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# A Brief Analysis on Lok Adalats in Contributing Legal Aid and Speedy Justice

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## ABSTRACT

*Lok Adalats have emerged well as an alternative dispute mechanism and it has gained statutory recognition under Legal Services Authorities Act, 1987. In common parlance, it means "People's Court." Lok Adalat is not a new concept in our country; its roots can be traced back to vedic period. The reference to this system can be found in the ancient works of Kautilya, Gautama, Brihaspati and Yagnavalkya; in ancient times, it were known as Panchayats, Gram Sabhas, Kula Courts or Sreni Courts. The first Lok Adalat was held on 14th of March, 1982 at Junagadh of Gujarat state; similarly first Lok Adalat was organized in Uttar Pradesh in the year of 1984 and in the state of Cuttack in the year of 1985 and these establishments of Lok Adalats had an influence on many states of the country including Bihar, Haryana, Goa, Sikkim, Mizoram, Meghalaya, Delhi, Haryana, Kerala and Tamil Nadu. The Legal Services Authorities Act, 1987 was passed mainly for the purpose of establishments of various authorities such as Lok Adalats, National Legal Services Authority and authorities at state and district level for providing free legal aid and speedier justice to the weaker sections and underprivileged sections of the society. There is establishment of the National Legal Services Authority (NALSA) at Delhi under the Legal Services Authorities Act, 1987 to provide free legal aid and various legal services to the weaker sections of the society. There are sections of society which are embodied under Section 12 of the Legal Services Authorities Act, 1987, which includes women, children, members of SC/ST, industrial workmen, victims of trafficking in human beings or beggars as referred under Article 23 of Indian Constitution., victims of disaster, violence, flood, drought, earthquake, industrial disaster and various persons enumerated under the aforementioned Article.*

**Keywords:** *Free legal aid, Indian Constitution, Lok Adalats, Right, Provision, Indigent, National Legal Services Authority (NALSA), Cr.P.C, Accused, Bail, and Permanent Lok Adalats.*

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## I. INTRODUCTION

Article 39A of the constitution and Committee under the chairmanship of Justice P.N. Bhagawati provides for free legal aid. Lok Adalats functions at various places throughout the country via the process of arbitration and settlement with lesser expenditures. Chapter VI of Legal Services Authorities Act, 1987 deals with Lok Adalats. Hon'ble Supreme Court has liberally interpreted Article 39A various cases including that of Hussainara Khatoon's case; Khatri's case, and Sukhdar's case and in the case of Gopalachari vs. State of Kerala<sup>2</sup>, the cases falling under Section 110 of CrPC (Security for Good behaviour) was referred for legal aid. There are also various enactments passed in various countries such as The Economic Opportunity Act, 1964, Poor Persons Procedure Act, 1964; Legal Aid and Advice Act, 1980 and section 37 of Criminal Justice Act, 1972 which are concerned with free legal aid. There are also provisions made for aiding indigent persons including section 304 of CrPC and Human Rights and International Covenants. In one of the cases, it has also been mandated by the Hon'ble Supreme Court that State has an obligation to provide free legal aid to indigent persons.<sup>3</sup> There are various disputes settled under Lok Adalats such as compensation claims, matrimonial disputes and various disputes of petty nature.

This article deals with Lok Adalats in providing free legal aid to people and working as a forum for alternative dispute resolution and assisting in providing speedy justice to different sections of society. Various legal literacy camps are being well organised in spreading awareness among people.

## II. FREE LEGAL AID: A CONSTITUTIONAL MANDATE

It was stated by **Justice Blackmun**: "humane considerations and constitutional requirements are not in this day to be measured by dollar considerations."<sup>4</sup>

It is embodied in Article 39A of Indian Constitution that its mandatory for the states in providing equal opportunities and provide free legal aid by suitable schemes or legislation or in any other way; and also to ensure that opportunities are being provided to every citizen of country; not denied to them due to any reasons, whether economic or other disabilities. Under the Legal Services Authorities Act, 1987, the provision of legal aid is provided under Chapter IV of the Act and the provision for legal aid to the accused at the expense of state is provided in Section 304 of the Code of Criminal Procedure; in that section, it is provided that where

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<sup>2</sup> Gopalachari vs. State of Kerala, AIR 1981 SC 674

<sup>3</sup> Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar AIR 1979 SC 1360

<sup>4</sup> Rhem vs. Malcolm, 377 F Supp. 995 (S.D.N.Y. 1974)

the accused is presented in a trial before Sessions Court without pleader and in the eyes of Court the accused is indigent or does not have sufficient money, the court shall assign him pleader and the expenses will be looked by State; and High Court may, with the previous approval of the State Government, make rules further procedures. The concept of speedy trial is not specifically provided in our Indian Constitution but it has been broadly interpreted in many cases; one of them is Maneka Gandhi Case; it was held by Hon'ble Supreme Court that if person's liberty is deprived under a procedure which not 'reasonable, fair and just', such deprivation would be violative of his fundamental rights guaranteed under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Speedy trial under Article 21 means reasonably expeditious trial in which his basic fundamental rights are not violated.<sup>5</sup> It was also pointed out in one of the cases that the State may have its financial constraints and its priorities in expenditure but, "the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty."<sup>6</sup>

There is no innate right vested in the hands of Magistrate to remand the accused to custody in the absence of any provision under the Code and the power to remand the accused shall be conferred upon the Court. A person can be detained in a police custody only upto 24 hours and the accused shall be produced before Magistrate excluding the time necessary for journey.<sup>7</sup>

This right to free legal aid would be delusory for an indigent accused unless the judge (whether magistrate or Sessions Judge) before whom he is produced informs him of such right; so, legal awareness programmes and providing free legal aid is the need of the hour. It must be mandatory for the magistrate or Sessions Judge to provide the accused free legal services at the cost of the State; it was also held that "the Magistrates and Sessions Judge in the country were directed to inform the accused on account of his poverty or indigence that he is entitled to free legal services at the cost of the state."<sup>8</sup>

### **Committal Proceedings and Bail**

The bail system in our judicial system also denies justice to poor people and only people (accused) from financially sound background can take advantage by getting themselves released on bail. There has been amendment in Code of Criminal Procedure in this regard but the Code continues to adopt the same antiquated approach as the earlier Code where an accused is to be released on his personal bond. It is strenuous for poor to furnish bail even

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<sup>5</sup> Maneka Gandhi vs. Union of India, AIR 1978 SC 597

<sup>6</sup> Jackson v. Bishop, 404 F.2d 571 (8<sup>th</sup> Cir. 1968)

<sup>7</sup> Natwar Parida v. State of Orissa, AIR 1975 SC 1465

<sup>8</sup> Khatri vs. State of Bihar, (1981) 2 SCR 408

without sureties because very often the amount of the bail system in our judicial system also denies justice to poor people and only people (accused) from financially sound background can take advantage by getting themselves released on bail. There has been amendment in Code of Criminal Procedure in this regard but the Code continues to adopt the same antiquated approach as the earlier Code where an accused is to be released on his personal bond. It is strenuous for poor to furnish bail even without sureties because very often the amount of the bail fixed by the courts is excessive that it becomes almost an impossible task for the poor to find persons sufficiently solvent to stand as sureties.<sup>9</sup>The lacuna in the bail system was raised by the Legal Aid Committee under the chairmanship of Mr. Justice Bhagwati, according to which the discrimination is also even when the amount is fixed by the magistrate is not so high, but still the large majority of indigent people who are brought before the courts in criminal cases find it difficult to furnish bail even in small amount.”<sup>10</sup>It was also pointed out by the Gujarat Committee that the system is harsh, oppressive and discriminates against the poor as various relevant factors such as individual financial circumstances of the accused and the probability of his fleeing before trial are not taken into consideration.<sup>10</sup>

The provisions relating to bail is embodied under Sections 209, 436, 437, 438 and 439 and according to section 209 clause (b) of Cr.P.C. the Magistrate has no jurisdiction to remand the accused to custody, while committing the accused to Sessions Court for trial. If the accused has already been granted bail prior to the committal proceedings he cannot be remanded to custody during the committal proceedings.

### **Permanent Lok Adalats**

Permanent Lok Adalats are one of the most effective tools of alternative dispute resolution in India which are established by the National Legal Services Authority or the State Legal Services Authority with a pre-litigation attempt to settle disputes in a speedy manner. The pecuniary jurisdiction of the Permanent Lok Adalats has been increased to rupees one crore.

The provision for establishment of Permanent Lok Adalats is provided under Section 22B of Legal Services Authorities Act, 1987; it was established for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to Public Utility Services. Section 22C embodies cognizance of cases and it was held in one of the cases that the amended provision of the Act does not confer power on permanent Lok Adalat even to

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<sup>9</sup> Hussainara Khatoun and others vs. Home Secretary, State of Bihar, Patna, AIR 1979 SC 1360

<sup>10</sup> Justice P.S. Narayana, Law Relating To Lok Adalats ( Law Relating To Lok Adalats, 1987), 4<sup>th</sup> edition, S.P. Gogia (H.U.F.)

entertain disputes in relation to non compoundable offences.<sup>11</sup>The members and Staff of Authorities, Committees and Lok Adalats are public servants within section 21 of the Indian Penal Code. In *Interglobe Aviation Ltd. vs. N. Sachidanand*, it was held by Hon'ble Supreme Court that the procedural trait of Permanent Lok Adalat is "conciliation-cum-arbitration"; the procedures followed by Permanent Lok Adalat resembles to the ADR mechanism.

The award of Permanent Lok Adalat is final and binding and it shall not be put into question in any original suit, application or execution proceeding and it was also held the Hon'ble Apex Court that award of PLA is non- appealable; the right to appeal is not an inherent right but a creation of the statute and in the case where party is aggrieved by the settlement of Permanent Lok Adalat, the party always has an option to invoke the special and extraordinary jurisdiction of the High Court under Articles 226 and 227 respectively of the Indian Constitution.<sup>12</sup>

### III. CONCLUSION

Lok Adalats acts as forum of alternative dispute resolution and are constituted at various places in the country for the disposal of cases in a summary way with lesser costs. It has gained statutory recognition through the Legal Services Authorities Act, 1987(Chapter VI of the Act); where Section 19 deals with organization of Lok Adalats, Section 20 deals with the cognizance of cases by Lok Adalats, Section 21 deals with award of Lok Adalat and section 22 embodies the powers of Lok Adalats .The right to counsel as inclusive of appointment of counsel to poor or impoverished person in federal criminal proceedings was recognized and interpreted for the first time by U.S. Supreme Court in one of the cases.<sup>13</sup>In another case of *Zeve Powell vs. State of Alabama*, it was observed that failure of according benefit of counsel would amount to be violative of the "due process of law". There are also various legislations passed by different countries for providing free legal aid to indigent and needy people; under Section 37 of Criminal Justice Act, 1972, it is provided that the Magistrate is bound to provide legal aid to the accused before imposing custodial penalty on him. In India, the Legal Aid movement gained recognition after Rushcliffe Committee Report in England. The Lok Adalats are established at different level whether at national, state or district level and the award of Lok Adalat is deemed to be decree of civil court passed on compromise and is non-appealable. In *Mansukhlal Vithal Das Chauhan v. State of Gujarat*, it was observed by

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<sup>11</sup>Branch Manager, United India Insurance Co. Ltd. V. State of Jharkhand, 2006 (1) AIR Jhar R. 32

<sup>12</sup> Devika Sharma, Permanent Lok Adalat: An Indian Model of Institutional ADR based on the Principle of "Gram Swaraj", ( June 06, 2020) < <https://www.scconline.com/blog/post/2020/06/12/permanent-lok-adalat-an-indian-model-of-institutional-adr-based-on-the-principl-of-gram-swaraj>> accessed 23 June 2021

<sup>13</sup> Johnson vs. Zerbes ( 304 U.S. 458 (1938)

the Supreme Court that the right to legal aid and speedy trial are implicit in Article 21 of the Indian Constitution and the main purpose behind passing of the Legal Services Authorities Act, 1987 is to achieve the goals enshrined under Article 39A of the Indian Constitution i.e., providing equal opportunity to various sections of society and securing justice. The Magistrates and Sessions Judge are under obligation to provide free legal aid on the account of the State to indigent person who cannot afford a lawyer.

Change is an inevitable thing and a balance has to be maintained between the changing needs and demands of different sections of society and to great extent, the System of Lok Adalats and Legal literacy camps and programmes are aiding the public and providing free legal services for the betterment of society.

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