

CHAPTER- V
LEGAL AID MOVEMENT AND THE
CONCEPT OF LOK ADALAT

5.1 Historical Background

The importance of ensuring justice is perhaps the objective of each egalitarian society. Achieving this objective is synonymous of peaceful existence of the society. History has witnessed a great demand for ensuring justice; socially, economically and politically within a society from the time immemorial. Magna Cartalibertatum of thirteenth century provides:

No Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or Liberties, of free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. We will sell to no man; we will not deny or defer to any man either Justice or Right.

This declaration of past can rightly be said as a step towards realizing access to justice for all without any discrimination on the grounds of caste, religion, race, sex, status etc. This declaration seemed to be a binding precedent on the human race for the promotion of justice; socially, economically and politically. Even after the lapses of almost eight centuries, the idea of access to justice for all is still far behind from becoming a ground reality in the present contemporary world. Society has a propensity of moving from ‘Static’

to 'Progressive'.¹ Law being a tool for social change is not supposed to be standstill in the society. Law has undergone a paradigm shift for ensuring justice within a society. Lord Denning was of view that there has been a great revolution in Law since the Second World War. England in the first half of 20th century set an example for the rest of the World by proving a Statutory Provision like Poor Prisons Act, 1903 and Poor Person Procedure, 1940 to provide legal aid to paupers or poor prisoners and thereafter by providing a structured or an organized policy based on the report of Rushcliffe Committee,² which later on became the source of enactment of Legal Aid and Legal Advice Act, 1949.

In the last years of colonial regime in India a demand for setting up of Committee like Rushcliffe Committee in England was also raised, particularly by the Bombay Legal Aid Service Society. But, the Colonizers did not pay any heed to the demand. Fortunately, it was only after India got independence that a Committee was constituted in March 1949 to consider the question of providing aid to persons of limited means.³ It is worth mentioning over here that this Committee was constituted even prior to the adoption of Indian Constitution.⁴ This shows that our freedom fighters were so concerned regarding the establishment of a State, where justice would be easily accessible to every citizen. To meet this end, they were passionate to keep the agenda of providing legal aid on the top most priority, even at that point of time when India was at nascent stage as far as its political sovereignty was concerned. In the same year of 1949 the

¹ As per the Historical School of the Jurisprudence.

² Constituted in England in 1944.

³ The Committee was constituted under the Chairmanship of Mr. Justice N.H. Bhagwati.

⁴ Constitution of India came in force fully on 26th January, 1950.

Government of Bengal also set up a Committee.⁵ Both the Committees came up with the suggestions to provide free legal aid at Government expenses. But, the newly constituted Government of that time ignored the recommendations of these Committees. A country like India that had been ruled by Britishers for at least three hundred years, after getting independence was in dire need to give preference to the civil and political rights instead of socio- economic and cultural rights.⁶ At the time of independence, our country was not supposed to provide schemes like that of legal aid to poor, due to the financial constraints. During those days, our Judiciary was yet to take any stand on this pertinent issue. The Supreme Court in the case of *Janardhan Reddy v. State of Hyderabad*⁷ came up with the newly interpreted right in the form of right to defend. The Court relied on the Judgment delivered by U.S. Supreme Court in the case of *Powell v. Alabama*⁸ wherein it was observed:

In a capital case where the defendant is unable to employ counsel, and is incapable of adequately making his own defense because of ignorance, feeble mindedness, illiteracy or the like, it is the duty of the Court whether requested or not, to assign a counsel for him as a necessary component of due process of law.

The pervasive demand of free legal assistance, where liberty is in jeopardy is obvious from the Universal Declaration of Human

⁵ Under the Chairmanship of Sir Arthur Trevor Harries, the then Chief Justice of Calcutta High Court.

⁶ These Rights are mentioned in the Universal Declaration of Human Rights, 1948.

⁷ AIR 1951 SC 217.

⁸ 287 U.S. 45.

Rights (UDHR).⁹ Article 8 of the UDHR provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law. Article 14(3) of the International Covenant on Civil and Political Rights also guarantees to everyone the right to be tried in, his presence and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him in any case where the interests of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it.

The Law Commission of India¹⁰ had considered the question of legal aid and made the recommendation that free legal aid to poor person and persons of limited means is a service which a modern welfare State owes to its citizen. The Commission was of view that State must accept this obligation and make available necessary funds for the purpose. These recommendations remained on paper and could not be implemented. It was only in the early 1970s that legal luminaries of India like Mr. Justice P.N. Bhagwati and Mr. Justice V.R. Krishna Iyer emerged to play a path breaking role in order to provide legal aid to the marginalized and deprived person. State of Gujarat constituted a Committee for the purpose of providing free legal aid.¹¹

⁹ Also cited as UDHR.

¹⁰ Law Commission Of India, 14th Report on Reforms of Judicial Administration (1958).

¹¹ Under the chairmanship of Mr. Justice P.N. Bhagwati. Beside him, the Gujrat Legal Aid Committee consisted of Mr. J.M. Thakore, Advocate General, Gujrat State, Mr. V.V. Mehta,

Mr. Justice Bhagwati in this Report of free legal aid observed:

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 reach in the administration of justice.

Many high-level Committees and Commissions in India had emphasized the free legal service as integral to processual fair-play. For example, one such committee has stated:¹²

Prisoners, men and women, regardless of means, are a peculiarly handicapped class...[L]egal remedies, civil and criminal, are often beyond their physical and even financial reach unless legal aid is available within the prison as is provided in some States in India and in other countries. Without legal aid, petitions of appeal, applications for commutation or parole, bail motions and claims for administrative benefits would be well-nigh impossible. There is a case for systematized and extensive assistance through legal aid lawyers to our prison population.

First respite in the history was the insertion of Article 39A in Part IV of the Constitution of India by 42nd Amendment Act of 1976, which put a constitutional mandate upon policy makers to provide for free legal aid by suitable legislation. Article 39A provided that the

Deputy Speaker, Gujrat Vidhan Sabha, Mr. Madhav Singh F Solanki, M.L.A., Mr. Girish Bhai C Patel, Principal, New College, Ahmadabad.

¹² Report on “Processual Justice to the people” (1973), p. 34.

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. This Article of the Constitution of India proved to be an interpretative tool for Article 21. Partial statutory implementation of this mandate is also found in section 304¹³ of the Criminal Procedure Code, 1973, which provided that where, in a trial before the Court of Sessions, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State. In order to comply with the above constitutional mandate the Government of India had constituted a committee known as 'Committee for Implementing Legal Aid Schemes'¹⁴ (CILAS) to monitor and implement legal aid programmes on a uniform basis in all the States and Union Territories of India. The Committee evolved a model scheme for legal aid Programmes applicable throughout the country and pursuant thereto, several legal aid and advice boards were set up in all the States and Union Territories of India.

Further the Judiciary through many of its path-breaking judgments had tried to bridge the gap in order to make the constitutional mandate a ground reality. As in the case of *Hussainara Khatun v. State of Bihar*,¹⁵ the Supreme Court of India held that the right to free legal services is an essential ingredient of reasonable,

¹³ Legal Aid to accused at state expense in certain cases.

¹⁴ Vide resolution dated 26-9- 1980, under the Chairmanship of Mr. Justice P.N. Bhagwati.

¹⁵ AIR 1979 SC 1371.

fair and just procedure for a person accused of an offence and it must be held to be implicit in the guarantee of right to life and liberty given in Article 21. The Court observed that many under-trial prisoners in different jails in the State of Bihar had been in jail for period longer than the maximum terms for which they would have been sentenced, if convicted, and that their prolonged detention in jails was totally unjustified and in violation of their Fundamental Right to personal liberty under Article 21 of the Constitution of India. By citing the miserable conditions of poor and illiterate citizens which amounted to the greatest violation of their personal liberty, Mr. Justice P.N. Bhagwati observed thus:

We may also take this opportunity of impressing upon the Government of India as also the State Governments, the urgent necessity of introducing a dynamic and comprehensive legal service programme with a view to reaching justice to the common man. Today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about changes in their life conditions and to deliver justice to them. The poor in their contract with the legal system have always been on the wrong side of the law. They have always come across "law for the poor" rather than "law of the poor."

The existing problem of poverty can only be reduced if Governments give all citizens, especially the poor, a legitimate stake in the protections provided by the legal system, which should not be

the privilege of the few but the right of all persons.¹⁶ In *Hussainra Khatun v. State of Bihar*, Mr. Justice P.N. Bhagwati also observed:

We do not think it is possible to reach the benefits of the legal process to the poor, to protect them against injustice and to secure to them their constitutional and statutory rights unless there is a nationwide legal service programme to provide free legal services to them.... [W]e would strongly recommend to the Government of India and the State Governments that it is high time that a comprehensive legal service programme is introduced in the country. That is not only a mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39A.

It was only after a gap of two years that the Supreme Court of India again in *Khatri v. State of Bihar*¹⁷ (Bhagalpur Blinded Prisoners case) through Mr. Justice P.N. Bhagwati opined:

It is unfortunate that though this court declared the right to legal aid as fundamental right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence....[T]he State is under a constitutional mandate to provide free legal

¹⁶ Dr. Pratiksha Bakshi, "Working paper, commissioned by the Institute of Human Development, New Delhi, on behalf of UN Commission on the legal empowerment of the poor" (2007).

¹⁷ AIR 1981SC 926.

aid to an accused person who is unable to secure legal services on account of indigence, and whatever is necessary for this purpose has to be done by the State. 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 the plea of poverty.

So it was a proactive role played by the Supreme Court of India through a series of cases of judicial activism. By these judgments the Supreme Court had directed the Government of India to give a proper weight to the concept of legal aid which was both, a Fundamental Right as well as a Directive Principles of State Policy. As the harmonious relationship between Part III and Part IV of the Constitution is the part of basic structure,¹⁸ hence, right to legal aid also is required to be given a proper weight in this context and the judgments of the Supreme Court of India were accurate strides in this regard.

In 1986, in another case, *Suk Das v. Union Territory of Arunachal Pradesh*¹⁹ the Supreme Court strongly opined:

Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness

¹⁸ *Minerva Mill Ltd. v. Union of India*, AIR 1980 SC 1789.

¹⁹ AIR 1986 SC 991.

which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land.

It was in the above backdrop that the Parliament passed the Legal Services Authorities Act, 1987, the provisions of which (except chapter- III) came in force with effect from 9-11-1995.²⁰

5.2 Legal Services Authorities Act, 1987: Nature and Scope

The very Preamble of the Legal Services Authorities Act, 1987 makes the provisions for the establishment of the Legal Service Authorities, which have been assigned the task of providing free and competent legal services to the marginalized 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 Adalat* for the promotion of idea of access to justice on equal footing.

The researcher has gone through certain schemes, notifications and rules formulated by various agencies at different levels. Section 2(2) of the Act provides, “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.”

5.2.1 Legal Services under the Legal Services Authorities Act, 1987

The term ‘legal service’ has been defined under section 2(a) of the Legal Services Authorities Act, 1987 as: legal service includes the

²⁰ Vide notification S.O. 893(E) dated 9-11-1995.

rendering of any service in the conduct of any case or other legal proceeding before any court or any other authority or tribunal and the giving of advice on any legal matter. The very definition is inclusive in nature. Legal aid without legal literacy seems to be of less importance. So, it is of utmost importance that people particularly the marginalized people should be given a platform so that they can be made aware of their basic legal rights. It is in this background that National Legal Services Authority²¹ has decided to open Legal Aid Clinic at every village where needy people can take the advantage of the availability of the Para-legal volunteers²² and Legal practitioners empanelled with Legal Service Institutions.²³ It can be rightly said as a welcome step towards realizing the Idea of Access to Justice for all, which is the vision of National Legal Services Authority. In order to give free Legal Aid to the needy, the academic institutions like-University, Law colleges etc. being the temples of the knowledge, may be vehicles for imparting legal awareness. The concept of Justice has been beautifully defined by various Indian Novelists as well as western literature which highlighted as to how denial of access to

²¹ Established by the Central Government under Sec. 3 *LSA Act*, 1987. The National Legal Services Authority (NALSA) consists of (a) the Chief Justice of India as 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 Chairperson (c) such number of other members, possessing such experience and qualification, as may be prescribed by Central Government, to be nominated by that Government in consultation with the Chief Justice of India.

²² The project of Para-Legal Volunteers is aimed at imparting legal awareness to volunteers selected from certain target groups who in turn act as harbingers of legal awareness and legal aid to all sections of people. The Volunteers are expected to act as intermediaries between the common people and Legal Services Institutions and thereby removing the barriers of access to justice. (*as per the scheme for the project of Para-Legal Volunteers under the Plan of Action for the year 2009-10*) Para-Legal Volunteers would be expected to have some rudimentary knowledge of basic rights of the individuals, functioning of the courts, functioning of the Legal Services Authorities and functioning of some of the organizations such as such as Municipal Corporation and District Administration.

²³ As per clause (e) of regulation-2 of *National Legal Services Authority (free and competent legal service) Regulation, 2010*, "Legal Services Institution" means the Supreme Court Legal Services Committee, a State Legal Services Authority, the High Court Legal Services Committee, District Legal Services Authority or the Taluk Legal Services Committee, as the case may be.

justice could be a reason behind the dissatisfaction in the society which could later on give birth of revolution. Some prominent writers like- Shakespeare in “Seven Stages of Life” in *As You Like It* and *The Merchant of Venice*; Kafka in *Trial*, and Munshi Prem Chand in *Panch Parmeshwar* had shown the real picture of society through their literature. These pieces of literature may be taken as a side view mirror of our society and should not only be taught as a part of syllabi rather students should be sensitized and encouraged to associate themselves with the social causes through the empirical study by collecting the data relating to the socio- economic problems. It will enable the concerned authorities to have appropriate roadmap for meting out the existing problems like the expensive judicial system, delayed justice, complicated procedure etc. It is in this background that the role of academic institutions can be of great worth in order to contribute towards the easy access to justice for masses and towards fulfillment of constitutional goal of social, economic and political justice. Opening up of the Legal Aid Clinic in the Law University and the Institutions of higher Studies can be proved to be a great source of imparting legal awareness. So, rendering legal services before any adjudicatory agency and to give legal advice are two kinds of services falling in the definition of legal service. It is clear that for both kinds of work, a person acquainted with legal knowledge is required for complying with this statutory mandate. As far as the empanelment of the legal practitioners²⁴ is concerned, that is the task of the concerned authority or Committee as the case may be. Every Legal Services

²⁴ “legal practitioner” shall have the meaning assigned to it in clause (i) of Sec. 2 of the *Advocates Act, 1961*.

Institution²⁵ shall invite applications from legal practitioners for their empanelment as panel lawyers and such applications shall be accompanied with proof of the professional experience with special reference to the type of cases which the applicant/legal practitioners may prefer to be entrusted with.²⁶

The Chairman of the Legal Services Institution may, in consultation with the Executive Chairman of the State Legal Services Authority or National Legal Services Authority as the case may be, prepares a list of legal practitioners from among the panel lawyers to be designated as Retainers. The Retainer lawyers shall be selected for a period fixed by the Executive Chairman on rotation basis or by any other method specified by the Executive Chairman.²⁷ The honorarium payable to Retainer lawyer is Rs.10, 000, Rs. 7,500, Rs. 5,000 and Rs. 3,000 per month in case of Supreme Court Legal Services Committee, High Court Legal Services Committee, District Legal Services Authority and Taluk Legal Services Committee respectively, provided that the honorarium specified in this sub-regulation is in addition to the honorarium or fee payable by the Legal Services Institution for each case entrusted to the Retainer lawyer.²⁸ Since the panel lawyers designated as Retainers shall devote their time exclusively for legal aid work and shall always be available to deal with legal aid cases and to man the front office or consultation office in the respective Legal Services Institution, the honorarium cannot be treated as

²⁵ *National Legal Service Authority (free and competent legal service) Regulation, 2010*, Regulation-2(e), "Legal Services Institution" means the Supreme Court Legal Services Committee, a State Legal Services Authority, the High Court Legal Services Committee, District Legal Services Authority or the Taluk Legal Services Committee, as the case may be.

²⁶ *Id.*, Regulation 8(1).

²⁷ *Ibid.*

²⁸ *Ibid.*

justifiable in today's context.

The term 'legal service' being inclusive of providing legal advice to the needy, the legal service institutions are duty bound to make the provisions for the legal advice. To meet this end, the service of various competent people can be availed by making a separate panel of senior advocates, law firms, retired judicial officers, mediators, conciliators and law professors in the law universities or law colleges for providing legal advice like drafting of various notices, replies, applications etc. for various suits or proceedings. The service of legal aid clinic, proposed to be established at every village and Students legal aid clinic established by Law University or law Colleges shall also be made use of in true sense.²⁹

5.2.2 Legal Aid Clinic

The insertion of the word clinic in the end made it clear that legal Aid Clinic is just like a medical clinic, where panel Advocate with the help of Para-legal volunteers, just like a medical practitioner, provides legal services in order to prevent the disputes from maturing into litigations and assist the parties even in litigations by providing necessary help in pleading in appropriate cases. The lawyer manning the legal aid clinic will also attempt to resolve the disputes of the disputants amicably outside the court. This provides the lawyer in the legal aid clinic an opportunity to understand the difficulties faced by people in the distant villages for access to justice. Legal aid clinics have to be manned by Para-legal volunteers selected by the Legal Services Authorities and lawyers with a sense of commitment,

²⁹ Regulation-9 of the *National Legal Service Authority (free and compulsory legal service) Regulation, 2010.*

sensibility and sensitivity to the problems of common people.

Legal aid clinic is one of the targets to hit as envisioned in the NALSA's Quinquennial (5 years) vision & strategy document. NALSA plans to set up legal aid clinics in all villages. To meet this end, National Legal Services Authority (Legal Aid Clinics) Scheme, 2010 was adopted in the meeting³⁰ of the Central Authority of the National Legal Service Authority. The objective of the Scheme was to provide legal services to the poor, marginalized and weaker sections of the society as categorized in section 12 of the Legal Services Authorities Act, 1987. The aim of the Scheme is to provide an inexpensive local machinery for rendering legal services of basic nature like legal advice, drafting of petitions, notices, replies, applications and other documents of legal importance and also for resolving the disputes of the local people by adopting ADR Mechanism by making the parties aware of the importance of outside court settlement and thereby preventing the disputes to be converted into litigations. In cases where legal services of a higher level are required, the matter can be referred to the legal services institutions³¹ established under the Legal Services Authorities Act, 1987. As per the above stated scheme, for manning the Legal Aid Clinic, preference shall be given to the women practitioners having the experience of minimum three years at Bar.³² This is rather the welcome step and is required to be given more attention in order to uplift status and condition of the women legal practitioners by providing a platform to them with a handsome remuneration to be paid

³⁰ Held on 8-12-2010 at the Supreme Court of India.

³¹ *Supra* note 25.

³² *National Legal Services Authority (Legal Aid Clinic) Scheme, 2010*, Rule 12.

by the Legal service Institutions. This is perhaps the answer to the question as to what has to be done in the field of legal education to provide the women lawyers' voice with more specific legal provisions and allow it to be significantly heard by a wider audience.

5.2.2.1 *Legal Aid Clinics at Doorstep*

Each District Legal Services Authority is required to establish Legal Aid Clinic in all villages or a cluster of villages in order to make the idea of access to justice for all a ground reality.³³ Legal Services rendered at the legal aid clinic shall be inclusive in nature. Besides legal advice, other services like preparing applications for issuance of ration card, subsidy, loan at subsidized rate of interest, job card under the MGNREGA Scheme, liaison with the government offices and public authorities and helping the common people who come to the clinic for solving their problems with the officials, authorities and other institutions also shall form part of the legal services in the legal aid clinic. Legal aid clinic should work as a safety valve for helping the disadvantaged people to solve their problems where the operation of law comes into picture and to adopt the preventive measures by sorting out the disputes amicably outside the court as far as possible. Further, as far as the construction of any suitable room for the opening of Legal Aid Clinic and the furniture required for the same is concerned then it is the duty of Legal service Institutions, as the case may be, to persuade the local body institutions like village *Panchayat* or Municipal Corporation etc. for providing the necessary support to this social cause.

³³ *Id.*, Rule 9.

5.2.2.2 *Legal Aid Clinics: Law Students as Human Resource*

The provisions of the Legal Aid Clinic at villages shall *mutatis mutandis* be applicable to the students' legal aid clinics set up by the law colleges and law universities also. However, in such clinics the students in the final year classes may render legal services and the junior students may assist them. The student's legal aid clinic shall always be under the supervision of a faculty member who shall be present in such clinics for immediate consultation. The students of law colleges and law universities may also make use of the other legal aid clinics established under this scheme.³⁴

Law students of the law colleges / law universities may be engaged to adopt a village especially in the remote areas and organize legal aid camps, through which students may make villagers aware about their legal rights and also about the appropriate remedy in case of violation thereof. Such students may make use of the legal aid clinics set up under this scheme in consultation with the legal services institution having territorial jurisdiction in that area. The students in the legal aid clinics may seek the assistance of the Para-legal volunteers in the legal aid clinics. It is the high time that this kind of work of establishing the Legal aid Clinic should be included in the syllabus for the LL.B. programme as well as for Research students, so that in the idea of realizing the social justice, the law students may be made sensitive enough towards the existing situations of the deprived persons. The students' legal aid clinics working in the remote villages may conduct surveys of the legal services required for the people of that area including identification of the problems which call for a

³⁴ *Id.*, Rule 21.

social justice litigation. For conducting surveys, members of the student legal aid clinic may seek the assistance of the Para-legal volunteers and voluntary social welfare institutions working at the grass-root level.³⁵ Such activities certainly empower the ability of the next generation lawyers and will prove a capacity building approach. By conducting the various surveys, the students will definitely develop a sensitive heart towards the suffering of the disadvantaged segment of the society and may also develop an interest in the research of this kind, which is the necessity for today as there is even lack of accurate and solid data regarding various contemporary problems like criteria for determining people living below poverty line etc.

The students' legal aid clinics shall send reports to the State Legal Services Authorities with copies to the legal services institutions having territorial jurisdiction and also to the District Legal Services Authorities concerned.³⁶

5.2.2.3 *Legal Aid Clinics at Law Colleges and Law Universities.*

Besides the student legal aid clinics in the rural areas, law colleges and law universities also may set up permanent legal aid clinics attached to their institutions as per the scheme of the National Legal service Authority, rather as the researcher highlighted above it should be a mandate upon the Law Universities to incorporate this kind of activities in the academic curriculum itself and simultaneously, the legal service institutions should provide necessary help and resources to the Legal academic institutions. The State Legal

³⁵ *Id.*, Rule 23.

³⁶ *Id.*

Services Authority shall be informed about the establishing of such legal aid clinics. The State Legal Services Authority shall render the required technical assistance for such legal aid clinics and shall coordinate with the legal aid clinics so established.³⁷

The service of the trained Para-legal volunteers³⁸ may be provided to the legal aid clinics in law colleges and law universities for assisting the seekers of legal aid and for interacting with the students and the members of faculty.

5.2.2.4 Legal Aid Clinics in Jails

The ambit of Article 21 of the Indian Constitution is considered to be vast in nature and even inclusive of the rights of the prisoners in jails. The convicts are not by reason of their conviction deprived of all fundamental rights which they otherwise possess, though all the fundamental rights may not be claimed. Prisoners being the *incommunicado*, walled-off from the rest of the world, require special attention and should be given legal aid, which is very much inclusive in Article 21. Prisoners are doubly handicapped and since the Supreme Court is the last in Indian pyramid of justice, every party in person elicits from the Court extra solicitude so that he may not suffer from a sense of handicap due to the absence of professional legal service.³⁹ Supreme Court held that our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compels the collaboration of lawyer-power or steering the wheels of equal justice under the law. Free legal services to the needy are part of the English criminal justice system. American

³⁷ *Id.*, Rule 24.

³⁸ Recruited as per the Appendix-II of the *NALSA- A quinquennial vision and strategy*.

³⁹ *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548.

jurist, Prof. Vance of Yale' words sounded sense for India too when he said: "What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is? Or that the courts are open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee?"

The U.S. Supreme Court, in *Raymond Hamlin* has extended this processual facet of Poverty Jurisprudence. Douglas, J. there explicated:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. Left without the aid of counsel one may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel in every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate or those of feeble intellect?

The right to represent through counsel may not be deemed fundamental and essential in some countries, but it is *sine-quo-non*

for the democratic country like ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.⁴⁰

The American Bar Association has also upheld the fundamental premise that counsel should be provided in the criminal proceedings for offences punishable by loss of liberty, except those types of offences for which such punishment is not likely to be imposed. The Indian social legal milieu makes free legal service, at trial and higher levels an imperative processual piece of criminal justice where deprivation of life or personal liberty hangs in the judicial balance.

One may follow up the import of *Maneka Gandhi* and crystallise the conclusion. *Maneka Gandhi's* case has laid down that personal liberty cannot be cut out or cut down without fair legal procedure. Enough has been set out to establish that a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim, as part of his protection under Article 21 and as implied in his statutory right to appeal, the necessary concomitant of right to counsel to prepare and argue his appeal.

If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit

⁴⁰ [1963] USSC 42; 93, AL R 2d 733 as quoted in the case of *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548.

in the Court under Article 142 read with Articles 21 and 39A of the Constitution of India, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Article 136 of the Constitution. The inference is inevitable that this is a State's duty and not government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. Surely, the profession has a public commitment to the people but mere philanthropic services of its members give up short mileage in the long run. Their services especially when they are on behalf of the State, must be paid for. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are 0 aid especially in the matters relating to defending or prosecuting their cases and appeals and also legal problems they and their family might face on account of their being the bars.⁴¹

5.2.3 Beneficiaries of Legal Services and the Legal Services Authorities Act, 1987

As far as the beneficiaries are concerned under this Act, section 12 read with Rule 19 of the Haryana State Legal Services Authorities Rules, 1996 makes the provisions for the criteria for giving legal services. As per the section 12, every person who has to file or defend a case shall be entitled to legal services under this Act if that person

⁴¹ Part-IV, *NALSA-A Quinquennial Vision & Strategy*.

is:

- a. A member of scheduled caste or scheduled tribes;
- b. A victim of trafficking in human beings or beggar as referred 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 (1 of 1996)
- e. A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, cast atrocity, flood, drought, earth-quake, industrial disaster; or
- f. An industrial workman; or
- g. In custody, including custody in a proactive home within the meaning of Clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice act, 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:
- h. In receipt of annual income less than one lac rupees
- i. Freedom fighters
- j. Ex- service men and families of the persons died in war.
- k. Eunuchs⁴²
- l. For filing Public Interest Litigation (PIL)

⁴² With effect from 19-10-2010.

5.2.4 Modes of Legal Services

To provide Legal Services, as defined earlier, is the main mechanism towards realizing the idea of access to justice for all. Legal Services may be given in all or any one or more of the following modes⁴³, namely:

- a. By payment of court fee, process fee, expenses of witnesses, and preparation of the paper book, lawyer's fee, and all other charges payable or incurred in connection with any legal proceedings.
- b. By representation by a legal practitioner in legal proceedings.
- c. By supplying certified copies of judgments, orders, notes or evidences and other documents in legal proceedings.
- d. By drafting of legal documents

5.2.5 Legal Aid and Idea of Access to Justice

There is a saying that Ignorance of law is not an excuse but at the same time law being a technical subject, is not supposed to be easy to understand even for literate persons. Further the procedural technicalities and delay in litigation make it beyond the reach of marginalized and deprived persons. The Right to Equality, as inserted in Fundamental Rights, cannot be promoted by the exclusion of any segment of our society. Jurisprudentially speaking, Lawyers are the mouthpiece of society but in the present contemporary world there has been a sea change in the nobility of this profession. It is in this background that legal aid has been declared as a Directive Principle of State Policy to uplift the needy by our policy-makers by inserting

⁴³ *The Haryana State Legal Services Authority Rules, 1996*, Rule 21.

Article 39A⁴⁴ in Part IV of the Constitution which put a mandate on the State to secure that the operation of the legal system promotes justice on a basis of equal opportunity, and ensure that the same is not denied to any citizen by reason of economic or other disabilities. Equal opportunity must be afforded for access to justice. The law must function in such a way that all the people have access to justice in spite of economic disparities. The idea of “access to justice” focuses on the following two basic purposes of the legal system:⁴⁵

The system must be equally accessible to all.

It must lead to results that are individually and socially just.

5.3 Lok Adalat

The second objective of the Legal Services Authorities Act, 1987, as mentioned in the Preamble of Act is the holding of *Lok Adalats* to secure that the operation of the legal system promotes justice on a basis of equal opportunity. As per section 2(b) “*Lok Adalat*” means a *Lok Adalat* organized under Chapter VI. Policy makers have intentionally defined the concept of *Lok Adalat* by giving it a broad and vast meaning. In order to have clarification about the *Lok Adalat* one has to thoroughly read out the chapter VI of the Legal Services Authorities Act, 1987, that consists of sections 19-22. Sections 19-22 of the Legal Services Authorities Act, 1987 talk about the provisions relating to the organization, jurisdiction, cognizance and powers of the *Lok Adalat* in chapter VI. As per the section 19 of Act, it is the prerogative of the concerned Legal Service

⁴⁴ Vide *Constitution (42nd Amendment), Act, 1976*.

⁴⁵ Law Commission of India, *222nd Report (2009)*.

Institutions⁴⁶ to organize the *Lok Adalat*. The *Lok Adalats* shall be organized for a definite geographical area where the aforesaid Authorities/ Committees think fit. Special *Lok Adalats* shall be organized for all Family Courts at regular intervals. 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 –

- Any cases pending for; or
- Any matter which is falling within the jurisdiction of, and is not brought before, any court for which the *Lok Adalat* is organized. 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.⁴⁷(At Pre- Litigation Stage)

So it is not only the pending cases rather disputes which has not reached to the court yet but, there is a likelihood that they may go to the court in near future may also be solved in the *Lok Adalat*. These types of Pre-litigation disputes may be taken up in *Lok Adalat* by approaching the Legal Service Institutions.

One thing important in the case of *Lok Adalat* is that there is no adjudication at all; rather parties are given a platform where they can discuss their problems together and be encouraged by *Lok Adalat* through conciliation. Because all the procedural technicalities are dispensed within *Lok Adalat* that's why there is always a probability of speedy justice in it without compromising the legal sanctity. The settlement arrived at between the disputants will be treated as an

⁴⁶ *Ibid.*

⁴⁷ *Legal Services Authorities Act, 1987, Sec. 19(5).*

Award⁴⁸ on getting the approval of the *Lok Adalat* Panel.⁴⁹ The Award of the *Lok Adalat* will be treated as final and there will be no Appeal thereafter in any court of law. 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 and in case of Pre-litigation, parties shall be advised to seek remedy in the court.⁵⁰ On the other hand in case of settlement of dispute and an Award thereof passed, it shall be mentioned in the award that the plaintiff/ petitioner is entitled to refund of the court fees remitted.

Not only this, the Legal Services Authorities Act, 1987 as amended by the Act 37 of 2002 inserted Chapter VI-A, which makes provisions about Pre-litigation Conciliation and Settlement. As per the section- 22B, National Legal Service Authority or as the case may be, every State Legal Service Authority, is mandatorily required to establish Permanent *Lok Adalat* 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. The Permanent *Lok Adalat* shall, while conducting conciliation proceedings or deciding a dispute on merit⁵¹ 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 and Indian

⁴⁸ When both parties sign and affix thumb impression, as the case may be, and the members of the *Lok Adalat* countersigned it, it becomes an Award. Drawing up of Award is merely an administrative act by incorporating the terms of settlement or compromise agreed by the parties under the guidance and assistance of *Lok Adalat* (as per Regulation 32-33, *National Legal Services Authority (Lok Adalats) Regulations, 2009*).

⁴⁹ Every *Lok Adalat* organized for an area shall consist of such number of- (a) serving or retired judicial officer (b) other persons. See section 19(2) *LSA Act, 1987*.

⁵⁰ *Legal Services Authorities Act, 1987*, Sec. 20 (6).

⁵¹ Permanent *Lok Adalat* unlike to *Lok Adalat* can dispose of the case on merits if the parties do not reach to an agreeable settlement. see Sec. 22C(8).

Evidence Act, 1872.⁵² Every Award of *Lok Adalat* and Permanent *Lok Adalat* shall be deemed to be a decree of a civil court and no appeal shall lie to any court against any Award passed by *Lok Adalat*.⁵³

5.3.1 Powers of Lok Adalat and Permanent Lok Adalat

Though all the legal proceedings in compliance of the procedural Acts are dispensed within the proceeding of *Lok Adalat* but at the same time Legal Services Authorities Act, 1987, under section 22 provides that for the purpose of holding any determination under this Act, the *Lok Adalat or permanent Lok Adalat* shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, like:

- a. 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.
- e. Such other matter as may be prescribed

Lok Adalats are empowered to specify its own procedure for determination of any dispute as per section 21(2). It is pertinent to mention over here that the word ‘determination’ means that *Lok Adalat* caused an environment or platform to be made whereby

⁵² See *Legal Services Authorities Act, 1987*, Sec. 22D.

⁵³ *Id.*, Sec. 21(2).

disputants unhesitatingly will take part in the amicable resolution of disputes. In doing so, *Lok Adalat* shall be deemed to be a civil court for the purpose of section 195 of the Code of Criminal Procedure, 1973 and its proceeding thereof as the judicial proceedings within the meaning of sections 193, 219, 228 of Indian Penal Code, 1860.⁵⁴

To supplement this, section 89 of the Code of Civil Procedure, 1908 as amended by the Act 46 of 1999 with effect from July 1, 2002 provides for settlement of disputes outside the court. Parliament had come up with the new ideas by amending the Civil Procedure Code in 2002 and amended section 89 of the CPC. Sub-section (1) of section 89 of Code of Civil Procedure empowers the courts, when it appears that there exist elements of 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:

- Arbitration
- Conciliation
- Judicial Settlement including settlement through *Lok Adalat*;
or
- Mediation

The terminology of *Lok Adalat* cannot be considered as a product of Legal Services Authorities Act, 1987 in India; rather, the Act just makes only explicit the same which was already implicit in the Indian society. It is not wrong to say that present Act narrows

⁵⁴*Id.*, Sec. 21(3).

down the area of *Lok Adalats* in comparison to the pre-statute period. This was rather a risky strategy, however, and has probably failed at least as often as it has succeeded. In India, the *Lok Adalat* system was functioning well and widely supported when independent of the judiciary. When the government passed legislation in 1987 forcing the *Lok Adalats* to be managed by the court system, it was thought that the judiciary would support the system once it was in control. Instead, the judiciary cut funding and mismanaged the program, which quickly lost the confidence of the users.⁵⁵

In addition, Judges, lawyers, and interest groups that benefited from institutional biases might have been sources of strong opposition to ADR programs during the times when *Lok Adalats* were maximum utilized by public at large. Lawyers felt they were losing cases and fees to the *Lok Adalat* ("people's court") system in India, for example, and probably helped persuade the government to take over the system and undermine it.⁵⁶

In colonial era also, a number of times, Privy Council had appreciated the decision of *Panchayat* which used to be the active participatory agency in dispensation of justice. In case of *Sitanna v. Marivada Viranna*⁵⁷, the Privy Council affirmed the decision of the Panchayat in a family dispute. Sir John Wallis, J. stated the law in the following words: "Reference to a village Panchayat is the time-

⁵⁵ Whitson, Sarah Leah, "'Neither Fish, Nor Flesh, Nor Good Red Herring' Lok Adalats: An Experiment in Informal Dispute Resolution in India," *Hastings International and Comparative Law Review*, vol. 15, no. 3, (1992), pp. 391-445. Quoted in Center for Democracy and Governance " *Alternative Dispute Resolution Practitioners' Guide* (1998), p.25.

⁵⁶ Kassebaum, "ADR in India: The Lok Adalat as an Alternative to Court Litigation of Personal Injury and Criminal Cases in South India", Working Paper Series (1989), University of Hawaii at Manoa, Program on Conflict Resolution (PCR), quoted in Center For Democracy And Governance " *Alternative Dispute Resolution Practitioners' Guide* (1998), p.25.

⁵⁷ 1934 PC 105, as cited in Law Commission of India, *222nd Report*.

honoured method of deciding disputes of this kind, and has these advantages, that it is comparatively easy for the *panchayatdars* to ascertain the true facts, and that, as in this case, it avoids protracted litigation which, as observed by one of the witnesses, might have proved ruinous to the estate. Looking at the evidence as a whole their Lordships see no reason for doubting that the award was a fair and honest settlement of a doubtful claim based both on legal and moral grounds, and are therefore of opinion that there is no ground for interfering with it.”

In post-colonial period in India, initially a demand for the restoration of the indigenous legal system was flourished. Although the *nyaya panchayat* derived some symbolic similarity with the traditional panchayat but, they were quite different from the traditional one. As *nyaya panchayat* applied statutory law rather than indigenous norms, their members were chosen by election whereas traditionally they used to be leading men of a caste. Further, legal luminaries like Mr. Justice Krishna Iyer and Mr. Justice P. N. Bhagwati had contributed remarkably in order to give the concept of *Lok Adalat* a statutory position and as a tool under the umbrella of legal aid to the poor particularly.⁵⁸ As stated above, by passing the Legal services Authorities Act, 1987, the *Lok Adalat* has been given a statutory status, though it is different from the *Panchayat*. *Lok Adalats* were proved to be a great success though limited to Auto Accidental cases and Family matters. Many proponents of *Lok*

⁵⁸ Mr. Justice Krishna Iyer chair an expert *Committee on Legal Aid- Processual Justice to the People* (1973) and Mr. Justice P. N. Bhagwati through Report “National Juridicare : Equal Social Justice” (1976) recommended a strong case of *nyaya panchayat* as part of the larger scheme of Legal Aid and Access to the court and proposed the informal and conciliatory participation.

Adalats see them not as a species of court reform but as a species of legal aid, and particularly suited to the poor and oppressed and female.⁵⁹

5.3.2 Functioning of the Lok Adalat: Some Observations

The concept of *Lok Adalat*, for which the Legal Services Authorities Act, 1987 does make the provisions, is also an icebreaker in order to sort out the problems of delay and pendency of cases in present scenario, though the scope of the *Lok Adalat* seems to be narrowed down under the present Act, if compared to the earlier one. As highlighted by Professor Upender Baxi, *Lok Adalat* used to tackle cases of all nature be it a case of Attempt to murder, murder, violent clashes, theft etc.⁶⁰ As far as panel of *Lok Adalat* was concerned there was no such interference of the judiciary as it exists today. The court intervention is required to be minimal so that the parties to the disputes are given an atmosphere where they can have dialogue freely. It is in practice in *Lok Adalat* that even parties to the dispute seem to be unaware regarding the procedure of the *Lok Adalat*. They are just following the directions of their advocates, who, may be for their own benefit, opt for the *Lok Adalat* after receiving their sky rocketed fee from the parties.

Further, the present day *Lok Adalats* are a day-long exercise in order to come up with an amicable settlement of disputes, which may be an over assessment. Disputes between parties are not supposed to be settled over a single sitting; rather they need in-depth discussion with number of sittings. The present form of *Lok Adalat* though

⁵⁹ Marc Galanter, Krishnan, "Bread for the poor: access to justice and rights of the needy in India" *Hasting Law Journal*, 2004.

⁶⁰ Upender Baxi, "From Takrar to Karar: the *Lok Adalat* at Rangpur- A Preliminary Study".

proved to be a benchmark in the Indian Judicial System, at the same time it cannot be denied that had it been of a multiple-sitting platform then it could be of more use in order to crystallize the idea of access to justice. So, *Lok Adalat* will be of more worth, if instead of a day-long activity, it is a multiple sitting *Lok Adalat*.

The very *Lok Adalats* or the *Permanent Lok Adalats* are also being used by some fraudulent litigants, as a means to circumvent the provisions of other statutes like: the Registration Act, 1908 or Indian Stamp Act, 1899. This must not be permitted and should be proscribed. The genuine and bona-fide disputes alone could be decided by the *Lok Adalat*. The fraud of the evasion of stamp duty should not be permitted in the garb of family settlement in cases of self-acquired property.⁶¹ This type of misuse of the process of settlement under the Legal Services Authorities Act, 1987 need to be checked.⁶²

Apart from it, in order to comply with the vision, setting out by Legal Services Authorities Act, 1987 read with other Rules and Notifications, it is the high time that women in general and women lawyers in particular should be given preference and more responsibilities by making them as a partner to it so that they can contribute towards the *idea of Access to Justice* and make it a ground reality.

It is the high time that Article 39A to be explicitly converted into the Part III of the Constitution, as 86th Amendment of the

⁶¹ Family settlement can only be permitted in case of ancestral property, as there exist a right by birth. What is being practiced is that litigants though not members of same family, adopt the methodology of pre-litigation settlement in order to avoid stamp duty or registration charges.

⁶² *Vijender Beniwal v. Presiding Judge, Permanent Lok Adalat, Gurgaon*, Punjab and Haryana High Court, CWP no. 21823 of 2008.

Constitution did in the case of Right to Education. The very fundamental right to education (Article 21A) as inserted by 86th Amendment can never be realized unless it is accompanied by the appropriate awareness regarding the Right to Education amongst the poor parents particularly. Indian Judiciary also in catena of cases held that Article 21 of the Constitution makes the right to legal aid implicit.

As stated earlier, legal-aid is incomplete until and unless it is coupled with legal awareness. To perform this task, the legal fraternity should come up and impart legal awareness particularly to the downtrodden, so that they can also taste the fruit of the idea of access to Justice. The services of Law Students should be utilized in order to serve this purpose by associating them with the Legal Aid Clinics established by the Legal Services Institutions or by opening Students' Legal Aid Clinic in the Law Universities itself. On one hand, this will give them practical training and on the on another front, it will serve the social cause by imparting legal awareness and by encouraging people to get their disputes resolved by various modes of ADR. They can also be associated with the panel of *Lok Adalats* for the empirical teaching.

In addition to this, as in the present scenario, there is a trend in democratic countries all over the world to woo the vote bank by inserting the new statutes blindly, which is equally responsible for the present mounting arrear suffered by adjudication authorities. To this end, the modules of the U.S. may be incorporated in order to meet cases emerging from the newly inserted Statutes. In U.S., every new legislation should be accompanied by a budgetary estimate of its

impact and provisions regarding necessary financial allocation (made in the Bill itself) to meet the forthcoming litigations and the expenditure to be incurred on setting up additional courts.⁶³

The disputes of commercial nature need to be given special category and should not be treated with the other cases of civil nature as in section 9 of the Code of Civil Procedure.⁶⁴ If we are able to provide speedy adjudication in such kind of cases then it is sure to boost the Foreign Direct Investment in India. Presently, the fear of procedural technicalities seems to be one of the hindrances in the path of FDI. The regular holding of *Lok Adalat* for commercial disputes may be utilized for promoting prosperous relationship amongst the business houses.

Lok Adalat or ‘people’s courts’ in India have been proved as an example before the World for imparting access to justice. In India, till date more than 11 lacs *Lok Adalats* have been organized which resulted into the resolving of 3.76 crore cases outside the adversarial court system.⁶⁵ In 2011 alone, as many as 41, 35,411 cases were settled through *Lok Adalats*.⁶⁶

Lok Adalats systems have been successful in handling large number of cases quickly and efficiently. Several studies indicate dramatic differences in amount of costs spent in *Lok Adalats* and in adversarial adjudication system. For example, during the 1980s, when the *Lok Adalat* system was operating successfully in India, a

⁶³ “Courts clogged up with huge arrears” *The Tribune*, 01-11-2010.

⁶⁴ As per Sec. 9, CPC, Court to try all civil suits unless barred. Read with Sec. 15 of CPC whereby every suit shall be instituted in the court of lowest grade competent to try it.

⁶⁵ Speech delivered by Sh. Aswani Kumar, the then Union Minister of Law and Justice at the inaugural ceremony of Joint Conference of CMs and CJs on 7-04-2013 held at New Delhi.

⁶⁶ Noted by Sh. Aswani Kumar, the then Union Minister of Law and Justice at All India Meet of State Legal Services Authorities held in Chennai on 20-04-2013.

comparative study in Rajasthan indicated that the average cost of a case handled in a *Lok Adalat* was 38 rupees, compared with an average litigation cost of Rs. 955.⁶⁷

Experiment with *Gram Nyayalaya* under Gram Nyayalaya Act, 2008, though a welcome step, has not taken up as expected. There was a target to establish 5,000 *gram nayalayas*, but till date only 172 have been established. Out of these only 152 are operational, though Government is hoping that up to 2014, 616 *gram nayalayas* will be established.⁶⁸ Obviously, it questions our political will.

5.3.3 Traditional Concept of *Panchayat*, Civil Courts, *Nyaya Panchayat* and *Lok Adalat*: Tracing the Difference

The difference among the traditional concept of *panchayat*, civil courts, *nyaya panchayat* and *Lok Adalat* can be easily understood by the following table⁶⁹:

Access to Justice	Through Traditional <i>Panchayat</i>	Through District Courts/ Subordinate Courts	Through <i>Nyaya Panchayat</i>	Through <i>Lok Adalats</i>
Flourished	Before British Rule	Since early 19 th Century	1950-1975	1980's
Jury	Well known elders	Judicial Authorities	Elected by local electorate	Retired judges, volunteers

⁶⁷ Whitson, Sarah Leah, "'Neither Fish, Nor Flesh, Nor Good Red Herring' *LokAdalats*: An Experiment in Informal Dispute Resolution in India," *Hastings International and Comparative Law Review*, vol. 15, no. 3, (1992), pp. 391-445. Quoted in Center for Democracy and Governance "*Alternative Dispute Resolution Practitioners' Guide* (1998), p.25.

⁶⁸ Speech delivered by Sh. Aswani Kumar, the then Union Minister of Law and Justice at the inaugural ceremony of Joint Conference of CMs and CJs on 7-04-2013 held at New Delhi.

⁶⁹ Idea of table is borrowed from Marc Galanter & Jayanth K. Krishnsn, "Bread for the Poor: Access to Justice and the Rights of the Needy in India", *Hastings Law Journal* (2004).

Rules and norms	'Custom' of Caste/Locality	Lex Loci (state law)	Statute law	Procedural technicalities are dispensed with
Sanctions	Fines, may be social boycott(criminal-cases) etc.	Money damages, injunctive relief	Fines	Enforced by court
Appeal	Politics of Reconsideration	Appeal within judicial hierarchy	Appeal to the courts	No appeal
Satisfactions of disputants	<i>Panchas</i> used to be the <i>Parmeshwar</i>	Vexatious suits, delay in justice etc. cause distrust among litigants	Chances of prejudice	<i>Win-Win</i> Situation

The above table depicts the qualities of the outside court settlement approach for the speedy, inexpensive, fair, responsive and understandable justice. It highlighted as triumphant situation for the parties to the disputes at every level. Even an unsuccessful dialogue could not be held as a breakdown, because parties to the disputes came together and discussed the problems over a cup of tea. There is nothing to lose by the parties. Mahatma Gandhi was the great supporter of the amicable settlement of dispute outside the court. Once Mahatma Gandhi said:⁷⁰

I realized that the true function of a lawyer was to unite parties.... A large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about

⁷⁰ Mahatma Gandhi, *An Autobiography: The Story of My Experiments with Truth*, (6th Ed. 1965), p. 134.

private compromises of hundreds of cases. I lost nothing thereby - not even money, certainly not my soul.

5.4 PIL as a Tool to Access to Justice

Further, legal awareness in itself is not exhaustive; rather, it should be accompanied with a proper mechanism for approaching the court in order to get justice. The concept of 'PIL' by relaxing the procedural hurdles in access to justice provides for an alternative procedure for knocking the doors of Courts directly. This can be rightly said as a game changer in order to contribute towards realizing the idea of Access to Justice. Public Interest Litigation (PIL) has been devised as a weapon under the law to ensure that unprivileged sections of the society are not deprived of justice, which is the ultimate goal to be achieved as per the Preamble of our Constitution. The very name, PIL or *Jann Hit Yachika* in Hindi, itself makes it clear that it is for the interest of public at large. Public interest litigation is not something unique to India; other jurisdictions such as South Africa, Canada and USA also have public interest litigation, though it is not described as such. It is alleged that over the years PIL has done great service to the people of our country. It is an instrument in the hands of the poor or downtrodden for the protection of their rights. The concept of PIL was evolved in 1980s by Supreme Court, when the rule of '*locus standi*'⁷¹ was relaxed. As per the normal rule of the '*locus standi*', only aggrieved person could move to the court. This relaxation was sought for the betterment of the poor, illiterate or the disadvantaged people, who are unable to represent their grievances to

⁷¹ The traditional view of '*locus standi*' was that only an aggrieved person, who has personally suffered legal injury by reason of violation of his rights or legally protected interest can file a suit for redress of his grievances.

the court. This relaxation results in allowing the public spirited citizen to approach the court for the redressal of public injury. Mr. Justice V.R. Krishna Iyer, Mr. Justice P.N. Bhagwati and Mr. Justice J.S. Verma did the country proud by introducing and expounding the concept of PIL in India. As per Mr. Justice P.N. Bhagwati, the procedure is hand maiden of justice and the cause of justice cannot be impeded by the procedural technicalities. It may even entertain a letter addressed to the court by a complainant. *Mumbai Kamgar Sabha v. Abdul Bhai*,⁷² *Sunil Batra v. Delhi Administration*,⁷³ *Ratlam v. Vardichan*,⁷⁴ *Hussainara Khatoon v. Home Secretary, State of Bihar*,⁷⁵ *S.P. Gupta v. Union of India*,⁷⁶ *Khatri v. State of Bihar*,⁷⁷ *Upendra Baxi (Dr) v. State of U.P.*,⁷⁸ *Sheela Barse v. State of Maharastra*,⁷⁹ and *Olga Tellis v. Bombay Municipal Corporation*⁸⁰ are PILs in India, wherein judiciary had passed judgments in order to make justice accessible to poor or disadvantaged.

The insertion of the PIL in the list of the categories entitled for free and competent legal services is a remarkable step by the Legal Services Institutions in order to realize the true objective of the idea of access to justice for all by providing an alternative mode of approaching the Courts of law. Poverty should not be the reason to injustice, as injustice anywhere is a threat to justice everywhere.⁸¹ That's why to give legal aid for filing PIL can rightly be proved as a

⁷² (1976) 3 SCC 832.

⁷³ (1978) 4 SCC 494.

⁷⁴ (1980) 4 SCC 162.

⁷⁵ (1980) 1 SCC 81.

⁷⁶ (1981) Supp. SCC 87.

⁷⁷ (1981) 1 SCC 627.

⁷⁸ (1983) 2 SCC 308.

⁷⁹ (1983) 2 SCC 96.

⁸⁰ (1985) 3 SCC 545.

⁸¹ Per Martin Luther King Jr.

ladder for plucking the golden fruit of justice.

5.4.1 PIL: Some Concerns

Though it is a matter of concern that the analysis of PIL “cases” shows that most of them are frivolous which shows the actual practice of PIL jurisdiction and its contribution in achieving the Justice (socio, economics and political), are on decline. On the one hand, the number of Fundamental Rights cases related to women, children, scheduled caste, scheduled tribe, other backward classes, appear to have increased; and the rate of increase has been similar for claimants belonging to both marginalized and advantaged population segments, but on the other hand, a very low share of the cases are brought by cooperative entities, such as NGOs. Now claimants from advantaged classes have higher win rates than claimants from disadvantaged classes.⁸² Advantaged class claimants had a 73% probability of winning a Fundamental Rights claim for cases in which an order or decision was rendered from years 2000-2008, whereas the win rate for claimants not from advantaged classes for the same years was 47% . For the 1990s, rates were 68% and 47% respectively indicating a change both from the original objective of public interest litigation and from the relative win rates in the 1980s.⁸³ Though the PIL jurisdiction seems to be economical and speedy, the real question is ‘whom does it benefit?’ It was started for the benefits of poor, downtrodden, illiterate or the disadvantaged person, but the actual crop is being harvested by the rich and advantaged class. It is the misuse that requires correction, not by abolishing PILs, but by laying

⁸² As per Manupatra database.

⁸³ Varun Gauri, “Public Interest Litigation in India: Overreaching or under Achieving?”, Policy Research working paper submitted to world bank.

down norms and framing strict guidelines for ensuring that such PILs are not improperly motivated.⁸⁴ In fact, there should be legislation on PILs, and there has to be some concerted effort at monitoring as there is no monitoring today and that clutters up our legal system unnecessarily.⁸⁵ Judicial whistle needs to be blown for a limited purpose. It needs to be remembered that court cannot run the government. It is the high time that courts should impose heavy penalty on frivolous PILs. Let it be a Jann Hitt Yachika instead of making it a *Dhann Hitt Yachika*.

5.5 Contemporary Problems and Legal Policy

In the present world of LPG (Liberalization, Privatization and Globalization), when the entire Europe is burning with the fire of Euro crises and of low growth rate, setting out an exception, India seems to be untouched by these kinds of problems and has been sustaining a remarkable growth rate. At the same time, contrary to this, India still does have daunting challenges to meet. One amongst these is the problem of mounting arrears of cases in Indian Judicial system. No doubt, economic growth is growing but, at the same time, India is facing a backlog of 3.2 Million cases before adjudication agencies, right from Apex Court to Subordinate Courts. In this contemporary world, with the passing of more and more Acts by the policy- makers and with the people becoming more and more aware about their rights, the daily filing of the suits are increasing day by day. This situation exists when only a small proportion of our population have an access to the court and a substantial part of

⁸⁴ Fali S. Nariman, "Judges v. Judges: Are they like emperors?" *The Tribune*, Dec.17, 2007.

⁸⁵ Fali S Nariman, "PIL is not an indictment of the failure of the system", *HLM*, 2008.

population is unaware regarding their legal rights. It further adds to the cynicism and helplessness of the legal academics and researchers in general. It is the high time to deconstruct the actual position of our country and to build a constructive paradigm for the active global participation in near future.

5.5.1 Procedural Aspects for Access to Justice

The legal maxim *ubi jus ibi remedium*, which means that ‘where there is a Legal Right, it will be accompanied by an appropriate remedy,’ is the basic human right.⁸⁶ The right to remedy is one of the rights of paramount importance and the same has got a place in Part III of our Constitution⁸⁷. In India, there is well structured procedure for knocking the doors of the court in both types of cases i.e. civil or criminal in nature. For civil matters Civil Procedure Code of India under section 26 makes the provision for the initiation of the proceeding by filing a plaint or otherwise, whereas in case of offences which are criminal in nature, these can only be addressed either through First Information Report or through Complaint or Information to the concerned Authorities.⁸⁸ It is pertinent to remember that for both above stated segments of cases, there is a requirement that case shall be pleaded through an advocate (in cases of allegation of criminal nature, the prosecutor will always be of Government i.e. Public Prosecutor). Here it is worthwhile to understand the plight of downtrodden or marginalized persons living in society who are not in a position to pay the heavy bucks to the legal representatives. Due to

⁸⁶ See. Art. 7, 8 and 10 of the UDHR, Art.14 (3) of the *International Covenant on Civil and Political Rights, 1966*.

⁸⁷ See *the Constitution of India Act 1950*, Art. 32.

⁸⁸ See *the Code of Criminal Procedure, 1973*, , Sec. 154, 200 and 190(1)(a-c).

the existing poverty or illiteracy, this segment of society is still far behind from a position to avail the services of a counsel and ultimately from the doors of the court of justice. Anyhow, if someone succeeds in approaching the court then the distress of persons seeking justice gets aggravated when the case prolongs year after year. “Justice delayed is justice denied,” this saying can rightly be said as a side view mirror for the Indian judicial system. This delay harms the interest of litigants amongst general public, companies and even government agencies and instrumentalities.

5.5.2 Problem of Backlog of Cases

In India, justice is adjudicated by adjudicating Agencies, which consists of one Supreme Court, 21 High Courts and 13,962 subordinate courts. It is a matter of concern that there are large numbers of vacancies at all the three levels. In all 21 High Courts there are 288 vacancies and in all Subordinate Courts there are 2,986 vacancies of Judges.⁸⁹

In our country, the ratio between the population and the judges is unrealistic. Therefore, the Judiciary is unable to cope up with the mounting arrears. India has less than 15 judges per million people,⁹⁰ a figure that compares very poorly with Countries, such as Canada (about 75 judges per million) and the US (104 judges per million). Supreme Court had directed the Union Government that the judge-population ratio be raised to 50 per Million in a phased manner.⁹¹ The proposal could not be acted upon till date due to the financial

⁸⁹ Court News, Vol.VI, issue no. 1, Jan- March, (2011), pp. 3, 4.

⁹⁰ Law Commission of India, “222nd Report on Need for Justice-dispensation through ADR” (2009), p.38.

⁹¹ *All India Judges Association v. Union of India*, AIR 1992 SC 165.

constraints. Further, the problem of mounting arrears of cases on the judiciary aggravates the issue. As per the written statement of Mr. Salman Khursid, the then Hon'ble Minister of Law and Justice, Government of India, given in *Rajya Sabha*, while answering to a question, around 3.2 crore cases were pending in high courts and subordinate courts across the country while 56,383 cases were pending in the Supreme Court. On an average, every year approximately 18 million cases are being filed every year and the average disposal is somehow more or less equivalent to the filing and does not contribute in decreasing the arrear.⁹² Number of cases has increased so fast that the entire adjudicative system is overburdened. For example in India, a vehicular crash takes place every three minutes and a death every six minutes.⁹³ By analyzing the above data the likelihood of the cases going to be filed before courts can be easily assess. This kind of figure poses a serious threat to our realizing the present goal of faster, sustainable and more inclusive growth.⁹⁴ Further the poor infrastructure of subordinate courts seems to be one of the hindrances in the path of administration of justice. On the financial front, the Union Government's allocation to judiciary under the five year plans is less than one per cent of the total plan outlay,⁹⁵ which cannot be justified. Judiciary being an essential ingredient of the government is supposed to be financially strong.

Not only this, Courts in the alien countries like U.S.A. have

⁹² As per the evaluation of table given in *Court News, Vol VI, Issue 1*, Jan- March, (2011).

⁹³ "Laws Need Enforcement", *The Tribune*, 20-09-2010.

⁹⁴ 'Faster, sustainable and more inclusive growth' is the theme of 12th Five year Plan (2012-2017). As per the draft approach of 12th Plan, the long delays in the judicial process are an important factor behind the growing cynicism about the rule of law in our system. Reforms in the legal process need to be put in place without further delays.

⁹⁵ K. G. Balakrishnan, "Judiciary in India" *50 JILI* (2008), p. 461.

many a time taken cognizance of the matter on the single ground of delay in Indian judicial system even if there is no cause of action in their countries. This is a sorry state of affairs. *Bhatnagar v. Surendra Overseas Ltd. (1995) 52 F.2.d. 1220 (3rd Cir)* is the case which vividly exposes this kind of an attitude of U.S Courts. Lewis J of 3rd Circuit Court of Appeal had referred to the affidavit of Prof. Marc Galanter and of Mr. Shardul Shroff (a lawyer from India) both of whom made unfortunate generalizations that the “Indian Court system was in a state of virtual collapse.” Lewis J accepted the affidavits and affirmed the District Court’s reasoning for continuance of the case in US. He said: “The district court... found that the Indian legal system has a tremendous backlog of cases – so great that it could take upon a quarter of a century to resolve this litigation if it were filed in India.”⁹⁶

Though a number of initiatives have been taken so far by the Government of India to overcome the above stated problems but they seem to be ineffective. Recently Hon’ble Supreme Court of India observed that pendency of 3 crore cases cannot be effectively dealt with unless the government creates more courts and fills vacancies because annual disposal of cases by trial courts, high courts and the Supreme Court only matches the numbers filed every year, leaving the backlog untouched.⁹⁷ It is of utmost importance to imagine the futuristic consequences if this kind of situation prolongs in the coming years. We have a bitter experiences of history where world had to face human tragedies which occurred due to the denial of justice. As we know that denial of justice is probably the greatest

⁹⁶ Quoted in Law Commission of India, 188th Report on Proposal for constitution of Hi-tech fast-track commercial divisions in High Courts, (2003).

⁹⁷ “Govt. faces Supreme Court Ire over Pendency”, *The Times of India*, 13-01-2012.

injustice done.⁹⁸ In the present circumstances, it may not be possible for India to meet the Constitutional goal of Justice: Social, Economic and Political.⁹⁹ Justice is required to be speedy, fair, inexpensive and understandable. ‘Nothing rankles more in human heart than a brooding sense of injustice’¹⁰⁰ can rightly be used as a reminder to the policy makers. Where does the solution lie? It is perhaps the question to be kept in mind by the researchers in the disciplines of legal studies and social sciences.

The Preamble of our Constitution devised ‘justice’ as one of the tool for achieving the ultimate goal of Constitution i.e. fraternity, and further the Constitutional mandate of Article 21 as interpreted by Judiciary, read with Article 39A 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 really needs to be bridged in order to achieve the vision of access to justice as a ground reality. The ADR, of which *Lok Adalat* is a part, is perhaps the concrete solution in Indian Context. It is pertinent to remember that if the elders’ settlement had been acceded to; the great *Kurukshetra Sangram* could have been avoided.¹⁰¹ The journey of any case, right from filing of plaint to the order of Appellate Court is definitely going to prolong and replete with bitter experiences with existing corruption the solution of which may perhaps be found in the form of amicable settlement outside the Courts.

⁹⁸ M.C. Sharma and Raju Ramchandran, (eds.) *Constitutionalism Human Rights and Rule of Law— Essays in Honour of Soli J Sorabjee*, (2005).

⁹⁹ See, Preamble of *Constitution of India*, wherein Social justice has been devised as a tool by our Constitutional makers in order to promote fraternity assuring the dignity of individual and unity and integrity of Nation.

¹⁰⁰ As per Mr. Justice Brennan of US Supreme Court

¹⁰¹ P.C. Rao & William Sheffield, *Alternative Dispute Resolution: What it is and How it Works* (2011), p.81.