



## A critical analysis of legal aid services in India: With a special reference to Lok Adalats

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### Abstract

Legal aid services play a crucial role in ensuring access to justice for all individuals, particularly those who are economically disadvantaged. Legal aid is essential in India, because a large section of the population experiences socio-economic issues. To fill the gaps in achieving a fair and just legal system, Legal Aid was mandatory. This includes legal advice, representation in court or tribunal, pleadings, and also alternative dispute resolution mechanisms. One notable aspect of legal aid in India is the establishment of Lok Adalats or 'The People's Court', which is basically, got designed to resolve disputes amicably. The purpose of Lok Adalats in lowering the burden on traditional courts and evolving a culture of mediation and conciliation is emphasized. The united efforts of advocates, legal practitioners, social workers and Legal Aid experts devote to address the socio-economic inequities in providing access to justice. The Lok Adalats are speedy, easiest, and cheapest mode of providing the justice to the needy people. Hence, it protects and promotes the equitable judicial system. The present paper is an attempt to analyze the legal structure that governs Lok Adalats, in addition to statutory laws, establishment and its functions. It elaborates the vital role of Lok Adalats in the Indian judicial system. It has conceptualized and institutionalized the philosophy of Lok Adalats. Therefore, this article may assist to the issue that how much jurisdictional restrictions affect the efficiency of Lok Adalats and the success rate of Lok Adalats in resolving cases involving limited powers in comparison to regular courts.

**Keywords:** Legal aid services, Lok Adalats, social justice and indian judicial system.

### Introduction

*The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice.*

Justice Harry Blackmun <sup>[1]</sup>

Legal Aid is a provision of free legal services to the economically weaker section of the society, for the conduct of a case or legal action in any court, tribunal, or before an expert. Legal Aid is an approach used to ensure that no one is denied expert counsel and assistance due to a lack of financial backing. The chief concern is whether justice can be made at the hand to the impoverished, oppressed, and vulnerable segments of society. Laws were framed to prop up the welfare provisions, through the approaches rather than the individual legal action. Legal Aid schemes were established as it was supposed that the State has to be accountable to aid those involved in legal disputes, but they started with the family law and divorce <sup>[2]</sup>.

Free Legal aid services are in close proximity with the welfare state and the provisions made for the legal aid by the State are determined towards the welfare. Historically, Legal aid has a vital role in cinching the social, economic and cultural rights likewise housing, social security, health and education. Therefore, Legal Aid is a welfare provision by the State <sup>[3]</sup>. While making a legislative policy, the Social justice is a main proponent. The welfare state is where an equality is recognized and not merely in form but in corporeality. In such a State, equality is a sole basis of jurisprudence and administration of justice. If a person is not able to have an access to the court of law for the protection of his own rights and having his wrongs rectified, then the justice becomes denied and provisions of law which were for his welfare, become futile <sup>[4]</sup>.

As a result, Justice P.N. Bhagwati correctly observed that <sup>[5]</sup>:  
*"The legal aid means providing an arrangement in the society so that the missionary of the administration of justice becomes easily accessible and is not out of reach of*

*those who have to resort to it for the enforcement of its given to them by laws the poor and illiterate should be able to approach the court and their ignorance and poverty should not impeditment in the way of their obtaining justice from the courts. Legal aid should be available to the poor and illiterate who don't have the access to the courts. One need not be a litigant to seek aid by means of legal aid."*

Nowadays the challenge before law makers and judicial statements is to evolve proper policies and form applicable tools to promote equality along freedom and protect fundamental rights including social justice <sup>[6]</sup>. Unless, the legal provisions are made for weaker section for payment of court fees and litigation, the individuals are denied equality to seek justice <sup>[7]</sup>.

Therefore, Legal Aid Services aims to ensure that constitutional pledge is satisfied in its letter and spirit and equal justice is made accessible to oppressed and poor people. It is obligatory to the State to see that legal system promotes justice rooted on equal opportunity for all its citizens.

The State must organize to supply free legal aid to those who are unable to have an access to justice due to weak financial conditions and other disabilities <sup>[8]</sup>. Legal aid is not a political right to seek defense in court of law. As the twentieth century was filled with extreme poverty, so to ensure a just living to the individuals were hard. Legal Aid is the consequence of that poverty, and not a "matter of charity". Back then, the scope of Legal Aid was limited to the appointment of a lawyer at the expense of the State. But with the passage of time, the scope of Legal Aid has improved; likewise it includes Public Interest litigation, Lok Adalats and Legal Literacy. In Civil cases, Legal Aid is not a matter of right, as the annual income will decide the eligibility of an individual. But in Criminal cases, it is a matter of right <sup>[9]</sup>.

### Historical Development of Legal Aid Services

Legal aid is a fairly recent concept, having emerged in the twentieth century. But back then, it was in the medieval period, that the King named as Jahangir, used to decide the cases in his Court irrespective of the religion, birth and any official rank of the parties to the suit <sup>[10]</sup>.

The evolution of the idea of legal aid came up in France during the year 1851 when the government there introduced an act to provide legal help to the needy. Whereas in United States (US), the Legal Aid Society of New York has formed in the year 1876. It was formed to provide legal assistance to the indigent <sup>[11]</sup>.

In India, the concept of legal aid started in 1950 when the Government asked for the legal help to the poor in various Law Conferences. For the very first time, the Government of Bombay has formed a Committee on Legal Aid and Advice. This Committee was headed by Bhagwati J. It laid down eligibility tests for Legal aid, named as "Prima facie case Test and Means Test". The Committee came with the objective of financially aiding the poor and bearing the Court expenses <sup>[12]</sup>.

In year 1958, with a great emphasis on equal justice, the 14<sup>th</sup> Report of the Law Commission of India has highlighted the need of free Legal Aid. The extensive report on Legal Aid has come in 1973 from Expert Committee on Legal Aid, chaired by Justice V. R. Krishna Iyer which emphasized that there must be statutory laws and provisions regarding the Legal Aid <sup>[13]</sup>. In 1980, a Committee was mould to direct the legal aid programs all over the India under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati. That Committee was known as "CILAS-Committee for Implementing Legal Aid Schemes" and it assisted the legal help to the needy ones. The Committee came up with the concept of Lok Adalats, these courts accelerated the trial process and nimble the justice <sup>[14]</sup>. In 1987, Legal Services Authority Act was enacted and enforced in 1995 by Hon. Mr. Justice R.N. Mishra. Under this Act, the National Legal Services Authority was constituted Hon. Dr. Justice A.S. Anand, Judge; Supreme Court of India took over as the Executive Chairman. It laid down principles and policies so that as per the Constitution, legal service is available to all.

### Sense and Significance of Legal Aid

According to Cambridge Advanced Learners Dictionary "Legal Aid" means a system of providing free advice about the law and practical help with legal matters for people who are too poor to pay for it <sup>[15]</sup>.

According to Late Justice V.R. Krishna Iyer, "the spiritual essence of a legal aid movements consists in inviting law with a human soul: its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent, and the dispensation of social justice through the legal order <sup>[16]</sup>."

Legal Aid is a part of Human Right and a key postulate of the Indian legal system. As there is a Supremacy of Law, the fair and speedy trail, equal justice are protected under the provisions of Legal Aid. "Everyone have the right to a remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by provisions of the law <sup>[17]</sup>."

Legal aid is provided through various means likewise by payment of court fee, process fee, expenses of witnesses, lawyers fee and all other charges incurred in connection with any legal proceeding, through representation by a legal

practitioner in legal proceedings, by supplying certified copies of judgment, orders, notes or evidence and other documents in legal proceedings, by drafting, Copying, Printing of legal documents, by giving legal advice on any legal matter or through meditation centers or family counseling Centers. The theme of Legal aid is clearly visible in Constitution of India and other statutory parameters. Legal Aid has been a recognized as a fundamental right under Article 21. Besides the Indian Constitution, there are some other Statutes under which Legal Aid is recognized as a Legal right, for example, The Legal Services Authorities Act, 1987; The Criminal Procedure Code, 1973 and The Civil Procedure Code, 1908.

### Types of Legal Aid Services

There are basically two types of legal aid that are Pre-litigation legal aid and Legal aid during the proceeding of litigation.

**Pre-Litigation Legal Aid:** It has been rightly said that prevention is better than cure. Litigation should be the last resort. Matters should be resolved without restoring to the complications of the legal framework of the country. Such pre-litigation legal aid includes Legal education, Legal advice, Legal awareness, Seminar on legal aid and Pre-litigation settlement. If pre-litigation services are properly rendered then both time and expenditure could be saved. In pre-litigation services there will be minimum financial burden upon the state. Therefore, priority is given to pre-litigation services in the country.

**Legal Aid during the Proceeding of the Litigation:** The basic aim of legal aid during the proceeding of litigation is to provide free legal services to poor and socially down-trodden people after the commencement of litigation and during proceeding. Legal community must respond in a wholehearted manner. Well-structured and effective planning for operation of the provisions of Legal Services Authorities Act must be evolved.

### Constitutional Prototype of Legal Aid Services in India

With the 42<sup>nd</sup> Amendment in the Constitution of India, a provision of legal aid has been added. The Constitution of India has mandated the free legal aid to help the weaker section of the society. According to Article 39-A of the Indian Constitution, the State must guarantee that the legal system upholds equal opportunity and offer free legal aid in whatever manner possible to guarantee that every person receives justice regardless of social or economic background <sup>[18]</sup>.

Another legal provision under Constitution of India is Art. 22(1) which provides that "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice <sup>[19]</sup>."

This provision ensures that individuals who are arrested have the right to know the reasons for their arrest and are entitled to legal representation. It emphasizes the importance of access to legal aid and the right to be defended by a legal practitioner. Legal aid works to make sure that the Constitution's promises are kept in letter and spirit and that the weaker, impoverished, and disadvantaged groups in society have equal access to justice. The goals of free legal aid in India are based on the rights to equality,

justice, and a fair trial. The key objectives include Equal Access to Justice, Social Justice, Protecting Fundamental Rights, Preventing Arbitrariness and Abuse of Power, Promoting Rule of Law, reducing Backlog of Cases, creating Legal Awareness, and Fostering Public Confidence in the Legal system. Justice Krishna Iyer, who is crusader of social justice in India, had properly said that if a detainee condemned to detention is practically unfit to practice his established and statutory right of claim comprehensive of unique leave to the Supreme Court for need of lawful help, there is understood in the Court under Article 142 read with Articles 21 and 39A of the Constitution, the ability to appoint direct for such detained individual for doing complete justice <sup>[20]</sup>.

### **Pertinence of Statutes Regarding the Legal Aid Services in India**

In harmony with the constitutional goal the Legal Services Authorities Act, 1987 was enacted; it got amended in 1994, and finally enforced in 1995. This Act provides for the creation of some legal Service Authorities, who may help to award free legal aid to the indigents. Under this Act, the National Legal Services Authority, State Legal Services Authority and District Legal Services Authority were formed.

#### **a. Legal Services Authorities Act, 1987**

Criterion for Providing Legal Aid Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to the eligible persons. Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is a member of a Scheduled Caste or Scheduled Tribe, a woman or a child or a mentally ill or otherwise disabled person, a person being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or an industrial workman <sup>[21]</sup> or a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution <sup>[22]</sup>.

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favor provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority.

#### **b. The Civil Procedure Code, 1908**

The Order 33 of the CPC deals with an indigent person to file a suit before the civil court, without paying the Court fees <sup>[23]</sup>. The Civil Court has an obligation to assign a legal practitioner to such indigent person.

#### **c. The Criminal Procedure Code, 1973**

The Section 304 <sup>[24]</sup> has obliged the State to pay the expenses to an indigent person. So when the number of cases pending before the Court of Session, then the State is obliged to be in compliance of the provision. In a Landmark case, the Supreme Court of India has decided the same, in the case of *Khatri Singh v. State of Bihar* <sup>[25]</sup>, “the court addressed the inquiry the privilege to free lawful guide to poor or indigent blamed who are incapable for engaging legal advisors. The State is under a constitutional mandate to provide free legal aid to an accused person. It held that

the state is will undoubtedly provide such guide at the phase of trial as well as when they are first created before the judge or remanded every now and then and that such a privilege can't be prevented on the ground from securing financial constraints or administrative inability or that the charged did not request it. Justices and Sessions Judges must inform the blamed for such rights. The privilege to free legitimate services is a fundamental ingredient of sensible, reasonable and only technique for a man blamed for an offense and it must be held certain in the certification of Article 21 and the State is under a protected command to provide an attorney to a blamed individual if the conditions for the case and the necessities of equity so require. The State can't avoid this commitment by pleading financial or administrative inability or that none of the aggrieved detainees requested any lawful guide.”

### **A Deep Dive into the Concept of Lok Adalats**

‘Lok Adalats’ or ‘The People’s Court’ are inaugural part of Legal Aid in India. The Lok Adalat is that the parties to the disputes sit across the table and sort out their disputes by method of conciliation in presence of the Lok Adalat judges who would be guiding them on technical legal aspects of the conflicts.

A Lok Adalat is one of the substitute dispute redressal mechanisms. National Legal Services Authority <sup>[26]</sup> alongside other Legal Services Institutions conducts Lok Adalats. It is a forum where cases or disputes left unaccomplished in the court of law are compromised cordially. So, generally, Legal Aid is a free or inexpensive legal advice, assistance, or representation provided to those who, because to their financial condition, otherwise would not be able to get.

All the authorities and the Committees constituted under the provisions of the LSA <sup>[27]</sup> Act are obliged to organize Lok adalats in order to provide a forum for the litigating people to settle their cases amicably. Even those disputes that are yet to be instituted in any court can be settled in a Lok adalat. A case can reach a Lok Adalat for settlement, if the parties to the dispute got agree.

Even if a one of the parties to the dispute makes an application to the Court for referring the Case to the Lok Adalat for settlement, then also the dispute can be referred to the Lok Adalats.

The composition of the Lok Adalat is chairman, two members, and one social worker. The chairman must be a sitting or retired judicial officer. The other two members should be a lawyer. The individuals determining the cases in the Lok Adalats are called the Members of the Lok Adalats. They have the role of statutory intermediaries and do not have any judicial role.

Under the LSA <sup>[28]</sup>, Lok Adalats have been given statutory status. The decision made by the Lok Adalats is considered to be a verdict of a civil court and is ultimate and binding on all parties. There is no provision for an appeal against the verdict made by Lok Adalat. If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal, they are free to initiate litigation. There is no court fee payable when a dispute is filed in a Lok Adalat. If a dispute pending in the court of law is referred to the Lok Adalat and is settled later, the court fee originally paid in the court on the petition is also reimbursed back to the parties.

Permanent Lok Adalats are organized under Section 22-B<sup>[29]</sup>. They have been set up as permanent bodies with a Chairman and two members for providing a compulsory pre-litigative mechanism for conciliation and settlement of cases relating to Public Utility Services like transport, postal, telegraph etc. As per the data provided by National Legal Services Authority, there are more than 15.14 lakhs Lok Adalats organized across the country, as of 2015. More than 8.25 crore cases have been settled.

### Process by Permanent Lok Adalats for Determination

The Parties to the Dispute has to write an application to the Permanent Lok Adalat for determination of a dispute, and after receiving it, the Permanent Lok Adalat should direct each party to file a written statement regarding the facts, nature of the Dispute, grounds in support or in opposition. The party may also file any document or such other evidence, in proof of such facts and grounds urged. When the statements if any are filed, the Permanent Lok Adalat shall conduct conciliation process between the parties. The Permanent Lok Adalat should assist the parties to reach an amicable settlement, in an independent and impartial manner. Every party is duty bound to co-operate in good faith, in the conciliation process<sup>[30]</sup>.

The Permanent Lok Adalat, while deciding a dispute between the parties on merit, shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872. Every award made by the Permanent Lok Adalat shall be by the majority and shall be deemed to be final as a decree of a civil court. The Permanent Lok Adalat may transmit the award to the court having local jurisdiction for execution.

### Contribution of Lok Adalats to the Legal System

In a majority of cases, litigants are pitted against entities with deep pockets, such as electricity boards, insurance companies, banks, etc. In most cases, compromises are imposed on the poor who often have no choice but to accept them. As compromise is its central idea, there is a concern that in the endeavor for speedy disposal of cases, it undermines the idea of justice. In, *State of Haryana v. Darshana Devi*<sup>[31]</sup>, the Court said that the poor shall not be priced out of the justice market by insistence on court-fee and refusal to apply the exemptive provisions of order XXXIII, CPC.

In *State of Punjab vs Jalour Singh* (2008)<sup>[32]</sup>, held that a Lok Adalat is purely conciliatory, and it has no adjudicatory or judicial function.

Lok Adalats promote a more relaxed and informal setting, encouraging open communication and negotiation. Lok Adalats help in reducing the burden on the traditional court system by resolving cases efficiently. As Justice Ramaswamy said<sup>[33]</sup>:

*“Resolving disputes through Lok Adalat not only minimizes litigation expenditure, it saves valuable time of the parties and their witnesses and also facilitates inexpensive and prompt remedy appropriately to the satisfaction of both the parties.”*

In a case of *Punjab National Bank v. Lakshmidhand Rai*,<sup>[34]</sup> an appeal was filed under Sec. 96 of the CPC against the award made by the Lok Adalat. The question before the court was whether such an appeal is maintainable or not. So, it was held by the Hon'ble Court that "An appeal would not lie under the provisions of Section 96 C.P.C. Lok Adalat is conducted under an independent enactment and once the award is made by Lok Adalat the

right of appeal shall be governed by the Legal Services Authority Act." It has been specifically mentioned in Section - 2 (2) that no appeal shall lie against an order of a Lok Adalat.

In another case of *Kishan Rao v. Bidar District Legal Services Authority*<sup>[35]</sup>, the question raised was whether the lok Adalat could pass a decree when all the parties had not appeared before the Lok Adalat nor had notice been issued to them. The Karnataka High Court interpreted Section 20(3) of the Legal Services Authorities Act to hold that all the parties to suit must be present if the compromise was to be a valid one.

In view of above facilities provided by the Act, Lok Adalat are boon to the litigation public as they can get their disputes settled fast and free of cost amicably. Hence, it is a very healthy way of dispute resolution.

### Conclusion and Suggestions

The Supreme Court of India has been requisite in promoting and protecting free Legal Aid services for deprived section of the society and the victims of natural disasters, who cannot have an access to courts in India. The Legislatures have formulated right to free legal aid as a fundamental right under Article 21 of the Constitution of India. The role of the Judges of the Supreme Court cannot be ignored. The Legal Aid is a State's duty and not a charity. The Legal Service Authorities include the lawyers. The lawyers are required to maintain the case wise details and submit it every three months. For the better delivery of Legal Aid services, the monitoring committee shall maintain a register for legal aided cases for recording day to day postings, progress of the case and the end result in relation to the cases for which Legal Aid is allowed. The Chairman of the Committee shall require deciding the course of action to be taken in such case and make orders.

So with reference to the Lok Adalats, it is easy mode of conducting justice to everyone at grassroots level. It also promotes Gandhian principle of peacefulness. It is based on transparency, efficiency and less expensive form of justice. It is formed with the motive to decrease the backlog of the cases with speedy justice to everyone. As a Justice P.N. Bhagwati, has deeply emphasized the need of the creating the legitimate awareness to the poor as they don't know about their rights. Further observed that in India a large portion of the people are living in provincial zones are uneducated people and don't know about the rights conferred upon them by law. Even educated people don't know what are their rights and entitlements under the law. It is this absence of legitimate awareness they are not approaching an attorney for consultation and advice. Moreover, due to their ignorance and lack of education, they cannot end up independent and they cannot even help themselves. That is the reason the promotion of legitimate proficiency has dependably been recognized as one of the principal things of the program of the lawful guide movement in the country.

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