
CONCEPT OF LOK ADALAT IN INDIA: DISCOURSE WITH REFERENCE TO THE LEGAL SERVICES AUTHORITIES ACT 1987

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ABSTRACT

Lok Adalat provides a mode for settlement of disputes between the parties through the authoritative sanction of the Court of law. It is a means for amicable settlement and relieves the litigants from the procedural clutches of the dispute redressal system. Section 89A of the Code of Civil Procedure 1908 (hereinafter 'CPC') requires the Court to be referred for alternative dispute resolution mechanisms as a part of the procedure prior to the regular litigation. The litigants have right to legal aid in the form of exemption from the regular court fees, process fees, Counsel fees, etc. under Order XXXIII of CPC. This mechanism of alternative dispute resolution has been further strengthened by the Legal Services Authorities Act 1987 which aims to provide free legal services to the vulnerable sections of society who cannot access justice or are not aware of their rights. This paper endeavours to state that the mechanism of legal services authorities is supplemental to the regular procedure of the Courts of law and aims to provide expeditious relief at reduced time and expenses. This paper would further state that the vulnerable class of people who are entitled for legal services are also entitled for the benefits provided for an indigent litigant under Order XXXIII of CPC provided they satisfy the criteria of being an indigent litigant.

Keywords: Lok Adalat, Legal aid, alternative dispute resolution mechanisms, Court fee, Public sector enterprises.

INTRODUCTION

Our judicial system is adversarial in nature; it requires filing of plaint, issuance of summons, filing of written statement, evidence, etc. on behalf of parties to the litigation. These stages of a civil suit often gets intertwined in procedures and sometimes, it takes a lot of time to dispose a suit completely. These reasons led to the introduction of alternative systems of dispute resolution namely, Arbitration, Mediation, Conciliation and Judicial settlement through Lok Adalat, etc. Hon'ble Justice V. R. Krishna Iyer observed:

'Indeterminable time consuming, complex and expensive [C]ourt procedure impelled jurists to search for an alternative forum less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to the Arbitration Act ...'¹

TYPES OF ALTERNATIVE DISPUTE RESOLUTION:

The techniques of alternative dispute resolution are stated in Section 89 of the Code of Civil Procedure 1908 (hereinafter 'CPC'). Section 89 of CPC states:

"(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

¹ Dr. N.V. Paranjape, *Law Relating To Arbitration and Conciliation in India* 439 (Central Law Agency, Allahabad, 7th edn. 2016).

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 Authority 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 Authority Act, 1987 shall apply as if the dispute 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."

Therefore, Section 89 of CPC requires the Courts of first instance to determine in regular course whether the suit is fit to be referred for any of the mechanisms of alternative dispute resolution. Further, section 20 of the Legal Services Authorities Act 1987 (hereinafter 'Legal Services Authorities Act') empowers the Courts to refer the civil suits pending consideration for amicable settlement through Lok Adalat. The salient features of the techniques of Alternative Dispute Resolution are:

1. MEDIATION

... mediation involves the act of a neutral third party (usually a retired Judge or an experienced lawyer) to facilitate the settlement of dispute between the two contending parties.² It differs from arbitration in the sense that arbitration is governed by the arbitration agreement wherein the arbitrator is nominated by disputant parties.³ The mediator often asks the parties to put forth their views and claims in a joint session before melting them separately to explore the possibilities of settlement of the dispute.⁴ [However,] ... the settlement made through the process of mediation is not enforceable as a decree of the Court as in case of an arbitral award which has the status and recognition as a decree passed by a Civil Court.⁵

The mediator must act according to the principles of natural justice and fair play. He should be

² *Id* at 430-431.

³ *Id* at 431.

⁴ *ibid.*

⁵ *ibid.*

impartial and neutral in his conduct of negotiation with the parties.⁶ Mediation is relatively cheap, less time consuming and settles disputes in a consensual manner. ... if the settlement in mediation is converted into a written agreement between the parties, it becomes enforceable like any other contract under the law of contracts.⁷ Section 74 of the Arbitration and Conciliation Act, 1996 also supports this contention.⁸

2. ARBITRATION

Arbitration is entered into usually by contract, but renders a binding result.⁹ Arbitrators are appointed on choice of parties and the parties have to bear the expenses of arbitral proceedings. An arbitration clause in the contract between the parties excludes intervention of the law Courts to decide the case on merits, however, an appeal against the arbitral award could be filed before the District Judge.¹⁰

Arbitration may either be "Ad hoc" or it may be institutional.¹¹ In "Ad hoc" arbitration, the parties jointly select the arbitrator(s) and workout details of the procedure together with the arbitral tribunal when the dispute arises.¹² The arbitral tribunal may also devise its own procedure. But when parties agree to employ the services of an arbitration institution, it is termed as "institutional arbitration".¹³

3. CONCILIATION

Section 62 of the Arbitration and Conciliation Act, 1996 deals with reference to conciliation by agreement of parties while on the other hand, Section 89 of the CPC permits the Civil court to refer a dispute for conciliation even where parties do not consent, provided the court deems it a fit case for conciliation.¹⁴

The conciliator has to act honestly, independently and impartially and maintain confidentiality of the conciliation proceedings.¹⁵ Section 74 of the Arbitration and Conciliation Act 1996 states:

⁶ *ibid.*

⁷ *Id* at 432.

⁸ *ibid.* see *Infra* section on Conciliation.

⁹ *Id* at 433.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

¹⁴ *Id* at 435.

¹⁵ Section 67 of the Arbitration and Conciliation Act 1996 states: The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

"Status and effect of settlement agreement.—The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30." So, the settlement by the conciliator attains the status of a decree of the Civil Court. ... [C]onciliation is non-binding in the sense that the parties are free to terminate the conciliation proceedings anytime until they put their signature on the settlement made by the conciliator(s).¹⁶

4. JUDICIAL SETTLEMENT

The concept of Judicial settlement is provided in Order 23 Rule 3 of the CPC which states:

"Compromise of suit.- Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit: -

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation : An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."

5. EARLY NEUTRAL EVALUATION

This is basically an American system of dispute resolution.¹⁷ It involves confidential meeting between the parties or their legal representatives and a third person who is usually a senior lawyer well experienced in the subject-matter of the dispute. He is called "Neutral".¹⁸ Such type of dispute resolution is practiced in India through the mechanism of mediation. Lawyers who have experience of ten years or more in the regular practice are provided mediation training of

¹⁶ *ibid.*

¹⁷ *Id* at 438.

¹⁸ *ibid.*

usually forty hours to be appointed a Mediator by the Hon'ble High Court of Chhattisgarh.¹⁹

6. LOK ADALAT

Article 39-A of the Constitution of India (hereinafter 'Constitution') reads: "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."

In pursuance of this Article, Parliament has passed the Legal Services Authorities Act, 1987.²⁰ The object of establishing Lok Adalat is to make access to justice more human, simple and effective.²¹ Justice P. N. Bhagwati described it [Lok Adalat] as a legal technology of peaceful transformation of society so as to ensure equal justice-cum-social justice.²² In *Bar Council of India v. Union of India*²³, Court observed:

"The alternative institutional mechanism in Chapter VI-A with regard to the disputes concerning public utility service is intended to provide an affordable, speedy and efficient mechanism to secure justice. By not making applicable the Code of Civil Procedure and the statutory provisions of the Indian Evidence Act, there is no compromise on the quality of determination of dispute since the Permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice."

"...Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of arbitration and settlement between the parties of a large number of cases expeditiously and with lesser costs."²⁴ To expedite the implementation of Article 39-A of the Constitution, the Legal Services Authorities Act 1987 (hereinafter 'Legal Services Authorities Act') was enacted which came into force on 9th Nov. 1995. It provides for constitution of NALSA (National Legal Services Authority) at Central level, SALSA (State Legal Services Authority) at State Level and DALSA (District Legal Services Authority) at

¹⁹ https://highcourt.cg.gov.in/other/2022/memo_11177_09092022.pdf (last visited 06.12.2022); Mediation Training Manual <https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf> (last visited 06.12.2022).

²⁰ M.P. Singh, *V.N. Shukla's Constitution of India* 374 (Eastern Book Company, Lucknow, 12th edn. 2013)

²¹ *Supra* note 1 at 438.

²² *ibid.*

²³ WP(C) 666/ 2002 filed in Hon'ble Supreme Court.

²⁴ Justice P.S. Narayana, *Justice P.S. Narayana's Law Relating to Lok Adalats: Lok Adalats and Legal Aid- A brief Analysis 2* (Asia law House, Hyderabad, Millenium edn. 2002).

district level. Sections 19 to 22 of the Legal Services Authorities Act contain provisions relating to the composition, functioning, jurisdiction, etc of Lok Adalat. It also contains provisions dealing with preventive legal-aid services, legal literacy and para-legal services which need to be extended for benefits of the rural population.

In *Hussainara Khatoon v. UOI*²⁵, Hon'ble Supreme Court observed that the State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence. It held that the Right to free legal aid is a Fundamental right under Article 21 of the Constitution. The latter decisions on *Khatri v. State of Bihar*²⁶ and *Francis Coraile Mulin v. Delhi Administration*²⁷ approved *Khatoon's* judgment²⁸.

PERSONS ENTITLED TO LEGAL SERVICES UNDER THE LEGAL SERVICES AUTHORITIES ACT 1987

Section 12 of the Legal Services Authorities Act provides list of persons who are entitled to the legal services through legal aid. Section 12 reads:

"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;

(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;

(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

²⁵ AIR 1979 SC 1360

²⁶ 1981 SCC (1) 627.

²⁷ AIR 1981 SC 746.

²⁸ *Supra* note 19.

(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

(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."

ORGANIZATION OF LOK ADALATS

Section 19 of the Legal Services Authorities Act, 1987 provides for Organisation of Lok Adalat, the composition of it, qualifications of its members and jurisdiction of Lok Adalat.

"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, 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. "

COMPOSITION OF LOK ADALAT

Section 19(2) of the Legal Services Authorities Act provides for composition of the Lok Adalat. It reads:

"Section 19 (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 Taluka Legal Services Committee, organising such Lok Adalat. "

QUALIFICATION OF MEMBERS OF LOK ADALAT

The experience and qualification of other members of the Lok Adalat is provided in Sections

19(3) and 19(4) of the Legal Services Authorities Act which reads:

"Section 19(3): The experience and qualifications of other persons referred to in clause (b) of sub-section (2) of Section 19 of the Legal Services Authorities Act 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.

Section 19(4): The experience and qualifications of other persons referred to in clause (b) of sub-section (2) of Section 19 of the Legal Services Authorities Act 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. "

JURISDICTION OF LOK ADALAT

Section 19(5) of the Legal Services Authorities Act provides for jurisdiction of the Lok Adalat. Section 19(5) of the Legal Services Authorities Act states:

"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 ADALAT

Section 20 of the Legal Services Authorities Act provides the procedure for cognizance of cases by Lok Adalat. It reads:

"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 other 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 advise the parties to seek remedy in a court.

(7) Where the record of the case is 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

The final order rendered by a Lok Adalat is known as an 'award'. Section 21 of the Legal Services Authorities Act provides about 'award' rendered by the Lok Adalat. The award of Lok Adalat is binding on the parties and is deemed to be a decree of the Civil Court and no appeal can lie from its decision. However, the writ jurisdiction could be exploited where the invocation of writ jurisdiction becomes imminent, *e.g.* procedural impropriety or violation of fundamental rights of the parties. Section 21 of the Legal Services Authorities Act states:

"Section 21. Award of Lok Adalat.— (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.

(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

Section 22 of the Legal Services Authorities Act, 1987 provides the powers of Lok Adalat. The institution of Lok Adalat has the powers of a Civil Court. However, it can govern its own procedure, wherever it deems it necessary. Section 22 of the Legal Services Authorities Act states that all the proceedings of Lok Adalat are deemed to be judicial proceedings.

"Section 22. Powers of Lok Adalat or Permanent Lok Adalat.—(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 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 section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

CONCLUSION

The Englishmen established the existing judicial system for the first time in British India around 17th century, particularly to settle the disputes of employers and employees of East India Company. Later, with the diversification of their rule, they allowed natives of British India to seek redressal and also appointed the natives as presiding officers. In 19th century particularly, the pendency of number of cases increased so rapidly that it became a challenge to dispose them in reasonable period.

With independence, the similar judicial system was integrated in India. The pendency of cases is about three crore in the higher judiciary of the country and again its a challenge to dispose them within reasonable period. So the judicial arbiters are inclined to resort to the techniques of Alternative Dispute Resolution.

These reasons facilitated the integration of concept of Lok Adalat. It is less expensive, less time consuming and after disposal, it preserves prior good relation between the parties. It provides amicable settlement and therefore Courts are persuading to utilize these techniques on an increase. The Government corporations and the public sector enterprises (i.e. inclusive of the non-Government organizations) are bound to refer their case for the alternative dispute

redressal mechanism by a circular²⁹ of the Government of India in the second decade of the twenty-first century.

²⁹ After considering a note dated 8.5.1987 prepared by the Department of Legal Affairs the Committee of Secretaries in its meeting held on 26.6.1987 suggested that a Permanent Machinery of Arbitrators should be set up in BPE to settle all commercial disputes between PSEs inter se and between a PSE and a Government Department excluding the categories of disputes mentioned above. The Committee of Secretaries also suggested that there should be a contractual clause binding the parties to commercial contracts to refer all their disputes to this body. Committee of Secretaries also wanted BPE to bring a note for the consideration of the Cabinet for this purpose. see https://dpe.gov.in/sites/default/files/PERMANENT_MACHINERY_OF_ARBITRATION_Chapter_7_1.pdf (last visited 06.12.2022); C:/Users/hp/Downloads/Government_And_Public_Sector_Undertaking_Litigation_Policy_And_.PDF (last visited 07.12.2022).