

Lok Adalat and Free legal Aid

**By- Sanjeev Kumar
(Nodal Officer Computer)/
A.D.J./F.T.C. Allahabad**

Lok Adalats in India

ADR (Alternate Dispute Resolution) system has been an integral part of our historical past. The concept of Lok Adalat (Peoples' Court) is an innovative Indian contribution to the world jurisprudence. The institution of Lok Adalat in India, as the very name suggests, means, People's Court."Lok" stands for "people" and the term "Adalat" means court. India has a long tradition and history of such methods being practiced in the society at grass roots level. In ancient times the disputes were used to be referred to "panchayat" which were established at village level. Panchayat's used to resolve the dispute through arbitration. It has proved to be a very effective alternative to litigation.

This very concept of settlement of dispute through mediation, negotiation or through arbitral process known as decision of "Nyaya-Panchayat" is conceptualized and institutionalized in the philosophy of Lok Adalat. It involves people who are directly or indirectly affected by dispute resolution.

The evolution of movement called Lok Adalat was a part of the strategy to relieve heavy burden on the Courts with pending cases and to give relief to the litigants who were in a queue to get justice.

The advent of Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats, pursuant to the constitutional mandate in Article 39-A of the Constitution of India. It contains various provisions for settlement of disputes through Lok Adalat. It is 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 organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

There is a Central Authority called the "National Legal Services Authority". Its patron is the Hon'ble Chief Justice of India. Its Executive Chairman is the senior most Judge of the Supreme Court of India.

So far as the State Legal Services Authorities are concerned, it is headed by a Patron-in-Chief who is none other than the Hon'ble Chief Justice of

the High Court. In almost all the State Authorities, except perhaps one or two, a sitting Judge of the High Court functions as the Executive Chairman.

Some relevant provisions of Legal Services Authority Act 1987 are as follows:----

Section 2 (1) (aaa) of the Act defines 'Court' as under:--

“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.”

Jurisdiction of Lok Adalat

(Sub Sec 5 of Sec 19 of the Act)

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.

The Lok Adalat can compromise and settle even criminal cases, which are compoundable under the relevant laws.

Organisation of Lok Adalat

(Section 19 of the Act)

The State Authority and District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee and Taluk Legal Services Committee (mentioned in Section 19 of the Act) can organize Lok Adalats at such intervals and places as may be deemed fit.

- Every Lok Adalat so organized shall consist of: (a) Serving or retired judicial officers, (b) other persons, as may be specified.

The experience and qualification of “other persons” in a Lok Adalat conducted by Supreme Court Legal Services Committee shall be prescribed by the Central Government in consultation with the Chief Justice of India. At present, Rule 13 of the National Legal Services Authorities Rules, 1995 prescribes such

experience and qualifications as:

- (a) A member of the legal profession; or
- (b) A person of repute who is specially interested in the implementation of the Legal Services Schemes and Programmes; or

© An eminent social worker who is engaged in the upliftment of weaker sections of people, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour.

The experience and qualification of “other persons” mentioned in clause (b) shall be prescribed by the State Government in consultation with the Chief Justice of High Court.

Cognizance of Pending Cases & Determination

(Sec 20 of the Act)

A. On Application:

- (i) When all the parties to the case agree for referring the case to Lok Adalat, or
- (ii) When one of the party to the case makes an application to court, praying to refer the case to Lok Adalat and the court is prima facie satisfied that there are chances for settlement

B. Suo Moto: Where the court is satisfied that the matter is an appropriate one to be taken cognizance of, by the Lok Adalat.

Then, the court shall refer the case to the Lok Adalat, after giving a reasonable opportunity for hearing to all the parties.

Further, the Authority or Committee organising Lok Adalat may, on application from any party to a dispute, refer the said dispute to Lok Adalat, after giving a reasonable opportunity for hearing to all the parties.

- Lok Adalat shall proceed to dispose of a case refereed to it expeditiously.
- Shall be guided by principles of law, justice, equity and fair play.
- Shall yearn to reach a settlement or compromise between parties.
- When no compromise or settlement is accomplished, the case is to be returned to the court which referred it. Then the case will proceed in the court from the stage immediately before the reference.

Passing of the Award

(Sec 21 of the Act)

- Every award of Lok Adalat shall be deemed to be a decree of a civil court.
- Every award shall be signed by all the parties to the dispute and the panel constituting the Lok Adalat.
- Every award shall form part of the judicial records.
- Every award shall be categorical and lucid.
- Every award shall be in the regional language or in English.
- A certified copy of the award will be given free of cost, to all the parties.
- Every award made by 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.
- If a pending case is settled at Lok Adalat, any court fee already paid will be refunded as provided by the Court Fees Act, 1870.

Powers of Lok Adalat

(Sec 22 of the Act)

- (1) The Lok Adalat shall have the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:---
- (a) Power to summon and enforce the attendance of any witness and to examine him/her on oath.
 - (b) Power to enforce the discovery and production of any document.
 - (c) Power to receive evidence on affidavits,
 - (d) Power for requisitioning of any public record or document or copy thereof or from any court.
 - (e) Such other matters as may be prescribed.
- (2) Every Lok Adalat shall have the power to specify its own procedure for the determination of any dispute coming before it.
- (3) All proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of IPC
- (4) Every Lok Adalat shall be deemed to be a Civil Court for the purpose of Sec 195 and Chapter XXVI of Cr.P.C.

Permanent Lok Adalat

(Hereinafter mentioned as 'PLA' - Chapter VI A of the Act)

-Chapter VI A was newly added by Amendment Act, 2002, introducing the concept of Permanent Lok Adalat.

-The Central or State Authorities may establish by notification, Permanent Lok Adalats at any place, for determining issues in connection to Public Utility Services.

-Public Utility Services include:

- (1) Transport service,
- (2) Postal, telegraph or telephone services,
- (3) Supply of power, light and water to public,
- (4) System of public conservancy or sanitation,
- (5) Insurance services and such other services as notified by the Central or State Governments.

-PLAs have the same powers that are vested on the Lok Adalats, mentioned under Section 22(1) of the Act.

Organisational Structure of Permanent Lok Adalat

(Section 22B (2) of the Act)

Chairman--

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.

Members---

Two other persons having adequate experience in Public Utility Service to be nominated by Central Government on the recommendation of Central Authority and by the State Government on the recommendation of the State Authority.

Cognizance of Pending Cases by Permanent Lok Adalat

(Sec 22C of the Act)

1. Any party to a dispute can apply to PLA for settlement of a dispute in respect of a public utility service, which is not pending before any court.
2. PLA does not have jurisdiction to entertain disputes involving offences which are not compoundable.
3. PLA does not have jurisdiction to entertain a matter where the value of the property involved exceeds ten lakhs, which limit can be enhanced as provided for.
4. Once, an application is preferred to PLA for determination of a dispute, no party to such application can invoke the jurisdiction of any court in the same dispute.

Procedure by Permanent Lok Adalat for Determination

(Sec 22C & 22D of the Act)

Where the PLA receives an application for determination of a dispute,

1. The PLA should direct each party to file before it a written statement stating therein, all the facts and the nature of the dispute, points or issues and the grounds in support or opposition. PLA may require the parties to file additional statements at any stage.
2. The party may also file any document or such other evidence, in proof of such facts and grounds urged.
3. The copy of the written statement and the documents or such other evidence filed has to be sent to the other parties to the application.
4. When the statement and additional statement and reply if any are filed, PLA shall conduct conciliation process between parties to the application, as it thinks fit, considering the circumstances of the dispute.
5. PLA should assist the parties in their attempt to reach an amicable settlement, in an independent and impartial manner. Every party is duty bound to co-operate in good faith, in the conciliation process.
6. If after the conciliation process, the PLA is of an opinion that there exists elements of settlement in such proceedings, which may be acceptable to the parties, PLA may formulate the terms of a possible settlement of the dispute and

give it for the consideration of the parties. If the parties are agreeable to the same, they shall sign the same and PLA shall pass an award in terms of the settlement agreement.

7.If the parties are not agreeable to the settlement formulated, if the dispute is not an offence, then the PLA should decide the dispute on merits.

8.PLA shall, while conducting conciliation proceedings or deciding a dispute on merit, shall be guided by the principle of natural justice, objectivity, fair play, equity and other principles of justice.

9.The PLA, when deciding a dispute on merit, shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

10.Every award made by the PLA shall be by the majority of the persons constituting the PLA.

11.The award rendered by PLA shall be deemed to be a decree of a civil court and shall be final. The PLA may transmit the award to the court having local jurisdiction for execution.

Right to Legal Aid:

It is the duty of the State to see that the legal system promotes justice on the basis of equal opportunity for all its citizens. It must therefore arrange to provide free legal aid to those who can not access justice due to economic and other disabilities.

----- (Art.39 A of the Constitution of India)

Under this concept the State has provided categories of persons who are entitled for legal services under this Act.

Entitlement to Legal Services

(Section 12 of the Act)

Following persons are entitled for free legal aid under the Act:----

- (i) A member of scheduled caste or schedule tribes;
- (ii) A person whose annual income is not more than Rs.50,000/- for cases before Supreme Court and Rs. 25,000/- in other courts;
- (iii) A person victim of trafficking in human beings or beggar;

- (iv) Disabled, including mentally disabled;
- (v) A woman or child;
- (vi) A victim of mass disaster, ethnic violence, caste atrocities, flood, drought, earth quake, industrial disaster and other cases of undeserved want;
- (vii) An industrial workman;
- (viii) A person in custody including protective custody;
- (ix) A person facing charge which might result in his imprisonment;
- (x) A person unable to engage a lawyer and secure legal services on account of reasons such as poverty and indigence.

In **(Khatri II Vs. State of Bihar, (1981) 1SCC; 1981 SCC (Cri) 228; 1981 Cri. LJ 470)** it has been held that the Constitutional duty to provide legal aid arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand.

In **(Madav Hayavadanrao Hoskot Vs. State of Maharashtra (1978)3 SCC 544)** it has been held that a person entitled to appeal against his/her sentence has the right to ask for a counsel, to prepare and argue the appeal.

Section 304 of Criminal Procedure Code also provides that if the accused does not have sufficient means to engage a lawyer, the court must provide one for the defense of the accused at the expense of the state.

Beside this The Magistrates and sessions judges must inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State.

In **(Suk Das Vs. Union Territory of Arunachal Pradesh (1986) 2 SCC 401; 1986 SCC (Cri) 166)** it has been held that failure to provide legal aid to an indigent accused, unless it was refused, would vitiate the trial. It might even result in setting aside a conviction and sentence.

When can Legal services be rejected---

(i) If the applicant has adequate means to access justice; or

(ii) he does not fulfill the eligibility criteria; or

(iii) he has no merits in his application requiring legal action.

When can the legal services be withdrawn---

The legal services committee can withdraw the services if, the aid is obtained through misrepresentation or fraud;

any material change occurs in the circumstances of the aided person; there is misconduct, misbehavior or negligence on the part of the aided person;

the aided person does not cooperate with the allotted advocate;

the aided person appoints another legal practitioner;

the aided person dies, except in civil cases;

the proceedings amount to misusing the process of law or of legal service.

Cases for which legal aid is not available ---

Cases in respect of defamation, malicious prosecution, contempt of court, perjury etc.

Proceedings relating to election;

Cases where the fine imposed is not more than Rs.50/-;

Economic offences and offences against social laws;

Cases where the person seeking legal aid is not directly concerned with the proceedings and whose interests will not be affected, if not represented properly.

Whom to approach for free legal aid---

The person who needs free legal aid can approach the Legal Services Authority at any level- national, state, district or taluq. The request can be made to:

the Senior Civil judge nominated as the chairperson of the Mandal/Taluq Legal Services Authority;

the Secretary, District Legal Services Authority at the district level;
the Secretary, High Court Legal Services Committee at the state level;
the Secretary, Supreme Court Legal Services Committee at the higher level;
the member secretary of the state legal services authority;
the magistrate before whom s/he is produced;
or the custodial authorities, if under detention.

How to Approach?

- A written application can be made to the concerned authority
 - Where the person cannot read or write, the legal services authority will record his/her statement along with thumb impression. Such a statement is treated as an application.
 - The person who claims legal aid has to file an affidavit of his income. Steps involved in the process: The eligibility criteria and the merits of the case are examined. If the application for legal aid is rejected, reasons shall be duly recorded and also informed to the applicant.

One important condition is that both parties in dispute should agree for settlement through Lok Adalat and abide by its decision. A Lok Adalat has the jurisdiction to settle, by way of effecting compromise between the parties, any matter which may be pending before any court, as well as matters at pre-litigation stage i.e. disputes which have not yet been formally instituted in any Court of Law. Such matters may be civil or criminal in nature, but any matter relating to an offence not compoundable under any law cannot be decided by the Lok Adalat even if the parties involved therein agree to settle the same.

The award passed by the Lok Adalat is the decision of the court itself though arrived at by the simpler method of conciliation instead of the process of arguments in court.

The most important factor to be considered while deciding the cases at the Lok Adalat is the consent of both the parties. It can not be forced on any party that the matter has to be decided by the Lok Adalat. However, once the parties agree that the matter has to be decided by the Lok Adalat, then any party cannot walk away from the decision of the Lok Adalat.

During the last few years Lok Adalat has been found to be a successful tool of alternate dispute resolution in India. It is most popular and effective because of its innovative nature and inexpensive style. The system received wide acceptance not only from the litigants, but from the public and legal functionaries in general.

Therefore, it may be concluded that the system of Lok Adalat and giving free legal aid to eligible persons is a very noble one which has helped judiciary not only in speedy disposal of cases but has given some relief to the litigant, particularly to them who are poor and can not afford to claim their right through court of law.
