

Free Legal Aid -

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Importance of free legal aid was ~~not~~ held in various decisions like in the case of Hussain Khan Khattar

Sukh das v Union Territory of Arunachal Pradesh

Khatris v Stg Biker

- Free legal aid is must in the country like India where majority of the people are poor or indigent and live below the poverty line (37%).
- The provision of free legal aid have been made in the Constitution as well as in the legal service authorities Act 1987 and simultaneously s/304 of CrP.C.
- Free legal aid is an Constitutional mandate s/14, 19, 21, 22 (1), 32, 39A, 51A, 226
- A/22 (1) expressly 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 be denied of the right to consult and to be defended by a legal practitioner of his choice."
- Long before the Indian Constitution, even in Old Criminal Procedure Code s/340(1) it was already mentioned.
- According to A/21 A person can not be deprived of his life and personal liberty except according to the procedure established by law.
and as per Maneka Gandhi's decision procedure should be just, fair & reasonable
- Through 42nd Amend. 1976 Art 39-A was added in DPSP which talks about Equal Justice & free legal aid

Then Art 21 it is Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty or indigence.

- For the first time in 1958 Law Commission India in its 14th Report ~~made~~ made several recommendations for state legal aid and emphasized for right to assignment of Counsel at govt expense.

Same thing was recommended again in 41st and 48th report of Law Commission.

- This recommendation has now been codified in s/304 of Cr.P.C

- s/304 of Cr.P.C it is clear that in Criminal Trial, the Magistrate or the Senior Court before whom ~~prosecution~~

accused appears must be held to be under an obligation to inform the accused that if he is unable to

engage the services of a lawyer on account of poverty or indigence or any other disability he is entitled to free legal services at the cost of state.

- It is an absolute Constitutional necessity and it is necessary that such lawyer should be of competence. Such Counsel appointed ~~for~~ for the accused must be given the complete brief of the case and time to prepare the case. Failure to do this is a denial of proper representation of the accused and vitiates the trial (Kishore v State (1969)).

Also no Counsel can be thrust upon the accused without ascertaining the wishes of the accused and without giving him any choice in selecting his lawyer.

As per Art 22 (1)

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Concerned with the programming legal aid as it's implementation of Constitutional mandate, in September 1980 the Govt India with the object of providing free legal aid ~~programmes~~ by a resolution dated 26th Sep 1980 appointed "Committee for implementing Legal Aid Schemes" (CSLAS) with P.N. Bhargwati as the Chairman to monitor and implement legal aid programmes on a uniform basis in ~~at~~ all states and UTs.

The committee evolved a model scheme for legal aid programmes which includes organization of legal aid camps and set up several legal aid and advice boards throughout the country.

But on the review of the working of CSLAS, certain deficiencies had come to the fore. It was therefore felt that it would be desirable to constitute statutory legal service authorities at national, state and district levels to provide effective monitoring of legal aid programmes. Therefore Legal Service Authorities Act 1987 was enacted with a view to constitute legal service authorities at National, State and District.

The Act was brought into force in 1995.

- Many states evolved their own programmes and even ~~one~~ enacted state ~~legislature~~ legislation and promulgated certain schemes to provide legal aid to underprivileged and disadvantage sections of the society.

Promoting legal literacy, organizing legal aid camps, encouragement of PSLs and holding Lok Adalats as initiative for bringing about settlements of disputes whether pending in court or outside

In Indian legal system litigant is the most neglected part and only 0.2% of GDP is spent on administering law and justice

- Legal Literacy — Pre-conditioning rule of law. People must have knowledge about their rights and entitlements

Legal aid camps and legal literacy should be encouraged

- NGOs, social action groups, journalists, advocates and law students can play a significant role to educate the people about law

The Institution of Lok Adalat

Part of ADR and evolved as a part of the CILAS programme with the object of taking justice at the doorstep of the poor and to give speedy and cheap justice to those who can't afford the ~~betting~~ cost of legal battle

- Lok Adalat handles the disputes through ~~conciliation~~

Conciliation and counselling

- Dispute in the Lok Adalat is resolved by discussion in an informal atmosphere in which parties and panel members of the Lok Adalat participate and settlement is reached with the mutual and free consent of the parties. Unlike in litigation concluded in our regular courts being in the nature of compromise there is no winner and no ~~loser~~ loser in a mediated resolution of dispute by Lok Adalat.

- As part of CILAS Programme Lok Adalats were constituted and Lok Adalats were organized at various places in the country under the supervision of State Legal Aid and Advice Board, for the disposal in a summary way and through the process of Arbitration.
- The organizers of the Lok Adalats fixed the date and place of holding Lok Adalats about a month in advance and information about the holding of Lok Adalat was widely publicized through press and other means of publicity.
- Presiding officers of various courts were requested to look into the cases pending in their respective courts and to see whether there was possibility of conciliation in these cases.
- Such of those cases where there was reasonable possibility of conciliation were identified and listed. Cases were analysed, classified under various heads according to the nature of dispute and substance ~~was~~ recorded.
- The pre-Lok Adalat conferences are held and parties to the dispute were approached and motivated by legal aid teams which include law students, social workers and volunteers to resolve their dispute through Lok Adalats.
- Before the case was taken up by the Lok Adalat, the mediation process or justice process through Lok Adalat was initiated and desirability of conciliation and compromise and the scope of a settlement mutually acceptable to the parties was ascertained. This process was continued and resumed at the campsite of the Lok Adalat.
- Once parties had made a compromise or arrived at a settlement, it was reduced into writing by members of the panel of the Lok Adalat, signatures of the parties and from

and countersigned by the members of the panel and passed on to the Court concerned for ~~final~~ final decree or order

- Multiple panel according to the need of Lok Adalats were set up. They consist two or three ~~members~~ persons, one of them could be a retired judge or a senior retired civil servant or an advocate, a law teacher

and other social workers and eminent persons of the locality carefully chosen by Local Aid Committee on the basis of their record of public service, honesty and respectability among local population and their quality as good conciliators.

~~When the~~

- When the compromise so arrived at was presented before the Court concerned, the Court was expected to look into the question whether all the parties entering to the suit were entering into settlement or compromise, fair and legality of the settlement or compromise and satisfy itself that compromise had been arrived at by free and mutual consent of the parties. After this process of due verification decree or order was passed in terms of the settlement or compromise.

- ADRs - In USA more than 90% of cases involving legal disputes are settled through ADRs while in India 91% go for trial and 9% through ADR.

- Lok Adalats are an effective institution of ADR where disputes are settled through negotiation, counselling, conciliation, compromise and settlement.

- Through legal services Authorities Act 1987 statutory status was given to Lok Adalats.

- Lok Adalats are conciliatory agencies.

In India Lok Adalats were already working in the form of Panchayats but replaced by adversarial system based upon English common law.

But now it is revived again through the Legal Services Authorities Act 1987 in the form of Lok Adalat.

Ordinary Lok Adalats consist of three members -

- ① Sitting or retired judicial officer
- ② an advocate, law officer or law teacher
- ③ A social worker preferably a woman

- Pending cases are referred to Lok Adalats either when both parties are agree or when one of the parties desire it and court is also satisfy that settlement is possible.

- Lok Adalats have power of a civil court in summoning and examining witnesses, discovery of documents, reception of evidence on Affidavits and requisitioning of public records. Lok Adalat can specify its own procedure and it is guided by the principles of justice, equity and fair play.

- Whenever a settlement is ~~made~~ reached an award is made which is deemed to be a decree of a civil court. It is to be written down in simple and clear terms. No appeal is permissible. If so compromised it reached it goes back to the same court for regular trial of settled petitioners get back the paid court fee.

Lawyers can represent the client with the permission of the Lok Adalat

- Lok Adalats have jurisdiction to settle, civil, criminal & revenue disputes in the courts and tribunals in the area for which the Lok Adalat is organized
- Legal aid includes → legal awareness, legal advice, counselling, PIL, Lok Adalats and other ADRs, para-legal services, law reforms etc
- Lok Adalats have no jurisdiction over non-compoundable offences
- Every award of Lok Adalat shall be final and binding on all parties to the dispute and no appeal shall lie to any court against the award

Lok Adalats and Permanent Lok Adalats L122 By LSA Act 1982

Added
Ming 2002
Amend 1

Permanent Lok Adalats - (1) Central Authority or State authority shall by notification establish Permanent Lok Adalats at such places and for exercising such areas as may be specified in the notification. (ii) It shall consist - a district judge or additional district judge or far less judicial officer higher in rank than that of a district judge shall be a Chairman PLP.

Two other persons having adequate experience in public utility services to be nominated by Central Govt. or State Govt.

- Matter can't be brought before the Permanent Lok Adalat when - offence is non-compoundable

more than 10 lakhs
Central Govt may increase the limit
Rs 10 lakh

- PLP while conducting conciliation proceedings will decide the case in merit and will be guided by the principles of natural justice

Through Legal Services Authorities (Amendment) Act, 2002 for the establishment of Permanent Lok Adalats for pre-litigation conciliation and Settlement of disputes concerning Public Utility services (S/22-A) and to decide them on merits if no settlement is forthcoming. The Central and State Authorities are authorized to establish such PLAs at any place to exercise such jurisdiction.

In respect of one or more public utility services as notified PLA undertakes pre-trial settlement on the application of any ~~two~~ party to the dispute and subsequently other party is not allowed to invoke the jurisdiction of any court in the same dispute.

PLA assists the parties to arrive at a settlement; when the parties does not reach the settlement, PLA can decide the dispute on merit. While deciding the cases on merit PLA shall be guided by the natural law of justice.

Amendment 2002 excludes the jurisdiction of the civil courts over the subjects specified in Sec 22 A (b) as public utility services. Summary power of revision or appeal should have been vested in a higher authority so as to bring the procedure in conformity with the rule of law.

- S/22 E of the Act makes the award of the PLA final and binding whether made as a resulting settlement or on merits. The provision by taking away the power of judicial review of the courts subverts the basic structure of the Constitution that judicial review of the laws can't be taken away by any law.

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Added
Munshi
Bansal

Lok Adalats and Permanent Lok Adalats (L1/22/BJ LSA Pt-1902)

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- Matter can't be brought before Permanent Lok Adalat when -
 - offence is non-compoundable
 - valuation of property in dispute is more than Rs 10 lakh
- Central Govt may increase the limit Rs 10 lakh

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Added
Amendment
1992

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