts and tribunals within their jurisdiction is also a part of the fundamental structure of the Constitution and cannot be overcome even by amending the

[213] United India Insurance v Ajay Sinha, AIR 2008 SC 2398.

[214] Sumer Singh v Shaukat Hussain, AIR 2008 Raj 107.

constitution.[215] But in *Shashi Prateek v Charan Singh Verma*[216] the High Court of Allahabad took contrary view. According to High Court of Allahabad:

> *"Although the provisions of the Act are intended to make the award of Lok Adalat arrived at on the basis of compromise or settlement between the parties to dispute as final and the remedies of appeal, review and revision in contrary the award of Lok Adalat are not feasible under law, but being a tribunal of unique character, The remedy for withdrawal of an award passed by a Lok Adalat on the basis of deception, cheating, misrepresentation or mistake of fact cannot be considered prohibited under the law, as the power to withdraw its order on the said ground is vested in every court or tribunal or statutory functionary. Likewise, the awards made by the Lok Adalat established or created under the Act cannot be immunized from judicial review as this court has sufficient power of superintendence over the decision of all courts or tribunals under Article 227 of the Constitution, ubiquitously the regions in relation to which it exerts jurisdiction, consequently, there is no skepticism in passing that order given by the Lok Adalats established under the Act inside the territorial boundaries of the court, which are subject to judicial review on the grounds procurable under Article 226 & 227 of the Constitution of India, otherwise, the afflicted party to the dispute will be left remediless."*

[215] L.Chandra Kumar v Union of India AIR 1997 SC 1125.

[216] AIR 2009 All 109.

As far as the researcher's view is concerned, the law laid down by the High Court of Allahabad is a correct approach. Law made for the benefit of society. When a party obtained an award by practicing fraud upon his adversary upon the Lok Adalat what will happen in this case? Is the aggrieved party would be remediless? The scope of judicial review is very limited. However, when Lok Adalat passed the award due to fraud playing upon the petitioner or when the Lok Adalat passed the award out of the mistake, the scope of review is open. The otherwise unscrupulous litigious public will be encouraged, and real consumer of justice will suffer solitude.[217]

In the matter of *Board of Trustees of the Port of Vishakhapatnam v Presiding officer, Lok Adalat cum Secretary*,[218] the Andhra Pradesh High court observed that, Just as the decree passed on compromise by Lok Adalat cannot be challenged in the regular systematic appeal, the award of Lok Adalat is similar to that which cannot be questioned in any of the regular remedies available under the law on any basis, together with the enforcement of Article 226 of the Indian Constitution examining the propriety of the award. Judicial review cannot be enforced in an award like this, particularly on the basis as established in the revision petition.

[217] Sukumar Ray *Alternate Dispute Resolution along with Gram Nyayalayas Act,* 118, (Eastern Law House New Delhi 2012)

[218] (2000) 5 ALT 577.

In the matter of *commissioner of Karnataka State Public Instruction (Education), Bangalore v Nirupadi Virbhadrappa Shiva Simpi,*[219] the question whether the order of Lok Adalat shall be final or is it open to challenge under Article 226 and 227 of the Constitution of India discussed at length. In the instant case filed a civil suit seeking a decree of mandatory injection declaring the plaintiff as belonging to Hindu sampi cast and not Hindu lingayat. Subsequently, the case was referred to Lok Adalat for settlement and disposal on the prayer of the counsel for the plaintiff. The Lok Adalat decreed the suit ignoring the objection rose by the additional Government pleader that he had no authority to enter into any settlement. The State challenged the award of Lok Adalat by filing a writ petition under Article 226. The Hon'ble court set aside the award of Lok Adalat and observed that, the broader concept of justice would always demand adherence to the fundamental principles of judicial procedure. Strict compliance with the provision of statute concerned and refraining from exercising power not vested in it would have ensured such adherence by the Lok Adalat.

Award of the Lok-Adalat is open to challenge and subject to judicial review on the grounds such as,

(i) Fraud[220] and misrepresentation[221]

(ii) Absence of free Consent, absence of parities or any parties or consent not proper[222]

[219] Commissioner, Karnataka State Public Instruction (Education), Bangalore v Nirupadi Virbhadrappa Shiva Simpi AIR 2001 Kant 504

[220] Mahila Bhanwari Bai v. Kashmir Singh AIR 2009 MP 232

[221] Shashi Prateek v. Charan Singh Verma AIR 2009 Alld 109

(iii) By coercion,[223] or pressuring the parties to refer the matter to Lok- Adalat by Court[224]

(iv) No dispute existed between the parties for resolving or settling[225]

(v) Impair the interest of the minor[226]

(vi) Totally arbitrary and unreasonable[227]

(vii) If the award is observed to be without the parties having voluntarily, not willingly have entered into a compromise or settlement.[228]

(viii) Ex-partie or Ex-facie judgment without compromise and settlement.[229]

(ix) Production of Succession Certificate –cannot be considered as consent[230]

(x) If the parties are not heard in the matter.[231]

(xi) Procedural lapses.[232]

(xii) Related to non-compoundable offence.[233]

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[222] Jai Devi Hans v. Beena Singh AIR 2005 Alld349

[223] Damera Raj Kumar v. Doli Srinivas" AIR 2007 AP 14

[224] Union Bank of India v. M/s. Narendra Plastics AIR 1991 Guj 67

[225] Basamma v. Taluka Legal Services Committee AIR 2003 Kar 242

[226] Merlin v. Yesudas AIR 2007 Ker 199

[227] Paras Holidays Pvt. Ltd. M/s. v. State of Haryana AIR 2009 P&H 9

[228] Basamma v. Taluka Legal Services Committee AIR 2003 Kar 242

[229] New India Assurance Co. Ltd. v. Lohit Dist. Legal Service Authority AIR 2008 Gau166

[230] Sreemanthula Kesavachari (deceased by LR) v. Yayyavuru Vallamma and Othrs. AIR 2008 AP 74

[231] K. S. P. Instruction v. Nirupadi Virbhadrappa Shiva AIR 2001 Kar504

[232] Dinesh Kumar v. Balbir Singh AIR 2008 HP 59. In the instance case, the Himachal Pradesh High Court observed, that the Advocate had no jurisdiction to make concession on question of law. The concession given on question of law, more particularly, when the jurisdiction of the Permanent Lok Adalat was involved will not be binding upon the claimant.

[233] State of Kerala v. Ernakulam District Legal Service Authority AIR 2008 Ker 70

4.12 PERMANENT LOK ADALATS AT PRE-LITIGATION STAGE

The first question, which arises, is whether Permanent Lok Adalats are real courts and how they are different from Lok Adalats. Permanent Lok Adalats are not courts in real sense. The essential highlights of a Permanent Lok Adalat are equivalent to a Lok Adalat. The only difference is that a regular Lok Adalat can be called to organise occasionally only and not on daily basis, but a permanent Lok Adalat is a mechanism which operates all over, similar to any other court or tribunal. They are designed to render expeditious and inexpensive assistance and relief to litigants against the captious actions of officials engaging with public utilities services in day-to-day life. It would be bereft of jurisdiction to adjudicate the dispute as to title.[234] When the parties been unsuccessful to reach at a peaceable settlement even though the conciliation, the Permanent Lok Adalat strengthened to determine the dispute.[235] Permanent Lok Adalat has no power to grant pensionery benefit to the petitioner if the parties failed to reach a settlement or compromise in terms of the Act.[236]

The Lok Adalat established under chapter VI of the Act might settle the dispute among the parties on the basis of compromise or settlement. If the parties tend not to reach a settlement, therefore the matter either returned to the court of or parties are suggested to look for a solution in a court of law, this leads to an undesirable obstacle in the distribution of justice. Therefore, the creators of the law determined to amend the Act through placing a completely new chapter VI-A

[234] Union Territory Chandigarh v Permanent Lok Adalat, AIR 2009 NOC 496 (P&H)

[235] PU Lalkanglova Sailo v PI Ngurthantluangi Sailo AIR 2009 Gau 39.

[236] Divisional Social Welfare Office, Nagpur v Narayan Dindar Gokhale AIR 2009 NOC 805 (Bom)

to create Permanent Lok Adalats to render mandatory pre litigative mechanism for conciliation and settlement of matters connected to "Public Utility Services". Under this new framework, the Permanent Lok Adalat will, at first, try to settle between the parties and if the parties are unable to come to a settlement, then the Permanent Lok Adalat will proceed to settle the cases on merit.

The unprecedented characteristic of the amendments to the Legal Service Authority (Amendment) Act, 2002 are as follows:

(i) It attempts to render mandatory pre-litigation mechanisms for the conciliation and settlement of matters relating to public utility services

(ii) Public utility services such as transportation of passengers or goods by air, road or water, post, telegraph or telephonic services, the supply of electricity and water to the public, public protection or hygiene & sanitation, hospitals and insurance have been produced under the perimeter of Permanent Lok Adalats.

(iii) After either party applies for an application before the permanent Lok Adalat, neither party shall epiclesis the jurisdiction of any court or tribunal.

(iv) Permanent Lok Adalat administers the conciliation procedures in a particular manner, as it takes proper steps keeping in mind the incidents of the matter, the desires of the parties to the dispute, which include any demand for a verbal hearing. The Lok Adalat will provide aid to the parties voluntarily and neutrally in an effort

to attain a friendly resolution of their dispute. Wherever it seems to the Lok Adalat that all their existential element of settlement, which will be suitable to the parties to the dispute. It will prepare the conditions of a feasible settlement and provide them to the parties to make their observations. After receiving observations from the parties to the dispute, it can formulate a possible settlement period in the benefit of such observations.

(v) If the parties to the dispute are unable to come to any compromise or settlement, the Lok Adalat will continue to decide the matter on merit when it is not related to any compoundable offense. The Permanent Lok Adalat will be guided by the principles of natural justice and other significant principles while deciding the case on the basis of merit.

(vi) The permanent Lok Adalat will have the necessary powers to particularize its own technique for the determination of any dispute coming before it.

(vii) The award delivered by the Permanent Lok Adalat will be ultimate, obligatory and will not be challenged in any suit, appeal or adjudication process.

(viii) The award of Permanent Lok Adalat would be considered to be a decision of the civil court.

(ix) Monitory jurisdiction of Permanent Lok Adalat fixed at Rs. 10 lakhs with the power bestowed upon the government to amend it periodically.

(x) The permanent Lok Adalat will consist of a Chairperson with two others having judicial experience and having substantial experience in public utility services area.[237]

4.13 PERMANENT LOK ADALATS - WHETHER AN ADR MECHANISM

Permanent Lok Adalat consists of adjournment cases, and in this panorama, issues are seldom elevated about its classification as an ADR mechanism. In the matter of *State of Punjab* v. *Jalour Singh*[238] The Apex Court discovered that Lok Adalats have only a decisive role and are not qualified to make adjudicative decisions, and the award of Lok Adalat does not indicate and any autonomous judgment or opinion that comes by the decision-making procedure.

The subsequent concern is how the notion of permanent Lok Adalat sticks together with this judgment of the Apex Court. The facet to acknowledge is that the Apex Court in the case of *State of Punjab v. Jalour Singh* was dealing with the matter connected with the Lok Adalat within the careful consideration of Sections 19, 20, 21 and 22 of the Legal Services Authorities Act, 1987. In

[237] Sukumar Ray *Alternate Dispute Resolution along with Gram Nyayalayas Act,* ,90, (Eastern Law House New Delhi 2012)

[238]AIR 2008 SC 1209

contrast to Lok Adalats, permanent Lok Adalats have been explicitly given an adjudicatory role by statute.[239] Where a case cannot be settled by conciliation before a Permanent Lok Adalat, the Permanent Lok Adalat is legally statutorily connected determine the dispute on merit. The decision in *Jalour Singh* will not implement to the permanent Lok Adalats due to the fact, in that particular case, the court was not contemplating the provision specified under Section 22C (8) of the Legal Services Authorities Act, 1987.[240] Further, the amendments to the Legal Services Authorities Act, 1987 on permanent Lok Adalats were questioned before the Apex Court, but the Court upheld them.[241]

In the case of *Life Insurance Corporation of India* v. *Suresh Kumar*[242], the Supreme Court of India held that Permanent Lok Adalat has no jurisdiction or authority vested in it to decide any dispute, like as among the parties to the dispute, wherever makes an attempt to reach a settlement granted among the parties have failed. On the other hand, the court, repeatedly, in that case, was referring to a Lok Adalat established under section 19 of the Act. The 'Lok Adalats' established under Section 19 of the Legal Services Authorities Act, 1987 are seldom defined as permanent Lok Adalats' and it need not be complicated with Permanent and Continuous Lok Adalats established under section 22B(1) of

[239] S. 22 C(8), Legal Services Authorities Act, 1987.

[240] PU Lalkanglova Sailo v PI Ngurthantluangi Sailo AIR 2009 Gau 39.

[241] S.N. Pandey v. Union of India, Writ Petition (Civil) No. 543/2002 decided by the Supreme Court vide order dated 28.10.2002.

[242] 2011 (4) SCALE 137.

the Act. The Apex Court has explained this situation by itself [243]that the Permanent Lok Adalat has the power to decide the dispute on the merits of where a friendly settlement of the dispute does not work out.[244]

Therefore, a person who gets into the realm of a permanent Lok Adalat is not able to distance themselves from the same, and he will eventually have to undergo a decision on the merits of a settlement entered into does not fail and that too on with the added rigour of an absence of any appeal.[245] This can place a party to the dispute at several drawbacks, as the forum, which ultimately appears to be conciliatory, might turn out adjudicatory. Lawyers have already been highly critical to this provision.[246] However, this only signifies that the notion of permanent Lok Adalat seems not fully coincide with the non-adjudicatory ADR mechanism.

As it may be, there are ADR methods, which additionally have an adjudicatory character. Arbitration is a completely adjudicatory process and is still considered as an ADR procedure. We additionally own heterogeneous techniques such as 'Med-Arb', in which the parties to the dispute acknowledge the similar person to mediate initially, and if it is not successful, in that case,

[243] InterGlobe Aviation Ltd. v. N. Satchidanand, (2011) 7 SCC 463

[244] See also United India Insurance Co. Ltd. v. Ajay Sinha, 2008 (7) S.C.C. 454 where the Supreme Court held that the Parliament has given the authority to the Permanent Lok Adalat to decide matters on merits and therefore it has an adjudicating role to play.

[245] Marc Galanter & Jayanth K. Krishnan, "Bread for the Poor: Access to Justice and Rights of the Needy in India", 55 *Hastings L.J.* 789 (March, 2004).

[246] P.C. Rao, "Alternatives to Litigation in India", in P.C. Rao and William Sheffield (Eds.), *Alternative Dispute Resolution* 24 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997); K. Jayachandra Reddy, "Alternative Dispute Resolution", in P.C. Rao and William Sheffield (Eds.), *Alternative Dispute Resolution* 79 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997 Reprint 2008).

arbitrate a dispute.[247] It is regarded as an ADR procedure that has both adjudicatory and non-adjudicatory forms of practices.

In the same way, resolution of the dispute via Permanent Lok Adalats is as well an ADR procedure, heterogeneous in nature, owning both adjudicatory and non-adjudicatory forms of practices and is optional in the sense that it provides an alternative to traditional litigation and it clarifies the rigour and complexity of the traditional litigation process. A permanent Lok Adalat is a specialized tribunal, is certainly not a 'court', and its judgment is not subject to sequential appeal. The method is slightly identical to Med-Arab. The Supreme Court held[248] that the method approved by the Permanent Lok Adalats is one that is popular in the United States as 'con-arb' (conciliation cum arbitration). Where the parties to the dispute may approach to an impartial third party or authority for conciliation and if conciliation does not work out, such authorized impartial third party or authority to settle the dispute, such decision will be conclusive and obligatory.[249]

The chief of a Permanent Lok Adalat is a particular person who was a judicial officer of the rank of Additional District Judge or higher. Therefore there can certainly be no problem with the nature of the judgment making process or the judgment will be given on the merits. Advocates regularly leave no room for

[247] Alexander Bevan, *Alternative Dispute Resolution* 9 (Sweet and Maxwell, London, 1992)

[248] Inter Globe Aviation Ltd. v. N. Satchidanand, (2011) 7 SCC 463.

[249] However the Jharkhand High Court by judicial interpretation has, however, held that the Permanent Lok Adalat must inform the parties regarding the adjudicatory role of a Permanent Lok Adalat and the fact that no appeal would lie against the award of the Permanent Lok Adalat and if thereafter the parties expressly consent to have their matter adjudicated on merits by the Permanent Lok Adalat then only it should proceed to dispose of the case of merits. Tata AIG General Insurance Co. Ltd. v. Bandana Devi, W.P.(S) No. 2557 of 2008 decided on 25.02.2010 by the High Court of Jharkhand.

any issue regarding adequate legal representation before the permanent Lok Adalats in Delhi. The Permanent Lok Adalat summons written statements of the parties to the dispute, it can take such proof as it can fit and has to be guided by the principles of natural justice. The simple fact that it is not restricted by the provisions of Civil Procedure Code, 1908 and additionally the Indian Evidence Act,1872 do not signify that the Permanent Lok Adalat settles the on the basis of any evidence or decides effectively.[250]

Therefore dispute determination by means of Permanent Lok Adalat is an ADR procedure. A person offering to the area of a permanent Lok Adalat is considered to know of the law that if the dispute is not resolved friendly, the Permanent Lok Adalat will obtain an adjudicatory role, therefore the alleged drawback can only be expressed as a self-enforced restraint if it is a negative aspect. According to the mechanism of the Permanent Lok Adalat, the lawyers could explain as well the customer of the demerits if there is any. Despite this, if the parties to the dispute, resort to inexpensive remedies, it simply cannot be said that the law is in contrary to the litigant because there is no restraint that one first move to the permanent Lok Adalat before knocking the door of the court of law.[251] In exercise, Permanent Lok Adalats possess comparable advantages and undergo from identical disabilities as ordinary Lok Adalats do. Though the permanent Lok Adalats operates regularly and requires supplementary

[250] Even an arbitrator is not bound by the provisions of Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872

[251] K.A. Abdul Gafoor, "The Concept of Permanent Lok Adalat and the Legal Services Authorities Amendment Act, 2002", 5 *SCC (Journal)* 33 (2003).

independent expense. They render a new state-subsidized ADR procedure including the capability and time to settle with an extremely higher number of matters and complicated matters than the regular Lok Adalats.

4.14 ADVANTAGES AND DISADVANTAGES OF LOK ADALAT SYSTEM

Lok Adalat is a substitute for the conventional judicial method. A current technique shows to render affordable, simple and speedy justice to the common men by way of settling the dispute, which are pending in courts of law and including those, which have not reached to the courts yet by adopting solid common cause and humanitarian approach to the problem of disputes, which is specially trained and experienced members of the team of conciliators.[252]

Prime Minister Narendra Modi While addressing the conference on the occasion of Legal Services Day in New Delhi, talked about the special role that Lok Adalats have been playing over the years in bringing justice to those who hesitate in taking the matters to courts. There are more than 15 lakh Lok Adalats in the country, and they have successfully delivered justice to 8.5 crore people, which is far higher than the count at courts. Prime Minister stressed upon on the importance of "Sabka Saath Sabka Vikas".[253]

[252] P.T Thomas v Thomas Jab, AIR 2005 SC 3575 as cited in Sukumar Ray *Alternate Dispute Resolution along with Gram Nyayalayas Act,* 84-85,, (Eastern Law House New Delhi 2012)

[253] Lok Adalats – Advantages and Disadvantages? Available at http://www.careerride.com/view/lok-adalats-advantages-and-disadvantages-26001.aspx accessed on 30/11/2017 at 13.04

Except for the fact that the Lok Adalats and Permanent Lok Adalats doing great in their ambit, there are ample of thing, which can be discussed, related to its advantages and drawbacks, Let us discuss the advantages and drawbacks of Lok Adalats.

ADVANTAGES OF LOK ADALAT:

The benefits of the Lok Adalats can be discussed as under:

1) It can be used at any time, even in the pending cases. The disputing parties may instantly communicate along with the presiding officer through their advocate, which is not allowable in a regular court of law.
2) Presence of an advocate is not necessary. The parties to the dispute can also place its case and explain its view directly to the Judge.
3) Settlement to the dispute can arrive at more expeditiously as well as less costly. Every proceeding prior to Lok Adalats will be treated as judicial proceedings.
4) The state pays the salary of the Judges because one of the aims of the State is to provide access to justice. However, in other cases, the cost of proceedings falls on the parties.
5) The Lok Adalat can take cognizance of the case even when one of the parties to the dispute makes an application to the regular courts to settle the dispute through Lok Adalats.

6) The parties to the dispute are required to pay any court fee, and if the any payment of court fees is allowed, if the dispute is settled in the Lok Adalats as per the rules, the amount will be refunded,
7) The fundamental peculiarities of Lok Adalats are formal procedural adaptability and expeditious trial of the dispute. There is no stringent utilization of procedural laws such as the Civil Procedure Code and the Evidence Act when evaluating a claim by a Lok Adalat.
8) The Lok Adalat holds the power of the civil court and the award of the Lok Adalat attains the status of the decree of the civil court. The award of the Lok Adalat is conclusive and obligatory on the parties to the dispute. The award is non-appealable, which does not cause the delay in settlement of dispute finally.
9) The Lok Adalat will announce the award with the assent of the parties to the dispute. Consequently, the matter need not be reviewed repeatedly, as the award passed by the Lok Adalat will be irrevocable.
10) Lok Adalats are blessing to the litigants that they can resolve their dispute free of cost and swiftly.[254]

[254] P. T. Thomas v. Thomas Job AIR 2005 SC 3575

DISADVANTAGES OF LOK ADALAT:

1) The speedy justice arrives with the cost of compromise and settlement reached the expenditure of more economical advantage, and the petitioner had no chance to claim the greater amount, which he should prudently have seen in many matters after which the Supreme Court commanded the Lok Adalat to be cautious regarding undermined rights of either party who involved in the issue. Quicker and less complicated justice ought not to arrive with the cost of injustice which appears as a hindrance to the Lok Adalat.
2) You cannot assume that all cases are appropriate for the jurisdiction of the Lok Adalat. Lok Adalat is all concerning compromise and settlement, which is not a requirement of every case. The majority of cases in India need methods of punishment and correction, which are not done under Lok Adalat. These cases will usually disappoint here and after that upheld in the courts of law. It would only create superfluous deferral in the legal proceedings, sometimes, which could be required as early as possible.
3) Its also been observed that since the person heads the forum of Lok-Adalat from the judiciary, they always try to Lok-Adalat to work as Judicial forum and go astray from the fundamental objectives for which it has formulated.[255]

[255] State of Punjab v Jalour Singh AIR 2008 SC 1209

Kerala High Court, while conveying its deplored statement current Lok Adalat system pointed out the drawback:

> *"Though, the significant disadvantage in the current plan of the method of Lok Adalats under Chapter VI of the Legal Services Authority Act is that the method of Lok Adalats is primarily based on compromise or settlement among the parties to the dispute. If the parties tend not to come to a compromise or agreement, the matter is either will be returned to the court of law or the parties to the dispute are directed to look for solutions of the dispute in the court of law. This leads to an undesirable delay in the delivery of justice. If the Lok Adalats are granted the strength to resolve matters on merit, if the parties fail to arrive at any compromise or settlement, this problem can be dealt with to a large extent."*[256]

However, these imperfections have dislodged in Permanent Lok-Adalat by amending The Legal Service Authority Act.

4.15 CRITICAL ANALYSIS OF LOK ADALAT AND PERMANENT LOK ADALATS

The system of Lok Adalat is not without limitations. Conflicting views have been expressed on the advisability of the institution of Lok Adalats. They are meant to supplement the judicial process and not to supplant it. It is being said that when conciliation becomes the norm, people's attitude to resort to court will change. The major defect of the mechanism of Lok Adalat is that it cannot

[256] Bhoopesh vs M/S.New India Assurance W.P.(C) Nos.30239 of 2007 *Available at*: https://in diankano on.org/doc/975382/ accessed on 30/10/2017 at 19.56

take a decision, if one of the parties, is not willing for a settlement, though the case involves an element of settlement. The unbending attitude shown by one among the parties will render the entire process fruitless. Even if all the members of the Lok Adalat are of the opinion that the case is a fit one for settlement, under the present set-up, they cannot take a decision unless all the parties consent.

"We have come across Lok Adalats passing orders, issuing directions and even, granting declaratory relief, which are purely in the realm of courts or specified tribunals, that too when there is no settlement. As an award of a Lok Adalat is an executable decree, it is necessary for the Lok Adalats to have a uniform procedure, prescribed registers and standardized formats of awards and permanent record of the awards, to avoid misuse or abuse of the ADR process." observed the court. Justice Raveendran writing the verdict for the bench said, "Although the members of Lok Adalats have been doing a commendable job, sometime they tend to act as judges, forgetting that while functioning as members of Lok Adalats, they are only statutory conciliators and have no judicial role. Any overbearing attitude on their part, or any attempt by them to pressurize or coerce parties to settle matters before the Lok Adalat (by implying that if the litigant does not agree for settlement before the Lok Adalat, his case will be prejudiced when heard in court), will bring disrepute to Lok Adalats as an alternative dispute resolution process (ADR process) and will also tend to bring down the trust and confidence of the public in the judiciary."

The goal of the Lok Adalat is to affect a compromise but in mass scale disposal of cases in Lok Adalats, it is difficult to expect that compromise

settlements of mutual benefits would be searched for. In some cases natural justice has been surrendered in the name of expediency.

The case of Manju Gupta vs. National Insurance Company,43 exhibits the sad state of compromises and settlements in Lok Adalats denying the fair minimum claims of the petitioners. In this case, Manju Gupta of 3 years old lost her two legs in the motor accident. A claim petition was filed for Rs. 2.21 Lakhs. During the pendency of the dispute the Lok Adalat was held at that place. The father of the claimant settled the case at Lok Adalat for Rs. 30,000/- and the insurance company immediately paid the money and filed the settlement petition at Motor Vehicle Accidents Claims Tribunal. This issue was reported in the local newspaper. The High Court of Allahabad took suo-moto note of the issue and directed the Tribunal to send the records to the High Court. The High Court awarded Rs. 1, 10,000/- as compensation. It was observed that in the name of the speedy resolution of the disputes the fair interests of the parties couldn't be sacrificed. More importantly when the petitioners are minors, insane and disabled, the court has to give proper importance in deciding the claims.

A similar fact situation arose in *Moni Mathai v. Federal Bank Ltd. and Recovery Officer, Debts Recovery Tribuna*[257]. The award of the Lok Adalat was given without issuing a notice of hearing to the petitioners; the compromise deed on the basis of which the award was given was not signed by the petitioners and this was a clear violation of the Kerala Regulations. The High Court of Kerala struck down the award with the observation that, "The Lok Adalats are also

[257] AIR 2003 Ker. 164.

bound to follow the principles of natural justice, equity, fair play and other legal principles…. The Lok Adalats shall also not forget that their duty is not to dispose of cases somehow but settle cases amicably."

CRITICAL ANALYSIS OF THE PERMANENT LOK ADALAT

There is criticism regarding the constitution and working of the permanent Lok Adalats. It is said that there may be political consideration in the appointment of the members of the PLA. This criticism is not fair. Because, though the respective governments nominate the members, this nomination is on the recommendations of the Legal Services Authority concerned.[258] The Chairman of the PLA will be a person who is or has been a district judge or additional district judge or has held office higher in rank than that of a district judge.[259]

The other criticism is regarding the functioning of PLA as it is given the power to decide a dispute when the parties do not agree for a settlement. When a Permanent Lok Adalat, in the conciliation proceedings, is of the opinion that there exist elements of settlement, which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give such terms to the parties concerned for their observations. In case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement

[258] Section 22 B (2) (b) of the Legal Services Authorities Act, 1987.

[259] Section 22 B (2) (a) of the Legal Services Authorities Act, 1987

agreement and the PLA shall pass an award in terms thereof.[260] But if they fail to reach at an agreement, PLA shall decide the dispute.[261] It means PLA is not given the power to decide every dispute coming before it. Only those disputes where there exist elements of settlement can be decided by the Permanent Lok Adalat.

The decision or the opinion of the Permanent Lok Adalat as to whether there exist elements of settlement is a matter, which can be subjected to judicial review under Article 226 of the Constitution of India. The ordinary Lok Adalat adopts only a conciliatory method and does not decide a dispute. Therefore it is expressly provided under section 21(2) of the Legal Services Authorities Act, 1987 that every award made by a Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie to any court against the award. Under the civil procedure law also no appeal shall lie from a decree passed on consent of the parties. It is not stated anywhere in the Act that an award of a PLA shall not be called in question in any appeal, as is stated in case of the award of an ordinary Lok Adalat in Section 21(2) of the Act. An appeal shall lie from an award of the PLA if the award is given by it on merits. Section 96(1) CPC can be relied on to establish that an appeal is not excluded. The award of PLA has all the Characteristics of a civil court decree and it is deemed as a decree of a civil court. Section 96(1) of the Code of Civil Procedure, 1908 provides, "Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court

[260] Section 22 C (7) of the Legal Services Authorities Act, 1987

[261] Section 22 B (8) of the Legal Services Authorities Act, 1987

exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court".

This will, certainly, prove to be very effective, litigant-friendly and less expensive mechanism to resolve certain serious disputes. As Public Utility Service is rendered mainly by corporate bodies, this virtually will be a forum for ordinary men and women to ventilate their grievances against such corporate bodies. These Permanent Lok Adalats can decide disputes relating to deficiency of service, claims for compensation, recovery of money etc. pertaining to all utility services. In the changing economic scenario of the country where insurance, communication and other services are thrown open to corporate giants, it is all the more necessary to provide for cost-effective and delay-free tools for resolution of disputes. PLA is a conciliatory mode with certain features of arbitration to arrive at decisions under given circumstances.

4.16 LOK ADALAT: CHALLENGES AHEAD

1) No doubt that speedy justice is one of the quintessential characteristics of Lok Adalat, but such speed must be reasonable so that such awards should not be passed, which defeats the cause of justice.
2) To increase its utility, the concerned Legal services Authority or Committee should disseminate information to the public about the holding of various Lok Adalats by it and success achieved thereby in providing speedy, equitable and inexpensive justice.
3) It observed that there are a sufficient number of statutory provisions

allowing justice through Lok Adalat. The only need is to organize awareness camps at a grass-root level so that, the ignorant people living in far-flung areas of the State get information about those provisions and reap the benefits of the same. The street plays are the best means to convey the message to the illiterate people. Law students can contribute to such activities effectively. Besides, mass media like newspapers, television, radios can also be desirable for this purpose.

4) The Lok Adalat Movement can be successful only if the people participate voluntarily in the functioning of Lok Adalat. It can be achieved by restraining themselves from invoking the jurisdiction of traditional Courts in trifle disputes.
5) It is also suggested that there should be increased involvement of law students, social workers at various stages of Lok Adalat proceedings. Their help can be taken to impart knowledge to the litigants about the general working of Lok Adalat, its purpose, why their case referred to Lok Adalat etcetera. To enable them to put their points during Lok Adalat proceedings and get effective and equitable justice through Lok Adalat.

4.17 CONCLUSION

From this it is very crystal clear that there is a lot of evidence for the existence of people's court in India for the settlement of local disputes since time immemorial. The Vedic period throws focus on this viewpoint that these courts were in existence in ancient period. Number of scriptures and historical accounts,

which bestow strength to the People's court in which, friendly settlement dispute was followed. The existences of these courts were first time mentioned in Yajnavalkya Smriti. Besides, Narada Smriti divulges the existence of three kind traditional courts viz., Puga, Sreni and Kula. Generally the King was a complete guardian of administration these courts, but he intervened in the working of these courts in exceptional situations. In the people's court procedure was very simple. The presiding officer of these gave much importance to amicable settlement rather than technicalities.

During the Muslim era the speedy decisions, absence of long and very complicated procedure in filing and disposal of cases etcetera, further strengthened the existence of these courts. Nevertheless the arrival of British in India gave serious deathblow to the functioning of popular courts as there was a total centralization of the judiciary and local courts were dissuaded and succeeded by the royal courts. Gradually these courts withered way and there came a dawn of new judicial system wholly controlled by the British Rulers. The administration of villages by the agencies of central government, extension of jurisdiction of modem civil and criminal courts with their adversary system of adjudication which was unknown and new to the village population, increase in the means of communication, migration of people from village to towns and consequent lessening of community's influence over the members may be said to be some of the main factors which gradually attributed towards the decay of the people's courts in India.

Lok Adalat, as circulated repeatedly all through the chapter, performs a very significant function in the country due to several factors such as pending cases, illiteracy etcetera. Lok Adalat was a historical requirement in a country like India, where illiteracy surpasses all phases of governance. The most desideratum features of Lok Adalats might appear to be eradicating the backlog, with the current report revealing that more than three crores cases pending in Indian courts but the additional characteristics cannot be neglected. The concept of Lok Adalat has been a breakthrough in practice. During the last few years, Lok Adalat in India has determined to be a well-turned mechanism of alternative dispute resolution. It is widely effective and efficient due to its innovative character and affordable technique. This method gained widespread recognition not merely from litigants but also from public and legal professionals in general.

Lok Adalat acts as a forum for speedy and equitable justice, where any person from any of the section of the society can approach to resolve dispute speedily and inexpensively. So there is a need to strengthen the system of Lok Adalat in recent context, which in turn, help to realize the Constitutional goals of 'equal and social justice' to its fullest extent. It will, in turn, helpful to regain to reaffirm the public confidence in the judiciary. The working of Lok Adalat seems to be both fruitful and successful; however, it has some drawbacks too, but it is trying to achieve those objectives, for which it has meant. The institution of Lok Adalat has a better utility in the context of Indian society and the problems relating to it. The overall functioning and achievement of Lok Adalat appear to be appreciable.

Therefore, it may be concluded that the system of Lok Adalat and rendering free legal aid to suitable persons is a highly virtuous task, which assisted the judiciary not merely in expeditious disposal of cases but also given some assistance to the litigants. Especially for those who are poor, indigent and cannot claim their rights by means of the court of law.

CHAPTER V

Chapter V

LOK ADALATS AND APPROACH OF JUDICIARY

5.1 INTRODUCTION

Judiciary in India occupies a prominent and influential position in the Indian democratic system. Right from the inception of the Supreme Court, India has influenced the national policy-making agenda in significant proportions.[1] The current framework of the Indian justice system is an outgrowth of the constitutional spirit. Supreme Court, as well as various High Courts in India, authorized to have an impact on even the policies and programs of the executive branch of the state.[2] The judiciary, specifically Supreme Court, has not only indulged in judicial legislation but has even exercised the constituent power unknown anywhere in the world and the seemingly transcending all, received notions of separation of power.[3]

In a large number of issues, while deciding the cases, the judiciary marched a long way in order to materialize the Constitutional goal and the protection of human rights. Among those, one was the goal of providing legal aid where judiciary propounded new legal aid jurisprudence so that the opportunity

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[1] George H. Gadbois, "The Supreme Court of India: As a political institution" in Rajeev Dhavan, R. Sudarshan & Salman Khurshid,(eds) *Judge and Judiciary power: Essay in Honour of Justice V.R.Krishna Iyar* 251 Sweet & Maxwell, (1985)

[2] *Ibid*

[3] Upendra Baxi, The Indian Supreme Court and politics, Mehr Chand Mahajan memorial law lectures, (Eastern Book Company, Lucknow,1980)

of obtaining justice is not refused to any citizen because of financial and other disability, of which Lok-Adalat is a strategic means.

It is the biggest challenge before the judiciary to render accessibility to justice to every citizen of India. The judiciary is trying its best to provide inclusive justice to the oppressed class at their level, as the principles for access to justice is an expression of the spirit specified in the Constitution of India. Regarding the process of access to justice through judicial institutions, the then Chief Justice of India justice A.S. Anand rightly stated that:

> *"While the judiciary was striving a balance between the dignity of the individuals and the unity of the nation, it found itself faced with a serious challenge concerning access to justice. It was noticed that the weaker section of the society had been deprived of justice for a long period; they had no access to justice on account of their poverty, ignorance and illiteracy. They were not aware of the rights and benefits conferred upon them by the constitution and other beneficial legislations. On account of their socially and economically disadvantaged positions, they lacked the capacity to assert their rights. Access to justice to protect their fundamental rights was almost illusory for such sections of Indian humanity. The judiciary rose to meet the challenge and regarded it as its duty to come to the rescue of the underprivileged to help them to reap the benefits of economic entitlement".*[4]

[4]Justice A.S.Anand, "Fifty Years of Indian Judiciary: Its Achievements & failures"*NyayaDeep19(*2000)

Not only did the judiciary play an indispensable part in rendering legal assistance in addition to standardizing the notion of Lok Adalat, which unfolded into a mechanism for providing legal aid. Not only did the Indian judiciary have an impact on the enactment of the Legal Services Authorities Act, 1987, but the judiciary also ascertained that the Act should be executed with its actual spirit all across the country.[5] The judiciary also instructed the government to render financial contributions to non-government organizations to encourage the participation of people through legal consciousness to ensure that the legal aid programs could be successful.[6] In order to provide speedy and cost-effective justice to the people, judiciary further directed that government and governmental organizations to established permanent Lok Adalat in their concerned departments to settle the disputes.[7] However, the Legal Services Authorities Act 1987 was enacted through central notification, the part Ill of the Act not enforced by most of the states. Part III of the Act provides directives for the formation of State Authority, District Authority, High Court Committee and Taluka level committee. Again when most of the States have not implemented the law, which in result in jeopardised the purpose of the Act to provide Legal Services at ground zero and operating Lok Adalats as a tool for providing legal

[5] Supreme Court Legal Service Committee V. U.01 AIR 1998 SC 2940,

[6] Centre for Legal Research & Other V. State of Kerala. AIR 1986 SC 2195

[7]Abdul Hassan & N.A.L.S.A. V. Delhi Electricity Board & others AIR 1999 DEL 88

services. The judiciary has to appear for exteriorizing the aim and object of the Act.[8]

5.2 JUDICIARY AS A PATH PROVIDER FOR LOK ADALAT

In the landmark judgment of *Hussainara khatoon v. State of Bihar*[9] Hon'ble Supreme Court decided that the right to get free legal aid is a basic fundamental right, while explaining Article 21 of the Constitution of India the noteworthy statement made by former Chief Justice Mr. Justice P. N. Bhagwati, "*it is a fundamental right of every person who accused and is Unable to hire an advocate on its own and obtain free legal service due to reasons of, such as indigence or in-communicable situation and the state is under the command to provide a lawyer to a person who is accused, if the events of the case and the necessities of justice so required, provided of course, the accused person does not oppose to the requirement of such lawyer".*

In the case of *Khatri & Others v. State of Bihar*[10] Hon'ble Supreme Court again emphasized on free legal service and observed that the state government could not avoid their constitutional obligation to provide free legal service to the poor accused by pending financial or administrative inability. Hon'ble Court further emphasized that it is the legal obligation of the magistrate or judge before whom the accused is presented to communicate him that if he is incapable of engaging a lawyer on account of indigence, He is eligible to get free legal service

[8] Sarfaraz Ahmed khan, *Lok Adalat: An Effective Dispute Resolution Mechanism* 64-65 (APH Publication Corporation, New Delhi 2006)

[9] AIR 1979 SC 1369

[10] AIR 1981 SC 928

at the cost of the state. The court has taken the view that the right to free legal service would be illusionary for indigent accused unless the trial judge informs him of such right since more than 70% of the people in the rural region are uneducated and even more than that amount of people ignorant of the right given them by law.[11]

The court has further explained the question of providing free legal aid to the accused person in *Sukhdas and others v. Union Territory of Arunachal Pradesh*[12], that it is an essential ingredient of a just fair and reasonable procedure to a convict who seeks his freedom through the court that he ought to have legal service available to him. Therefore, a free legal service at the state's cost is a basic fundamental right of a person accused, which may include risk to his life or personal liberty, and his basic fundamental right is inherent in terms of just, fair and reasonable process as prescribed by Article 21 of the constitution.[13] The actual question for the court is to consider in this case was whether the fundamental right could be denied a lawfully accused person if it does not apply for free legal aid. The court has pointed out that the bulk of the Indian people living in the rural area are illiterate and not conscious of their legal rights. Even educated people do not understand what their rights are under the purview of the law. In the circumstances, it would make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service. "Legal

[11] Prof.M.P.Jain, *Indian Constitutional Law* 1206 (LexisNexis Butterworths Wadhwa Nagpur, 2010)

[12] AIR 1986 SC 991.

[13] Prof.M.P.Jain, *Indian Constitutional Law* 1207 (LexisNexis Butterworths Wadhwa Nagpur, 2010)

aid would be an idle formality if it were to depend upon a specific application by such poor or ignorant person for such legal assistance".[14] The outcome was that the appellants remained unrepresented through a lawyer, and the trial eventually resulted in their conviction. It was a violation of the appellant's fundamental, and the trial should accordingly be held to be vitiated on account of fatal Constitutional infirmity, and the conviction must be set aside.[15]

In another remarkable judgment of *Sheela Barse v. State of Maharashtra*[16] Hon'ble Court instructed the state government, to secure provisions regarding providing free legal aid to the poor and disadvantaged accused, and observed that the only requirement would be that the offence imputed against the convict is such that, upon conviction, it results in a sentence of imprisonment and is of such characteristics that the events of the case and the demands of social justice, that he should be granted free legal service. There may be the case involving offences such as economic offences or offences related to the child abuse and more like that, where social justice might require that the state need not grant free legal aid to the accused.[17]

P. T. Thomas v. Thomas Job[18] in this matter, Hon'ble Supreme Court discussed in details about the benefits people get under the Lok Adalats. The court stated about the court fee that there is no court fee for Lok Adalat and if the

[14] *Ibid*

[15] *Ibid*

[16] AIR 1983 SC 624

[17] Prof.M.P.Jain, *Indian Constitutional Law* 1208 (LexisNexis Butterworths Wadhwa Nagpur, 2010)

[18] *P. T. Thomas v. Thomas Job,* AIR 2005 SC 3575.

parties to the dispute pay any court fee, it will be refunded when the Lok Adalat settles the dispute. The parties could immediately interact with the presiding officer and the other panelists, which usually is not allowed in the regular courts. There is procedural decency of disputes; procedural laws have no strict applicability when evaluating claims by a Lok Adalat. The award given by the Lok Adalat is obligatory on the parties and is acknowledged as a decree of the civil court and which is not appealable.

However, public interest litigation rendered measures to helpless, poor and indigent people to access to the justice and to protect their rights through such mechanism, contrary to the object of access to justice still a preposterous reality. Large numbers of people do not have access to justice primarily because of the high cost of the system of administration of justice.[19] According to justice A.S.Anand:

> "*The high cost of litigation is a challenge, which judiciary has made attempts to meet though without any spectacular success. Even after decades of independence, the poor, backward and weaker sections of the society feel that they do not have equal opportunities for securing justice because of their socio-economic conditions. The judiciary evolved schemes for providing legal aid to the poor A Committee for Implementation of Legal Aid Scheme (CLAS) was set up by the judiciary*

[19] Sarfaraz Ahmed khan, *Lok Adalat: An Effective Dispute Resolution Mechanism* 64 (APH Publication Corporation, New Delhi 2006)

to further the Directive Principles and assure 'equal protection of law' to the citizen" [20]

5.3 LOK ADALATS AND INDIAN JUDICIARY

Sections 19 to 22 (chapter VI) of the Legal Service Authority Act, 1987 discusses about the Lok Adalats, related to organizations, constitution, cognizance, procedure, and powers Lok Adalats, although the Act does not seem to define the term 'Lok Adalat', it only states that Lok Adalat means which organised under chapter VI of the Act. Consequently, it is clear that this definition analyses the qualities and attributes of the Lok Adalat. To consider the actual spirit of the Lok Adalat, We have to acknowledge and examine the provisions of chapter VI of the legal service authority Act 1987 and judicial decisions of various courts.

Justice by way of Lok Adalat is the most prominent peculiarity of Indian justice delivery system. It's one of its kinds of participatory justice, in which many individuals from different professions; participates intending to provide effective and efficient justice to the downtrodden.

In 1979 the judgment was in pronounced in *Hussainara Khatoon's case* [21] and Committee for Implementation of Legal Aid Scheme (CILAS) constituted in the year 1980, Justice P.N.Bhagwati was appointed the president of the committee. The committee introduced the Lok Adalat as a legal aid policy. The

[20]Justice A.S.Anand, "Fifty Years of Indian Judiciary : Its Achievements & failures"*NyayaDeep19(*2000)

[21] *Hussainara khatoon v. State of Bihar*, AIR 1979 SC 1369

effective functioning of the committee and all the judgments as mentioned above, paved the way to pass the Legal Services Authorities Act, 1987. However, the Act came into effect from 09th November 1995. Thus all the efforts made by the judiciary not only evolved the institution of Lok-Adalat but also manifest the Lok Adalat into reality.[22] After the enactment of the Legal Service Authority Act, 1987 the modern statutory Lok Adalat came into existence, though there was Lok Adalats conducted through the CILAS, now judiciary has to appear for exteriorizing the aim and objective which enshrined in the Act.

It is directed by the Hon'ble Supreme Court in the matter of *Supreme Court Legal Aid Committee v. Union of India*[23] framing of the rules under Section 28 of the Legal Services Authority Act, 1987 to all the States and Union Territories and to report within two months. It also directed that the States or Union Territories constitute High Court Legal Services Committees and other Committees within two months and affidavit related to compliance of these directions asked for on behalf of states governments or union territories the by 03rd February 1998. Despite that most of the states did not comply with the order initially, though, by elongating some time, the Hon'ble Court directed the defaulting union territories and state administrations again to comply with the full direction till 30.4.1998. Approximately each the states have substantially complied with the implementation of the Act.

[22] Sarfaraz Ahmed khan, *Lok Adalat: An Effective Dispute Resolution Mechanism* 64 (APH Publication Corporation, New Delhi 2006)

[23] *Supreme Court Legal Aid Committee V. Union of India,*1998 (5) SCC 762.

Hence, the judiciary executed an important role not only in the enactment but as well as in the implementation of the Act. The judiciary did not hold here only; it proceeded to constitute the permanent Lok-Adalat in different governmental agencies, relating to the public utility services.

Delhi High Court in *Abdul Hassan v. Delhi Vidyut Board*[24] outlined the aim and objective of the Legal Service Authority Act and accentuated the concept of establishing Permanent Lok Adalats and pointed out that there is a severe problem of accumulation of cases. People seeking justice are substantial in number and increasing day by day, and it is turning out to be more challenging for courts to deal with the cases with existing infrastructure and human resources. There is a strong necessity for the fragmentation of justice. Permanent and Continuous Lok Adalats should be set up with the objective not only to remove the pendency from the courts but also to serve the purpose of Article 39A and the aim of the Legal Service Authority Act.[25]

Court furthermore stated that permanent Lok-Adalat should establish for the facilitation of speedy disposal of all kinds of cases in Delhi Electricity Board, Municipal Corporation of Delhi (MCD), Mahanagar Telephone Nigam Limited (MTNL), General Insurance of India (GII) and countless other governmental departments for settling the disputes among the citizens and government, government and its employees. It is directed by the Court to all such governmental agencies to establish Permanent Lok Adalats.

In the light of the above case, the Legal Services Authorities Act, 1987

[24] *Abdul Hassan V. Delhi Vidyut Board,* AIR 1999 Del 88.

[25] Prof.M.P.Jain, *Indian Constitutional Law* 1505 (LexisNexis Butterworths Wadhwa Nagpur, 2010)

amended in the year 2002 by the Parliament in which a whole new chapter has added chapter VI-A titled "Pre - Litigation Conciliation and Settlement" which mandate for the establishment of a Permanent Lok Adalat to resolve disputes in public utility service. The importance of the amendment predominates in strengthening the well being of society by allowing the people to approach Lok Adalats. The amendment attempts to eliminate the destitution of a consumer, which he confronts in the area of public utility services.

In the matter of *Municipal Council Tonk v. Serve Seva Sanasthan*[26], The Rajasthan High Court pointed out the purposes and characteristics of the amendments of the Legal Services Authority Act, 1987 and observed that the Lok Adalats instituted under Chapter VI of the Act, can only resolve the dispute on the grounds of compromise or settlement amidst the parties. If the parties do not settle the dispute amicably, the matter possibly reverted to its initial court, or the parties are directed to seek a remedy in a court of law. It creates a gratuitous delay in dispensation of justice. The court appreciated the amendment of 2002 of Legal Services Authorities Act, 1987, which provides a compulsory pre-litigative mechanism for conciliation, and gives power to Permanent Lok Adalats to settle the matter on merit.

In the case of *Centre of Legal Research and another v. State of Kerala*[27] the court appreciated that since the commencement of the Lok-Adalat, as a legal aid strategy, the non-governmental organizations, performed a significant role in

[26] *Municipal Council Tonk v. Serve Seva Sanasthan*, AIR 2004 Raj 96.

[27] *Centre of Legal Research V. State*, AIR 1986 SC 2195

gathering people from all sections of society, particularly the downtrodden people. Justice P.N. Bhagwati appreciated the effective working of the voluntary organisation and said that to ensure people's participation and involvement in the legal service programs, the suitable approach is to perform by way of voluntary associations and social action groups. These groups and associations are functioning at the grassroots level among the deprived and weaker sections of the community, and they know what the difficulties confronted by the neglected class of the society are. They understand the real situation of these people fairly well; they know it from their particular personal knowledge, what are the optimum legal requirements and what action should be exercised to eliminate such tapping and discrimination and to reach social or distributive justice to these people. [28]

This issue was raised in front of the Supreme Court whether financial assistance should be given the non-governmental organizations or social action groups involved in the legal aid services program by the state government. These kinds of issues generally considered in the purview of the administration, the court goes beyond the boundary and directs the government to render funds to such NGOs. Justice P.N.Bhagwati speaking on behalf of the Supreme Court held that:

"We, therefore, definitely of the view that NGOs and social action groups must be promoted and encouraged by the State in operating the Legal Aid programme. It is now widely acknowledged throughout the country that the

[28] Sarfaraz Ahmed khan, *Lok Adalat: An Effective Dispute Resolution Mechanism* 65 (APH Publication Corporation, New Delhi 2006)

Legal Aid programme, which is needed for reaching social justice to the people, cannot afford to remain confined to the traditional or litigation-oriented legal aid programme. But it must, taking into account the socio-economic conditions prevailing in the country, adopt a more dynamic positive steps and take within its sweep what we call strategic legal aid programmes, consisting of promotion of legal literacy, organisation of legal aid camps, encouragement of PIL and holding Lok-Adalat for bringing about the settlement of disputes, whether pending in the Court or outside."

The judiciary not merely uncovers the means for the moral support of non-governmental organizations, but also provide the setup for their economic needs. These assertive attempts of the judiciary will accommodate new energy in the Lok-Adalat movement vis-a-vis NGOs participation in the movement. A few couples of cases appeared before the higher judiciary related to Lok Adalat and in most of the cases judiciary restrained appeal or revision in contradiction of the settlement order passed by the Lok Adalat.

In the case of *Union Bank of India v. Narendra Plastic*[29] High Court of Gujarat set aside the decree passed by the Civil Judge on the settlement came before Lok Adalat. The appellant contends that they did not enter the agreement as it imposed on them. If yes then, in this case, the High Court was justified in setting aside the order. Prudence is vital so that litigant could not take similar pleas with dishonest intention.

[29] *Union Bank of India V. Narendra Plastic*, AIR 1991 Guj 67

Punjab National Bank v. Laxmi Chand Rai & others[30] the High Court of Madhya Pradesh rejected the appeal filed against the decree passed by the Lok Adalat by saying that in case of filing an appeal, the provision of the Legal Services Authority Act will be applicable, and there will be no appeal under the provisions of Section 96 of CPC. In this matter in the course of the negotiation before Lok Adalat, the appellant bank agreed upon the award containing the full dues including, pendent lite interest and the duration of installment remaining on the Lok Adalat to decide. The appellant argued that they never agreed upon the, and the amount of pendent lite interest is inappropriate and unacceptable.

The Court stated that Lok Adalats had been given the strength of the civil court under the Civil Procedure Code in regard of cases related to summoning and setting up the presence of any witnesses, and questioning him on oath to provide any documents, to supplicate any government document o other matters as may be directed. The court outlined that the provision of Section 21(2) of the Legal Service Authority Act, prohibits appeal along with section 96(3) of the Code of Civil Procedure, which also prohibits any appeal from the consent decree. The Code also proposes that when a consent decree settled by the civil court then that finality is associated with it, and this finality could not be sanctioned to be demolished, especially under the Legal Services Authorities Act, as it may defeat the very purpose of the Act In view with the provision of Section 96 of Civil Procedure Code is not suitable for filing appeal against the award given by the Lok Adalat.

[30] *Punjab National Bank V. Laxmi Chand Rai & others,* AIR 2000 MP 30

In the case of *K. N. Govindan Kutty Menon v. C. D. Shaji*[31] the question before the Hon'ble court is that if the matter was referred by a civil court to the Lok Adalat, could it be a decree of civil court, as well as if the case was referred by a criminal court, would it be considered as an order of a criminal court and not an award under Section 21 of the Legal Service Authority Act. The Court observed that the Act does not distinguish between such references made by the civil court or the criminal court. There is no constraint, on the power of Lok Adalat to implement an award based on the compromise and settlement between the parties to the conflict in a case referenced by a criminal court under Section 138 of the Negotiable Instrument Act. On the basis of such provision, it ought to be considered as a decree able to be executed by the civil court.

In *Kishan Rao v. Bidar District Legal Services Authority*[32] the issue was brought up before the High Court of Karnataka regarding if the Lok Adalat can pass an award when all the parties to the dispute failed to present in front of the Lok Adalat or if any notice issued to them. The plaintiff and defendant 2 & 4 entered into a compromise, and according to that compromise, the Lok Adalat passed the award. Whether the Lok Adalat was right while passing the award? The High Court of Karnataka said that while the matter referred to Lok Adalat, it is expected from the Lok Adalat to analyze the matter, whether or not all the parties are moving into a compromise or settlement because there can no be award on the basis on any compromise amid parties if each party to the dispute

[31] *K. N. Govindan Kutty Menon v. C. D. Shaji*,(2012) 2 SCC 51.

[32] *Kishon Rao v. Biddar District Legal Services Authority,* AIR 2001 Kar. 407

tend not to get into a compromise. The Lok Adalat is expected to observe with its maximum effort that the settlement between the parties to the suit, be carefully supervised by the concepts of justice, equity and fair play. After that, it is necessary to examine whether all parties have entered into the compromise or settlement. Hence, it is the responsibility of Lok Adalats to observe that all parties to the dispute have appeared before it or not. If some parties got into a compromise or settlement and others, do not, subsequently the Lok Adalat has no jurisdiction to pass an award, due to the fact the matter persists uncompromised, and in that circumstance, Lok Adalat can pass no award.

In the case of *Sreedharan T. v. Sub-Inspector of Police, Balussery Police Station*[33], Hon'ble court shed light on the procedure, which observed by Lok Adalats, the Karnataka High Court held that the several different provisions comprised in the Legal Service Authority Act, which clearly states that the Lok Adalat has no adjudicatory functions, and can not declare an independent award. It can only indoctrinate the parties by any methods like mediation, conciliation, etcetera, to arrive at a settlement and dispose of the matter according to mutual agreement. The Hon'ble Court furthermore added that it is imperative to include the terms of the settlement by the Lok Adalat to be involved in the disputes, in the form of an award and with the signature of both parties and the seal and signature of the Lok Adalat, it's the like the same settlement decree. The Lok Adalat can take no decision unilaterally; nonetheless, many Lok Adalats issues

[33] *Sreedhaaran T.S. v. Sub-Inspector of Police, Balusseery Police Station* 2009 CriLJ 1249 (Ker).

independent instructions and orders, following an independent adjudicatory process. It is entirely unallowable and opposite to the plan and scope of the Act.

In the matter of *Sitaram Patel V. Dushyant Dahyabhai Desai & Others*[34] Gujarat High Court followed previous judgments given by various courts. It said that Lok Adalat has no adjudicatory or judicial capabilities; its duties and functions are entirely correlated with the conciliation and must base on compromise or settlement between the parties. The Hon'ble Court further held that in case no compromise could be made, case record must revert to the court from which it was received, for disposal by the said court as per law as no Lok Adalat has any power to hear parties adjudicate the case. When the Legal Service Authority Act pertains to the award by the Lok Adalat, the Act doesn't have an adjudicatory judicial decision, but a non- adjudicatory decision based on a compromise or settlement, entered at by the parties to the dispute, with supervision and support from Lok Adalat.

In the matter of *State of Punjab and others v. Shri Ganpat Raj*[35] the Hon'ble Supreme Court laid down the explicit expression used in sub-section 3 of Section 20 of the Legal Service Authority Act, 1987, which clarifies that the Lok Adalat can settle the case by settlement or compromise between the parties to the dispute. The court also described in particular the meaning of two important terms compromise and settlement. A compromise is always reciprocal, which means mutual adjustment as far as the settlement is a concern; it is the

[34] Criminal Appeal/ 1008/2017

[35] *State of Punjab and others v. Shri Ganpat Raj,* AIR 2006 SC 3098.

termination of legal procedures by mutual consent. Hon'ble Court held that this matter seemed not to include compromise or settlement also couldn't have been disposed of by Lok Adalat if parties to the dispute could not arrive at any compromise and settlement and Hon'ble court declared in the matter that the Lok Adalat could pass no award.

In *New India Assurance Co. Ltd., v. Lohit Distt. Legal Service Authority*[36] the High Court of Guwahati, on the basis of the study of the provisions mentioned in the Act said that, when Lok Adalat passed an award it should primarily be centered upon the assent by the parties to the dispute and not on the merits of the settled cases by the disputing parties. If collectively read sub-sections (3) and (5) of Section 20 of the Legal Service Authority Act, 1987 it becomes clear that an award for the payment of damages or compensation ought not to be executed by the Lok Adalat except while both the parties entered into the settlement. Accordingly, when a Lok Adalat renders any award enforcing liability for payment of compensation, under Section 166 of the Motor Vehicle Act, without a compromise or settlement between the parties or ex-parte such an award would be opusul to the provisions of Section 20 of the Act. Such questionable award without jurisdiction cannot be sustained, and if allowed, it would cause a severe miscarriage of justice.

[36] *New India Assurance Co. Ltd., v. Lohit District. Legal Service Authority,* AIR 2008 Guw 166.

In the matter of *Durgam Rayali v. The Chairman Mandal Legal Services Committee*[37] the High Court of Andhra Pradesh stated that Under section 19(1) of the Act, every Authority or Committee might arrange the Lok Adalats at such periods and areas and for such jurisdiction, as it considers suitable. Under sub-section (3) of section 20 of the Act, where a matter referenced to a Lok Adalat under sub-section (1) of section 20 or in the context referred to it under sub-section (2) of section 20, the Lok Adalat will proceed to settle the cases off and reach at an amicable settlement among the parties to the dispute. The Court observed the requirement of observing the clear and unambiguous provisions of the Legal Services Authorities Act, 1987.

In *Dr. (Smt.) Shashi Prateek Shashi Prateek v. Charan Singh Verma*[38] the High Court of Allahabad, made comparable perception, the question before the court is that while making a decision on the application which was submitted by the applicant, the Lok Adalat expected to examine the matter as to whether the parties have reached an amicable settlement. In this particular matter it was noticed that parties to the dispute did not enter into any compromise or settlement as challenged by the petitioner that she was not present there and not signed the documents as claimed to have been entered into compromise before the Lok Adalat and in this kind of matter, Lok Adalat could not execute such award. Subsequently, it was imperative or the Lok Adalat to call off the award and return the case to the court from which it referenced, but the Lok Adalat has

[37] WP No. 28621 of 2016 Decided on June 14th 2018.

[38] *Dr. (Smt.)Shashi Prateek v. Charan Singh Verma,* AIR 2009 All 109.

refused the application as specified above referring as not maintainable. This kind of panorama of Lok Adalat is opposite and antagonistic to the law.

The Apex court considered the fair question about the adjudicatory authority of Lok Adalat in the matter of *State of Punjab v. Jalour Singh* the Hon'ble Court described the approach adopted by the Lok Adalats and made it clear that the Lok Adalats have no judicial or adjudicatory capacities as provided in the Act but utterly related to the settlement. A Lok Adalat decides a case based on compromise or settlement between the parties over its existence and manages its support of verification by rendering an award for compromise or settlement. Lok Adalat has no authority to hear parties to the dispute adjudicate cases as a court does. On challenging the award of Lok Adalat by means of the writ petition, the Hon'ble Court stated that, as per Article 227 of the Constitution of India, an award of Lok Adalat could be challenged but only on limited grounds. Where an award delivered by the Lok Adalat in courses of the compromise and settlement between the parties to the dispute, it becomes irrevocable, obligatory and executable, as a decree of the civil court and no appeal shall lie against it. When parties to the dispute have not arrived at any compromise or settlement, and the award passed by the Lok Adalat does not mention any compromise or settlement between parties, but directs one of the parties to either secure the payment if it accepts or moves to the High Court if either party not agrees, is not said to be award of Lok Adalat. The issue of challenging such an award does not appear under Article 227 because earlier, the High Court should have undoubtedly heard and disposed of the appeal on merit in such a circumstance.

In another case of *Puspa Suresh Bhutada & other v. Subhash Bansilal Maheswari & Other*[39] the question before the court is that, whether or not if either party does not agree on such a reference, the court may refer the case to the Lok Adalat. Section 20 of the Legal Service Authority Act, empowers the court to refer the matter when one party to the dispute applies to the court. Though, the court could suo-moto refer the matter to the Lok Adalat, if satisfied that there can be possibilities of compromise or settlement. However, the proviso commandment the court to render opportunities to the other parties to the dispute to lay their opinions on such reference. The Hon'ble Court appreciated the perspective of referring the matter to the Lok-Adalat and states that:

> *"The purpose of this kind of reference is to investigate the possibility of conciliation using the mediation of an independent agency which is the statutory support for experience and judgment in that account. In the matter similar to the prevailing one, it is a limited part of the court to examine the settlement opportunity. This kind of strategy |would like to aides the legislative, intent to constitute Lok Adalats and statutory support to their decision. Any new approach would not only discourage legislative intent but would also affect the authority of the courts to the extent that the court is required to submit the parties to the jurisdiction of the Lok Adalat, where Courts are confident that the case is relevant to be referred to the Lok Adalat".*

[39] *Puspa Suresh Bhutada & other V. Subhash Bansilal Maheswari & Other*, AIR 2002 Born 126.

The issue of the civil jurisdiction of Lok Adalat was before the Court in the case of *United India Insurance Co. Ltd. v Ajay Sinha and Others*[40] in the matter a burglary took place at respondents' shop, he filed an insurance claim, but it was denied by united India insurance. FIR filed for burglary and matter went pending to court of chief judicial magistrate, and in that course of action, an application filed before the Permanent Lok Adalat for deriving claim, the opposite party to the dispute filed an objection on the ground of lack of jurisdiction. The Permanent Lok Adalat refused the objection and entertained the matter. When matter arrived at High Court, it was held that offence in action was not a compoundable one and that is why Permanent Lok Adalat has no jurisdiction. The court further said that Parliament had given authority to Permanent Lok Adalat to decide the matter; the system of these courts is an innovative mechanism for alternative dispute resolution, it has an adjudicating role to play.

In *Afcons Infrastructure & Another v. Chairman Varkey Construction Co. Ltd & Others*[41] Hon'ble Supreme Court observed that if compromise and settlement made through mediation, it would deem to be compromise and settlement by the Lok Adalat.

[40] *United India Insurance Co Ltd v Ajay Sinha and Others,* AIR 2008 SC 2398.

[41] *Afcons Infrastructure Ltd. & Another v. Chairman Varkey Construction Co. Ltd & Others* 2010 (8) SCC 24.

In the matter of *Inter Globe Aviation Ltd v. N. Satchidanand*[42] the territorial jurisdiction of related question rose before the court, including the contract with jurisdiction exclusion clause. The appellant, an aviation company, operating an air carrier under the name of indigo airlines, has filled this appeal aggrieved by the judgment of Andhra Pradesh High court. The respondent and eight other passengers were travelling from Delhi to Hyderabad. Due to bad weather and dense fog and reduced visibility at Delhi airport flight was delayed for more than 11 hours, and for the whole 11 hours respondent required to stay in the aircraft. As the appellant was a low-cost carrier, neither snacks nor beverages offered, and later, this flight cancelled, and passengers were given three options. The respondents and other passengers who had opted for the travel in combined later flight by the same aircraft protested about the delay. Moreover, defendants detained at Hyderabad airport for misbehaving and threatening the crewmembers. Respondents registered a complained toward the appellant before to the Permanent Lok Adalat in Hyderabad requiring settlement amount of five lakh rupees.

The question before Apex Court, in this case, is that weather Permanent Lok Adalat has territorial jurisdiction or not? On this particular question, Hon'ble Court observed and said that Permanent Lok Adalat is a tribunal of special character it is not a court, the nature of the processes prior to it conciliatory initially and after that adjudicatory. The Permanent Lok Adalat is not a "court of law"; the provisions related to the distinction of the jurisdiction of court do not

[42] *Inter Globe Aviation Ltd v. N. Satchidanand,* (2011) 7 SCC 463.

apply. The apex court further stated that, while conducting conciliation process, the Permanent Lok Adalats require to be supervised by the basic principle of natural justice and indeed not regulated by the Civil Procedure Code or Evidence Act. Permanent Lok Adalat cannot award compensation merely on the ground of sympathy when there is no cause of action for claiming damages resulting from a deficiency in service or negligence.

In the case of *B. P. Moideen Sevamandir v. A. M. Kutty Hassan*[43] Hon'ble court, the Supreme Court examined the role of Lok-Adalat and observed that no party to the dispute could be penalized for not entering into the compromise or settlement before the Lok-Adalat. Section 20(5) of the Legal Service Authority Act recognises the right of parties to the dispute, whose case not settled before the Lok-Adalat, shall be returned to court to decide the matter on merit. During the process of negotiation any exemption is given or any agreement made between the parties before the Lok Adalat, when the matter returned to the court of law from Lok Adalat on the failure of the settlement process, it can be used neither in support nor against the parties to the dispute.

5.4 CONCLUSION

The judiciary is performing an influential role from the very beginning of the Lok Adalats. It made its impression on the enactment and implementation of the Legal Services Authority Act, 1987. When the executive machinery fails to enforce the Act, the judiciary made it enforceable. Based on cases decided by the

[43] *B. P. Moideen Sevamandir v. A. M. Kutty Hassan,* 2009 (2) S.C.C. 198.

various courts, the Indian judiciary plays an indispensable role in executing their function in protecting the people against discrimination and dismissal of justice on diverse grounds. The judiciary has a responsibility on its shoulder to save the institution of Lok-Adalat from losing its essential features, and new principles should be developed to make it more effective.

CHAPTER VI

Chapter VI

STUDY OF FUNCTIONING OF LOK ADALATS IN UTTAR PRADESH

6:1 INTRODUCTION

All over the world, India is known for its constitutional democracy and its democratic institutions. Our democratic values are rooted in our ancient traditions. Freedom implies the rule of law; the rule of law is indeed the supreme principle of a democratic society; it is the fundamental guarantee of equal justice. In India, the Lok Adalat system invented to dispense quick, cheap, and qualitative justice to people at their doorsteps.

The Lok Adalats considered a successful tool of alternative dispute resolution in India during the last few years. It is the most economical accessible and innovatory in nature and method. The Lok Adalat mechanism obtained extensive recognition not particularly from the litigants, but also from the community and legal officials in general. In India, Lok Adalat has been functioning continuously and permanently in each district during the last few years.

This chapter is a vital part and core of the thesis, for the purpose of the study, the researcher, has conducted empirical research. The researcher has participated and observed the functioning of Lok Adalats in Uttar Pradesh. The Lok Adalats are organized by the National Legal Service Authority through the

State Legal Service Authority at State and District Legal Service Authority at the District level under the Legal Service Authority Act 1987.

6.2 PERFORMANCE OF LOK ADALAT IN INDIA

The mechanism of Lok Adalat is developing quite steadily since its introduction in Gujarat. This experiment of Lok Adalat has achieved popularity not only in the state of Gujarat but also in other states of the country. Now the institution is functioning under the umbrella of Legal Service Authorities Act, 1987. The Act came into force on November 1995 with the object to organize Lok Adalats in a view to promoting justice based on equal opportunity. Nowadays, Lok Adalats are being conducted regularly in all parts of the country. Day by day, large numbers of disputants are resolving their disputes through this institution. The Lok Adalat system has become a living and regular feature of the Indian justice delivery mechanism.

TABLE-1

ALL TYPES OF CASES DISPOSED BY LOK ADALATS IN INDIA FROM 2015 TO 2019 (TILL JULY)[1]

Year	Pre litigation		Pending before the courts		Total Number of Disposal	Total Settlement Amount (₹)
	Disposal	Settlement Amount (₹)	Disposal	Settlement Amount (₹)		
2015	16343150	----	6158564	----	22501714	127376348387
2016	5521422	29613305229	4977031	6103090,926	10498423	91644209155
2017	2475904	31716632057	2922574	117679927006	5398422	149396559063
2018	3271539	38838422602	2608152	97937667427	5879691	153476090029
2019 Till July	1367385	21698584965	1338804	67416690336	2706189	89115275301

[1] The statistics obtained from the National Legal Service Authority

As we get data from NALSA regarding the performance of the Lok Adalats in the whole of India from 2015 to 2019 (till July), as shown in table-1. In India the Lok Adalats was operational even before the constitution of NALSA, the guidelines of CILAS became the basis of the Lok Adalats for more than a decade. The performance of the Lok Adalat system is growing continuously in the country. It is evident from the study that till July 2019, near about 20 lakhs Lok Adalats have been organized all around the country. A total number of 106,990,174[2] cases have been disposed of by these Lok Adalats, and in these cases, the total amount of ₹ 145,050,663,511 has been settled through the National Lok Adalats. From April 2018 To March 2019 Lok Adalats were organized other than National Lok Adalats, and in which 2,348,699 cases were taken up, and 1,047,670 were disposed off by the Lok Adalats, both the matters which are pending before the courts and which are at the pre litigative stage and total amount of ₹ 21,627,418,637 been settled during the year 2018-19.[3] The numbers of Lok Adalats, as well as the number of resolved cases by the Adalats, are day-by-day increasing, and it is proving itself as significant machinery for dispensing justice to all.

[2] The statistics obtained from the National Legal Service Authority

[3] *Ibid*

TABLE-2

CASES SETTLED BY THE LOK ADALATS ORGANISED BY SUPREMECOURT LEGAL SERVICE COMMITTEE FROM 2014 TO 2016[4]

Lok Adalats held in the Supreme Court	Matters listed in the Lok Adalat	Matters settled in the Lok Adalat
06.12.2014	54	29
14.02.2015	194	09
11.04.2015	13	01
09.05.2015	51	24
08.08.2015	18	01
14.05.2016	15	07
12.11.2016	36	22

The Legal Services Committee of the Supreme Court, under the umbrella of the National Legal Services Authority, periodically organizes Lok Adalats in the Supreme Court premises, and cases of various categories, which are, eligible and unresolved and being presented before the Lok Adalat by the Honorable Supreme Court. In the year 2014, on December 06, 54 matters listed before the Lok Adalats and out of the 29 cases settled by the Lok Adalats arranged by the Supreme Court Legal Services Committee. In February 2015, only 9 matters

[4] Data *available at* http://www.sclsc.nic.in/lok_adalat/100026 (accessed on 29/09/2019 at 20:40)

were settled out of 194. In April 2015, out of 13, only 01 matter settled. In May 2015, 51 issues were listed, and out of 51 matters, 24 settled in the Lok Adalat. In August 2015, 01 case out of 18 was settled. In May 2016, 15 matters were listed before the Lok Adalats, and only 07 matters got settled out of 15. In November 2016, 22 cases out of 36 were settled. From 2014 to 2016, only 93 matters were settled out of 381 cases, which makes only 24% of cases decided during the years. Though the performance of Lok Adalats in the Supreme Court is not satisfactory still, it is making an effort according to the object of the Act.

6.3 PERFORMANCE OF PERMANENT AND CONTINUOUS LOK ADALAT IN INDIA

Permanent Lok Adalats established for providing a necessary pre-litigative procedure for settlement of cases related to Public Utility Services. The intention of setting up Permanent and Continuous Lok Adalats in all the districts of the country was thrown up for deliberations by Justice Dr. A.S. Anand, chairman of National Legal Services Authority, wrote down an official letter on dated December 8, 1997, to all of the Chief Justices of the High Courts, demanding them to organize Permanent Lok Adalat at all levels. Therefore, in the State Legal Services Authorities in the light of the above-said letter, established Permanent and Continuous Lok Adalats in each district of the state for resolving cases regularly.

TABLE-3

FUNCTION OF PERMANENT LOK ADALATS IN INDIA
(Established u/s 22-B of LSA Act)[5]

F.Y. Year	No. of PLAs Functioning	No. of Sittings During the Year	Cases Pending beginning or the Year	Cases Received During The Year	No. of Cases Disposed Of	Total Settlement Amount ₹
2015 - 16	239	17117	---	---	103559	238700291
2016 - 17	271	20886	53660	121057	93555	1608311878
2017 - 18	289	24842	51330	140318	124459	2475437487
2018 - 19	298	26615	60484	82577	102625	3870578815
Total	**1097**	**89460**	**165474**	**343952**	**424198**	**8193028471**

As statistical information provided by the National Legal Service Authority in respect of function of Permanent Lok Adalats in India, they are established under section 22 (b) of the Legal Service Authority Act 1987, from the year 2015-16 to the year 2018-19. The table 2 shows that in 2015 to 16, 239 Permanent Lok Adalats were functioning in India, the number of sitting of Adalats during the year was 17117, and a total number of 103559 cases, resolved with the total settlement amount of ₹ 238700291. From the year 2016 to 2017, there were 271 Permanent Lok Adalats were functioning, and made 20886 numbers of sittings during the year. The Permanent Lok Adalats received a total

[5] The statistics obtained from the National Legal Service Authority

number of 121057 cases for determination, out of which 93555 cases disposed of. The Adalats got 77% success in the disposal of referred cases, and there was growth recorded in the success rate of Permanent Lok Adalats during the period. From the year 2017 to 2018, 289 Permanent Lok Adalats were functioning, during the year the Permanent Lok Adalats disposed of 124459 cases out of 140318. The Adalats got 88% success in the disposal of cases received. During 2018 to 2019, a total number of 298 Permanent Lok Adalats were functioning all over India during the year with the total number of 26615 sittings of Adalats. 60484 cases were pending for the determination and a total number of 82577 cases received during the year. A total number of 102625 cases were disposed of. The success of Permanent and Continuous Lok Adalats in India during the financial year 2018-19 was 71% related to the pending and received cases.

It is apparent from the statistics that through 2015 to 2019, a total of 509399 cases had come before Permanent Lok Adalat for resolution in which 165474 cases were pending and 343925 cases received during the years for determination out of which 424198 cases have been disposed of. It is pertinent to note that the Permanent Lok Adalat has achieved 83% success rate in the disposal of cases from the year 2015 to 2019.

6.4 PERFORMANCE OF LOK ADALAT IN UTTAR PRADESH

Uttar Pradesh is a vast state that introduced legal aid to the poor program to start with. In this state, the Panchayat Raj Act was very effective. The caste or jati panchayats were settling disputes. This system was prevalent for a

considerable time. After the legal aid system got introduced, panchayat activity got reduced. Legal aid is given to the poor for access to justice. Lok Adalat being the main limb of legal aid and advice scheme got started in 1981, and after enforcement of the Legal Services Authorities Act in State in 1997, various legal services authorities and committees are organizing the Lok Adalats. The first Lok Adalat in the state of Uttar Pradesh was organized to settle civil criminal and revenue cases, before this from the year 1981 Lok Adalat conducted by the Legal Aid Board of Uttar Pradesh. During the short span of 2 years till May 1986, 170 Lok Adalats were held in the state of Uttar Pradesh, and the instrument of Lok Adalat benefited a total number of 2,70,753 persons, including 1,35,230 MACT cases.[6] The success of the Institution of Lok Adalat in the state can be estimated from the attempt of the Legal Aid Board of Uttar Pradesh and the growth obtained from the programs. The Board attempted to make district and the taluk free from the litigation and declared it litigation free zone. The experiment of this effect was, first of all, carried out by district Legal Aid advisor committee Varanasi. It conveyed a meeting of 22 gram pradhan and appraised the scheme of litigation free zone. Gram pradhans prepared a list of cases pending in different courts. There were 82 cases in which the parties were invited on a fixed day. On that day, the Lok Adalat was organized, and conciliators of the institution succeeded in getting the 68 disputes compromised. Hence by this experiment, 17 out of 22 two villages were made litigation free

[6] The statistics obtained from the U.P. state Legal Service Authority, Lucknow.

there were only 14 cases, which could not be compromised because they were of severe criminal nature.

Though the highest number of Lok Adalat organized is in the state of Gujarat, the highest number of people enriched from the fruit of the Institution of Lok Adalat was in the state of Uttar Pradesh. The state of U.P. State Legal Service Authority is still leading in settling the dispute from all other state and union territories. The Uttar Pradesh State Legal Services Authority pointed out that since 1987, the use of Lok Adalats in Uttar Pradesh has steadily increased. The State Legal Service Authority has managed to settle approximately 2 crore cases until July 2019.[7] From 1997 To July 2019, the state of Uttar Pradesh was leading in both organizing Lok Adalat and settling the dispute in such Lok Adalats. However, from the year 1997 to 2019 Uttar Pradesh still leads in settlement of the dispute in National Lok Adalats by settling a skyscraping figure of the case in number at 25,489,101 till July 13 2019, which is the 40% of the total cases decided through the instrument of Lok Adalat throughout the country.[8] The U.P. SLSA also conducts Special Lok Adalats for Juveniles, called the 'Bal Samvad Lok Adalat'. Under this scheme, the SLSA settled 1266 cases during the first 9 months of 2012 and has helped 1167 juveniles stay out of the criminal justice system.[9] It is the largest populated state of the country. Uttar

[7]Project On Access To Justice For Marginalised People Workshop Report On Validation Of Needs Assessment Study Of Legal Services Authorities Organised by Department of Justice, Ministry of Law and Justice, Government of India and United Nations Development Programme *available at* https://doj.gov.in/sites/default/ files/VWR %20%205_0_0.pdf (accessed on 24/09/2019 at 23:56)

[8] The statistics obtained from the U.P. state Legal Service Authority.

[9] Project On Access To Justice For Marginalised People Workshop Report On Validation Of Needs Assessment Study Of Legal Services Authorities Organised by Department of Justice, Ministry of Law

Pradesh has maintained to be the highest achiever in providing justice through the institution of Lok Adalat. It is a state where, for quite some time, lawyers resisted holding of Lok Adalats for many years on the ground that Lok Adalats were opposed to their professional interest.

In the state of U.P., the disposal at Lok Adalats of motor vehicle accident claims varied between 13 to 16 percent but yet keeping the disposal of the tribunals in view; this offered a very substantial relief. The pendency of motor vehicle cases in U.P. have scuttled in recent years, and the working of the Lok Adalats at the tribunal stage are not efficient as it was some years back.

TABLE-4

CATEGORY WISE DETAIL OF CASE DISPOSED IN UTTAR PRADESH FROM 1981 TO 2013[10]

Financial Year	Lok Adalats Held	Motor Accident Claim	Compensation Awarded (₹)	Minor Criminal Cases		Matrimonial Cases	Civil Cases	Labour Cases	Revenue Cases	Other Cases	Total Number of Cases Disposed
				Number of Disposal	Compensation Awarded (₹)						
1981 to 1997 (Board)	2830	30929	1334001211	1759918	1098627227	61211	37860	18005	861915	145845	2871683
1997-98	362	6023	409364450	206148	25006759.05	2901	6242	345	4570	11285	278656
1998-99	399	5067	355941034	192946	27196180.27	2460	6038	758	40758	16993	265020
1999-00	611	4237	342656901	244846	31394640.42	2718	5010	582	43799	17826	319018
2000-01	1126	4777	376602543	306519	43914883.36	3875	9891	767	49269	16694	391792
2001-02	1297	3720	280648362	267222	40259590.05	5074	11917	1190	45362	13646	348131
2002-03	1525	3226	297579748	286758	45526384	4264	12055	1330	61122	11787	380542

and Justice, Government of India and United Nations Development Programme *available at* https://doj.gov.in/sites/default/ files/VWR %20%205_0_0.pdf (accessed on 24/09/2019 at 23:56)

[10] The statistics obtained from the U.P. state Legal Service Authority.

2003-04	2178	2370	200594448	276849	43075008.05	3130	10194	2406	54272	9815	359036
2004-05	3421	2326	214667573	371271	99698459	3502	12610	521	60343	6415	456988
2005-06	4781	2291	207172160	390166	76801247.05	4036	5988	309	50419	21187	474396
2006-07	4587	2631	279286507	393138	80964854.45	5302	8405	118	43561	33807	486962
2007-08	4597	2340	235165182	435975	65310169	4605	7688	375	42201	34201	527384
2008-09	4348	2321	267663315	492381	96279963.13	4690	15548	377	47532	29218	592067
2009-10	4244	2850	404934657	520653	77915038	5052	13430	450	42349	25515	610299
2010-11	4312	3033	456154522	577823	86044312	5446	15776	350	41249	27806	671483
2011-12	4304	2952	499833955	552752	141535586	5414	15405	234	39639	42752	659148
2012-13	4177	3077	537717686	601903	114122435	5790	20445	493	65785	93542	791035
2013 till July	1251	2960	182390798	186550 2	26048632	1679	4520	63	23710	28694	246128
Total	**47520**	**54210**	**5548373841**	**630385 2**	**1121094061**	**69937**	**181162**	**10668**	**779073**	**441183**	**10729768**

Table - 4 provides the information concerning the performance of the Lok Adalats in State of Uttar Pradesh during the period from 1981 to July 2013, and table 5 from November 2013 to July 2019.

It is apparent through the statistics that from 1981 to 1997, Lok Adalats were being organized by the Legal Aid Board of Uttar Pradesh, 2830 Lok Adalats held during 1981 to1997, in which total numbers of 2871683 matters disposed of. In which 30929 were MACT cases, 1759918 were minor criminal cases, 61211 matrimonial cases, 37860 civil cases, 18005 labour cases, 861915 revenue cases, and 145845 other cases settled by the Lok Adalats organized by the Board. While in 1997-1998, the number of Lok Adalats held in the state had been reduced and reached the lowest at 362. In these Lok Adalats, 278656 cases amicably settled. In which 6023 were MACT cases, 206148 were minor criminal cases, 2901 matrimonial cases, 6242 civil cases, 345 labour cases, 4570 revenue cases, and 11285 other cases. The Adalats achieved 83% success in the disposal

of referred cases. In the year of 1998, the State Authority organized 399 Lok Adalats. The Lok Adalats could succeed in disposing of 265020 cases, which comes to 64% of the listed cases. This year, the success rate of Lok Adalats had declined from the previous year and reached 64% from 83%.

During 1999, 611 Lok Adalats organized in the state, which effectually settled 319018 cases. The Adalats got 78% success of success in all the cases during the year. The Uttar Pradesh, Legal Service Authority, conducted 1126 Lok Adalats in 2000, in which the Lok Adalats disposed of 391792 cases of diverse nature. The success obtained by these Adalats was to the extent of 72%. In the year 2001, 348131 cases determined by 1297 Lok Adalats. In the year 2001, there was a significant increase in the number of Lok Adalats, referred cases, and settled cases.

The Uttar Pradesh, Legal Service Authority, organized 1525 Lok Adalats during the period 2002. Out of the referred cases, 380542 cases amicably settled, which comes to 72% of total cases. In which 3226 were MACT cases, 286758 were minor criminal cases, 4264 matrimonial cases, 12055 civil cases, 1330 labour cases, 61122 revenue cases, and the Lok Adalats settled 11787 other matters in the year. In the year of 2003, 2178 Lok Adalats were held in the state in which the Lok Adalats disposed of 359036 cases, which constitutes 67% of the referred cases. It is worth noting that the year 2003, although success percentage decreased the number of Lok Adalats yet, referred cases and resolved cases increased. Overall performance of Lok Adalats in Uttar Pradesh, increased to 78% during 2004, a total number of 456988 cases resolved, including 2326

cases of MACT, 37127 minor criminal cases, 3502 matrimonial cases, 12610 civil cases, 521 labour cases, 60343 revenue cases, and 6415 other cases. A total number of ₹ 121166032 compensation awarded by the Lok Adalats during the year. During 2005, the authorities conducted a large number of 4781 Lok Adalats. 474396 cases were disposed of in these Lok Adalats total number of ₹283973407.05 compensation awarded by the Lok Adalats this year; The Lok Adalats succeed only in 70% cases as compared to the cases taken up. In this year, there was a decline in success rate but more than 08% increase in the number of settled cases as compared to the year 2004.

The Authorities conducted 4587 Lok Adalats in the year 2006, where 486962 cases of different nature were amicably resolved, which constitutes to 43% of the cases referred, in which 2631 cases resolved of MACT, 393138 minor criminal cases, 5302 matrimonial cases, 8405 civil cases, 118 labour cases, 43561 revenue cases, and 33807 other cases disposed of and total number of ₹360251352.45 compensation awarded by the Lok Adalats during the year. In 2007, 4597 Lok Adalats were organized, which resolve the 527384 cases in which a total number of ₹ 300475351 compensation awarded in the year 2007. There was again growth in the number of settled matters in the success rate of the Lok Adalats. During 2008, 4348 Lok Adalats organized by the concerned authorities/committees all around the state. In these Adalats, a large number of 592067 cases were determined amicably, which constitutes 63% success in the performance of the system. The success rate of the Adalats had increased and reached the stage of 63% against the referred cases.

During the year 2009, 4244 Lok Adalats organized by the U.P. State Legal Service Authority. Out of those cases, which brought before the Lok Adalats, only 610299 disposed of amicably including 2850 matters of MACT, 520653 minor criminal cases, 5052 matrimonial cases, 13430 civil cases, 450 labour cases, 42349 revenue cases, and 25515 other cases. A total number of ₹ 482849695 compensation awarded by the Lok Adalats during the year to the aggrieved parties. Lok Adalats are increasing by and by in the state of Uttar Pradesh.

The U.P. Legal Service Authority/committees organized 4312 Lok Adalats in the year of 2010 with total disposal of 671483 cases, in which 3033 cases settled of motor accident claim, 577823 minor criminal cases, 5446 matrimonial cases, 15776 civil cases, 350 labour cases, 41249 revenue cases, and 27806 other cases were settled and total number of ₹ 542198834 compensation awarded by the Lok Adalats during the year 2010. The Uttar Pradesh, Legal Service Authority, conducted 4304 Lok Adalats in 2011 in which the Lok Adalats disposed of 659148 cases of diverse nature, and compensation award in a total of ₹ 641369541, which is the maximum since the commencement of Lok Adalats in the state of Uttar Pradesh. In the year 2011, a total number of 2952 MACT settled, 552752 were minor criminal cases, 5414 matrimonial cases, 15405 civil cases, 234 labour cases, 39639 revenue cases, and 42752 other cases were settled.

During the year 2012, 4177 Lok Adalats were organized, in which the Adalats resolved 791035 cases out of the total referred cases. The table indicates

the increasing trend in the performance of Lok Adalats, in which a total number of ₹651840121 amount settled for compensation. During the year 2013(till July), 1251 Lok Adalats were organized by the Authority, the list of resolved cases of 246128, included 2960 MACT, 1865502 minor criminal cases, 1679 matrimonial cases, 4520 civil, 63 labour cases, 23710 revenue cases and 28694 other cases with total number of compensation warded ₹ 208439430 in 2013(till July). There was an inclining in the number of determined cases of all categories from 1981 to 2013. It is pertinent to note that the performance of Lok Adalats was increasing year by year during the period from 1981 to 2013 and is still growing.

TABLE -5
ALL TYPES OF CASES DISPOSED BY LOK ADALATS IN UTTAR PRADESH FROM 2013 TO 2019 (TILL JULY)[11]

	Pre litigation			Pending before the courts			Total Number of Cases Disposed	Settlement Amount (₹)
	Taken up	Disposed	Settlement Amount (₹)	Taken up	Disposed	Settlement Amount (₹)		
2013(Nov)	88548	88548	2398352535	857518	857518	2654944500	946066	5053297035
2014	93840	93840	3992251588	1499643	1499643	3700561384	1593483	7692812972
2015	2003090	1425040	528023803	2806561	1980324	4885778220	3405364	10133802023
2016	2157828	1129759	4474242254	2652271	1779709	3887150576	2909468	8361392830
2017	1969337	660803	7486850649	2172365	1220342	6997494000	1881145	14484344649
2018	3708374	1632963	7244545718	1890982	1025940	718656370	2658903	14431092088
2019 July)	1677399	892170	2139108361	838808	472734	4625081963	1248119	41716487891
Total	**11698416**	**523123**	**28263374908**	**12718148**	**8836210**	**90447113013**	**14759333**	**118710487921**

[11] The statistics obtained from the U.P. state Legal Service Authority.

Table 5 provides the information with regard to the performance of the Lok Adalats in the State of Uttar Pradesh during period November 2013 to July 2019 as data provided by the legal service authority 14759333 cases disposed of out of 24416564 with the total number of ₹ 118710,487,921 compensation amount settled by the Lok Adalats all over the state from November 2013 to 2019 till July.

In the year 2013, 88548 matters were brought before the Lok Adalats at the pre litigative stage for an amicable settlement, 88548 out of which 88548 cases were settled. 857518 matters which are pending before the courts out of which 857518 cases settled, which reaches to 100% disposal off all types of cases with the total settlement amount of ₹ 5053297035. In the year 2014, again, Lok Adalats disposed 100% a total number of 1593483 of cases brought before it at the pre and post litigative stages, in which a total number ₹7692812972 compensation amount settled by the Lok Adalat.

During the year 2015, a total number of 3405364 all types of cases settled by the Lok Adalats out of 4809651, which constitutes to 73% of the disposed of cases in the year 2015. During 2016 Lok Adalats were organized by the concerned authorities, which took 4810099 cases for resolution. The Lok Adalats effectively settled 2909468 cases and got 60% success. During the year ₹ 8361392830, compensation was awarded. In the year of 2017, Lok Adalats held by the authorities in Uttar Pradesh, in which 4141702 cases were listed for resolution. The Adalats disposed of 1881145 cases, which constitutes 45% of the

referred cases. The overall performance of Lok Adalats in Uttar Pradesh decreased to 46% in 2017.

The overall performance of Lok Adalats in Uttar Pradesh again steadily increased and reached 47% during the year 2018. The total number of disposal is 2658903, out of 5599356, cases in which a total number of 3708374, cases were taken up at the pre-litigation stage, and 1632963, were disposed of at the pre litigative stage. A total number of 1890982 cases taken up referred by the courts in which cases are pending; out of that, the Lok Adalats disposed of 1025940 cases during the year. The total number of ₹ 14431092088, compensation amount settled during the year 2018. In 2019 till July 1248119 cases disposed of out of 1730978 cases taken up, the total number of ₹ 41716487891 amount settled for compensation in all types of cases.

TABLE-6
CASES SETTLED BY THE LOK ADALATS ORGANISED BY HIGH COURT LEGAL SERVICE COMMITTEE IN UTTAR PRADESH FROM 2013 TO 2019 TILL MAY[12]

S.N.	YEAR	TOTAL NUMBER OF DISPOSED CASES
1	2013	51
2	2014	105
3	2015	68
4	2016	68
5	2017	200
6	2018	217
7	2019(Till July)	120
TOTAL		**829**

[12] Data provided by High Court Legal Service Committee, Uttar Pradesh.

The table 6 deals with the cases resolved by Lok Adalats organized by the High Court Legal Service Committee in Uttar Pradesh during the period from 2013 to 2019. A total number 829 of all types of cases disposed of during the period. In the year 2013, the total numbers of 51 cases were disposed of, whereas in 2014, the percentage of cases disposed of increased to 105 cases. In the year 2015, the percentage of cases disposed of by Lok Adalats decreased again to 68 cases. In the year 2016, the total number of cases disposed of by the Lok Adalats is 68 again. The number of cases settled in 2017, the Lok Adalats organized by the high court legal service committee was increased to 200 cases during the year. 217 cases disposed of by the Lok Adalats in the year 2018, in this particular year, Lok Adalats disposed of maximum numbers of cases. In 2019 till July 120, cases were determined by the Lok Adalats organized by the High Court Legal Service Committee. The percentage of the disposal is increasing steadily; it is appropriate to say that the Lok Adalats arranged through the Legal Services Committee of High Court is making sincere efforts to achieve the goal for which it was created.

6.5 PERFORMANCE OF PERMANENT AND CONTINUOUS LOK ADALAT IN UTTAR PRADESH

As per the Legal Services Authority Act, (Amendment Act), 2002, Permanent Lok Adalats, have been constituted at district level. Pre-litigative cases relating to Public Utility Services are decided in these Lok Adalats.

TABLE-7

STATISTICAL INFORMATION IN RESPECT OF FUNCTION OF PERMANENT LOK ADALATS IN UTTAR PRADESH (Established u/s 22-B of LSA Act)[13]

F.Y. Year	No. Of PLAs Functioning	No. Of Sittings During the Year	Cases Pending beginning of the Year	Cases Received During The Year	No. Of Cases Disposed Of	Total Settlement Amount ₹
2016 to 2017	47	4952	4191	2724	1260	15973471
2017 to 2018	47	5964	2178	2293	1663	26782680
2018 to 2019	47	4956	4804	1354	2340	85480779
Total	**141**	**15872**	**11173**	**6371**	**5263**	**128236930**

As statistical data provided by the National Legal Service Authority in respect of function of Permanent and Continuous Lok Adalats in Uttar Pradesh, established under section 22 (b) of the Legal Service Authority Act 1987, from the year 2016 to 2019.

Table 7 is concerned with the performance of Permanent and Continuous Lok Adalats in the state of Uttar Pradesh from 2016 to 2019. There were 47 Permanent Lok Adalats functioning in Uttar Pradesh. The table shows that in 2016 to 2017, there were 4952 sittings of Permanent Lok Adalats; during the year 2724, matters received for settlement and a total of 4191 cases were pending from the beginning of the year. A total number of 1260 cases disposed of by the Permanent Lok Adalats. The success of the rate of the cases resolved was 46% of the cases received during the year. A total number of ₹15973471

[13] The statistics obtained from the National Legal Service Authority

settlement amount awarded by the Permanent Lok Adalats. From 2017 to 2018, Adalats made 5964 sittings during the year. A total number of 1663 cases disposed of out of 2293 received, and 2178 cases were pending during 2017-18, which constitutes 72% of the success of the total cases received. During the year 2018-19, 47 Permanent Lok Adalats were functioning in Uttar Pradesh, the number of sitting of Adalats during the year were 4956, and a total number of 2340 cases were resolved out of 1354 received and 4804 pending cases with the total settlement amount of ₹ 85480779.

It is apparent from the statistics that from 2016-2019, A total number of 141 Permanent Lok Adalats were functioning in Uttar Pradesh during the years, which settled a total number of 5263 cases out of 6371 received and 11173 pending cases, related to public utility services. The total number of amount settled by the Permanent Lok Adalats from 2016 to 2019 was ₹128236930. It is pertinent to note that the Permanent Lok Adalat has achieved 82% success rate in the disposal of taken up cases from 2016 to 2019

6.6 CONCLUSION

The researcher has attended a large number of Lok Adalats in Uttar Pradesh to study with the purpose to carefully examine the performance of Lok Adalat system. The researcher has also interviewed the officials of the authorities/committees, members of Lok Adalats, advocates, disputants, beneficiaries, and the general public about the organization, powers, proceedings, legality, importance, and functioning of the mechanism. The

information regarding the institution of Lok Adalat has been discussed with law teachers, social workers, government servants, and people belonging to rural and urban areas. The conclusion of this particular chapter is based on the analysis of data, interviews, and interactions with people regarding the performance of Lok Adalats in the state.

The institution of Lok Adalat in the study area is functioning since 1981. It has got the statutory backing in 1997 in Uttar Pradesh. After that, it has started functioning as per the Legal Services Authorities Act, 1987, and U.P. State Legal Services Authorities Rules, 1996. In the study area, the various concerned authorities/committees are conducting ordinary Lok Adalats, national Lok Adalats, in addition to these Lok Adalats, the Permanent Lok Adalat related to Public Utility Services has been working since 2007 in state of Uttar Pradesh.

The study has revealed that in Uttar Pradesh, more than fifty thousand Lok Adalats have been organized during 1981-2019. In these Lok Adalats, 25,489,101 cases have been resolved. Adalats have achieved a 47% success rate in the disposal of cases (Table 4 & 5). The study demonstrates that there is a fluctuating success rate of Lok Adalats in the study period. The highest performance rate of Lok Adalats is 70% in 2015, and the lowest is 42% in the year 1998 (Table 4 & 5). The Lok Adalats of the state has witnessed its best performance in disposal of summary cases, the Lok Adalats has also performed well in disposal of civil cases (181162), petty criminal cases (6303852), matrimonial cases (69937), labour cases (10668), revenue cases (779073) and motor accident claim cases (54210) from 1981 to 2013(Table 4).

The study shows that the performances of Lok Adalats are not similar to other states in India. The state of Uttar Pradesh has noted the optimum 58% success rate in the disposal of cases. The Permanent Lok Adalat related to public utility services has determined 5263 cases out of 6371 taken up cases; it has got 82% success in the determination of cases.

The study reveals that numbers of Lok Adalats in the state are increasing from year to year, but the performance of these Adalats is not growing. Along with other reasons, the significant reasons for unexpected slow performance may be enumerated as under:

(i) The disputants, generally, do not appear before the Lok Adalats. It is a fact that compromise should be based upon the free and mutual consent of the parties, and for this purpose, parties must be present in Lok Adalats proceedings. Their lawyers convince the parties, and they ordinarily prevent the disputants from coming before Adalat. Because lawyers know this fact that the Lok Adalat is not empowered to compel the disputing parties to appear before it. Therefore, it is a vital deficiency in the Lok Adalat system.

(ii) It has been observed that there is passive involvement of members of Lok Adalat in its proceedings. It has been noticed that usually, judicial officers hesitate to sit along with litigants, criminals, and common people due to their position in society. Moreover, sometimes, they also feel uneasy in the Lok Adalats proceedings due to the rude and hostile attitude of people. They remain formal

in the system and do not make serious efforts for the amicable resolution of disputes.

(iii) It revealed from the study that members ok Lok Adalats generally, pressurize the disputants to reach an agreement and decide the disputes like the judges of ordinary courts only to increase the number of settled cases in Lok Adalats. In this situation, the conciliators of Lok Adalats must be dedicated, committed, and expert in the conciliation process so that the Lok Adalat mechanism may function in its true spirit.

(iv) In most cases, the government and its departments are also involved as a disputant. The officers of the departments are not cooperative in the disposal of cases based on compromise. Similarly, the roles of other administrative authorities of various departments are also generally undesirable and non-cooperative in Lok Adalats proceedings.

(v) The principal reason for the declining growth rate of the Lok Adalat system is the passive and negative attitude of the advocates of the disputing parties. As advocates can effectively play a significant part in the disposal of cases through Lok Adalats. They can easily persuade the parties to agree. However, most advocates do not show faith due to their professional loss in the system. So they do not take the initiative to persuade their clients for compromise. They create obstacles in the way of making of

settlement between the parties. Thus, the positive and cooperative attitude of advocates may play a predominant role to make the Lok Adalat system meaningful and successful.

(vi) Generally, the Lok Adalats are commenced with endless speeches by the administrative and Legal Services Authorities and followed by tea or lunch program. In these activities, most of the day lost. In the remaining period, the conciliators of Lok Adalat do not actively involve in the conciliation process but only perform it as formal work. Therefore, it is respectfully submitted that to save time, and the unnecessary formalities should be minimized.

(vii) The talk with disputants, beneficiaries, and the general public revealed that the lack of awareness regarding the Lok Adalat system, its features, and its advantages among the people. So, it is the need of the time to popularize the Lok Adalat mechanism through mass media, etcetera.

CHAPTER VII

Chapter VII

CONCLUSION & SUGGESTIONS

In the present epoch, obtaining justice is the primary requisite of an enlightened society. Ensuring equality and equal justice for all is the duty of every system of administration of the governments. Access to justice is a recognized human right and an indispensable requirement for the survival of the state. It is an ascertained fact, which a government cannot survive if it is not to incorporate liberty and justice in its actions. Access to justice is most important right in a democratic system of the state, which is based on the rule of law, where it is the responsibility of the state to protect human rights and guarantee the dignity of the individual. Settlement of the disputes between the poor and needy is obligatory for a democratic system of the state, which intended to at an equal social status of citizens. The institution of Lok-Adalat is functioning commendably for more than two decades and also had performed efficiently for more than a decade without having any specific legislation. Though, Lok Adalats during that time operated legally in the form of constitutional directives and guidelines as directed by the judiciary.

From the study, it is apparent that the institution of Lok Adalat has been an instrument to which satisfy and put together the constitutional duty to provide equal justice and to secure access to justice to all especially to the downtrodden people. Therefore, the institution of Lok-Adalat is nothing but a mechanism to achieve the Constitutional goals as enshrined in the Preamble, Art. 14, Art 39A,

Art.40 and various other Constitutional provisions.

Lok Adalat system is not a new concept for India, and it existed from time to time with multiple roll of names. It was called as people's court or Panchayat system in ancient India. A substantial number of people's court also operated at the same time intending to provide justice to people at their doorsteps, apart from the state's courts. Besides from the official courts, which were established and governed by the state, the people's court used to provide justice to all with the assistance of reputable persons of the neighborhood. The then people's courts had information concerning the disputants, the witnesses and the facts related to the dispute; so, it was effortless to settle the dispute speedily, effectively and efficiently.

According to Katyayana smriti, mainly six kinds of courts existed in ancient times, viz. (i) Nripa (ii) Sasita (iii) Adhikrita (iv) Gana (v) Sreni and (vi) Kula. Nripa, the king himself the supreme authority in the legal process, the king himself and was guided by the principles of dharma. Sasita was the king's court; it was the apex court of law in the kingdom and presided by the king. Adhikrita is the court-appointed by the king, and the king authorized these courts for delivering justice in which people who were knowledgeable in the sutras and smrithis are appointed as judges. These three were called the higher court, and another three were the people's court. Gana is an assembly of elders in the village belonging to different castes and professions but living in the same village or town who are confirmed by the people of the area as learned and neutral. The Gana court, as the highest court in the hierarchy of people's court,

enjoyed an appellate jurisdiction in all cases decided by the Sreni and Kula. The Sreni courts are the councils of trade or profession comprised of persons of the same trade or profession or persons belonging to different clans who governed by principles of the same trade or profession. The courts had the authority to settle matters relating to their specific trade or profession. The Sreni courts had the appellate powers against the judgment of Kula courts. The Kula was the informal group of families of disputing individuals, which investigated and resolved their disputes. It was regarded as the lowest people's court in the hierarchy of courts.

The system adopted by the people's courts was simple, informal, methodical and based on customs and usages the land. These courts performed under the auxiliary direction and supervision of the king. There were three fundamental features of people's courts first was the truth, based on truth courts dispenses justice, the second was justice, rendered without delay by this unbiased and independent method and third was that these courts were free from the problem of corruption and justice was given at no cost.

In the medieval era, the Mughal rulers founded their legal system, but they did not meddle in the working of people's courts. In Mughal domination, the people's courts or gram Panchayats continued working with minor modifications as a conflict resolution mechanism. During this rule, no direct or methodical state administration over the Gram Panchayats existed which provided justice at the village and community level. The people's courts of the caste, trades, artisans, and community of traders within which such conflict occurred resolved the conflicts at the local level. These courts settled the matters according to the

methods or practices followed in the family, caste, community, trade or locality. Five respectable people of the community, who were called panchas presided over the Panchayats, which was intended to be unbiased and gave their decisions in the respective meetings. These Panchayats followed the methodical and straightforward procedure, and it was free from the legal technicalities. The Panchayats were endowed to take cognizance and settle civil cases and criminal cases of petty nature. On the grounds of customary laws and doctrines of natural justice, these courts provided justice. It is vital to mention that the regional courts in the form of Panchayats performed a significant part in delivering justice during the Mughal era.

The Britishers entered India to practise business and trade; initially, they were not involved in the process of dispensing justice. Afterwards, they established and started the lowest level courts on the pattern of Panchayat like choultry court in Madras, in Bombay court of conscience and each presidency town there were courts of appeals. Subsequently, the Britishers progressively developed the new adjudicatory structure, which turned out to be increasingly more formal with the introduction of legal terminology in the Indian justice system. This complex legal development was centred upon the notion of the rule of the Anglo-Saxon system of jurisprudence. In this manner, the Britishers shaped the ancient Indian justice delivery system according to their implicit interests and deliberately destroyed the structure and idea of people's court. Hence, it is vital to discuss that the people's courts performed a significant role in ancient as well as in the medieval era in the distribution of justice.

After attaining independence, it was emphasized that the Panchayat system should be restructured to provide faster, more affordable and qualitative justice based on traditional principles and values and to establish the philosophy of equality and justice, nyaya Panchayats were revivified in most states of the country for the abovementioned objective. On the other hand, the execution of these organizations was not satisfactory owing to inadequate legal knowledge of members of nyaya Panchayats, insufficient secretarial staff, lack of monetary resources and prejudiced involvement of members of Panchayats in the delivery of justice. It became a necessity of society in this backdrop to introduce a distinct justice delivery system, which not only lessens the workload from courts but also provide expeditious and cost-effective justice to all by applying the friendly conciliatory applications with the desire to sustain balance in the society.

Conventional courts have universally been executing a precursive and significant part in the justice delivery system for a very long time. The Courts adhere an adversarial form of procedure to adjudicate disputes; litigation becomes an endless exercise in this form of process. Dispute resolution has become exceptionally formal through legal proceedings in the courts and has resulted in unreasonable delays, high expenses and unfairness in litigation. Also, the adversarial essence of litigation is not compatible with social and professional relationships, which required to be protected. Courts are all concerned with the problems the justice delivery system is dealing with, the delays overcrowding and the high cost of litigations. The adversarial system creates two mutually adamant opposing parties to the litigation, which does not create an atmosphere

of unison, settlement, and cooperation. Adversarial litigation does not end with an agreement. Ultimately, one party emerges as the winner and the other as the defeated, this produces more enmity among the parties resulting in more litigation among them or their successors.

The justice delivery system performs an indispensable part in advancing public interest and maintaining law and order in society. To obtain justice via courts, parties to the suit have to go through the formal, complicated and expensive processes associated with the litigation. A substantial part of the population in India is uneducated and live in absolute inhumane conditions in poverty. Hence, they are completely unaware and ignorant of courtroom procedures, afraid and bewildered when confronted with the judicial machinery. Therefore, the majority of citizens in India are not in a situation to enforce their constitutional or legal rights, which creates inequality. It is an essential function of a welfare state to render dispute-resolution mechanisms, in which every citizen has equal accessibility to the resolution of their disputes and to execute their fundamental and legal rights, social inequalities, ignorance, illiteracy or poverty should certainly not be a hindrance to this.

Delay in the judicial process leads to a lack of public reliance on the concept of justice. Trust in the judicial system is determined by its capacity to render equal, speedy and cost-effective justice to all. Achieving speedy justice is a fundamental right of every citizen, which is also the essential requirement of proper judicial administration. The Apex Court has, in various decisions, emphasized the necessity for speedy justice and the right to free legal aid,

successive governments have failed to translate the court's decisions into legislative enactments. Justice Bhagwati in the matter of *Hussainara Khatoon v. the State of Bihar* observed that any process which does not guarantee a reasonable speedy trial can not be considered as 'just, fair, or reasonable' and that would be wrong under Article 21 of the Constitution. Therefore, there is no uncertainty that the speedy trial, and the speedy trial we refer to as reasonably speedy trial, is an essential and indispensable part of the fundamental right to life and liberty inducted in Article 21 of the Constitution of India.

The judiciary suffers from a large backlog of cases, which often occurred in being the dismissal of access to justice, on account of delay that occurs in various matters in the distribution of justice. Justice K.G. Balakrishnan, the former Chief Justice of India, observed that "... people's trust in the judicial system will begin to decline, because justice that delayed is forgotten, excluded and finally discharged." [1]

There are several reasons for delays in the disposal of justice, foremost of them are increasing in the number of cases in the institution, the massive number of pending cases in courts at all levels, the vacancy of judges in all levels of courts, low judge-population ratio, and the lengthy procedural law. Although the disposal of cases in various courts has increased considerably, the institutions also have grown more rapidly. The immense backlog of cases only makes justice less convenient.

There are 59,616 cases are pending in the Supreme Court as on 29/9/2019.

[1] Backlog of cases causing concern: CJI, The Hindu, Thursday, Aug. 16, 2007.

The High Court has 43.55 lakhs cases pending and out of which 18.75 lakhs are related to civil cases, and 12.15 lakhs are criminal cases. However, in subordinate courts, the situation is most difficult, as on 23-10-2019 and 8896139 civil cases and 22387856 criminal cases total 31283995 cases are pending. In the courts of Utter Pradesh, 1735330 civil cases and 5724505 criminal cases total 7459835 cases are pending. With an average time to resolve each matter for 10 years, we need 162 years to clear this massive backlog of cases, but it is not likely that during this time we get the same data of pending backlog cases again. The approved number of judges is insufficient to deal with the burden of cases at all levels of courts. There are vacancies even in those strengths of judges in mostly all the courts. At present in India, the judge-population ratio is approximatly13 judges per million people, while Australia has 58 judges per million, Canada 75, United Kingdom 150 and United States of America 107 judges per million of its population. In Supreme Court, there are sanctioned strength of judges is a total number of 34, and the working strength as on 01.10.2019 was 34, which leaves no vacancies. The approved strength of judges in the various High Courts is 1079; however, the working strength is 659 as on 01.10.2019 leaving 420 posts vacant. At the subordinate courts at the district level, the approved strength of judges is facing the same problematic situation as above. The infrastructure available courts of India currently are not sufficient to settle the increasing number of litigation within an affordable time.

Due to such inadequacies in the system, cases in courts at all levels have become heavily stacked, and method and technique need to be identified

immediately to cope up with the enormous arrears of cases so that the trust of the common man is maintained. Various law commissions in their several reports formed various suggestions related to the high rate of pendency and other related issues of cases from time to time. The reports of the 14th, 54th, 77th, 79th, 114th, 124th, 129th, 221st, 222nd Law Commissions, recommended a variety of changes while maintaining the system in their infrastructure and directed to the subsequent supplementary modifications. Governments have attempted to render speedy justice by adopting some of these suggestions given by the Law Commission of India, but the problem remains the same because in most of the cases government itself is a prime litigant. For this very reason Government of India announced National Litigation Policy, the idea was to make the Government a "responsible" and "efficient" litigant from compulsory "litigant" and reduce the pendency of cases in various courts in India, under the 'National Legal Mission to Reduce Average Pendency Time from 15 years to 3 years'. However, the Government's effort to initiate this policy is a welcome step, but again, the National Litigation Policy has failed to address pendency.

Because of the fluctuations in international trade & commerce, the adjudicatory system has not been qualified to meet the exigency of trade & commerce or the corporate sector in the dispensation of speedy justice. Litigation has not accelerated with the fast-moving society and advancing development in business practices. The formal legal system has been inadequate to satisfy the requirements of justice not only of the business society but also of the common citizens; however, people still have faith in the judiciary and its efficacy to settle

the matters. At present, we need some practical yet useful procedures which compatible with requirements of justice, equity and fair play, to expedite the disposal of cases and clear the increasing number of arrears of cases.

Since India is a diverse country, the nature of every dispute varies; the type of procedures for the resolution of disputes also varies from one dispute to another. Therefore, there is no particular dispute resolution process, which can be suitable for all kinds of disputes. Fundamentally, justice needs to be delivered rapidly, effectively and efficiently and with minimal expenses, however realistic experience has proved differently. The concept of speedy justice is the foundation of the advancement of the Alternative Dispute Resolution mechanism. The term Alternative Dispute Resolution can pertain to everything from facilitated settlement negotiations in which opponents are encouraged to settle disputes directly with each other previous to any other legal process, to arbitration systems or mini-trials that resemble courtroom process. In developing Alternative Dispute Resolution as an alternative to the conventional litigation to settle disputes, emphasis ought to be given to two matters, the first is the extent to which these techniques suffer from litigation systems to avoid those problems, and the second is that the fundamental doctrine underlying the working of the judicial system, on which is endowed the commitment of our system to the rule of law does not perish in search of alternatives.

Court annexed mediation was officially started in India through the Amendment Act of 1999, by incorporating Section 89 of the Code of the Civil Procedure, 1908, which is operative since 1st July 2002. Section 89 of CPC

embodies the legislative mandate to courts for exploring the possibility of a resolution of a dispute other than the litigative process in matters pending for judicial determination and if found appropriate, refer the dispute to any of the Alternative Dispute Resolution processes provided therein namely arbitration, conciliation, mediation, Lok Adalats and judicial settlement. The Supreme Court took the initiatives in *Salem Advocate Bar Association v. Union of India and Salem Advocate Bar Association v. Union of India (II)* gave the initial momentum to the use of ADR in courts according to section 89 of CPC. After that in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, which can be described as a comprehensive practical guide for effective use of section 89 of CPC, the Supreme Court has given detailed practical guidelines so that section 89 of CPC can be utilized to achieve the best results. In the Afcons case, the Apex Court has also directed interchanging of clauses (c) and (d) of section 89 (2) CPC by the interpretative process to correct the draftsman's error to give a purposive interpretation to mediation and judicial settlement under section 89 of the Civil Procedure Code.

Section 89 CPC efficiently utilized in Uttar Pradesh. Mediation and Lok Adalats are the most widely employed Alternative Dispute Resolution mechanisms in terms of section 89 CPC Uttar Pradesh. However, arbitration conciliation is being rarely resorted to, and judicial settlement is not being employed at all in terms of section 89 CPC.

The court could demand the appearance and attendance of any party to the suit to appear in person expecting to arrive at an amicable settlement. It has now

made it mandatory for the court to refer for settlement of disputes either through 1) arbitration 2) conciliation 3) judicial settlement including settlement through Lok Adalats or 4) mediation, although judges are not in a position to resort to this provision until mediation and conciliation centres established in all courts.

The introduction of court-annexed mediation in India brought various advancements in the field of ADR. Training programs on mediation and conciliation for lawyers and judicial officers conducted by the Mediation and Conciliation Project Committee of the Supreme Court of India. State Legal Services Authorities are authorized to set up mediation centres in the districts of related states. Considering the massive amount of backlog of cases in our courts, Lok Adalats have appeared as a response to it. The goal of the Lok Adalat is to affect a settlement, but in bulk disposal of cases in Lok Adalats, it is challenging to expect that a settlement of mutual benefit will reach.

These Alternative Dispute Resolution mechanisms have turned out to be very helpful in settlement of a substantial number of cases after the establishment of mediation and conciliation centres in the courts. These methods are also extensively used in the Lok Adalats, but these methods do not independently generate much interest or acceptance. Albeit there is a comprehensive legal framework to govern ADR and India has a rich tradition of domestic mediation and conciliation, but still, the notion is significantly less flourishing as it is in developed countries around the world. These goals cannot be attained until the essential facilities provided. A maximum number of our courts do not have sufficient space for their current work; it would not be possible for them to render

proper accommodation for the ADR system.

The alternative institutions have performed a significant role in the justice delivery system. The performance of these institutions has been restricted by plenty of limits like insufficient financial, material and human resources. The advantages of these methods have not been discovered in the manner that they should be, but there is still scope for advancement if the institutions are to perform to the best possible levels. As compared to the western countries, Alternative Dispute Resolution is still in its initial stage in India. Although Alternative Dispute Resolution mechanisms are slowly being brought to fruition, litigation is still at the forefront and is used most of the time. One of these reasons is the inclination for a right-based dispute resolution preferably as compared to interest-based one. The right-based system prioritizes litigation while interest-based dispute resolution systems prefer ADR.

The study suggests that Alternative Dispute Resolution mechanisms have contributed considerably to the pursuit of justice in India, but it should also be considered that ADR is not meant to suppress the formal adversarial system of dispute resolution. It can be taken advantage of when it works as a complement to the formal system. The requirement for ADR is not disputed, but the problem is how this system can be developed to create ADR a precise alternative to the litigation.

It was stressed out after the independence that the Panchayat system should be restructured to provide expeditious, affordable and qualitative justice based on traditional principles and values and to establish the philosophy of

equality and justice, for the above purpose in most states of the country, Nyaya Panchayats were revived. Although, the execution of these bodies was not satisfying because of insufficient legal knowledge of members of Nyaya Panchayats, inadequate secretarial staff, scarcity of economic resources and partial involvement of members of Panchayats in the dispensation of justice. In this background, it had turned into a necessity for society to enhance a new justice delivery system, which not only reduces the workload from the courts but moreover provide accelerated and inexpensive justice to everyone by using conciliatory efforts to preserve harmony in the society.

Keeping these things in mind, the institution of Lok Adalat as an alternative platform has come into existence in as per the recommendations given by the Law Commission of India and committees on legal aid e.g. Committee for Implementing Legal Aid Schemes, Expert Committee on Legal Aid Processual Justice to the People, Gujarat Legal Aid Committee, Committee on National Juridicare: Equal Justice – Social Justice, etc. Based on this lauded views of the abovmentioned committees, the first Lok Adalat was organized in village 'Una' in Junagadh district of Gujarat in March 1982. The institution of Lok Adalat was sublimed subsequently in several other states and union territories, and increasingly it became prevalent in rendering a faster system of administration of justice. The legal status to the Lok Adalat was given under the Legal Services Authorities Act, 1987, which was earlier operating unofficially all over India, the Act was enforced on 9th November 1995. The desired objective of the Legal Services Authorities Act, 1987 is the establishment of legal service authorities to

render cost-free and skilled legal service to the weaker sections of the society to guarantee that any citizen due to economic or other disabilities are not denied to get justice. To secure that process of the legal system, Lok Adalats promotes justice on the grounds of an equal opportunity.

The Legal Services Authorities Act provides legal assistance to eligible persons, and the Act formulates three Legal Services Authorities and three Legal Services Committees to provide Legal Aid to the person in need, these Authorities and Committees organize Lok Adalats at various levels from Supreme Court to the Sub-Divisional Courts at the lowest level. Chapter II & III of the Legal Services Authorities Act provides for these authorities and committees which are (i) National Legal Services Authority, (ii) Supreme Court Legal Services Committee, (iii) State Legal Services Authority, (iv) High Court Legal Services Committee, (v) District Legal Services Authority, and (vi) Taluk Legal Services Committee. It is worth observing here that these authorities and committees are specific bodies with a specific status. The National Legal Services Authority is the supreme institution empowered to regulate and watch over other subordinate authorities and committees for the execution of the objectives of the Act. At the apex level, the Supreme Court Legal Services Committee is authorized to execute legal services programs for Supreme Court cases. The State Legal Services Authority is the supreme authority in the state following Legal Service Authority Act, which regulates and also directs the actions of the High Court Legal Services Committee, District Legal Services Authorities, and Taluk Legal Services Committees. Within the State, the

provisions for making effective legal aid programs, organizing Lok Adalats and legal literacy camps the State Authority is authorized to direct such programs according to the ACT. The High Court Legal Services Committee implements legal services programs and organizes Lok Adalats related to High Court cases. In each district of the state, the District Legal Services Authority is established to organize Lok Adalats and carry out the functions set by the State Legal Service Authority within the district.

On the other hand, it is not obligatory to constitute a Taluk Legal Services Authority at the taluk level for the State Legal Services Authority. To render legal aid to the poor and needy moreover to establish Lok Adalats at the smallest level, State Legal Service Authority may set up Taluk Legal Service Authority. Even though these authorities and committees are diverse from each other, yet they perform in solidarity for the execution of the legal services schemes, legal awareness programs and organizing of Lok Adalats at different areas and places.

There are generally two types of Lok Adalats such as Lok Adalat and Permanent Lok Adalat, various legal services authorities and committees for deciding several matters at different places organize the Lok Adalats. The Lok Adalats empowered to arrive at a compromise in between the parties to the dispute regarding matters, which is already in litigation and also matter are not before any court of law, which are at pre-litigative stage. The matters on which Lok Adalats have jurisdiction may be diverse, for example civil, revenue and criminal compoundable cases. In contrast, permanent Lok Adalats are founded to ascertain disputes related to public utility services given under chapter VI A, of

the Legal Service Authority Act. Public utility services includes six types of services like transport service, postal, telegraph or telephone service, supply of power, system of public conservancy or service in hospital and includes any service which the Central or the State Government, as the case matter be, in the public interest, by notification, declare as a public utility service for Chapter VI A of the Act.

The techniques which the Lok Adalats follows are straightforward, informal, uncomplicated and are without any legal, technical expertise for the resolution of disputes. Lok Adalats or Permanent Lok Adalats can produce their methods for executing the conciliation. The principles of natural justice and other legal principles, which include judgments of the Supreme Court as well as the various High Courts, are followed by the Lok Adalats or the Permanent Lok Adalats. The Lok Adalats are not confined to follow the Code of Civil Procedure and Evidence Act; however, it is required to follow the statutory provisions, rules, and regulations enacted under the Legal Service Authority Act, 1987. Lok Adalats have been given the powers of the civil court when summoning and compelling the attendance of any witness, questioning him on oath, admission of evidence on affidavits and determining disputes as to the necessity of any governmental public record or document.

The Lok Adalat seeks to settle the disputes and resolve them in influential ways. If the endeavours of Lok Adalats, which are made to resolve disputes, do not succeed, in that case, matter reverts to the court of law, or the disputants are suggested to find relief in the court of law. It indicates that Lok Adalat has no

adjudicatory power to decide the matter on merit but can only amicably settle the dispute. On the other hand, the Permanent Lok Adalat can resolve the dispute based on merit. It has adjudicatory powers, but the permanent Lok Adalat can utilize this power only if the dispute seems not to be resolved by way of conciliation. The Hon'ble Supreme court and the High Courts directed that the Permanent Lok Adalat should exercise its judgment making power with adequate care and attention and should be implemented only as a last resort.

The award of Lok Adalats or a Permanent Lok Adalats is final and binding on parties to the dispute and deemed to be a decree of the civil court. The award delivered by the Lok Adalats is centred upon the reciprocal agreement of parties to the dispute, and no appeal can be filed in contrary to such award. Although the award of the Lok Adalat or the Permanent Lok Adalat is not appealable, it falls under the writ jurisdiction of the Supreme Court and the High Courts only if Lok Adalats have passed such award, which is contradictory with the principles of natural justice and statutory provisions. In the procedure of administration of justice, the mechanism of Lok Adalat has become supplemental to the conventional courts because of its legal status.

The Lok Adalats are renowned for providing informal, economical and speedy justice to the common man, Therefore, by setting up separate Lok Adalats for government departments and public sector undertakings getting more cases under the jurisdiction of Lok Adalats like taxation, banking services, environment, matters relating to education, It is essential to proceed for further the scope of the system. Accordingly, the Lok Adalat ought to be empowered to

settle matters on merit as the Permanent Lok Adalat has the right to decide. It is recommended that these specific suggestions could strengthen the structure, functionality, process, and outcome of the performance of the Lok Adalat system in the existing scenario.

The judiciary, particularly the Supreme Court and the High Courts, have performed an influential part in establishing and strengthening the Lok Adalat mechanism. It has not only supervised to enact the legislation to give quick and inexpensive justice to the people at their doorsteps but has additionally initiated endeavours for the implementation of the Legal Services Authorities Act 1987. When the executive machinery fails to enforce the Act, the judiciary made it enforceable. In a series of the matters decided by the various courts, the judiciary directed the respective authorities, committees, including members of the Lok Adalat to perform the work according to the provisions, rules, and regulations constituted under the Legal Service Authority Act 1987. The Apex Court held in various decisions that Lok Adalats must adhere to the principles of natural justice, equality, and other legal principles while providing justice to the parties to the disputes. The judiciary has a responsibility on its shoulder to save the institution of Lok-Adalat from losing its essential features, and new principles should be developed to make it more effective.

The Constitution of India is the mother of all laws, and it is a powerful symbol of the desires and ambitions of the citizens of India. The fathers of the Constitution purports that the benefit of the law should be for everyone, not like today to only those who use the Constitution for an illegal purpose. Their

particular intention was to eradicate every single drop of tear from every individual's eye, and it is expected that the law should help the individuals without any distinction to reach them to the best lawyer and judge. To achieve this goal, the mandate for socio-economic and political justice, recommended by the founders of the Constitution is in the Preamble of the Constitution.

The right of equality inducted in Article 14 of the Constitution of India, states that the State shall not deny to any person equality before or the equal protection of laws within the territory of India. The right of equality includes two principles of justice, namely, equality before the law and equal protection of the law. In the prospect of the principle incorporated in Article 14, it presumed that the purpose of equality could be accomplished only when long-established incidents of inequalities and injustice are restricted in the name of creed, caste, religion, status and wealth.

Articles 38, 39 (b) and (c) and 39A of the Constitution of India incorporate provisions for the attainment of non-oppression, equal rights for all the citizens of the society. Thus, this is not only the constitutional duty of the Legislature and Executive to execute constitutional directives but also the responsibility of the judiciary to make attempts to achieve these goals. The Supreme Court on several occasions expressed its significant opinion and explained its view to the impression that there is a need to change the judiciary if it improves itself as an efficient means for equal and equitable justice, without it, there is virtually no expectation of sustaining this long. To respond to social transformation, the law must not only be powerful yet also it should leave old-

fashioned practices and make new rules according to social requirements

The performance of the institution of Lok Adalat can be evaluated from the established fact that from 2016 till July 2019, a large number of Lok Adalats have been organized within the sphere of the country. In these Lok Adalats, a total number of 106,990,174 cases of all types have settled, the total amount of ₹ 145,050,663,511 has been awarded as the compensation to the claimants.

The Lok Adalats have been delivering justice since its successful performance in the state of Gujarat in 1982 to a large number of people. Large numbers of cases within the region have settled via this unique justice delivery system. In the year of 1981 Uttar Pradesh State Legal Aid & Advice Board was established, but the schemes effectively implemented only from the year 1984-85. U.P. State Legal Services Authority was founded under section 6 of the Legal Services Authority Act 1987; it is the duty of the Authority to organize Lok Adalats within the state which is the more productive and direct scheme of help to the poor and needy person through the settlement of particular categories of cases. The Lok Adalats have got the statutory backing in 1997 in Uttar Pradesh. After that, it has started functioning as per the Legal Services Authorities Act, 1987 and U.P. State Legal Services Authorities Rules, 1996. In the study the various concerned authorities/committees are conducting ordinary Lok Adalats, national Lok Adalats, in addition to these Lok Adalats, the Permanent Lok Adalat related to Public Utility Services has been working since 2007 in state of Uttar Pradesh.

In the State of Uttar Pradesh, the Lok Adalat movement was started in

1981. The Board had conducted the first Lok Adalat. During the short span of 2 years till May 1986, 170 Lok Adalats were held in the state of Uttar Pradesh, and the instrument of Lok Adalat benefited a total number of 2,70,753 persons, including 135,230 MACT cases. It was the victorious beginning of the Lok Adalat mechanism as an alternative to ordinary courts system in State of Uttar Pradesh. The Uttar Pradesh State Legal Services Authority pointed out that since 1987, the use of Lok Adalats in Uttar Pradesh has steadily increased, and Authority has managed to settle approximately 2 crore cases till July 2019. From 1997 To July 2019, the state of Uttar Pradesh was leading in both organizing Lok Adalat and settling the disputes in such Lok Adalats. However, from the year 1997 to 2019 Uttar Pradesh still leads in settlement of the dispute in National Lok Adalats by settling a skyscraping figure of the case in number at 25,489,101 till 13th July 2019, which is the 40% of the total cases settled through the instrument of Lok Adalat throughout the country.

The researcher has attended a large number of Lok Adalats in Uttar Pradesh to study with the purpose to carefully examine the performance of Lok Adalat system. The researcher has also interviewed the officials of the authorities/committees, members of Lok Adalats, advocates, disputants, beneficiaries and the general public about the organization, powers, proceedings, legality, importance and functioning of the mechanism. The information regarding the institution of Lok Adalat has been discussed with law teachers, social workers, government servants, and people belonging to rural and urban areas. The conclusion is centred upon the analysis of data, interviews and

interactions with people regarding the performance of Lok Adalats in the state.

The study has revealed that in Uttar Pradesh, more than fifty thousand Lok Adalats have been organized during 1981-2019. In these Lok Adalats, 25,489,101 cases have been resolved. The Adalats have achieved a 47% success rate in the disposal of cases. The study demonstrates that there is a fluctuating success rate of Lok Adalats in the study period. The highest performance rate of Lok Adalats is 70% in 2015, and the lowest is 42% in the year 1998. The Lok Adalats of the state have witnessed their best performance in the disposal of summary cases; the Lok Adalats have also performed well in the disposal of civil cases 181162, petty criminal cases 6303852, matrimonial cases 69937, labour cases 10668, revenue cases 779073 and motor accident claim cases 54210 from 1981 to 2013. The success rate of the disposal of cases has been the highest 58% recorded in the state of Uttar Pradesh. The Permanent Lok Adalat related to public utility services has determined 5263 cases out of 6371 taken up cases, it has got 82% success in the determination of cases.

The researcher has studied the organization and functioning of Lok Adalat in the state of Uttar Pradesh. While studying this topic, several explicit questions and issues on awareness, knowledge, adequacy, and functioning of Lok Adalats were professed. The present study was carried out to carefully search for answers to these questions, to study the various dimension of the organization and functioning of the Lok Adalats in Uttar Pradesh. After analyzing both primary and secondary data respective functioning of Lok Adalats in Uttar Pradesh has led to the conclusion, based on which necessary following suggestions have been

made.

TESTING OF HYPOTHESIS

1. It was hypothesized that "**litigation in courts of law is complicated costly and often delayed**." The number of institution cases in the courts is far higher than the number of their disposal. There has been a remarkable growth in the number of institutions of cases year-by-year leading to 'docket explosion'. The total 31265694 cases are pending all across India. Also, the legal procedure in conventional courts is very costly. **This way, the first hypothesis is proved.**
2. It was hypnotized that **"Possibilities of compromise between the parties will be increased with the help of Alternative Dispute Resolution Mechanism"**. It was noticed that in India, people have much faith in conventional methods of dispute resolution, i.e. litigation. People prefer litigation over Alternative Dispute Resolution methods. It was noticed that only 5 per cent litigations were settled through the help of various ADR mechanism. **The second hypothesis is not proved in this way.**
3. The third hypothesis was that the **"Lok Adalat system is not working efficiently for disposing of the cases".** It was noticed that the numbers of Lok Adalats, as well as the number of resolved cases by the Adalats, are increasing day-by-day and it is proved itself as significant machinery for dispensing justice to all. It was also noticed that till July 2019, near about 20 lakhs Lok Adalats have been organized all around the country and a

total number of 106,990,174 cases have been disposed of. **So this hypothesis is disapproved straightforwardly.**

4. The fourth hypothesis was that **"The Lok Adalat system is not substitute for the adversarial system of courts of law"**. It is correct that there are substantial numbers of arrears pending in Courts, but the Lok Adalats can not substitute the adversarial system of courts. Lok Adalats are playing a very effective complementary role in the adjudication of disputes by the judicial system. **Thus the hypothesis is proved.**
5. The fifth hypothesis was that "**Creation of permanent and continuous Lok Adalat is a positive step to help the litigants at the pre-litigative stage".** It was noticed that Permanent Lok Adalats had been established to render a compulsory pre-litigative procedure for settlement of the matters related to public utility services. A total number of 424198 cases settled by the Permanent Lok Adalat in India from 2015 to 2019, Adalat settled 5263 cases out of 6371 taken up cases in the state of Uttar Pradesh, it has got 82% success rate in the determination of cases. It can be said that in this way, the **hypothesis is proved**.

SUGGESTIONS:

To improve the functioning of Lok Adalats in India, especially in Uttar Pradesh, expedient and appropriate efforts have been made to suggest appropriate measures to attain the objective of justice for all. Through this study, several difficulties and challenges of Lok Adalats in India, especially in Uttar Pradesh

have been observed, on the basis of which, the researcher offers some suggestions:

- There is a need to have a separate "Lok Adalat Service" for the smooth functioning of Lok Adalats. This could help in reducing the additional workload from judicial officers and courts as well.
- Vacancies of Judges in all levels courts should be filled to the sanctioned strength, and the judge-population ratio should be increased in a phased process to at least 55 judges per million of population.
- Lok Adalats need to be garrisoned with the skilled, dedicated and qualified experts, and talented committed individuals, who understand the root causes of disputes and the interests of the parties and settle the disputes through the application of conciliatory procedures.
- The Lok Adalat should be strengthened to settle matters based on merit if the conciliation procedure does not work out, and there should be a provision for re-appeal against the decrees of Lok Adalats.
- Under section 320 (1) (2) (3) Code of Criminal Procedure, 1973, a distinct provision should be made for reference of cases to Lok Adalat in case of compoundable offences.
- Attitudinal changes of both the bar and the bench are needed. The bar should encourage settlement of public disputes by Lok Adalats, and it should convey to the litigants the benefits of resolving disputes through Lok Adalat. This would demand a creative approach to the bar.
- The appearance of each party to the dispute is required when the

proceedings of Lok Adalats are taking place. Furthermore, Lok Adalats should be authorized to deal with criminal non-compoundable cases. More financial autonomy can be given to improve the functioning of the Lok Adalats.

- With the help of proper policy, planning and strategies, maximum efforts should be executed to familiarize Lok Adalats among the people. Additionally, Lok Adalats should be included in school level, undergraduate and postgraduate level courses.
- UGC and other research institutes should approve research projects on various aspects of Lok Adalats. The suggestion provided by those research projects should be implemented.
- Lok Adalats should ensure that their functioning is transparent; this would increase the trust of the people in the Lok Adalats. All proceedings should be recorded. In matters where there is any doubt, this can be exhibited to those who have a complaint against the method adopted by the Lok Adalats.
- The active participation, proactive role and assertive response towards the Lok Adalats of local self-government institutions, and civil society can be proved through their participation in promoting the Lok Adalat system at the primary level.
- The provision related to consent ought to be removed if the case is ideal to be referred to the Lok Adalat and this will allow each disputant to refer more disputes to the Lok Adalat for expeditious disposal of the case.

- A new provision empowering the Lok Adalat to pass interim and inter-governmental orders should be included to the Legal Service Authority Act so that it is beyond the capability of a party to dispute to thwart the proceedings of Lok Adalats.
- Mass media is the most significant modern method of social action. It should be used to create awareness among people about the merits of Lok Adalat forum as an alternative dispute resolution method. It is respectfully submitted that the aims, objects, features and advantages of this unique institution should be publicized by press, radio, television, cinema, and internet; by displaying of boards, posters and hoardings at conspicuous places; by publication and distribution of material about it in books and periodicals, and by pamphlets and leaflets in area surrounding the place of holding of Lok Adalat. Apart from these methods, slogans regarding the benefits of Lok Adalat system should be penned at tickets and bills of public utility services, etcetera, in order to universalize the system.

In reality, Lok Adalats are performing an essential role in preventing and completing the pending litigations as well as maintaining the enormous belief of the people in the judiciary. Although Lok Adalat is more suitable to the conventional court system, it cannot be an alternative to the formal judiciary. It is believed that if the proposed measures are incorporated, the Lok Adalats will have a positive impact on the conventional justice delivery system. In the end, it can undoubtedly be stated that the organization of Lok Adalat is the need of the

present time. The achievements of Lok Adalats in India, especially in Uttar Pradesh, are remarkably motivating. People who have always complained about judicial reforms are expected to give a fair trial to the Lok Adalats and not proceed to a quick result based on insufficient data and perception.

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ANNEXURE I

THE LEGAL SERVICES AUTHORITIES ACT, 1987

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

CHAPTER II

THE NATIONAL LEGAL SERVICES AUTHORITY

CHAPTER III

STATE LEGAL SERVICES AUTHORITY

CHAPTER IV

ENTITLEMENT TO LEGAL SERVICES

CHAPTER V

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PRE-LITIGATION CONCILIATION AND SETTLEMENT

CHAPTER VII

MISCELLANEIOUS

THE LEGAL SERVICES AUTHORITIES ACT, 1987

ACT NO. 39 OF 1987

[11*th October*, 1987.]

An Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

BE it enacted by the Parliament in the Thirty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—This Act may be called the Legal Services Authorities Act, 1987.

(*2*) It extends to the whole of India, except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date[1] as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State.

2. Definitions.—In this Act, unless the context otherwise requires,—

[2][(*a*) "case" includes a suit or any proceeding before a court;

(*aa*) "Central Authority" means the National Legal Services Authority constituted under section 3;

(*aaa*) "court" means a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions;]

(*b*) "District Authority" means a District Legal Services Authority constituted under section 9;

[3][(*bb*) "High Court Legal Services Committee" means a High Court Legal Services Committee constituted under section 8A;]

(*c*) "legal service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter;

(*d*) "Lok Adalat" means a Lok Adalat organised under Chapter VI;

(*e*) "notification" means a notification published in the Official Gazette;

(*f*) "prescribed" means prescribed by rules made under this Act;

[3][(*ff*) "regulations" means regulations made under this Act;]

(*g*) "scheme" means any scheme framed by the Central Authority, a State Authority or a District Authority for the purpose of giving effect to any of the provisions of this Act;

(*h*) "State Authority" means a State Legal Services Authority constituted under section 6;

(*i*) "State Government" includes the administrator of a Union territory appointed by the President under article 239 of the Constitution;

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1. 9th November, 1995, *vide* notification No. S.O. 893(E), dated 9th November, 1995, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).
2. Subs. by Act 59 of 1994, s. 2, for clause (*a*) (w.e.f. 29-10-1994).
3. Ins. by s. 2, *ibid*. (w.e.f. 29-10-1994).

[1][(*j*) "Supreme Court Legal Services Committee" means the Supreme Court Legal Services Committee constituted under section 3A;

(*k*) "Taluk Legal Services Committee" means a Taluk Legal Services Committee constituted under section 11A.]

(*2*) Any reference in this Act to any other enactment or any provision thereof shall, in relation to an area in which such enactment or provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

THE NATIONAL LEGAL SERVICES AUTHORITY

[2]**[3. Constitution of the National Legal Services Authority.—**(*1*) The Central Government shall constitute a body to be called the National Legal Services Authority to exercise the powers and perform the functions conferred on, or assigned to, the Central Authority under this Act.

(*2*) The Central Authority shall consist of—

(*a*) the Chief Justice of India who shall be the Patron-in-Chief;

(*b*) a serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and

(*c*) such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India.

(*3*) The Central Government shall, in consultation with the Chief Justice of India, appoint a person to be the Member-Secretary of the Central Authority, possessing such experience and qualifications as may be prescribed by that Government, to exercise such powers and perform such duties under the Executive Chairman of the Central Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

(*4*) The terms of office and other conditions relating thereto, of members and the Member-Secretary of the Central Authority shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(*5*) The Central Authority may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions under this Act.

(*6*) The officers and other employees of the Central Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(*7*) The administrative expenses of the Central Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the Central Authority, shall be defrayed out of the Consolidated Fund of India.

(*8*) All orders and decisions of the Central Authority shall be authenticated by the Member-Secretary or any other officer of the Central Authority duly authorised by the Executive Chairman of that Authority.

(*9*) No act or proceeding of the Central Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the Central Authority.

3A. Supreme Court Legal Services Committee.—(*1*) The Central Authority shall constitute a committee to be called the Supreme Court Legal Services Committee for the purpose of exercising such

1. Ins. by Act 59 of 1994, s. 2 (w.e.f. 29-10-1994).
2. Subs. by s. 3, *ibid*., for section 3 (w.e.f. 29-10-1994).

powers and performing such functions as may be determined by regulations made by the Central Authority.

(*2*) The Committee shall consist of—

(*a*) a sitting Judge of the Supreme Court who shall be the Chairman; and

(*b*) such number of other members possessing such experience and qualifications as may be prescribed by the Central Government,

to be nominated by the Chief Justice of India.

(*3*) The Chief Justice of India shall appoint a person to be the Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the Central Government.

(*4*) The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the Central Authority.

(*5*) The Committee may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions.

(*6*) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.]

4. Functions of the Central Authority.—The Central Authority shall [1]*** perform all or any of the following functions, namely:—

(*a*) lay down policies and principles for making legal services available under the provisions of this Act;

(*b*) frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;

(*c*) utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;

(*d*) take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;

(*e*) organise legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;

(*f*) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;

(*g*) undertake and promote research in the field of legal services with special reference to the need for such services among the poor;

(*h*) to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;

(*i*) monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;

1. The words ", subject to the general directions of the Central Government," omitted by Act of 59 of 1994, s. 4 (w.e.f. 29-10-1994).

[1][(*j*) provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out of the amounts placed at its disposal for the implementation of the legal services schemes under the provisions of this Act;]

(*k*) develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions;

(*l*) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;

(*m*) make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and

(*n*) coordinate and monitor the functioning of [2][State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social service institutions] and other legal services organisations and give general directions for the proper implementation of the legal services programmes.

5. Central Authority to work in coordination with other agencies.—In the discharge of its functions under this Act, the Central Authority shall, wherever appropriate, act in coordination with other governmental and non-governmental agencies, universities and others engaged in the work of promoting the cause of legal services to the poor.

CHAPTER III

STATE LEGAL SERVICES AUTHORITY

[3]**[6. Constitution of State Legal Services Authority.—**(*1*) Every State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under this Act.

(*2*) A State Authority shall consist of—

(*a*) the Chief Justice of the High Court who shall be the Patron-in-Chief;

(*b*) a serving or retired Judge of the High Court, to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and

(*c*) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(*3*) The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member-Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

Provided that a person functioning as Secretary of a State Legal Aid and Advice Board immediately before the date of constitution of the State Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this sub-section, for a period not exceeding five years.

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1. Subs. by Act 59 of 1994, s. 4, for clause (*j*) (w.e.f. 29-10-1994).
2. Subs. by s. 4, *ibid*., for "State and District Authorities and other voluntary social welfare institutions" (w.e.f. 29-10-1994).
3. Subs. by s. 5, *ibid.*, for section 6 (w.e.f. 29-10-1994).

(*4*) The terms of office and other conditions relating thereto, of members and the Member-Secretary of the State Authority shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(*5*) The State Authority may appoint such number of officers and other employees as may be prescribed by the State Government, in consultation with the Chief Justice of the High Court, for the efficient discharge of its functions under this Act.

(*6*) The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(*7*) The administrative expenses of the State Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the State Authority shall be defrayed out of the Consolidated Fund of the State.

(*8*) All orders and decisions of the State Authority shall be authenticated by the Member-Secretary or any other officer of the State Authority duly authorised by the Executive Chairman of the State Authority.

(*9*) No act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the State Authority.]

7. Functions of the State Authority.—(*1*) It shall be the duty of the State Authority to give to effect to the policy and directions of the Central Authority.

(*2*) Without prejudice to the generality of the functions referred to in sub-section (*1*), the State Authority shall perform all or any of the following functions, namely:—

(*a*) give legal service to persons who satisfy the criteria laid down under this Act;

(*b*) conduct [1][Lok Adalats, including Lok Adalats for High Court cases];

(*c*) undertake preventive and strategic legal aid programmes; and

(*d*) perform such other functions as the State Authority may, in consultation with the [2][Central Authority], fix by regulations.

[3]**[8. State Authority to act in coordination with other agencies., etc., and be subject to directions given by the Central Authority**.—In the discharge of its functions the State Authority shall appropriately act in coordination with other governmental agencies, non-governmental voluntary social service institutions, universities and other bodies engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority may give to it in writing.

8A. High Court Legal Services Committee.—(*1*) The State Authority shall constitute a Committee to be called the High Court Legal Services Committee for every High Court, for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the State Authority.

(*2*) The Committee shall consist of—

(*a*) a sitting Judge of the High Court who shall be the Chairman; and

(*b*) such number of other members possessing such experience and qualifications as may be determined by regulations made by the State Authority,

to be nominated by the Chief Justice of the High Court.

(*3*) The Chief Justice of the High Court shall appoint a Secretary to the Committee possessing such experience and qualifications as may be prescribed by the State Government.

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1. Subs. by Act 59 of 1994, s. 6, for "Lok Adalats" (w.e.f. 29-10-1994).
2. Subs. by s. 6, *ibid*., for "Central Government" (w.e.f. 29-10-1994).
3. Subs. by s. 7, *ibid*., for sections 8 and 9 (w.e.f. 29-10-1994).

(*4*) The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the State Authority.

(*5*) The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(*6*) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of Service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

9. District Legal Services Authority.—(*1*) The State Government shall, in consultation with the Chief Justice of the High Court, constitute a body to be called the District Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on, or assigned to, the District Authority under this Act.

(*2*) A District Authority shall consist of—

(*a*) the District Judge who shall be its Chairman; and

(*b*) such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(*3*) The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman.

(*4*) The terms of office and other conditions relating thereto, of members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation with the Chief Justice of the High Court.

(*5*) The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(*6*) The officers and other employees of the District Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(*7*) The administrative expenses of every District Authority, including the salaries, allowances and pensions payable to the Secretary, officers and other employees of the District Authority, shall be defrayed out of the Consolidated Fund of the State.

(*8*) All orders and decisions of the District Authority shall be authenticated by the Secretary or by any other officer of the District Authority duly authorised by the Chairman of that Authority.

(*9*) No act or proceeding of the District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the District Authority.]

10. Functions of the District Authority.—(*1*) It shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority.

(*2*) Without prejudice to the generality of the functions referred to in sub-section (*1*), the District Authority may perform all or any of the following functions, namely:—

[1][(*a*) coordinate the activities of the Taluk Legal Services Committee and other legal services in the District;]

1. Subs. by Act 59 of 1994, s. 8, for clause (*a*) (w.e.f. 29-10-1994).

(*b*) organise Lok Adalats within the District; and

(*c*) perform such other functions as the State Authority may [1]*** fix by regulations.

11. District Authority to act in coordination with other agencies and be subject to directions given by the Central Authority, etc.—In the discharge of its functions under this Act, the District Authority shall, wherever appropriate, act in coordination with other governmental and non-governmental institutions, universities and others engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority or the State Authority may give to it in writing.

[2]**[11A. Taluk Legal Services Committee.—**(*1*) The State Authority may constitute a Committee, to be called the Taluk Legal Services Committee, for each taluk or mandal or for group of taluks or mandals.

(*2*) The Committee shall consist of—

(*a*) The [3][senior-most Judicial Officer] operating within the jurisdiction of the Committee who shall be the *ex officio* Chairman; and

(*b*) such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(*3*) The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(*4*) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(*5*) The administrative expenses of the Committee shall be defrayed out of the District Legal Aid Fund by the District Authority.

11B. Functions of Taluk Legal Services Committee.—The Taluk Legal Services Committee may perform all or any of the following functions, namely:—

(*a*) co-ordinate the activities of legal services in the taluk;

(*b*) organise Lok Adalats within the taluk; and

(*c*) perform such other functions as the District Authority may assign to it.]

CHAPTER IV

ENTITLEMENT TO LEGAL SERVICES

12. Criteria for giving legal services.—Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is—

(*a*) a member of a Scheduled Caste or Scheduled Tribe;

(*b*) a victim of trafficking in human beings or *begar* as referred to in article 23 of the Constitution;

(*c*) a woman or a child;

[4][(*d*) a person with disability as defined in clause (*i*) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]

1. The words ", in consultation with the State Government," omitted by Act 59 of 1994, s. 8 (w.e.f. 29-10-1994).
2. Ins. by s. 9, *ibid*. (w.e.f. 29-10-1994).
3. Subs. by Act 37 of 2002, s. 2, for "senior Civil Judge" (w.e.f. 11-6-2002).
4. Subs. by Act 1 of 1996, s. 74, for clause (*d*) (w.e.f. 7-2-1996).

(*e*) a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic, violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(*f*) an industrial workman; or

(*g*) in custody, including custody in a protective home within the meaning of clause (*g*) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956), or in a juvenile home within the meaning of clause (*j*) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986), or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (*g*) of section 2 of the Mental Health Act, 1987 (14 of 1987); or

[1][(*h*) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.]

13. Entitlement of legal services.—(*1*) Persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a *prima facie* case to prosecute or to defend.

(*2*) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

14. Grants by the Central Government.—The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Central Authority, by way of grants, such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

15. National Legal Aid Fund.—(*1*) The Central Authority shall establish a fund to be called the National Legal Aid Fund and there shall be credited thereto—

(*a*) all sums of money given as grants by the Central Government under section 14;

(*b*) any grants or donations that may be made to the Central Authority by any other person for the purposes of this Act;

(*c*) any amount received by the Central Authority under the orders of any court or from any other source.

(*2*) The National Legal Aid Fund shall be applied for meeting—

(*a*) the cost of legal services provided under this Act including grants made to State Authorities;

[2][(*b*) the cost of legal services provided by the Supreme Court Legal Services Committee;

(*c*) any other expenses which are required to be met by the Central Authority.]

16. State Legal Aid Fund.—(*1*) A State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto—

(*a*) all sums of money paid to it or any grants by the Central Authority for the purposes of this Act;

(*b*) any grants or donations that may be made to the State Authority by the State Government or by any person for the purposes of this Act;

(*c*) any other amount received by the State Authority under the orders of any court or from any other source.

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1. Subs. by Act 59 of 1994, s. 10, for clause (*h*) (w.e.f. 29-10-1994).
2. Subs. by s. 11, *ibid*., for clause (*b*) (w.e.f. 29-10-1994).

(*2*) A State Legal Aid Fund shall be applied for meeting—

(*a*) the cost of functions referred to in section 7;

[1][(*b*) the cost of legal services provided by the High Court Legal Services Committee;

(*c*) any other expenses which are required to be met by the State Authority.]

17. District Legal Aid Fund.—(*1*) Every District Authority shall establish a fund to be called the District Legal Aid Fund and there shall be credited thereto—

(*a*) all sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act;

[2][(*b*) any grants or donations that may be made to the District Authority by any person, with the prior approval of the State Authority, for the purposes of this Act;]

(*c*) any other amount received by the District Authority under the orders of any court or from any other source.

(*2*) A District Legal Aid Fund shall be applied for meeting—

(*a*) the cost of functions referred to in section 10 [3][and 11B];

(*b*) any other expenses which are required to be met by the District Authority.

18. Accounts and audit.—(*1*) The Central Authority, State Authority, or the District Authority (hereinafter referred to in this section as 'the authority'), as the case may be, shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure account and the balance-sheet in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of the Authorities shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority concerned to the Comptroller and Auditor-General of India.

(*3*) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the auditing of the accounts of an Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authorities under this Act.

(*4*) The accounts of the Authorities, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually by the Authorities to the Central Government or the State Governments, as the case may be.

[4][(*5*) The Central Government shall cause the accounts and the audit report received by it under sub-section (*4*) to be laid, as soon as may be after they are received, before each House of Parliament.

(*6*) The State Government shall cause the accounts and the audit report received by it under sub-section (*4*) to be laid, as soon as may be after they are received, before the State Legislature.]

CHAPTER VI

LOK ADALATS

[5]**[19. Organisation of Lok Adalats.**—(*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,

1. Subs. by Act 59 of 1994, s. 12, for clause (*b*) (w.e.f. 29-10-1994).
2. Subs. by s. 13, *ibid*., for clause (*b*) (w.e.f. 29-10-1994).
3. Ins. by s. 13, *ibid*. (w.e.f. 29-10-1994).
4. Ins. by s. 14, *ibid*. (w.e.f. 29-10-1994).
5. Subs. by s. 15, *ibid*., for sections 19 and 20 (w.e.f. 29-10-1994).

Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(*2*) Every Lok Adalat organised 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, organising such Lok Adalat.

(*3*) The experience and qualifications of other persons referred to in clause (*b*) of sub-section (*2*) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(*4*) The experience and qualifications of other persons referred to in clause (*b*) of sub-section (*2*) for Lok Adalats other than referred to in sub-section (*3*) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(*5*) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

(*i*) any case pending before; or

(*ii*) any matter which is falling within the jurisdiction of, and is not brought before,

any Court for which the Lok Adalat is organised:

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

20. Cognizance of cases by Lok Adalats.—(*1*) Where in any case referred to in clause (*i*) of sub-section (*5*) of section 19,—

(*i*) (*a*) the parties thereof agree; or

(*b*) one of the parties thereof makes an application to the Court,

for referring the case to the Lok Adalat for settlement and if such court is *prima facie* satisfied that there are chances of such settlement; or

(*ii*) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat,

the Court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (*b*) of clause (*i*) or clause (*ii*) by such court except after giving a reasonable opportunity of being heard to the parties.

(*2*) Notwithstanding anything contained in any cither law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (*1*) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (*ii*) of sub-section (*5*) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(*3*) Where any case is referred to a Lok Adalat under sub-section (*1*) or where a reference has been made to it under sub-section (*2*), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(*4*) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(*5*) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (*1*) for disposal in accordance with law.

(*6*) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (*2*), that Lok Adalat shall advice the parties to seek remedy in a court.

(*7*) Where the record of the case if returned under sub-section (*5*) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (*1*).]

21. Award of Lok Adalat.—[1][(*1*) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (*1*) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).]

(*2*) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

22. Powers of [2][Lok Adalat or Permanent Lok Adalat.]—(*1*) The [2][Lok Adalat or Permanent Lok Adalat] shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

(*a*) the summoning and enforcing the attendance of any witness and examining him on oath;

(*b*) the discovery and production of any document;

(*c*) the reception of evidence on affidavits;

(*d*) the requisitioning of any public record or document or copy of such record or document from any court or office; and

(*e*) such other matters as may be prescribed.

(*2*) Without prejudice to the generality of the powers contained in sub-section (*1*), every [2][Lok Adalat or Permanent Lok Adalat] shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(*3*) All proceedings before a [2][Lok Adalat or Permanent Lok Adalat] shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every [2][Lok Adalat or Permanent Lok Adalat] shall be deemed to be a Civil Court for the purpose of section195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

[3][CHAPTER VIA

PRE-LITIGATION CONCILIATION AND SETTLEMENT

22A. Definitions.—In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,—

(*a*) "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (*1*) of section 22B;

1. Subs. by Act 59 of 1994, s. 16, for sub-section (*1*) (w.e.f. 29-10-1994),
2. Subs. by Act 37 of 2002, s. 3, for "Lok Adalat" (w.e.f. 11-6-2002).
3. Ins. by s. 4, *ibid*. (w.e.f. 11-6-2002).

(*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, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.

22B. Establishment of Permanent Lok Adalats.—(*1*) Notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

(*2*) Every Permanent Lok Adalat established for an area notified under sub-section (*1*) shall consist of—

(*a*) a person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district judge, shall be the Chairman of the Permanent Lok Adalat; and

(*b*) two other persons having adequate experience in public utility service to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority,

appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (*b*) shall be such as may be prescribed by the Central Government.

22C. Cognizance of cases by Permanent Lok Adalat.—(*1*) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government, may by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(*2*) After an application is made under sub-section (*1*) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(*3*) Where an application is made to a Permanent Lok Adalat under sub-section (*1*), it—

(*a*) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(*b*) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(*c*) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(*4*) When statement, additional statement and reply, if any, have been filed under sub-section (*3*), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(*5*) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (*4*), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(*6*) It shall be the duty of the every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(*7*) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(*8*) Where the parties fail to reach at an agreement under sub-section (*7*), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

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).

22E. Award of Permanent Lok Adalat to be final.—(*1*) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

(*2*) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.

(*3*) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(*4*) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

(*5*) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.]

CHAPTER VII

MISCELLANEOUS

[1][**23. Members and staff of Authorities, Committees and Lok Adalats to be public servants.—**The members including Member-Secretary or, as the case may be, Secretary of the Central Authority, the State Authority, the District Authorities, the Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and officers and other employees of such Authorities, Committees and the [2][members of the Lok Adalats or the persons constituting Permanent Lok Adalats] shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

1. Subs. by Act 59 of 1994, s. 17, for sections 23 and 24 (w.e.f. 29-10-1994),
2. Subs. by Act 37 of 2002, s. 5, for "members of the Lok Adalats" (w.e.f. 11-6-2002).

24. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against—

(*a*) the Central Government or State Government;

(*b*) the Patron-in-Chief, Executive Chairman, members of, Member-Secretary or officers or other employees of the Central Authority;

(*c*) Patron-in-Chief, Executive Chairman, member, Member-Secretary or officers or other employees of the State Authority;

(*d*) Chairman, Secretary, members or officers or other employees of the Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees or the District Authority; or

(*e*) any other person authorised by any of the Patron-in-Chief, Executive Chairman, Chairman, Member, Member-Secretary referred to in sub-clauses (*b*) to (*d*),

for anything which is in good faith done or intended to be done under the provisions of this Act or any rule or regulation made thereunder.]

25. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of law other than this Act.

26. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which this Act receives the assent of the President.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

[1][**27. Power of Central Government to make rules.—**(*1*) The Central Government in consultation with the Chief Justice of India may, by notification, make rules to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the number, experience and qualifications of other members of the Central Authority under clause (*c*) of sub-section (*2*) of section3;

(*b*) the experience and qualifications of the Member-Secretary of the Central Authority and his powers and functions under sub-section (*3*) of section 3;

(*c*) the terms of office and other conditions relating thereto, of members and Member-Secretary of the Central Authority under sub-section (*4*) of section 3;

(*d*) the number of officers and other employees of the Central Authority under sub-section (*5*) of section 3;

(*e*) the conditions of service and the salary and allowances of officers and other employees of the Central Authority under sub-section (*6*) of section 3;

(*f*) the number, experience and qualifications of members of the Supreme Court Legal Services Committee under clause (*b*) of sub-section (*2*) of section 3A;

(*g*) the experience and qualifications of Secretary of the Supreme Court Legal Services Committee under sub-section (*3*) of section 3A;

1. Subs. by Act 59 of 1994, s. 18, for sections 27, 28 and 29 (w.e.f. 29-10-1994).

(*h*) the number of officers and other employees of the Supreme Court Legal Services Committee under sub-section (*5*) of section 3A and the conditions of service and the salary and allowances payable to them under sub-section (*6*) of that section;

(*i*) the upper limit of annual income of a person entitling him to legal services under clause (*h*) of section 12, if the case is before the Supreme Court;

(*j*) the manner in which the accounts of the Central Authority, the State Authority or the District Authority shall be maintained under section 18;

(*k*) the experience and qualifications of other persons of the Lok Adalats organised by the Supreme Court Legal Services Committee specified in sub-section (*3*) of section 19;

(*l*) other matters under clause (*e*) of sub-section (*1*) of section 22;

[1][(*la*) the other terms and conditions of appointment of the Chairman and other persons under sub-section (*2*) of section 22B;]

(*m*) any other matter which is to be, or may be, prescribed.

28. Power of State Government to make rules.—(*1*) The State Government in consultation with the Chief Justice of the High Court may, by notification, make rules to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the number, experience and qualifications of other members of the State Authority under clause (*c*) of sub-section (*2*) of section 6;

(*b*) the powers and functions of the Member-Secretary of the State Authority under sub-section (*3*) of section 6;

(*c*) the terms of office and other conditions relating thereto, of members and Member-Secretary of the State Authority under sub-section (*4*) of section 6;

(*d*) the number of officers and other employees of the State Authority under sub-section (*5*) of section 6;

(*e*) the conditions of service and the salary and allowances of officers and other employees of the State Authority under sub-section (*6*) of section 6;

(*f*) the experience and qualifications of Secretary of the High Court Legal Services Committee under sub-section (*3*) of section 8A;

(*g*) the number of officers and other employees of the High Court Legal Services Committee under sub-section (*5*) of section 8A and the conditions of service and the salary and allowances payable to them under sub-section (*6*) of that section;

(*h*) the number, experience and qualifications of members of the District Authority under clause (*b*) of sub-section (*2*) of section 9;

(*i*) the number of officers and other employees of the District Authority under sub-section (*5*) of section 9;

(*j*) the conditions of service and the salary and allowances of the officers and other employees of the District Authority under sub-section (*6*) of section 9;

(*k*) the number, experience and qualifications of members of the Taluk Legal Services Committee under clause (*b*) of sub-section (*2*) of section 11A;

(*l*) the number of officers and other employees of the Taluk Legal Services Committee under sub-section (*3*) of section 11A;

1. Ins. by Act 37 of 2002, s. 6 (w.e.f. 11-6-2002).

(*m*) the conditions of service and the salary and allowances of officers and other employees of the Taluk Legal Services Committee under sub-section (*4*) of section 11A;

(*n*) the upper limit of annual income of a person entitling him to legal services under clause (*h*) of section 12, if the case is before a court, other than the Supreme Court;

(*o*) the experience and qualifications of other persons of the Lok Adalats other than referred to in sub-section (*4*) of section 19;

(*p*) any other matter which is to be, or may be, prescribed.

29. Power of Central Authority to make regulations.—(*1*) The Central Authority may, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provisions is necessary or expedient for the purposes of giving effect to the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(*a*) the powers and functions of the Supreme Court Legal Services Committee under sub-section (*1*) of section 3A;

(*b*) the terms of office and other conditions relating thereto, of the members and Secretary of the Supreme Court Legal Services Committee under sub-section (*4*) of section 3A.

29A. Power of State Authority to make regulations.—(*1*) The State Authority may, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision in necessary or expedient for the purposes of giving effect to the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(*a*) the other functions to be performed by the State Authority under clause (*d*) of sub-section (*2*) of section 7;

(*b*) the powers and functions of the High Court Legal Services Committee under sub-section (*1*) of section 8A;

(*c*) the number, experience and qualifications of members of the High Court Legal Services Committee under clause (*b*) of sub-section (*2*) of section 8A;

(*d*) the terms of office and other conditions relating thereto, of the members and Secretary of the High Court Legal Services Committee under sub-section (*4*) of section 8A;

(*e*) the term of office and other conditions relating thereto, of the members and Secretary of the District Authority under sub-section (*4*) of section 9;

(*f*) the number, experience and qualifications of members of the High Court Legal Services Committee under clause (*b*) of sub-section (*2*) of section 8A;

(*g*) other functions to be performed by the District Authority under clause (*c*) of sub-section (*2*) of section 10;

(*h*) the term of office and other conditions relating thereto, of members and Secretary of the Taluk Legal Services Committee under sub-section (*3*) of section 11A.]

30. Laying of rules and regulations.—(*1*) Every rule made under this Act by the Central Government and every regulation made by the Central Authority thereunder shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of

no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(*2*) Every rule made under this Act by a State Government and every regulation made by a State Authority thereunder shall be laid, as soon as may be after it is made, before the State Legislature.

ANNEXURE II

THE NATIONAL LEGAL SERVICES AUTHORITY (LOK ADALAT) REGULATIONS, 2009

(As amended vide notification F.No. L/28/09/NALSA dated 28.08.2019 published in the Gazette of India on 6.9.2019)

In exercise of the powers conferred by Section 29 of the Legal Services Authorities Act, 1987, the Central Authority hereby makes the following regulations, namely:

1. Short title and commencement. – (1) These regulations may be called National Legal Services Authority (Lok Adalats) Regulations, 2009.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. - In these Regulations, unless the context otherwise requires –

(a) 'Act' means the Legal Services Authorities Act, 1987 (39 of 1987).

(b) 'Lok Adalat' means Lok Adalats to be organized under Section 19 of the Act

[1](ba) 'Pre-Litigation matter' means a dispute between the parties which is not filed before the court.

(c) All other words and expressions used but not defined in these regulations and defined in the Legal Services Authorities Act, 1987(39 of 1987) or the National Legal Services Authority Rules, 1995 shall have the meanings respectively assigned to them in the said Act or rules.

3. Procedure for organising Lok Adalats:- (1) Lok Adalat may be organised by the State Authorities or District Authorities or Supreme Court Legal Services Committee or High Court Legal Services Committee or, as the case may be, the Taluk Legal Services Committees at regular intervals and such Lok Adalats shall be organised for a definite geographical area as the aforesaid Authorities or Committees think fit:

Provided that, Special Lok Adalats shall be organised for all Family Courts at regular intervals.

(2) The Member-Secretary or Secretary of the High Court Legal Services Committee or District Authority, or the case may be, the Chairman of the Taluk Legal Services Committee may associate the members of the legal profession, college students, social organisations, charitable and philanthropic institutions and other similar organisations for organizing the Lok Adalats.

4. Intimation to the State Authority:- The Secretary of the High Court Legal Services Committee or District Authority or Chairman of the Taluk Legal Services Committee, as the case may be, shall inform the State Authority about the proposal to organize the Lok Adalat,

[1] Inserted vide notification dated 22/10/2018, published in the Gazette of India on 25/10/2018.

well before the date on which the Lok Adalat is proposed to be organized, and furnish the following information to the State Authority, namely:-

(i) the place and the date on which the Lok Adalat is proposed to be organized;

(ii) whether any of the organisations as referred to in sub-regulation(2) of regulation 3 above have agreed to associate themselves with Lok Adalat;

(iii) categories and nature of cases,viz., pending cases or pre-lititgation disputes, proposed to be placed before the Lok Adalat;

(iv) number of cases proposed to be brought before the Lok Adalat in each category;

(v) any other information relevant to the convening and organizing of the Lok Adalat.

5. Notice to parties concerned:- The Member Secretary or Secretary of the High Court Legal Services Committee or District Authority or, as the case may be, the Chairman of the Taluk Legal Services Committee convening and organizing the Lok Adalat shall inform every party concerned whose case is referred to the Adalat, well in time so as to afford him an opportunity to prepare himself for the Lok Adalat:

Provided that such notice may be dispensed with, if the Court while referring the case to the Lok Adalat fixes or informs the date and time of the Lok Adalat in the presence of the parties, or their advocates:

Provided further that if a party is not willing to refer their case to Lok Adalat, the case may be considered on its merits by the Court concerned.

6. Composition of Lok Adalat:- (a) **At State Authority Level**.- The Member Secretary organising the Lok Adalat shall constitute benches of the Lok Adalats, each bench comprising of a sitting or retired Judge of the High Court or a serving or retired judicial officer and any one or [2]two of the following:-

(i) a member of the legal profession;

(ii) a social worker of repute who is engaged in the upliftment of the weaker sections of the people, including the Scheduled Castes, the Scheduled Tribes, women, children, rural and urban labour and interested in the implementation of legal services schemes or programmes.

[3](iii) a professional from the field related to the subject matter of the Lok Adalat; and

[4](iv) a mediator or a professional or a serving or retired senior executive.

(b) **At High Court Level**:- The Secretary of the High Court Legal Services Committee organizing the Lok Adalat shall constitute benches of the Lok Adalats, each bench comprising of a sitting or retired Judge of the High Court or a serving or retired Judicial Officer and any one or [2]two of the following: -

(i) a member of the legal profession;

[2] Substituted vide notification dated 22/10/2018, published in the Gazette of India on 25/10/2018.
[3] Inserted vide notification dated 22/10/2018, published in the Gazette of India on 25/10/2018.
[4] Inserted vide notification dated 22/10/2018, published in the Gazette of India on 25/10/2018.

(ii) a social worker belonging to the category as mentioned in item (ii) of sub-para (a) above;

[3](iii) a professional from the field related to the subject matter of the Lok Adalat; and

[4](iv) a mediator or a professional or a serving or retired senior executive.

(c) **At District Level**:- The Secretary of the District Authority organizing the Lok Adalats shall constitute benches of the Lok Adalats, each bench comprising of a sitting or retired judicial officer and any one or [2]two of the following:-

(i) a member of the legal profession;

(ii) a social worker belonging to the category as mentioned in item(ii) of sub-para (a) above or a person engaged in para-legal activities of the area, preferably a woman;

[3](iii) a professional from the field related to the subject matter of the Lok Adalat; and

[4](iv) a mediator or a professional or a serving or retired senior executive.

(d) **At Taluk Level** :- The Chairman of the Taluk Legal Services Committee organizing the Lok Adalat shall constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or two of the following:-

(i) a member of the legal profession;

(ii) a social worker belonging to the category as mentioned in item(ii) of sub-para (a) above or a person engaged in para-legal activities of the area, preferably a woman;

[3](iii) a professional from the field related to the subject matter of the Lok Adalat; and

[4](iv) a mediator or a professional or a serving or retired senior executive.

[5]**6 A. Payment of Special Duty Allowance:**- If the Lok Adalat is organised on a holiday or organised beyond court hours on a working day, the [6]presiding judges, other members and staff assisting the Lok Adalat shall be paid Special Duty Allowance as may be fixed by the concerned State Legal Services Authority:

Provided that such Special Duty Allowance shall not be less than the allowance recommended by the National Legal Services Authority.

7. Allotment of cases to Lok Adalats:- (1) The Member Secretary, the Secretary of the High Court Legal Services Committee, the District Authority or Chairman of the Taluk Legal Services Committee, as the case may be, shall assign specific cases to each bench of the Lok Adalat.

(2) The Member Secretary, the Secretary of the High Court Legal Services Committee

[5] Inserted vide notification dated 22/10/2018, published in the Gazette of India on 25/10/2018.
[6] Substituted vide notification dated 28/08/2019, published in the Gazette of India on 06/09/2019.

or the District Authority or Chairman of the Taluk Legal Services Committee, as the case may be, may prepare a cause list for each bench of the Lok Adalat and intimate the same to all concerned at least two days before the date of holding of the Lok Adalat.

(3) Every bench of the Lok Adalat shall make sincere efforts to bring about a conciliated settlement in every case put before it without bringing about any kind of coercion, threat, undue influence, allurement or misrepresentation.

8. Holding of Lok Adalats. - Lok Adalats may be organised at such time and place and on such days, including holidays as the State Authority, High Court Legal Services Committee, District Authority, or the Taluk Legal Services Committee, as the case may be, organising the Lok Adalat deems appropriate.

9. Jurisdiction of Lok Adalats.- Lok Adalats shall have the power only to help the parties to arrive at a compromise or settlement between the parties to a dispute and, while so doing, it shall not issue any direction or order in respect of such dispute between the parties.

10. Reference of cases and matters. - (1) Lok Adalat shall get jurisdiction to deal with a case only when a court of competent jurisdiction orders the case to be referred in the manner prescribed in Section 20 of the Act or under Section 89 of the Code of Civil Procedure, 1908 (5 of 1908).

[7](1A) A pre-litigation matter may be referred to the Lok Adalat by the concerned Legal Services Institution on the request of any of the parties after giving a reasonable opportunity of being heard to the other party.

(2) A mechanical reference of pending cases to Lok Adalat shall be avoided and the referring court shall, *prima facie* satisfy itself that there are chances of settlement of the case through Lok Adalat and the case is appropriate to be referred to Lok Adalat:

Provided that matters relating to divorce and criminal cases which are not compoundable under the Code of Criminal Procedure, 1973 (2 of 1974) shall not be referred to Lok Adalat.

(3) In a pending case where only one of the parties had made application to the court for referring the case to Lok Adalat, or where the court *suo motu* is satisfied that the case is appropriate to take cognizance by Lok Adalat, the case shall not be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the parties.

[8](4) The need based continuous Lok Adalats may be constituted in order to facilitate regular reference and timely disposal of cases.

11. Summoning of records and the responsibility for its safe custody. - (1) The Member Secretary, the Secretary of the High Court Legal Services Committee, the District Authority or, as the case may be, the Chairman of the Taluk Legal Services Committee may

[7] Inserted vide notification dated 22/10/2018, published in the Gazette of India on 25/10/2018.
[8] Inserted vide notification dated 22/10/2018, published in the Gazette of India on 25/10/2018.

call for the judicial records of pending cases which are referred to the Lok Adalat under Section 20 of the Act from the courts concerned.

(2) The officer duly authorised by the Member Secretary, the Secretary of the High Court Legal Services Committee, the District Authority or the Chairman of the Taluk Legal Services, as the case may be, shall be responsible for the safe custody of records from receiving of the same from court till they are returned.

(3) The judicial records shall be returned within ten days of the Lok Adalat irrespective or whether or not the case is settled by the Lok Adalat with an endorsement about the result of proceedings:

Provided that wherever it is appropriate, the court concerned from where the records are called may permit the records to be retained beyond the period of ten days.

(4) Every judicial authority is expected to co-operate in transmission of the judicial records.

12. Pre-Litigation matters. - (1) In a Pre-litigation matter it may be ensured that the court for which a Lok Adalat is organised has territorial jurisdiction to adjudicate in the matter.

(2) Before referring a Pre-litigation matter to Lok Adalat the Authority concerned or Committee, as the case may be, shall give a reasonable hearing to the parties concerned.

Provided that the version of each party, shall be obtained by the Authority concerned or, as the case may be, the Committee for placing it before the Lok Adalat,

(3) An award based on settlement between the parties can be challenged only on violation of procedure prescribed in section 20 of the Act by filing a petition under articles 226 and 227 of the Constitution of India.

13. Procedure in Lok Adalats.- (1) Members of Lok Adalat have the role of statutory conciliators only and have no judicial role and they, *mutatis mutandis,* may follow the procedure laid down in sections 67 to 76 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Members of Lok Adalat shall not pressurise or coerce any of the parties, to compromise or settle cases or matters, either directly or indirectly.

(3) In a Lok Adalat the members shall discuss the subject matter with the parties for arriving at a just settlement or compromise and such members of the Lok Adalat shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute:

Provided that if it found necessary the assistance of an independent person or a trained mediator may also be availed of the by Lok Adalat.

(4) Members of Lok Adalat shall be guided by principles of natural justice, equity, fairplay, objectivity, giving consideration to, among other things, the rights and obligations of the parties, custom and usages and the circumstances surrounding the dispute.

(5) The Lok Adalat may conduct the proceedings in such a manner as it considers appropriate taking into account the circumstances of the case, wishes of the parties including any request by a party to the Lok Adalat to hear oral statements, and the need for a speedy settlement of the dispute.

(6) The Lok Adalat shall not determine a reference, at its own instance, but shall determine only on the basis of a compromise or settlement between the parties by making an award in terms of the compromise or settlement arrived at:

Provided that no Lok Adalat has the power to hear the parties to adjudicate their dispute as a regular court:

Provided further that the aware of the Lok Adalat is neither a verdict nor an opinion arrived at by any decision making process.

14. Administrative assistance. - Administrative assistance for facilitating Lok Adalat proceedings may be arranged by suitable institutions or persons engaged in providing legal services.

15. Formulating compromise or settlements. - The Lok Adalat may, at any stage of the proceedings, make proposal for a settlement of the dispute and such proposal need not be accompanied by a statement of the reasons therefor.

16. Communication between Lok Adalat and parties. - (1) A Lok Adalat may invite the parties to meet it or may communicate with it orally or in writing and it may meet or communicate with the parties together or with each of them separately. The factual information concerning the dispute received from a party may be disclosed to the other party in order that the other party may have the opportunity to present any explanation:

Provided that the Lok Adalat shall not disclose any information, if one of the party desires to keep it confidential.

(2) Each party may on his own initiative or at the invitation of the Lok Adalat, submit suggestions for settlement of the dispute.

(3) When it appears to the Lok Adalat that there exists elements of a settlement which may be acceptable to the parties, the terms of a possible settlement may be formulated by the Lok Adalat and given to the parties for their observations and modifications, if any, suggested by the parties can be taken into consideration and terms of a possible settlement may be re-formulated by the Lok Adalat.

(4) If the parties reach a compromise or settlement of the dispute, the Lok Adalat may draw up or assist the parties in drawing up the compromise or settlement.

17. Award. – (1) Drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed by parties under the guidance and assistance from Lok Adalat.

(2) When both parties sign or affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an award. (see a specimen at Appendix-I) Every award of the

Lok Adalat shall be categorical and lucid and shall be written in regional language used in the local courts or in English. It shall also contain particulars of the case viz., case number, name of court and names of parties, date of receipt, register number assigned to the case in the permanent Register (maintained as provided under Regulation–20) and date of settlement. Wherever the parties are represented by counsel, they should also be required to sign the settlement or award before the members of the Lok Adalat affix their signature.

(3) In cases referred to Lok Adalat from a court, it shall be mentioned in the award that the plaintiff or petitioner is entitled to refund of the court fees remitted.

(4) Where the parties are not accompanied or represented by counsel, the members of the Lok Adalat shall also verify the identity of parties, before recording the settlement.

(5) Member of the Lok Adalat shall ensure that the parties affix their signatures only after fully understanding the terms of settlement arrived at and recorded. The members of the Lok Adalat shall also satisfy themselves about the following before affixing their signatures:

(a) that the terms of settlement are not unreasonable or illegal or one-sided; and
(b) that the parties have entered into the settlement voluntarily and not on account of any threat, coercion or undue influence.

(6) Members of the Lok Adalat should affix their signatures only in settlement reached before them and should avoid affixing signatures to settlement reached by the parties outside the Lok Adalat with the assistance of some third parties, to ensure that the Lok Adalats are not used by unscrupulous parties to commit fraud, forgery, etc.

(7) Lok Adalat shall not grant any bail or a divorce by mutual consent.

(8) The original award shall form part of the judicial records (in pre-litigation matter, the original award may be kept with the Legal Services Authority or committee, concerned) and a copy of the award shall be given to each of the parties duly certifying them to be true by the officer designated by the Member-Secretary or Secretary of the High Court Legal Services Committee or District Legal Services Authority or, as the case may be, the Chairman of Taluk Legal Services Committees free of cost and the official seal of the Authority concerned or Committee shall be affixed on all awards.

18. Confidentiality.—(1) The members of the Lok Adalat and the parties shall keep confidential all matters relating to the proceedings in the Lok Adalat and the members of the Lok Adalat shall not be compelled to disclose the matter which took place in the Lok Adalat proceedings before any court of law, except where such disclosure is necessary for purposes of implementation and enforcement of the award. `

(2) The views expressed and discussions made by parties during the proceedings of Lok Adalat in respect of the possible settlement of a dispute and the proposals made by the members of Lok Adalat or admission made by any party or the conduct of the parties in the course of the proceeding before Lok Adalat shall not be brought in evidence or made use of in other court or arbitral proceedings.

(3) Members of the Lok Adalat shall not record the statement of any of the parties or record any conduct of the parties or express any opinion in such a manner as it would prejudice such party in any other proceedings before a court or arbitrator.

(4) If any member of the Lok Adalat violates the confidentiality and the ethical concerns which are akin to any other judicial proceedings, such member shall be removed from the panel of members of Lok Adalat.

19. Failure of Lok Adalat proceedings. – If a pre-litigation matter is not settled in the Lok Adalat, the parties may be advised to resort to other Alternative Dispute Resolution (ADR) techniques or to approach a court of law and in appropriate cases they may be advised about the availability of legal aid.

20. Compilation of results. – At the conclusion of session of the Lok Adalat, the officer designated by the Member-Secretary, the Secretary of the High Court Legal Services Committee, the District Authority or the Chairman of the Taluk Legal Services Committee, as the case may be, shall compile the results for submission to the State Authority in the proforma given in Appendix-II.

21. Maintenance of panel of names of Lok Adalat Members. – The Member-Secretary or Secretary of the High Court Legal Services Committee or District Authority or, as the case may be, the Chairman of the Taluk Legal Services Committee shall maintain a panel of names of retired judicial officers, advocates and social workers to work in Lok Adalats.

22. Procedure for maintain record of cases referred under Section 20 of the Act or otherwise. – (1) The officer designated by the Member-Secretary, the Secretary of the High Court Legal Services Committee, the District Authority or the Chairman of the Taluk Legal Services Committee, as the case may be, shall maintain a permanent register wherein all the cases and pre-litigation matters received by him by way of reference to the Lok Adalat shall be entered giving particulars of:

(i) date of receipt;
(ii) nature of the case or pre-litigation matter;
(iii) other particulars, if any;
(iv) date of compromise or settlement and the manner in which the case or matter was finally disposed of; and
(v) date of return of the case file.

(2) A copy of the award, if passed, duly certified in the manner stated in regulation 17 shall be kept in the office of the Authority or Committee, as the case may be, as a permanent record.

(3) Records other than the original of the awards of pre-litigation Lok Adalats may be destroyed after a period of three years from the date of disposal of the matter by Lok Adalat.

23. Appearance of lawyers and the procedure to be followed in the cases before Lok Adalat. – The appearance of lawyers on behalf of the parties at the Lok Adalat shall not be barred and an effort shall be made to encourage the parties to be present personally. The lawyers may be advised to avoid wearing their robes and bands during the proceedings before the Lok Adalat.

24. Application of regulation. – The above regulations shall be applicable in the same manner with appropriate changes to the Lok Adalats organised by the National Legal Services and the Supreme Court Legal Services Committee.

APPENDIX–I

BEFORE THE LOK ADALAT

HELD AT _____

[Organized by _____Authority/ _____Committee under Section 19, of Legal Services Authorities Act 1987(Central Act)]

Petitioner/Plaintiff/Complainant :

Defendant/Respondent :

No. of proceedings of the _____Court/Authority/Committee

Present:-

Name of Judicial Officer / Retired Judicial Officer :

Name of Members: (1)

(2)

AWARD

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement :

……
……
……
……

The parties are informed that the court fee, if any, paid by any of them shall be refunded.

Petitioner/Plaintiff/Complainant
Defendant/Respondent

Judicial Officer Member Member

Date:

(Seal of the Authority/Committee)

APPENDIX–II

PROFORMA
DISPOSAL OF CASES IN LOK ADALAT

Place:			**Date:**		
			Nature of Cases disposed of		
Sl.No.	**Case No.**	**Name of parties**	**Civil**	**Claims**	**Criminal**
Total					

****

ANNEXURE III

THE UTTAR PRADESH STATE LEGAL SERVICES AUTHORITY RULES, 1996

In exercise of the powers conferred by section 28 of the Legal Services Authorities Act, 1987 (Act No. 39 of 1987) and in consultation with the Chief Justice, the Governor is pleased to make the following rules:

1. Short title and commencement

(1) These rules may be called the Uttar Pradesh State Legal Services Authority Rules, 1996.

(2) They shall come into force with effect from the date of their publication in the official Gazette.

2. Definitions—In these rules unless the context otherwise requires—

(a) 'Act' means the Legal Services Authorities Act, 1987 (Act No. 39 of 1987);

(b) 'Chief Justice' means Chief Justice of the High Court;

(c) 'Executive Chairman' means Executive Chairman of the State Authority;

(d) 'Governor' means the Governor of Uttar Pradesh;

(e) 'Government' means the State Government of Uttar Pradesh;

(f) 'High Court' means the High Court of Judicature at Allahabad;

(g) 'Member' means member of the State Authority or member of the High Court Legal Services Committee or member of a District Authority or member of a Tehsil Legal Services Committee, as the case may be;

(h) 'Member-Secretary' means Member-Secretary of the State Authority;

(i) 'Section' means section of the Act;

(j) 'Tehsil Legal Services Committee' means Taluk Legal Services Committee as defined in clause (k) of section 2.

3. Number, experience and qualifications of other members of the State Authority

(1) Besides the Patron-in-Chief and the Executive Chairman, the State Authority shall have not more than seventeen members including Member-Secretary.

(2) In addition to members nominated under sub-rule (3), the State Authority shall consist of the following other members—

(a) Advocate General, Uttar Pradesh;

(b) Secretary, Board of Revenue, Uttar Pradesh;

(c) Principal Secretary or Secretary, as the case may be, to the Government in the Finance Department;

(d) Principal Secretary or Secretary, as the case may be, to the Government in the Judicial Department;

(e) Director General of Police, Uttar Pradesh;

(f) Chairman, Uttar Pradesh Commission for the Scheduled Castes and Scheduled Tribes;

(g) Two District Judges nominated by the Government in consultation with the Chief Justice;

(h) Chairman, Bar Council, Uttar Pradesh;

(3) The Government may, in consultation with the Chief Justice, nominate seven other members of the State Authority from amongst the persons possessing the experience and qualifications specified in sub-rule (4).

(4) A person shall not be qualified to be nominated as member of the State Authority, unless he is—

(a) an eminent Social Worker who is engaged in the upliftment of the weaker sections of the society, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour;

(b) an eminent person in the field of law; or

(c) a person of repute who is specially interested in the implementation of the Legal Services Schemes.

4. Powers and functions of the Member-Secretary—

The powers and functions of the Member-Secretary shall be—

(a) to provide legal services to a person entitled to legal services under the Act;

(b) to work out modalities of the Legal Services Schemes and Programmes approved by the State Authority and ensure their effective monitoring and implementation;

(c) to exercise the powers in respect of Administrative House-keeping, Finance and Budget matters as Head of the Department in the Government;

(d) to manage the properties, records and funds of the State Authority;

(e) to maintain true and proper accounts of the State Authority including periodical checking and auditing in respect thereof;

(f) to prepare Annual Income and Expenditure Account and Balance Sheet of the State Authority;

(g) to liaise with the Social Action Groups and District Authority and Tehsil Legal Services Committee;

(h) to maintain uptodate and complete statistical information including progress made in the implementation of various Legal Services Programmes from time to time;

(i) to process proposal for financial assistance and issue Utilisation Certificates thereof;

(j) to organise various Legal Services programmes approved by the State Authority and to convene Meetings/Seminars and Workshops connected with Legal Services Programmes and to prepare reports of such Meetings/Seminars/Workshops and to ensure follow-up action thereon;

(k) to produce video/documentary films, publicity material, literature and publications to inform general public about the various aspects of the Legal Services Programmes;

(l) to lay stress on the resolution of rural disputes and to take extra measure to draw schemes for effective and meaningful legal services for settling rural disputes at the door steps of the rural people;

(m) to perform such of the functions as are assigned to him under the Schemes framed under clause (b) of section 4;

(n) to exercise effective control over the functioning of the High Court Legal Services Committee, the District Authority and the Tehsil Legal Services Committee and to provide

them guidance and necessary assistance in carrying out the programmes and schemes framed under the Act;

(o) to exercise such power and perform such functions and duties as may be assigned to him by the Executive Chairman; and

(p) to perform such other functions as may be expedient for efficient discharge of the functions of the State Authority.

5. Service conditions of the Executive Chairman—

The Service conditions of the Executive Chairman in case of his being a retired Judge of the High Court shall be such as may be determined by the Government, from time to time, in consultation with the Chief Justice.

6. Terms of office and other conditions of Members and Member-Secretary of the State Authority—

(1) The terms of office of members of the State Authority nominated under sub-rule (3) of rule 3 shall be two years and such members shall be eligible for re-nomination.

(2) A member of the State Authority nominated under sub-rule (3) of rule 3 may be removed by the Government, if in the opinion of the Government, it is not desirable to continue him as member.

(3) If any vacancy occurs due to death or otherwise in the office of member of the State Authority, it shall be filled in the manner provided for in these rules for the residue of the term of his predecessor.

(4) All members shall be entitled to payment of travelling allowance and daily allowance in respect of journey performed in connection with the work of the State Authority and shall be paid by the State Authority in accordance with the regulations made under section 29-A

Explanation—If a member is a Government employee, he shall be entitled to only one set of travelling allowance and daily allowance from his parent department or from the State Authority.

(5) The Member Secretary shall be the whole time employee and shall hold office for a term not exceeding five year, which may be extended for a further period not exceeding one year by the Government in consultation with Chief Justice.

(6) In all matters, like age of retirement, pay and allowances, benifits and entitlements, disciplinary matters and other conditions of service, the Member-Secretary shall be governed by the rules applicable to the members of the Uttar Pradesh Higher Judicial Service. The Member-Secretary shall be on deputation to the State Authority.

7. Number of officers and other employees of the State Authority—

(1) The number of officers and other employees including Secretary II, Officer-on Special Duty and Deputy Secretary of the State Authority shall be such as may be determined by the Government, from time to time, in consultation with the Chief Justice.

(2) The Number of officers and other employees including Secretary II, Officer-on-Special Duty and Deputy Secretary of the State Authority shall, until orders varying the same are passed under sub-rule (1), be as given in Appendix A.

(3) All the Officers and other employees including Secretary II, Officer-on Special Duty and Deputy Secretary working immediately before the commencement of these rules, in the Uttar Pradesh Legal Aid and Advice Board shall, on such commencement, be the officers and other employees of the State Authority.

8. Conditions of service, pay and allowances of the Officers and other employees of the State Authority–

(1) The Officers and other employees of the State Authority other than Secretary II, Officer-on Special Duty and Deputy secretary shall be entitled to such pay and allowances as may be determined by the Government, from time to time, in consultation with the Chief Justice.

(2) The scales of pay at the time of the commencement of these rules are as given in the Appendix A.

(3) The officers and other employees of the State Authority shall be entitled to such other facilities, allowances and benefits as may be determined by the Government, from time to time, in consultation with the Chief Justice.

(4) Secretary II and Officer on Special Duty shall be appointed, in consultation with the Chief Justice, from amongst persons belonging to the Uttar Pradesh Higher Judicial Service for a term not exceeding five years.

(5) Deputy Secretary shall be appointed, in consultation with the Chief Justice, from amongst persons belonging to the Uttar Pradesh Nyayik Sewa not below the Rank of Civil Judge (Senior Division).

(6) In all matters, like age of retirement pay and allowances, benefits and entitlements disciplinary matters and other conditions of service Secretary II, Officer-on-Special Duty and Deputy Secretary shall be governed by the rules applicable to the service to which they belong. The Secretary II, Officer-on-Special duty and Deputy Secretary shall be on deputation to the State Authority.

(7) Until the terms and conditions of service of officers and other employees of the State Authority other than the Secretary II, Officer-on-Special Duty and Deputy Secretary are prescribed, their qualifications, procedure for recruitment and other conditions of service including disciplinary matters, leave provident fund and other matters shall be the same as that of the officers and employees of similar category in the Government and rules relating thereto shall mutatis mutandis apply.

9. Experience and qualifications of the Secretary to the High Court Legal Services Committee—

A person shall not be qualified for appointment as Secretary to the High Court Legal Services Committee unless he is an officer of the High Court not below the Rank of Joint Registrar, belonging to the Uttar Pradesh Higher Judicial Service.

10. Numbers of Officers and other employees of the High Court Legal Services Committee and their conditions of service, pay and allowances—

(1) The number of officers and other employees of the High Court Legal Services Committee shall be such as may be determined by the Government, from time to time, in consultation with the Chief Justice.

(2) The number of officers and other employees of the High Court Legal Services Committee shall, until orders varying the same are passed under sub-rule (1), be as given in Appendix B.

(3) All the officers and other employees other than the Secretary, working immediately before the commencement of these rules, in the High Court Legal Aid and Advice Committee, shall, on such commencement be the officers and employees of the High Court Legal Services Committee.

(4) The Officers and other employees of the High Court Legal Services Committee shall be entitled to such pay and allowances as may be determined by the Government, from time to time, in consultation with the Chief Justice.

(5) The scales of pay at the time of commencement of these rules are as given in the Appendix B.

(6) Until the terms and conditions of service of officers and other employees of the High Court Legal Services Committee are prescribed, their qualifications, procedure for recruitment and other conditions of service including disciplinary matters, leave, Provident Fund and other matters shall be the same as that of the officers and employees of similar category in the Government and rules relating thereto shall *Mutatis Mutandis* apply.

(7) The officers and other employees of the High Court Legal Services Committee shall be entitled to such other facilities, allowances and benefits as may be determined by the Government, from time to time, in consultation with the Chief Justice.

11. Number, experience and qualifications of other members of District Authority—

(1) A District Authority shall have not more than twelve other members.

(2) In addition to members nominated under sub-rule (3), a District Authority shall consist of the following other Members—

(a) District Magistrate;

(b) Senior Superintendent of Police or Superintendent of Police, as the case may be;

(c) Chief Judicial Magistrate;

(d) District Government Counsel (Civil);

(e) District Government Counsel (Criminal);

(f) District Government Counsel (Revenue).

(3) The Government may, in consultation with the Chief Justice, nominate six other members of a District Authority from amongst the persons possessing the experience and qualifications specified in sub-rule (4).

(4) A person shall not be qualified to be nominated as member of a District Authority, unless he is–

(a) an eminent social worker who is engaged in the upliftment of the weaker sections of the society, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour;

(b) an eminent person in the field of law; or

(c) a person of repute who is specially interested in the implementation of the Legal Services Schemes.

12. Number of Officers and other employees of District Authority—

(1) The number of officers and other employees of a District Authority shall be such as may be determined by the Government, from time to time, in consultation with the Chief Justice.

(2) The number of officers and other employees of a District Authority shall, until orders varying the same are passed under sub-rule (1) be as given in Appendix C.

(3) All the officers and other employees working, immediately before the Commencement of these rules, in a District Legal Aid and Advice Committee, shall on such commencement, be the officers and employees of the District Authority.

13. Conditions of service, pay and allowances of the officers and other employees of District Authority—

(1) The officers and other employees of the District Authority shall be entitled to such pay and allowances as may be determined by the Government, from time to time in consultation with the Chief Justice.

(2) The scales of pay at the time of the commencement of these rules are as given in Appendix C.

(3) The officers and other employees of the District Authority shall be entitled to such other facilities, allowances and benefits as may be determined by the Government from time to time, in consultation with the Chief Justice.

(4) Until terms and conditions of service of officers and other employees of the District Authority are prescribed, their qualifications, procedure for recruitment and other conditions of service including disciplinary matters, leave, Provident Fund and other matters shall be the same as that of the officers and employees of a similar category in the Government and rules relating thereto shall *mutatis mutandis* apply.

14. Number, experience and qualifications of other members of Tehsil Legal Services Committee—

(1) A Tehsil Legal Services Committee shall have not more than five members.

(2) In addition to members nominated under sub-rule (3) a Tehsil Legal Services Committee shall consist of the followinng other members–

(a) Sub-Divisional Officer of the Tehsil;

(b) Senior most Gazetted Police Officer posted within the local limits of the Tehsil.

(3) The Government may in consultation with the Chief Justice, nominate three other members of a Tehsil Legal Services Committee from amongst the persons possessing the qualifications and experience specified in sub-rule (4).

(4) A person shall not be qualified to be nominated as member of a Tehsil Legal Services Committee, unless he is—

(a) an eminent social worker who permanently resides within the local limits of the Tehsil concerned and is engaged in the upliftment of the weaker sections of the society, including Scheduled Castes, Scheduled Tribes, Women, Children, rural and urban labour;

(b) an eminent person in the field of law; or

(c) a person of repute who is specially interested in the implementation of the Legal Services Schemes.

15. Number of officers and other employees of Tehsil Legal Services Committee—

(1) The number of officer and other employees of a Tehsil legal Services Committee shall be such as may be determined by the Government, from time to time, in consultation with the Chief Justice.

(2) The Officers and other employees of a Tehsil Legal Services Committee shall be entitled to such pay and allowances as may be determined by the Government from time to time, in consultation with the Chief Justice.

(3) The officers and other employees of a Tehsil Legal Services Committee shall be entitled to such other facilities, allowances and benefits as may be determined by the Government from time to time, in consultation with the Chief Justice.

(4) Until terms and conditions of service of officers and other employees of Tehsil Legal Services Committee are prescribed, their qualifications, procedure for recruitment and other conditions of service including disciplinary matters, leave, Provident Fund and other matters shall be the same as that of the officers and employees of similar category in the Government and rules relating thereto shall *mutatis mutandis* apply.

16. Upper-limit of annual income of a person entitling him to Legal Services if the case is before court, other than the Supreme Court—

A person, whose annual income from all sources does not exceed rupees twelve thousand or such higher amount as may be determined by the Government, from time to time, if the case is before a Court other than the Supreme Court, shall be entitled to Legal Services under the Act.

17. Experience and qualifications for other persons under sub-section (4) of section 19—

A person shall not be qualified to be included in the Bench of Lok Adalat, unless he is–

(a) an eminent social worker who is engaged in the upliftment of the weaker sections of the society, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour; or

(b) a lawyer of standing; or

(c) a person of repute who is specially intersted in the implementation of the Legal Services Schemes and Progarammes.
