

## CHAPTER II

### CONCEPT AND NATURE OF LOK ADALAT

#### 1. Introduction

“To the poor the courts are a maze,  
If he pleads there all his life,  
Law is so lordly,  
And loath to end his case,  
Without money paid in the presents,  
Law listeneth to few.”

Pier's Plowman<sup>1</sup>

In every system of government, the effective justice delivery mechanism is a permanent and necessary condition of peace, order, civilization and governance of the country. Just as pollution poisons the physical atmosphere, the poor justice system poisons the social atmosphere. Equal and fair justice is the hallmark of any civilized society.<sup>2</sup> It is the primary duty of State to ensure equal and even handed justice for all by regulating the dealings of citizens with one another, by checking disorder and high handedness of one class of people over others and by maintaining all those rights which are fundamental to the existence and upliftment of common man through establishing the effective administration of justice. Administration of justice means to adjudicate the rights and duties of the individuals on the basis of rules laid down by the State. It makes efforts to provide the right to access to justice to all because access to justice from an independent and impartial agency in public law as well as private law is a recognized human right.<sup>3</sup>

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1. See T.B. Singh; “Legal Aid In India: A Profile”, AIR 2002 Jour 191.
  2. S.C. Singh; “Criminal Justice: An Overview”, CrLJ 1999 Jour 44.
  3. Article 10 of Universal Declaration of Human Rights, 1948 emphasize upon the right to a full equality to a fair and public hearing by an independent and impartial tribunal. Similarly, Article 14 of International Covenant on Civil and Political Rights, 1966 also says about the right to equality before the courts and tribunals; right to a fair and public hearing.

Equal access to justice to the people through efficacious justice delivery mechanism is necessary for the existence of a democratic system. In the words of justice Brennan, “Democracy’s very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.”<sup>4</sup> But, rendering of justice to the people, rich or poor, is not a minor problem but a question of fundamental character.<sup>5</sup> So, it becomes a sacred duty of the State to establish a judicial system where its people without any distinctions are enabled to vindicate their grievances and have justice without any delay on the part of the judiciary. Because, it is an essential requisite for the survival of the State. As it has been outlined by Robert G. Ingersoll that a government founded upon anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities, and all the nations that have passed away furnish a note of warning that no nation founded upon injustice can stand. From the stand enshrouded Egypt, from the marble wilderness of Athens, and from every fallen, crumbling stone of once mighty Rome, comes a wail as it were, the cry that no nation founded on injustice can permanently stand.<sup>6</sup> Keeping in view the reasons of these historical facts, our Constitution makers emphasize to ensure justice to all even to the poorest of the poor through decentralized process and inexpensive access.

The Indian Constitution as a form of social document is a significant symbol of the hopes and aspirations of the people. It is intended by the makers of the Constitution that the largees of law must belong to all, not, as now, to those who use the

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4. See S. Rao; “Legal Aid and Under Trials”, CrLJ 1993 Jour 37.

5. Fourteenth Report of Law Commission of India on Reform of Judicial Administration, 587 (1958).

6. V.R. K. Iyer; *Indian Social Justice in Crisis*, 26(1983).

Constitution for unconstitutional ends. They were quite hopeful that the poor and the needy must not be at the victims end but at the consumers end.<sup>7</sup> Their aim was to wipe every tear from every eye and it is expected that the law must go to eye and not compel the weeper to reach the urban-based lawyer and judge.<sup>8</sup> In order to achieve this holy goal, the framers of the Constitution prescribed the mandate for social, economic and political justice, in its Preamble.

The philosophy of equality enshrined in Article 14 of the constitution says that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. The provision of equality contains two principles of justice viz. equality before law and equal protection of laws. In the light of the principle embodied in Article 14, it is implied that aim of equality can be achieved only when the long established phenomena of inequalities and injustices in name of creed, caste, religion, status and wealth, are weeded out from the Indian society.

But, in reality, the guarantee of equality before law does not provide any satisfaction to a poor man if there is no one to tell him what the law is or that the courts are open to him on equal terms as to other rich persons. But, in fact, the principle of equality before law can really be made meaningful only when the price of admission to opportunities for justice can be equally paid. There can hardly be said equal access to justice where one litigant is rich and other poor because the rich litigant may purchase justice with his heavy purse while the poor may not do so. So long as socio-economic and other forms of inequality exists, the implementation of national charter

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7. V.R.K. Iyer ; *Law Versus Justice*, 11 (1981).

8. Austin Granville; *The Indian Constitution: Cornerstone of A Nation*, 26 (1972).

becomes impossible, until or unless we evolve the process of administration of justice where the economic differences is not a factor for getting justice. Expenses, which can only be affordable by parties with strong economic capacities, create an unfortunate situation for the poor litigants where they are getting priced out of court. The dispensation of justice has thus become lopsided. As a result, millions of social and economic exploited people of the country, have badly lost their trust over the existing legal system. The basic rights as enshrines in the national character become meaningless to those people. Thus, in reality equal justice for them is nothing but a formal promise.<sup>9</sup>

The Supreme Court of India expressed its views while interpreting the philosophy of rule of law envisaged in Article 14 of our National Charter and observed,<sup>10</sup>

“The rule of law does not mean that the protection of laws must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on papers and not in reality.... So far the Courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only those privileged classes

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9. S.A. Khan; *Lok Adalat: An Effective Alternative Dispute Resolution Mechanism*, 41(2006).

10. See *People's Union for Democratic Rights. v. Union of India*, AIR 1982 SC 1473 at 1478; *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

which have been able to approach the Courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the doors of justice.... They have been crying for justice but their cries have so far been in the wilderness. They have been suffering injustice silently.... But time has now come when the Courts must become the Courts for the poor and struggling masses of this country. . . . It is true that there are large arrears pending in the Courts, but that cannot be any reason for denying access to justice to the poor and weaker section of the community. No State has right to tell its citizens that because a number of cases of the rich and the well-to-do are pending in our courts, we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford, is disposed of.”

Similarly, the Supreme Court in plethora of cases<sup>11</sup> directed to the judicial system as well as to the legal profession of the country to mould their character in order to fulfil the aspirations of the weaker sections of society and for the long survival of the judicial system as an effective instrument of equal justice.

Article 38 of the Constitution is other important provision which refers to social, economic and political justice. This article emphasizes that the State should strive to promote the

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11. See *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675 and AIR 1980 SC 1579; *Babu Singh v. State of U.P.*, AIR 1978 SC 527; *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369; *Raghubir Singh v. State of Haryana*, AIR 1980 SC 1087; *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 and *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

welfare of people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall be implemented in all the institutions of the national life. The State has been directed, in particular, to strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

The spirit of Article 38 intends to secure to all its citizens, trilogy of justice-social, economic and political. The framers of the Constitution wished to secure trilogy of justice because they knew that political freedom without socio-economic justice is meaningless. The true meaning of trilogy of justice can be construed as social justice demands eradication of social inequalities based on caste, colour, race, creed, etc., economic justice rules out distinction from man to man formed on the basis of economic conditions, and political justice refers to the absence of arbitrary treatment of citizens in the political spheres.<sup>12</sup>

In order to achieve the goal of trilogy of justice, Article 39A<sup>13</sup> has been embodied in the Constitution of India with an intention to provide free legal aid and to strengthen equal justice to weaker section of society. Another important directive of the Constitution is Article 40 which is concerned with the distribution and decentralization of powers at village level. This Article says that the State shall take steps to organize village Panchayats and endow them with such powers and authority as

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12. K.S. Rao; "Law and Social Justice," *Indian Constitutional and Parliamentary Studies*, 7(1974).

13. Art. 39A read as under : "The State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizens by reason of economic or other disabilities."

may be necessary to enable them to function as unit of self government. The objective of this article is also to dispense justice at the doorsteps of all especially of villagers. In order to achieve this objective, the Law Commission<sup>14</sup> suggested that at village level the 'Nyaya Panchayats' should be constituted with the purposes to provide expeditious justice to the villagers as well as for decentralization of the system of administration of justice. So, these provisions<sup>15</sup> of the Constitution lay down emphasis directly or indirectly on the concept of justice and need of efficient and effective justice delivery system.

Keeping in mind, the Constitutional philosophy reflected in Part III and Part IV of the Constitution, the Supreme Court, as protector of the fundamental rights of a person, has played an important and significant role through its catena of judgments for the betterment of administration of justice. In the case of *Hossainara Khatoon v. State of Bihar*,<sup>16</sup> the Apex Court held that the right to free legal services is an essential ingredient of reasonable, fair and just procedure to an accused. The court directed to the Central Government and the State Government to introduce the comprehensive legal service programme in the country. Because, it is not only a mandate of equal justice implicit in Article 14 and right to life and personal liberty conferred by Article 21, but also the compulsion of the Constitutional directive embodied in Article 39A. Similarly, several land mark judicial pronouncements<sup>17</sup> have been made

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14. See One Hundred and Fourteenth Report of Law Commission of India, on Gram Nyayalaya (1986).
  15. Preamble, Articles 14, 21, 38, 39A and 40.
  16. AIR 1979 SC 1369.
  17. See *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548; *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *State of Haryana v. Darshana Devi*, AIR 1979 SC 855; *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579; *Khatri v. State of Bihar*, AIR 1981 SC 928; *Gopalanachari v. State of Kerala*, AIR 1981 SC 674; *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378; *Sukhdas v. Union Territory of Aruna Pradesh*, AIR 1986 SC 991; and *A.R. Antulay v. R.S.Nayak*, (1992) SCC 225.

by the Apex Court in which the Court declared that right to free legal aid and speedy trial as fundamental rights under Article 21.

The principles of equal justice and right to live with human dignity, therefore, can only be implemented when the law works in favour of weak and can afford him an opportunity to have an access to courts. Access to courts does not mean to give permission to enter into courts room but in reality it means to provide an opportunity to seek justice to all irrespective of their socio-economic differences. It is evident that Article 14 and 21 are not directly stated about establishment of Lok Adalats but it is as interpreted by the Apex Court, directed the State to create such conditions whereby existing economic inequalities are removed and justice in its true perspective is implemented through effective justice delivery system, as Lok Adalat. Therefore, the Constitution mandates the urgent requirement of effective and even handed justice delivery machinery not only for protection of the rights of people but also for the progressive march of the Nation, its integrity and unity, its guarantee of legality and equality.

## 2. Present Judicial System and its Drawbacks

Keeping in view the directions of the Constitution, the India has constituted its own judicial system for administering justice to all its citizens. But, the structure of the system has been based on the pattern of the British Courts system. Because it was, initially, established by the Britishers when they were our ruler. After Independence, some modifications have been made and the court structure has become pyramidal in nature. Unlike the American model of dual court system, Federal and State, India has monolithic system. The judiciary in all the States in India has practically the same structure with variations in designations. The designations of courts are

derived principally from the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 and further embellished by local statutes. These statutes also prescribes the Jurisdictions, powers, functions and procedures of these courts. At the top of the judicial system is the Supreme Court of India, followed by High Courts at the State level. There are at present twenty one High Courts in the country out of which five High Courts<sup>18</sup> having jurisdiction over more than one State/Union Territory. At the district level, there are subordinate Courts which represent the first tier of the entire judicial structure. As a general rule, criminal cases are dealt with by one set of hierarchy of Courts known as Criminal Courts and civil cases by another known as Civil Courts. The Courts system has been constituted for imparting justice to all without any hurdles.

But, inspite of all commands of the Constitution, benevolent provisions of other laws, we are not in a position to achieve the desired goal of establishment of effective judicial mechanism. Because, as above discussed the Indian courts system is designed on British Judicial system and has a limited scope in light of prevailing values and culture of Indian society. It is an evident fact that the British system of administration of justice in our country has alienated the ignorant and poor people from the system because of its foreign origin, technicality, extreme formalism, rigid rules of procedure and foreign language.<sup>19</sup> The other known reasons which affected badly the administration of justice-may be enumerated such as delay, corruption, expensive litigation, non access, less number

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18. Bombay High Court, Guwahati High Court, Kerala High Court, Madras High Court and Punjab and Haryana High Court.

19. Report of Gujarat Legal Aid Committee, 209(1971).

of courts, judges and official staff, lengthy process and lack of legal aid and legal awareness to the needy.

So in the light of these weaknesses of the existing judicial system, the question arises whether the poor and weaker section is really being benefited to the desired extent and has meaningful access to the judicial system. The effective access to justice is the basic requirement, the most basic human right, of the system, which purports to guarantee legal rights. But the problems of access to justice have many dimensions. In the broader concept, access to justice has to cover more than bare court entry and is to include the access to lawmakers, lawyers, police, enforcement agencies, capability to pay court fees, etc. Hence the poor and the downtrodden have in reality no access to justice, and at the very outset they are, therefore, denied access to legal system by the reason of their poverty.<sup>20</sup> Equal justice for them is a formal promise and a fictitious prospect.<sup>21</sup> The net result, is that the masses have no faith in justice delivery system itself, which developed in the last several hundred years, in British traditions and footprints.

After Independence, the Indian society has become more complex and impersonal and raised the problems of people in different walks of life. Due to increased urbanization, industrial and commercial growth, legal awareness, broadening government involvement in everyday life of the people and waning away of non-judicial institutions traditionally engaged in dispute resolution. In these situations, the citizens have increasingly turned to the legal system for the dissolution and solution of their disputes. But, by the passage of time, justice

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20. D.K. Sampat; *Mediation : Concept and Technique in Support of Resolution of Dispute*, 54(1990).

21. V.R. Iyer, *Equal Justice and Forensic Process: Truth and Myth*, 65(1986).

delivery system has really grown more and more complex both in terms of substance and procedure and the administration is inadequate to meet the needs of the time with the result that the grievances like, access, delay, arrears, expenses are only the tips of the iceberg.<sup>22</sup> More so, hierarchy of the courts, with appeals, revisions, reviews petitions, etc. increase the elephantine backlog of cases and the enormous congestion in courts, result in inordinate delays in the administration of justice.<sup>23</sup> The other common reasons for delays in disposal of cases are defective legislation, hasty and injudicious action by the executive, apathy to solve the problems by negotiations, inadequacy of judges, lack of adequate training for judicial officers and meaningful co-operation from the legal profession and the litigants. It has resulted in congestion and delay reducing the effectiveness of the judicial system and the justice has become distant reality and remote dream for the poor and weaker sections of the society.<sup>24</sup>

The adversary system of adjudication breeds a sort of animosity and bitter hatred, in the minds of the disputants. In this kind of approach, the litigation is considered as a battle and that too a battle of wits and not for truth between the parties to, somehow, won by the litigants. A judge merely sits as an umpire to enforce the rules of the battle. Consequently, one is necessarily a victor and the other a loser. Victor leaves the court with the sense of pride and vanquished with a sense of humiliation and bitterness. This kind of approach to the

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22. Sheel Dhairya Patil, "Justice Delivery System and Socio-Economic Realities", 14(3) Indian Bar Review, 373(1987).

23. B.P. Radha Krishna Musti, "Laws' Delays" 16(2) Indian Bar Review, 200(1989).

24. Neela Kantho Das, "Restructuring of the Judicial Administration in Orissa," AIR 1991 Jour 132.

litigation is certainly not fit for the changing needs and values of the society during the 21<sup>st</sup> century.<sup>25</sup>

The problem of unmanaged backlog of cases, mounting arrears and inordinate delay in disposal of cases in Courts at all levels lowest to the highest coupled with exorbitant expenses have undoubtedly attracted the attention of not only the lawyers, litigants, social activists, legal academics, legislature, judiciary but also everyone concerned with judicial reforms. The sole governing consideration, therefore, how to reduce the delay in disposal of cases, make the system resilient by removing its stratification, making the system less formal and truly inexpensive so as to bring justice within the reach of the poor.<sup>26</sup>

The reports of Fourteenth, Fifty-Fourth, Seventy-Seventh, Seventy-Ninth, One Hundred and Fourteenth and One Hundred Twenty-Fourth amongst other reports of the Law Commission have strongly recommended for revamping of the exiting Anglo-Saxon model with a view to interlink with participatory model which may help in deprofessionalisation of the administration of justice. The surprising drawbacks of judicial system has compelled the members of Law Commission of India to deliberate on the revival of indigenous legal system<sup>27</sup> and recommended its restructuring to provide a new model or mechanism for dissolving disputes on the principles of participatory justice. The dire need of the present day is that justice must not be operated in a sound-proof and light-proof Courts room with absolute technical procedures but justice delivery system must be redesigned, so as to accelerate the people's access to effective, quick and inexpensive justice and

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25. S.S. Sharma; *Legal Service, Public Interest Litigations and Para Legal Services*, 186(2003).

26. *Supra note 14*, 7.

27. *Id.*, 16.

in its true perspective accomplish the principles of equality and justice enshrined in our Constitution.

Keeping in view the weaknesses of Indian Judicial System, the five fundamentals (Panchasheel) which may help to radicalise and democratise the judicial remedies in consonance with the real traditions of Indian society may be mentioned as follows.<sup>28</sup>

Firstly, access to justice, civil, criminal and other, must be democratized, humanised and the doors of all be kept ajar for the citizenry, without the janitors of legal justice blocking the way and hampering the entry, initially and at higher levels, using various constraints.

Secondly, the procedure for judicial consideration of disputes must be streamlined, rationalised and rendered easy and inexpensive, informal and flexible, compassionate and realistic, and shorn of inherited technicalities, rigidities and other legal complexities mystifying the ragtag masses and rebuffing the Good Samaritan social action groups from securing for their humbler neighbours effective relief.

Thirdly, institutional diversity and remedial plurality adapted to different types of litigation and layers of people, invested with mobility, even door delivery, dynamism and ability to rely upon all sources and materials which, in broader terms of justice, equity and good conscience, and without technical interdicts bear upon searching for truth. And wider area of fact-finding by the court with a view to secure socially just relief to the suitors and restoring healing harmony among the disputants is part of procedural social justice.

Fourthly, the provision for the participation of the people in the delivery system of justice and bringing into vogue versatile modes of judicial engineering and 'hearing'

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28. *Supra note 21, 59-61.*

structuring, so that processual justice to the common people may become a fruitful reality, not romantic rhetoric. Here, we must concretise the principles of equal justice, local trials and early finality, ensuring fair facilities for all regardless of economic and other disabilities, personal or of groups. Here, again, we must shape policies on public interest law, social action jurisprudence, lawyers for the people and like seminal developments and dimensions of "judicure" and "judicare". This massive, meaningful reform exercise must be geared to changing the structure and culture of the social order in terms of Article 38 and not be cosmetic justice reform or remain deceptively cosmetic or shine as lip-stick legal aid.

Finally, preventive justice with prophylactic goals including legal literacy, local negotiated settlements, give and take adjustments, reconciliation procedures, arbitral bodies and other non-formal variants must be explored. And para-judicial agencies, para-legal personnel and radical social action cells and voluntary service clubs and organs after careful scrutiny, should be invested with statutory powers so as to function as defenders and promoters of social justice. As a broad omnipresence, two fighting faiths must pervade and enliven the operation of the legal system. Again, there must be broad judicial accountability to the nation on an institutional footing and a social philosophy in the "robbed brethren" which makes them affirmative actors, not anaemic umpires, of the Constitutional order which envisions a 'rights revolution', decentralisation of State process and socialistic pattern of society. The testament that the least grievance of the justice system, even if Might, with the panoly of patrician counsel and profound sounding submissions, be pitted against the weak man's Right, is the tribute to Processual Justice and Law India.

The law reform panchasheel demands a redesigning of our adversary process and experimenting with "appropriate" procedural technology with a view to maintain peace and amity in the society. Therefore, in the light of drawbacks of the justice delivery mechanism, there appears to be deep felt need to look forward for introducing changes in the mode, method and even the forum for settling disputes, before the existing judicial system itself is engulfed by its own weight at debris. The search for new method has been completed after the introduction of Alternative Dispute Resolution (for brevity 'ADR') mechanism which also includes the Lok Adalat system. The ADR mechanism emerges not only because the adversarial formal court system is not much effective to provide justice to a large number of masses but also because ADR is the best mode for dispute resolution for certain classes of cases.

### 3. Alternative Dispute Resolution System

In India, the system of alternative means of dispute resolution has been part of our culture heritage in the form of Panchayat System<sup>29</sup> since ancient times. But, it acquired statutory recognition only in 20<sup>th</sup> century when laws have been made and suitably amended to incorporate this method as the forum of settlement of cases. After this fruitful step the ADR mechanism as the name suggests, is proving to be an efficient alternative to the traditional courts system for redressing grievances or answering a complaint and rendering justice. ADR is mostly a non-judicial mean or procedure which refers to a set of practices and techniques to resolve disputes outside the courts. In its wider sense, this term refers to everything from facilitated settlement negotiations in which parties are

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29. A.M. Khanwilkar; "Need of Revitalise ADR Mechanism," 6 Nyaya Deep, 60 (2005).

encouraged to negotiate directly with each other prior to some other legal process.<sup>30</sup>

The main objectives of ADR system are to render economical and speedy justice to the disputants, justice delivery system less cumbersome and easily accessible to the weaker sections of the society. ADR system is not intended to replace or supplant the courts of the land but it is in addition to the traditional judicial system and supplement to it for dispensation of justice. It has some instrumental and intrinsic functions; it is instrumental in so far as it enables amicable settlement of disputes through means which are not available generally to courts and intrinsic because it enables the parties themselves to settle their disputes.<sup>31</sup> This mechanism acts through public co-operation, creative professional intervention and constructive involvement of officials and authorities concerned for imparting justice effectively. It's focus is to avoid feudalistic approach and to harmonise the relationship between the disputing parties for an amicable settlement which must be occurred out of court by using the methods of mediation, arbitration, conciliation, Lok Adalats and negotiation as dispute resolving techniques.

The positive aspects of ADR are that firstly, it involves parties directly, and the parties themselves address their problems and needs, secondly, it helps or prepares the parties to use their energy creatively and establishes a frame work for developing options for finding solutions, thirdly, it makes disputants responsible for their own decision rather than having decisions imposed upon them. As a result, the enmity or antagonism or bitterness among the parties get lessened

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30. Nomita Aggarwal, "Alternative Dispute Resolution: Concept and Concerns," 7 Nyaya Deep, 68 (2006).

31. *Ibid.*

considerably. Therefore, the ADR system is informal which settles the dispute amicably outside the scope of the formal legal system so it may be called as an alternative means of settlement of disputes. It enables accessibility of justice to the disputants without much cost and delay.

### 3.1 Benefits of ADR System

In modern era, the ADR system is a major way to provide justice to the parties of a dispute, which functions in one form or other. The benefits of the ADR system are as follows :

1. ADR system reduces the workload of the regular courts of law because generally the pending cases in courts are referred to ADR for settlement.
2. The system can be invoked at any time, immediately after dispute arises or when the matter is pending in the court of law. Similarly, it can be terminated at any time, except in case of compulsory binding arbitration, by anyone of the disputing parties.
3. The procedures employed in ADR programmes are flexible and informal in contrast to the formal and rigid procedures followed in the ordinary process of dispute resolution in courts of law. The system is not afflicted with strict application of procedural laws such as Civil Procedure Code (CPC) and Evidence Law.
4. The system of ADR can be followed without seeking legal assistance from the lawyer because it is not mandatory. But it does not mean that role of lawyer is diminished during ADR's proceeding. Because an advocate plays a very useful role for identification of issues, settlement of those issues with justification and rendering advice during presentation of his client's case.

5. The ADR mechanism provide better solution to disputes more expeditiously and less expensive. It helps in confining dispute as a private and personal matter. Generally, the disputes are resolved within one or two days because the procedure adopted by the ADR is controlled and consented by the parties. Thus, the real solution of the dispute can be arrived at by the ADR system.
6. The freedom of the disputants is not affected by ADR proceedings. Even if an ADR proceeding have not been resulted in an amicable settlement between the parties or have been failed, since it helps the parties to appreciate each other's case better.
7. ADR system finds such solution which is acceptable to all the parties to the dispute. It does not only reduce the bitterness among the parties but also helps to strengthen their relations. Because, no one will be the winner or loser if the matter settled through ADR system.
8. The ADR mechanism also helps to maintain the confidentiality in the relationship of the disputants, particularly, in business and family disputes.
9. It brings a permanent and holistic resolution of the dispute in a spirit of 'Give and Take'. Because, ordinarily, if a matter is settled through ADR then no appeal, revision or review is allowed.

These are some benefits of the ADR mechanism due to which it proves itself a better alternative to the formal court system not only in India but also in other countries of the world.

### 3.2 Methods of ADR System

On the basis of benefits of ADR mechanism and drawbacks of the existing judicial system, it is evident that the ADR is an important mechanism for settlement of the disputes which adopts the Indian traditions during its proceeding. It has various methods such as arbitration, conciliation, mediation, etc. and disputants can get justice by using any method of ADR. It is heartening to note that now the court has power under Section 89 of CPC for settlement of disputes outside the court by way of arbitration, conciliation, judicial settlement including settlement through Lok Adalat, or by mediation. Section 89 of CPC lays down that where it appears to the court that there exist elements of a settlement, which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their comments. On receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same either to (i) arbitration, or (ii) conciliation, or (iii) judicial settlement including settlement through Lok Adalat, or (iv) mediation. As per sub-section (2) of Section 89, it is stated that when a dispute is referred to arbitration or conciliation, the provisions of Arbitration and Conciliation Act, 1996 will apply. When the court refers to matter to the Lok Adalat, the Legal Services Authorities Act, 1987 will be applied and when the matter is referred to mediation, the court itself shall effect a compromise between the parties and shall follow such procedure as may be prescribed by the rules. Therefore, the court is also empowered to refer the case for settlement to anyone of the methods of ADR. The following are the main methods of ADR which are generally applicable in India :

- 3.2.1 Arbitration
- 3.2.2 Conciliation
- 3.2.3 Mediation
- 3.2.4 Negotiation
- 3.2.5 Lok Adalat.

### 3.2.1 Arbitration

The term 'Arbitration' means a settlement of a dispute by the decision of not a regular and ordinary court of law but of one or more persons who are called arbitrators.<sup>32</sup> In India, the arbitration and conciliation proceedings are conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996. But, the Act does not define the term 'Arbitration'. The definition of Arbitration has been based on the definition mentioned in Article 2(a) of UNCITRAL Model Law.<sup>33</sup> According to that provision the term 'Arbitration' is the mean by which the parties to a dispute get the matter settled through the intervention of an agreed third person. According to Halsbury Laws of England 'Arbitration' means the reference of dispute or difference between not less than two parties, for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.<sup>34</sup> Russel views that, "the essence of arbitration is that the dispute is referred by the parties for settlement to a tribunal of their own choice instead of to a court."<sup>35</sup> The arbitration is, therefore, a procedure for the resolution of dispute through the arbitrator, an independent, neutral third person who hears and considers

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32. S.C. Tripathi; *Arbitration and Conciliation Act, 1996 with Alternative Means of Settlement of Disputes*, 344-345(2010).

33. United Nations Commissions on International Trade Law, Model Law on International Commercial Arbitration which has been adopted in 1985.

34. See *Supra* note 32, 345.

35. See *Supra* note 30, 73.

the merits of the dispute and renders a final and binding decision called an award.

In arbitration, first of all, the disputants appoints the arbitrators oftenly those who possess the specialization in the subject matter concern and who will act impartially and fairly. The appointed arbitrators initiate the arbitral proceedings by adopting the less formal procedure or such procedural rules which may be formed by the concerned parties. The arbitral tribunal provides the opportunity to each party to present, examine and argue the evidences before it. After the hearing of the parties, the tribunal endeavors to make an agreement among them on such dispute and if no settlement is possible, in such circumstances, the tribunal is empowered to decide the matter on the basis of evidences and arguments produced before it and pass the arbitral award as per law. However, the tribunal, while settling or deciding the matter, is bound to follow the principles of natural justice. The award is binding, however, subject to review on limited grounds.<sup>36</sup> The process of arbitration is generally utilized in commercial and labour disputes.

### 3.2.2 Conciliation

In India, the conciliation is other method of ADR system which is also conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996. But, the Act has also not defined the term 'Conciliation'. Black's Law Dictionary defines – Conciliation as a settlement of a dispute in an agreeable manner, is a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved. According to Halsbury's Law of England, Conciliator is described as a person persuading parties to reach

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36. See the Arbitration and Conciliation Act, 1996.

an agreement.<sup>37</sup> Generally, conciliation is a private, informal process in which a neutral third person helps disputing parties to arrive at an agreement. It is a process whereby the parties, together with the assistance of the neutral third person or persons, systematically isolate the issues involved in the dispute, develop options, consider alternatives and reach a consensual settlement that will accommodate their needs.<sup>38</sup>

The Conciliator or Conciliators are appointed by the parties who actively participate in conciliation proceedings. The conciliator hears the disputants and examines the evidences produced by them before it. He assists them in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. After hearing the parties, the conciliator formulate proposal for settlement and if required, reformulate the terms of a possible settlement. When the parties accept the settlement agreement and sign on it then the conciliator authenticate it. Then the agreement becomes final and binding upon the parties of the dispute. The conciliator during conciliation proceeding is not bound to follow the Civil Procedure Code and the evidence law. However, it is essential for him to apply the principles of objectivity, fairness and justice.<sup>39</sup> In India, the process of conciliation is mainly used in labour disputes under the Industrial Disputes Act, in family disputes under the Family Courts Act and also in commercial disputes under the Arbitration and Conciliation Act.

### 3.2.3 Mediation

The term 'Mediation' connotes the act of a third party relating to the settling of a dispute between two contending parties. It is a non-binding process in which an impartial third

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37. See *Supra* note 32, 299.

38. See *Supra* note 30, 73.

39. See *Supra* note 36.

party, who is called as mediator, assists the disputants in searching a mutually satisfactory and agreed settlement of the dispute. Since mediation itself is an informal legal system, it is not governed by any statute as such. However, it is expected from the mediator to act honestly, fairly and impartially by following the principles of natural justice. In the process of mediation, the mediator provides the equal opportunity to the contending parties to present their submissions freely and friendly. Then, he attempts to facilitate voluntary resolution of the dispute of the parties and communicates the view of each party to the other, assist them in identifying issues, reducing misunderstanding, clarifying priorities and induces the parties for amicable settlement in cordial atmosphere. So, the mediator acts between the two extremes or adopts the middle course, therefore, he must maintain balance between the two halves. It is permissible for the mediator to use his goodwill, knowledge and skill while performing the act of mediating. The mediator's fundamental duty is to ensure that no party is pressurized unduly or forced to arrive at the terms of so called settlement otherwise the whole object of mediation would stand defeated.

In India, the concept of mediation is private and not broadly recognized in the statutes except in some.<sup>40</sup> In fact, mediator's settlement is a voluntary settlement of the parties with the assistance of a mediator so it's enforceability depends upon the willingness of the parties. If mediator's settlement is converted into an agreement then such agreement will be enforced like any other legal agreement. On the other hand, if the parties sign the mediator's settlement it will be final and

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40. Industrial Dispute Act, 1948, Sec. 4 and Civil Procedure Code, Sec. 89, which made it mandatory to refer the dispute for alternative mechanism which also include mediation.

binding on the parties as arbitral award under Sec. 74 and Sec. 30 of the Arbitration and Conciliation Act, 1996.

### 3.2.4 Negotiation

In common parlance the term 'negotiation' means transacting of business rather dispute management by participation of disputants or by their representatives while preserving relationship. It constitutes sharing of ideas and information while seeking mutually accepted solution. It is a communication process used to put deals together or resolve conflicts. It is a voluntary, non-binding process in which the parties control the outcome as well as the procedures by which they will make an agreement.<sup>41</sup> It is most flexible, informal and party directed, closest to the parties circumstances and control, and can be geared to each party's own concerns.<sup>42</sup> It is a technique in which discussion between the parties is initiated without the intervention of any third party with the objective of arriving at a negotiated settlement.

Negotiation is a tool which is capable to handle conflicting interests by means of participative management under mutual terms and conditions. The culture of deliberation and discussion is required to be preserved in view of class or individual conflicts, which is taking place in every walk of human life in modern times. It is well said that the negotiation is an integral part of democratic life and further it indicates civilian attitude. Because discussion for compromise causes delay and delay suspends conflict. Now, it is recognized by law as one of the modes of the alternative mechanism for solution of a dispute. Even, it is non-binding process, the outcome of the negotiation in the form of mutually acceptable agreement so it can be enforced as a contract.

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41. See *Supra* note 32, 349.

42. P.C. Rao, *Alternative to Litigation in India*, 26(1987).

### 3.2.5 Lok Adalat

The Lok Adalat is a significant mode of alternative dispute resolution mechanism. It is an old form of adjudicating system prevailed in ancient India whose validity has not been taken away even in the modern days too. It is interesting to note that the Lok Adalat system settles disputes by way of negotiation, persuasion, mediation and conciliation with the active involvement of the advocates, judges, eminent social workers and concerned parties. So, it is worthy to say that the procedure as follows in Lok Adalat is like to implement the views of our nation's father Mahatma Gandhi as he said, "I had learned the true practice of law. I had learnt to find out the better side of human nature and to enter hearts, I realized that the true function of the lawyer was to unite parties given as under. The lesson was so indelibly burnt into me that the large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby, not even money, certainly not my soul also."<sup>43</sup> The Abraham Lincoln also appreciated the persuasion method which is a major tool of Lok Adalat system for settlement of disputes.<sup>44</sup>

As, it is a known fact that the Indian courts are overburdened with the backlog of cases and the regular courts are to decide the cases involve a lengthy, expensive and tedious procedure. In such situation, the emergence of Lok Adalat is a ray of hope for needy of justice. The institution of Lok Adalat has multifarious advantages and people also have faith upon it

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43. Anurag K. Agarwal, "Strengthening Lok Adalat Movement in India," AIR 2006 Jour 33.

44. Abraham Lincoln - "Discourage litigation persuade your neighbours to compromise whenever you can. Point out to them the nominal winner is often a real loser; in fees, expenses and waste of time. As a pacemaker, the lawyer has a superior opportunity of being a good person", See *Supra* note 9, 34.

as an apparatus for social change. It bears the signature of social justice. Lok Adalats, therefore, devise for imparting expeditious and inexpensive justice as an alternative dispute resolution forum. Now, the Lok Adalat system has got the statutory recognition under the Legal Services Authorities Act, 1987 (for brevity 'the Act'). The object of the Act is to provide free and competent legal system to the weaker section of society to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on basis of equal opportunity. The preamble of the said Act emphasize that the Lok Adalats should be constituted to provide economical and competent legal services to the weaker sections of the society to perform Constitutional obligation on behalf of the State.

Therefore, the study reveals that these are the major methods of ADR which effectively functions with the object to implement the Constitutional pledge of justice social, political and economic.

#### 4. Concept of Lok Adalat

The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants or disputants for satisfactory settlement of their disputes. It is a major aspect of legal aid programme because it intends to provide equal protection of law and equal access to justice to all people, particularly the poor who lack means to knock at the door of justice.<sup>45</sup>

The meaning of the term 'Lok Adalat' in literally is 'People's Court' because the term comprises two words namely

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45. N.C. Jain, "Legal Aid, Its Scope and Effectiveness of the Legal Aid Rules in This Regard," AIR 1996 Jour 185.

'Lok' and 'Adalat', Lok stands for the people and Adalat means the court. So, it is meant people's court. The former word of the term expressing the concept of public opinion while the latter devoting the accurate and thorough deliberation aspect of decision making.<sup>46</sup> The Lok Adalat is an institution settles dispute by adopting the principles of justice, equity and fair play. These noble principles are guiding factors for decisions of the Lok Adalats based on compromises to be arrived at before such Adalats. The Lok Adalat is a voluntary mechanism which is mainly concerned with two-fold functions – firstly, it provides a quick, easy, accessible, non-technical, sympathetic and disputant friendly forum to the people for resolution of their disputes and secondly, it helps overcome the hazard of the docket explosion.

The Lok Adalat is not a people's court in the sense in which it is understood in some other legal system of the Soviet type, although literally translated a Lok Adalat means a people's court. It may be better to call it a court for people, but almost every court of whatever description is meant for the people. The Lok Adalat is not a Nyaya Panchayat or Village Nyaya Panchayat of Indian tradition. Further, it is not a Village Panchayat recognised under the Village Panchayat Acts in some States. It is not a Caste Panchayat or Jati Sabha. It is neither a Bench Court nor a statutory tribunal meant to adjudicate or arbitrate. It appears to be a unique institution meant to take care of disputes as they arise between members of whatever section of society and disputes as they go before the court, that is, the pre-litigative and the post-litigative stages. It is only an institution meant to promote voluntary settlement between parties under the auspices of a set of individuals who have, to

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46. Sayani Chakeraborty and Saumya Misra, "Lok Adalats" [www.stpl.india.com](http://www.stpl.india.com)-last visited on 5/5/10.

their credit, certain accomplishment necessary for playing a meaningful role in this process. The Lok Adalat, in its structure and memberships, is conceived in that view.<sup>47</sup> It is an amorphous crowd of concerned citizens animated by a common desire for justice and willing to experiment with consensual models of dispute resolution.<sup>48</sup> The Lok Adalat being an innovative form of a voluntary efforts for amicable settlement of disputes between the parties and not akin to regularly, constituted law courts, is expected to supplement and not to supplant the existing adjudicatory machinery.

It is true that initially, the Lok Adalats were organized under the legal services programmes. But, Lok Adalat system is not only a part of the legal aid movement while it is a unique symbol of Indian traditional participatory justice delivery system. Of course, there is no law against it. In fact, all laws and the Constitution demand mutual settlement of disputes which, under any circumstances, is superior to long drawn-out, expensive litigation. There are comparable provisions in the Civil Procedure Code, Criminal Procedure Code and in a variety of special and local laws (Family Court Act, Arbitration Act, etc.) which enable the court to attempt settlements and avoid adjudication whenever possible. The rationale behind such provisions is sound experience which tells us that an adversary adjudication ending up in one party declared the victor and the other the vanquished does not remove the dispute from society and may lead to further disputes or social tensions. On the other hand, mutually agreed settlements through Lok Adalat system contribute to greater social solidarity and better cohesion among disputants. Perhaps culturally and historically,

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47. K. Gupteshwar, "The Statutory Lok Adalat: Its Structure and Role," 30 JILI, 174 at 177-178 (1988).

48. Shiraj Sidhva, "Quick, Informal, Nyaya," LEXET JURIS, 39 (1988).

Indian people are disposed to conciliated settlements with community intervention rather than adjudicated decisions through adversarial process of formal courts.<sup>49</sup> It is an institution which strive to further the solidarity and integrity in the society by finding the amicable settlement of the dispute.

Generally speaking, Lok Adalat is a para-judicial institution being developed by the people themselves. Before the passing of the Legal Services Authorities Act, it was working in its infancy, trying to find an appropriate structure and procedure in the struggle of the common people for social justice. It is born out of a belief that even if State-supported programmes of legal aid were able to provide legal assistance to every indigent client that is not sufficient to solve the problems of the poor vis-a-vis the administration of justice. The poor do not have the staying power which litigation inevitably involves nor can they expect equal justice in all stages of the complicated and technical procedures of the law. Even the not so poor find it prudent to invoke informal processes if available to settle their disputes. In these circumstances, Lok Adalat phenomenon is an expression of the disgust and disenchantment of the poor and the middle class people in respect of the court system as it functions today.<sup>50</sup> It is a unique ray of hope for the common masses where they can get the justice in real sense without any impediments.

As the term implies, Lok Adalat (Lok Nyayalaya), is a court for the people at their door-steps with a true spirit of conflict resolution and devoid of strict formalism of the existing judicial system. It is oriented to interpret technically the matters of conflict in the fixed premises attended by the litigants, their

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49. N.R.M. Menon, "Lok Adalat : Peoples Programme for Speedy Justice," 12 Indian Bar Review, 129 at 132(1986).

50. *Id.*, 133.

lawyers, judges and social workers. Adjudication in a Lok Adalat is a people oriented, speedy and summary-styled for swift settlement of disputes on compromise terms.<sup>51</sup> Lok Adalat is a informal forum provided by the people themselves or by interested parties including social activists, legal aiders and public spirited people belonging to every walk of life.<sup>52</sup> Lok Adalats are voluntary efforts of judiciary and the litigants to invent new prospects for resolution of disputes which are not possible under the conventional justice delivery system.

The Lok Adalat system is an expeditious mode of redressal which avoid frequent adjournment and lengthy arguments, limits cross examination and evidence to relevant issues, adopts healthy attitude of co-operation between Bar and Bench and encourage compromise, settlements, reconciliation and arbitration. It is based on the principle that it is always better to settle the matter rather than to fight in the court. The system is intended to act as a safety valve to relieve the mounting pressure on the courts.<sup>53</sup> Its informality and flexibility helps to alleviate the sense of injustice amongst the litigants regarding dismissals of their cases owing to procedural, evidentiary or jurisdictional technicalities.<sup>54</sup>

Lok Adalat is one of the alternate dispute redressal forms to provide qualitative and speedy justice to a common man, thus it means a place of justice for a common man.<sup>55</sup> However, strictly speaking, a Lok Adalat is not a court in its accepted connotation, as understood by jurists but the common people may find attributes of Court in Lok Adalat. It is a new system of dispensation of justice, which has come into existence to

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51. Prabha Bhargava, *Lok Adalat: Justice at the Door-Steps*, 5(1998).
  52. Sunil Deshta, *Lok Adalat in India: Genesis and Functioning*, 106(1995).
  53. Mark William, "Impression of a Lok Adalat", *The Lawyers*, 8(1990).
  54. *Supra note* 51, 3.
  55. M.N. Morje, "Lok Nyayalaya," AIR 1984 Jour 68.

grapple with the problem of giving cheap and speedy justice to the people. It is a forum where the parties to a dispute, by voluntary efforts, aim at bringing about settlement through voluntary, convivial and persuasive efforts.

In view of mounting arrears of litigations in the existing judicial courts, the Lok Adalats are constituted not to decide the cases on the merits and demerits but rather to resolve them by persuading parties to take advantages of compromise bypassing the entire dilatory procedure of adverbial litigation.<sup>56</sup> It also helps in creating awareness among the people of their rights and obligations, by providing legal literacy in the basic laws with which people come in close contact in day to day life; in involving them in judicial processes at the grass-root level and by educating social workers to function as para-legal to enable them to give first-aid in law to the people on the spot.<sup>57</sup> This institution does not only settle the disputes but also bring awareness among the people about their rights and duties.

We should be clear in our mind as to what Lok Adalat system is, because some still look skeptically at this experiment, and some suspect it as a gimmick. Yet there are some persons who see a ray of hope in this new experiment. The Lok Adalat system is not a substitute for the present judicial system, but a supplementary to it so that the arrears of cases in courts of law may be reduced. The system is based on Gandhian principles because it gives a practical shape to the twin concept of Swaraj and Sarvodaya propounded by the Father of the Nation. The concept of the Swaraj implies not merely liberation from the foreign yoke but also emancipation from backwardness, poverty and illiteracy. The concept of

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56. Paras Diwan, "Justice at the Door-Step of the People, The Lok Adalat System," AIR 1991 Jour 85-86.

57. *Supra note* 45, 186.

Sarvodaya means well being of all, obliteration of distinction between haves and have-nots. The system casts duty upon us to work constructively and actively to uplift the downtrodden from the deep mire of poverty and ignorance in which centuries of subjugation has immersed them. The Indian Constitution incorporates the basic concept of justice to all-justice, social, economic and political and equality before law and equal protection of law.<sup>58</sup> The Lok Adalat is a weapon to achieve the above mentioned Constitutional obligation.

Therefore, the emergence of the concept of Lok Adalat as a new system of dispensation of justice is a result of social philosophy of judges, jurists and eminent scholars who are always engrossed in the thought to establish a new forum for providing inexpensive and quick justice to people. They see in this system a strong ray of hope and visualize it not as substitute for the present judicial system but as supplementary to it so that the mounting arrears are reduced and the consumers of justice may find in it a sign of relief. The concept of Lok Adalat implies resolution of disputes by discussion, counselling, persuasion and conciliation so that it dispenses speedy and cheap justice at the door-steps of disputants with their mutual and free consent. The Lok Adalats are neither parallel to, nor meant to replace the existing court system but aimed at reducing the burden of the courts and saving the parties time, expense and trauma of litigation. It is a participatory justice system which can only survive with the actively involvement of lawyers, judges, social workers, reputed persons of the society and specially the concerned parties to the dispute.

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58. *Supra note 56, 86.*

## 5. Nature of Lok Adalat

The Indian judiciary is held in very high esteem in all the developing as well as the developed countries of the world. However, there is criticism that the Indian judiciary is struggling with many problems as the mounting burden of backlog of court cases, the astronomical rise of high costs of litigation, corruption, inadequate number of judges, lack of sufficient accommodation and staff, unpredictable delays, and inaccessibilities of justice. The Lok Adalat system is only the answer of these significant problems of Indian judicial system.

Lok Adalat an important alternative method used for resolution of disputes, where justice is dispensed summarily without too much emphasis on procedural technicalities. It enables the common people to ventilate their grievances against the state agencies, other citizens and to seek a just amicable settlement if possible. Such mutually agreed settlements arrived at by the disputants in the Lok Adalats contribute to the greater social solidarity and better cohesion among litigants. The salient features of this form of dispute resolution are participation, accommodation, fairness, expectation, voluntariness, neighbourliness, transparency, efficiency, less legal technicalities and lack of animosity.<sup>59</sup> The followings are some of the colours and shades of nature of Lok Adalat.

### 5.1 Lok Adalat Implements Indian Cultural Values

The Lok Adalat is an innovative system invented for dispensation of justice in a manner compatible with the social, cultural, economic, political and administrative inheritance of India. The people's participation in justice delivery system such as Lok Adalat has prevailed from the time immemorial as a part

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59. *Supra* note 43, 35.

of our cultural heritage.<sup>60</sup> The ancient concept of settlement of dispute through mediation, negotiation or through arbitral process known as “People’s Court Verdict” or decision of “Nyaya-Panch” is conceptualized and institutionalized in the philosophy of Lok Adalat.<sup>61</sup> After independence, the Lok Adalats were not constituted under specific rules and regulations made under the legislations. The evolution of the structure of Lok Adalats has been a gradual process and the founders of the institution have not attached much importance to this aspect because their mind remained totally absorbed with the idea of resolving the disputes of the local people speedily and save their time, energy and money so far as possible.<sup>62</sup> Lok Adalat are held generally, at public places where all the people presented, participate and persuade the disputants to arrive at a compromise, by following the principles of justice, truth(Satya), equity and fairness. This kind of procedure is an unique symbol of our culture and values.

## 5.2 Lok Adalat an Integral Part of Constitution

The concept of Lok Adalat is an integral part of the Indian Constitutional Scheme mentioned in Preamble, Part III and Part IV of the Constitution. Because the Constitution mandates not only to impart justice in its legal sense, but also social, economic, and political sense. Equal justice and free legal aid is a directive principle of state policy imbibed in Article 39A which is particularly concerned with the need of qualitative and effective justice delivery mechanism. The institution of Lok Adalat has been developed in the process of implementation of commitments of the Constitution in order to mitigate not only

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60. Guman Singh, “Permanent Lok Adalat For Public Utility Services: A Statutory Land Mark,” AIR 2003 Jour 354.

61. *Supra note* 43, 35.

62. Awadh Prasad and G.N. Gupta, *Lok Adalat – A Probe Into its Organisation and Working Process*, 43(1976).

the problem of justice delays resulting from adjudication of even ordinary disputes by the normal courts procedure but also to dispense less expensive justice quickly with the conciliatory efforts. So, Lok Adalat is a way to achieve the constitution goals enshrined in different provisions.<sup>63</sup>

### 5.3 Lok Adalat Fulfils the Aspirations of Poor

The Lok Adalat system fulfils the requirement of justice of the poor, backward and illiterate people who are often intimidated and confused by the greasy, semantics and substantive and procedural laws and provides them this approachable system to resolve their disputes while securing justice. As it is observed by Justice Dr. A.S. Anand, the Lok Adalats are providing an effective solution to the three main drawbacks facing Indian justice delivery system which is catalogued in the first three alphabets of English language. These are A-Access to courts, B-Backlog in courts resulting in delays and C-Cost of litigation.<sup>64</sup>

These drawbacks were putting a fear in the mind of weakened section of society that they can not get justice in ordinary courts mechanism. But Lok Adalats are proving such means which provide justice without delay and much cost to the socially and economically backward people residing in distant villages. In this sense, it is a legal instrument which significantly helps us to achieve the goal of access to justice to all. The Lok Adalats also bring consciousness among the poor regarding the benefits made available to them by the Central and State Governments. It is really an institution to serve the poor by means of dispensing justice for the reason that the poor need not go out of his village, spend hard earned money and

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63. See Constitution of India, Preamble, Arts. 14, 21, 38, 39A and 40.

64. A. Subrahmanyam and A.S. Raju, "Distributive Justice: Indian Perspective," AIR 2004 Jour 16 at 20.

waste weeks and months in town in litigation and be exploited by lawyers.<sup>65</sup> In the present judicial system the rich people are in position to win the legal battle in the courts whereas the poor class feel frustrated due to expensive and lengthy legal process. However, the Lok Adalat brings the joy on the faces of poor litigants when the court fee is refunded to them if their matter is settled by Lok Adalat. Similarly, in pre-litigation cases filed directly in Lok Adalat, no court fee need to be paid. In this sense, Lok Adalat system provides almost free justice to all.

#### 5.4 Lok Adalat Brings Unity in Society

The concept of Lok Adalat is a concept of compromise. Here lies the importance of this mechanism. A society exists because of the give and take relations that binds its members. Social interaction implies accommodation and compromise when it is normal. Minus the spirit of accommodation, interaction perverts into dispute and confrontation. Dispute invites litigation which does not ensure speedy justice.<sup>66</sup> In India, where the entire dilatory procedure of litigation exists, the Lok Adalat system can give relief to the disputant. The purpose behind the Lok Adalat is to invoke the consciousness of the community to maintain local unity and to secure equitable and substantial justice. The amicable settlements by the Lok Adalats are not necessarily according to the legal principles. They have their eyes always on social goals like ending feuds rather pending disputes, restoring peace in the family, community and the locality and ultimately providing for destitute law or no law, and also inculcating a nature of amicable settlement of disputes among the people.<sup>67</sup>

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65. *Supra note 25, 170-171.*

66. *Supra note 51, 9.*

67. *Supra note 25, 170.*

Lok Adalats involve the people in its proceeding which infuse the spirit of unity, amity and peace among the litigants. Apart from being a method of mobilising and involving the people in the judicial process at the grass-root level, the Lok Adalat has social advantage of seeing the parties returning happily to their respective homes relieved from bickerings and enmity lingering on up to generations.<sup>68</sup> Because if the disputes are resolved through Lok Adalats, parties may be saved from protracted litigation, anxiety, botheration and bitterness, the large amount of expenses or court fees and other expenses which they are likely to incur in future litigation by way of further appeal, etc. The Lok Adalats have a direct impact on the people's mind disclosing that the common man yearning for justice leaves the place of Lok Adalat with happiness and satisfaction. In Lok Adalat, there is neither victor, nor a vanquished, but there is victory for both because of concert and conciliation resulting in peace, that a case ends in the Lok Adalat the enemy disappears. By the settling of dispute the old friends and family members re-appear.<sup>69</sup> Therefore, the Lok Adalat does not only provide the happiness to the disputants by resolution of their dispute but also bring unity, peace and order in the society.

### 5.5 Lok Adalat a Participatory Justice System

Lok Adalat is one of the fine and familiar forums which has been playing an important role in settlement of disputes. Some people equate Lok Adalat to conciliation or mediation, some treat it with negotiation or arbitration. Those who find it different from all these, call it "People's court". It involves people who are directly or indirectly affected by dispute

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68. R.K. Mahajan; "Practical Evaluation of Himachal Pradesh Experiment," AIR 1988 Jour 136.

69. *Supra note 25*, 171.

resolution.<sup>70</sup> Lok Adalat is an appropriate and well-known method of participatory justice in which people and judges participate and resolve their disputes by discussion and mutual consent.<sup>71</sup>

The Lok Adalat works as an additional and complementary arm for existing judicial system. Judiciary through the activist approach has tried to revive the old strategy of conciliation in the form of Lok Adalat for amicable settlement of dispute. It may justifiably be said that the concept of Lok Adalat is the brain child of necessity of Indian Judicial system. It is a judge-inspired, judge-induced, judge-aided and judge guided strategy which can easily be understood and appreciated by the people. Basically, this strategy aims at providing quick and cheap and efficacious justice along with reducing the backlog of cases pending in courts, with an idea that in future they prefer the settlement even before the institution of cases in courts. The whole functioning is based on the free and mutual consent of the parties to dispute and persistent persuading pursuits of judiciary, social organisations and voluntary organisations.

Generally, a Lok Adalat is inaugurated by senior judicial officer. The audience at a Lok Adalat usually include local officers, members of Bar, disputants, law students and people from nearby places. The members participating in justice process through Lok Adalats are called, generally, conciliators, who are usually drawn from amongst serving or retired judicial officers, advocates/law teachers and social workers.<sup>72</sup> These conciliators try to arrive at a fair settlement between the parties. Besides of the conciliators, the other persons presented in the Lok Adalat proceeding, also strive to convince the parties

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70. *Supra note 43*, 35.

71. *Supra note 45*, 86.

72. B.R. Sharma, "Lok Adalat in India: Some Reflections," AIR 1994 Jour 167 at 168.

to settle the dispute. For this purpose, they actively participate in the discussions with the conciliators and the parties.

The Lok Adalat system does not produce any hurdle in the working of ordinary courts. Because the date and place of holding a Lok Adalat are fixed about a month in advance, generally, a Saturday or Sunday or some other holiday with the objective that the work of regular court may not suffer due to holding of Lok Adalat. Lok Adalat is a people oriented and people's participatory forum. The people must participate in working of a Lok Adalat. So, the information about the holding of Lok Adalat is given wide publicity through press, posters and, where possible, through radio, television and cinema slides.<sup>73</sup> Therefore, Lok Adalat represents itself as a participatory justice system where not only judges and lawyers but also a common man can participate in the process of dispensation of justice.

#### 5.6 Wide Jurisdiction of Lok Adalat

The Lok Adalat system is basically meant for the resolution of people's disputes that are pending in the courts or which have not reached the court, through conciliatory techniques and voluntary actions.<sup>74</sup> In this sense, it has the widest possible jurisdiction to deal with any matter, whatever be its legal character and in whatever court it might be pending or falling within its jurisdiction, including the highest court. But, the Lok Adalat has no jurisdiction in respect of the non-compoundable criminal cases under any law.<sup>75</sup> Thus, the serious crimes are kept outside the ambit of Lok Adalat. Generally, the Lok Adalats settle the disputes concerning mutation of land, encroachment on forest lands, family or

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73. *Ibid.* and *Supra* note 52, 110.

74. The Legal Services Authorities Act, 1987, Sec. 19(5).

75. *Id.*, Proviso of Sec. 19(5).

matrimonial disputes, land acquisition disputes, cases relating to insurance, bank loan cases, labour disputes, dishonour of cheque cases, revenue cases, motor vehicles accidental claims cases, and compoundable criminal cases, etc. For the selection of cases fit for reference to Lok Adalat, no fixed criteria or rules have so far been laid down by the authorities concerned. However, judges are competent enough and well-equipped to examine the cases in which the compromise is possible. Such kinds of cases are referred to Lok Adalat by the courts. So, the Lok Adalat has wide jurisdiction to settle the all kinds of disputes except the dispute related to non-compoundable offences.

#### 5.7 Lok Adalat based on Democratic Principles

The Legal Services Authorities Act fulfills the two objectives namely, granting legal aid services and organising Lok Adalats for providing justice to the people at their door-steps. But the legal aid services are provided only to the eligible persons as per the provision<sup>76</sup> of the Act. However, in the case of Lok Adalat, the criteria for eligibility for legal aid are not applicable for the very good reason that it should be available in all cases to all persons irrespective of income of the parties, its object being speedier justice at less expense to all parties to the litigation, actual and potential.<sup>77</sup> It means that Lok Adalat can take cognizance of matters involving not only those persons who are entitled to avail free legal services but of all other persons also, be they women, men or children and even institutions. In this sense, it provides equal opportunity to all irrespective of caste, religion, sex, race and wealth to present the dispute before Lok Adalat for settlement.

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76. *Id.*, Sec. 12.

77. *Supra note 47.*

The Lok Adalats function purely on democratic principles. There is no pressure upon parties to settle the disputes through Lok Adalats. The Lok Adalat is an institution of Indian justice delivery system in which the cases are referred by consent of disputants or by one of the parties or by court *suo motu* or by the concerned authority or committee.<sup>78</sup> Before such reference, a reasonable opportunity of being heard is provided to the parties except where there is a consensus between the parties.

The Lok Adalats act with utmost expedition in bringing about a compromise and is guided by legal principles and the principles of justice, equity and fair play. The compromise implies some element of accommodation on each side. It is not apt to describe it as total surrender. A compromise is always based upon the mutual adjustment of the parties. If no compromise or settlement is or could be arrived at, no order can be passed by Lok Adalat other than Permanent Lok Adalat. Permanent Lok Adalat is empowered to decide the dispute, where the parties fail to reach at an agreement.<sup>79</sup> In case if Lok Adalat finds that it is not in a position to pass an award because efforts to bring about a compromise proved unsuccessful, it is open to the parties to continue such suit or proceeding so transferred from the stage at which it was earlier transferred to Lok Adalat. Similarly, the concerned party may institute proceedings in the proper court if not already done at the time of application to the concerned authority or committee for the settlement of case through Lok Adalat.<sup>80</sup> Thus, the Lok Adalat provides justice to all irrespective of their caste, religion, sex, wealth and income. During its proceeding, it can not impose pressure upon the parties to the dispute to settle the

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78. *Supra note 74*, Sec. 20(1) and (2).

79. *Id.*, Sec. 22C(8).

80. *Id.*, Sec. 20(4),(5) and (6).

dispute. Settlement always depends upon the free and mutual consent of the parties. So, the compromise can only be made if the concerned parties give their consent.

### 5.8 Uniformity in Structure and Procedure

Before the passing of the Legal Services Authorities Act, the peculiar feature of Lok Adalat was that it had neither uniformity in structure nor in its procedure. The procedure followed by these Lok Adalats was different in different states as they were sponsored, patronised, financed and guided by Legal Aid Boards and Legal Aid Committees of respective States.<sup>81</sup> Moreover, the organization of Lok Adalat was quite flexible and informal. The Lok Adalat was consisted of two or three persons, one of them might be a retired judge or senior retired civil servant or an advocate or a law teacher, and others were social workers and eminent persons of the locality. These were carefully chosen by the Legal Aid Committee on the basis of their record of public service, honesty and respectability among local population.<sup>82</sup> Now, the Lok Adalats are organised by various authorities and committees<sup>83</sup> at such intervals and places and areas under their jurisdiction as they think fit.<sup>84</sup> A Lok Adalat is consisted of serving or retired judicial officers and other reputed persons, usually, a lawyer and a social worker.<sup>85</sup>

The procedure, before the Act, followed by Lok Adalats was informal and varied as the nature of the problems and the culture of the community of the disputants. There could be variation in approaches and procedures depending upon whether the place is urban, rural or tribal and whether the

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81. *Supra note* 49, 133.

82. *Supra note* 56, 87.

83. Every State Legal Services Authority, Supreme Court Legal Services Committee, High Court Legal Services Committees, District Legal Services Authorities and Taluk Legal Services Committees.

84. *Supra note* 74, Sec. 19(1).

85. *Id.*, Sec. 19(2) and (3).

dispute pertain to property, personal relation or public administration.<sup>86</sup> In terms of procedure in the Lok Adalats, there was no set pattern. Now a days, the Lok Adalats are not bound to follow the strict applications of procedural laws, particularly, the Civil Procedure Code and the Evidence Act. The Lok Adalat is empowered to specify its own procedure for determination of any dispute coming before it. The Lok Adalats are always flexible with regard to the rules and procedure because the parties come to their own term with little assistance here and there, and they are able to reach a particular decision if they consider it to be just and acceptable.<sup>87</sup>

The Lok Adalat method is quite inexpensive. It discards the unnecessarily imposes financial burden on the disputants. It assists the poor people to get prompt and speedy justice at the local level and affords opportunity to have easy access to the Lok Adalat. In this system one need not approach the advocates who are an unavoidable feature in Law Court. He even need not get the plaint drawn up. The Lok Adalat may take into consideration an oral submission made by the party before it. One is also saved of the expensive and the trouble, he has to take in getting the summons served on the opposite parties.<sup>88</sup> The disputants are saved of the complications of law and legal technicalities and cumbersome procedures adopted at various stages of litigations by the regular Courts, in respect of the framing of the issue of the disputes, producing witnesses, pleadings and arguments putforth by the advocates before the courts and the final judgment and eventually execution of the

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86. *Supra note 49*, 135.

87. A.M. Ahmadi, "Workshop on Lok Adalat – An Appraisal," 12 Legal Aid Newsletter, 8(1992).

88. *Supra note 62*, 43.

decree awarded by the judge.<sup>89</sup> The idea behind the entire concept of Lok Adalat is that it should enlighten the outlook of the disputant and inculcate in them a spirit of “forgive and forget” and enable them to look to their social problem from a new angle of vision and changed attitude of life.<sup>90</sup>

Therefore, in the Lok Adalat, there is no strict application of cumbersome procedural laws like Civil Procedure Code, Criminal Procedure Code and the Evidence Law. The procedure is simple, quick, flexible, informal and devoid of all technicalities and baffling formalities but moulded in consonance with the exigencies of the situation. Its non-controversial or non-adversarial tendency has some degree of uniformity in approach and methods in order to ensure the fairness and justice. Its informal procedure conformity only to the requirements of principles of natural justice, when the key note is justice rather than law. The procedure and working of the system is also modified in accordance with the local needs of disputants. However, the Lok Adalats are bound to follow the principles of justice, equity, fair play and other legal principles.<sup>91</sup>

### 5.9 Role of Lawyers in Lok Adalat

It is, generally, said that the lawyers frequently request for adjournments on the flimsiest of grounds which obviously delay in the process of dispensation of justice. Therefore, in the Lok Adalat system, it is not compulsory for lawyers to be appeared on behalf of their parties. The parties are free to settle the matter on the basis of mutual consent. But lawyers are also not prohibited to appear before a Lok Adalat. Lawyers have been showing a commendable sense of participative co-

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89. *Id.*, 54.

90. *Id.*, 55.

91. *Supra note* 74, Sec. 20(4).

operation in the endeavours aimed at holding successful sittings of Lok Adalat.<sup>92</sup> When a case is referred from a court to Lok Adalat for settlement, the lawyers of the concerned parties are under legal as well as moral obligation to participate in the Lok Adalat proceedings. The appearance of lawyers before Lok Adalat are expected by the society to demonstrate enough commitment to offer their expertise for the achievement and advancement of the noble mission of Lok Adalat. Lawyers are helpful in drafting out the terms of the compromise or settlement, a better marshalling and appreciation of the facts which sometimes may be complex and persuading the parties for settlement of the dispute.<sup>93</sup> Therefore, the role of lawyers in the Lok Adalat is simply of advisory nature and help their clients to arrive at a compromise through their sweet and sincere efforts.

#### 5.10 Lok Adalat Depend upon Members Ability

Assurance of a fair trial is the first imperative of the dispensation of justice.<sup>94</sup> The decision making process should be fair, transparent and open.<sup>95</sup> The Lok Adalat is trite forum which implement the above stated objectives on the basis of principles of honesty. Lok Nyayalaya or Lok Adalat contemplates to hear and settle the dispute in language of the people, in the public presence.<sup>96</sup> The procedure, generally, followed by Lok Adalat as a conciliation body, is that it first of all, calls both the parties to disputes for presentation of their case before it. It asks for elucidation on the points of disputes and afford opportunities for both the parties to explain their

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92. D.K. Sharma, "Lawyers and Lok Adalat," AIR 2004 Jour 251.

93. *Id.*, 252.

94. *Police Commissioner, Delhi v. Registrar, Delhi High Court*, AIR 1997 SC 95.

95. *Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd.*, (1997) 1 SCC 53.

96. *Supra* note 54.

view points. At this stage, the members of Lok Adalat explain the position of law hearing on the point and clarifies the doubts of parties in respect of their mutual rights and duties. They endeavour to provide guidelines to parties for arriving at truth of the matter and take care that interests of neither party are put on stake while reaching at a settlement. It is an old saying that judgment is not only to be had but also should be felt. Therefore, the members try their best to set an equilibrium between the once warring factions and see that the interests of one party are not sacrificed while safeguarding the interests of the other one. An agreement is finally drawn on the basis of the free consent of the parties. Both the parties should have the feeling of satisfaction that they have been provided full and fair justice.

Voluntary acceptance of the solution to the dispute is the essence of the conciliation. Nothing can be imposed on the parties to the dispute. Power and authority are the very anti-thesis of the spirit in which really effective conciliation is carried on. It is primarily the responsibility of the conciliator that he must keep negotiation/talks moving towards settlement. For this, he must encourage the parties to explore fresh avenues and choices, offer suggestions and alternative proposals, guide the discussions by feeding valuable information, etc. During this process, the great emphasis is laid on the traditions, culture, economic and social status, advantages of compromise and social values of the parties because if due weightage is not given to the economic and social status during the time of compromise there remains great probability of ego clash which would definitely result in filing of another suit in the law courts.<sup>97</sup>

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97. *Supra note 51, 54-55.*

During the proceeding of Lok Adalat the members must act as a neutral, experienced, intelligent, objective and benevolent participant in the efforts of the parties to negotiate settlement, knowing fully well, that they do not have a feeling of irritation and frustration in the event of no settlement. Their role is to clarify law and by gentle persuasion to convince the parties how they stand to gain by an agreed settlement.<sup>98</sup> They must attempts to inculcate the sense of reasoning in the minds of parties to dispute by having deep insight into their minds after the study of their psychology, their leanings and prejudices. They must make all possible alternative proposals for mutual settlement but must not impose their decision on the disputants. The method adopted by them is of persuasion, legal and factual guidance, advice, mutual give and take. They have to proceed to dispose of the case and arrive at a compromise or settlement between the parties in an expeditious manner, guiding itself and its procedure according to the principle of justice, objectivity, equity and fair play.<sup>99</sup>

Keeping in view the process of working of Lok Adalat, it would not be wrong to say that the Lok Adalat system and its success as a forum for settlement of disputes, to a large extent, depend upon the availability of dedicated persons who may have the necessary devotion and dedication for promoting the cause of social justice and social solidarity through orderly processes-humane, just and consensual.

#### 5.11 Lok Adalat as a Court

Lok Adalat means people's court but, in its accepted connotation, it is not a court. It is a alternative dispute resolution forum where voluntary efforts intended to bring

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98. *Supra note 49*, 132.

99. J.S. Bisht, "Lok Adalat: A Mechanism of Alternate Dispute Resolution," 31 Indian Bar Review, 165 at 179(2004).

about settlement of disputes between the parties are made through conciliatory and persuasive efforts. However, the Lok Adalat has got the status of a Civil Court in respect of the matters<sup>100</sup> such as summoning of witnesses, examination of witnesses, discovery of documents, reception of evidences on affidavits, and requisitioning of public record or documents. All proceedings before a Lok Adalat for the determination of the dispute are deemed to be judicial proceedings.<sup>101</sup> The award of Lok Adalat is deemed to be a decree of Civil Court and final and binding on all the parties to the dispute. No appeal can be made to any Court against such award of Lok Adalat.

So far as the implementation aspect of the decision of Lok Adalat is concerned, the moral sanctity, popularity and approval enjoyed by the Lok Adalat have helped it in getting its decision executed and implemented by the disputants. The Lok Adalat does not believe in the coercive method, but relies solely on its moral and social force to have its decisions carried out.<sup>102</sup> Therefore, most of the disputant voluntarily takes upon themselves the responsibility to fulfil the obligations imposed upon them by the Lok Adalat either because of public pressure upon them or because of the self-realisation of any mistake or offence committed by them and the necessity of rectifying that mistake by fulfilling the obligation imposed by the Lok Adalat in that respect.<sup>103</sup> In present days the Lok Adalat system is governed by Legal Services Authorities Act. As per that Act, the award of Lok Adalat is treated as a decree of civil court from which the case is referred to Lok Adalat for settlement, so, such award can be executed by such court in accordance with the provision of CPC.

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100. *Supra note 74*, Sec. 22 (1) and (2).

101. *Id.*, Sec. 22(3).

102. *Supra note 62*, 74.

103. *Id.*, 76.

Keeping in mind the powers of Lok Adalat, it will not be wrong to say that Lok Adalat has some features of the Civil Court but it is certainly distinct from the law Courts. Lok Adalat cannot pass the order *ex parte* decree and order to dismiss any case for default and sentences in the manner the regular Courts does. The presence of the opposite party in the Lok Adalat is essentially necessary if any dispute is to be heard and settled by it. It cannot pass any order for the confiscation of an offender's property if he avoid to be present before the Lok Adalat. The Lok Adalat cannot take any steps to make one's presence obligatory. The power to summon the party is not at all vested in the Lok Adalat, rather it all depends only on the extent of social and moral pressure which it can exert on the disputant.<sup>104</sup> Because the working of Lok Adalat at all stages of its proceeding depend upon the free consent of parties so it can only persuade the parties to settle the dispute through it but can not compel the party to come and settle the matter.

#### 5.12 Lok Adalat Strengthen Human Relations

Lok Adalat system is not visualized as a supplant to court system but supplementary machinery to get resolved pending cases in the courts of law. Resolution of cases through Lok Adalat is a composite endeavour.<sup>105</sup> The true basis of settlement of dispute by the Lok Adalat is the principle of mutual consent and voluntary acceptance of the solution with the help of conciliator. The basic purpose of Lok Adalat is not merely to give justice based on evidence, law, and legal know-how but the approach is to the very human problem itself.

The concept of Lok Adalat revolves around the principle of creating awareness amongst the poor, innocent, illiterate and ignorant people to the effect that their welfare and interest

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104. *Id.*, 124.

105. *Supra note* 45, 186.

really lies in arriving at immediate and peaceful settlement of their dispute. It is to make them conscious of the fact that the only suitable remedy with them is in getting rid of their case by a single decision through, compromise. It will save not only their hard-earned money, time, but multiplicity of litigation, by being involved in appeal, review, revision, remand, etc., the never ending chain. It is the basic philosophy of the Lok Adalat to see that the tension, enmity, disquietude of the party are shunned away by resolution of their case. Lok Adalat is to generate an environment of friendship by making the people to understand that their relief lies not in enmity by winning the case but by resolution in mutual friendship and brotherhood. It will create an atmosphere of goodwill amongst the parties, which in ultimate analysis will bring peace in the society at large.<sup>106</sup>

The Lok Adalat is an unique institution which does not only handle the disputes of the parties but also contributes to their well-beings in several other ways. It meets the aspirations of the people by getting them economic and social justice. The main focus of Lok Adalats is to settle the dispute in such a manner that the mutual relations of the disputants remains practically the same as existed before the commencement of such a dispute. They aim not only at the restoration of normal relations between the disputing individuals and families but also at a better and more lasting solution of the problem so that their future relations might not get strained at a slight provocation and a tense situation in the immediate future might be avoided.<sup>107</sup> Moreover, the Lok Adalat also lays a great emphasis on the social aspect of the dispute. Obviously, it holds that the aim of justice is not to pronounce a barren

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106. *Supra note 25*, 173.

107. *Supra note 62*, 54.

decision on the basis of law of evidence only but that it should also have two aims and objectives in its decision making process: (a) The wrong doer might repent and mend his ways and may not repeat the wrong, and (b) the tension between the two parties may be minimised so that their mutual relations might again get normalised. It always aims at the removal of misunderstanding at the initial stage so that any trivial disputes might not grow into proportions and reach a point of no return.<sup>108</sup>

The main aim of Lok Adalat is humanitarian aspect and the basic purpose of the Lok Adalat is not to impose the justice but handling over justice with mutual and free consent of the parties. The people are awakened to their own rights and duties vis-a-vis the rights and duties of others. There is a rational thinking on the part of both the parties to a dispute, without going towards adversary system of proving or disproving guilt. It is seen that both the parties accept a solution as agreed to by them or suggested by the members of Lok Adalat. In this solution, actually none of the disputants is held totally guilty or totally innocent and the dispute or conflict is resolved through conciliation on the give and take' basis. The Lok Adalats act as a middle agency in finding out a solution which is beneficial and agreeable to both the parties. The procedure and results are really determined in a significant manner by the attitude of the disputants.<sup>109</sup> By adopting this attitude, the Lok Adalats strengthen the human relations in society. Thus, the significant objective of Lok Adalat is to settle the disputes by discussions, counselling, negotiations, conciliation and by adopting persuasive commonsense and humane approach to the problems of the disputants.

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108. *Id.*, 55.

109. B.R. Patil; *Conciliation in India*, 22(1977).

On the basis of features of the Lok Adalat, it is revealed that the main focus of Lok Adalat through its dedicated conciliators, is to settle the dispute by adopting the persuasive and conciliatory rules. It does not use the coercive methods for bringing the graceful settlement between the disputants. The award of Lok Adalat is based on the compromise of the parties with their free and mutual consent. The Lok Adalat system does not only fulfil the aspiration of the weaker section of the society but also implement the Indian cultural values and constitutional mandates. It is an unique forum which strengthens the human relations and values and helps to establish the peace, order and unity in the society.

## 6. Lok Adalat and other Dispute Resolution Systems

Delay in justice and expensive legal procedure have been perennial features of the justice delivery machinery of the country. As a result, there are various other systems involved in the process of dispensation of justice such as Gram Nyayalaya, Khap Panchayat and the Plea Bargaining. They have some similar features with the Lok Adalat. They also emphasize on the settlement of the dispute with the purpose to reduce the workload of the courts and to render justice to the disputants at their locality or village. It is desirable to mention here about the comparative study of these system with the Lok Adalat system.

### 6.1 Comparison of Gram Nyayalaya and Lok Adalat

Gram Nyayalaya and Lok Adalat are two different forums constituted with the object to impart justice to the disputants at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities.

The Gram Nyayalaya Act, 2008 was enacted by Parliament in order to establish the Gram Nyayalayas at grass root level.

The Act governs the constitution, establishment, powers, jurisdiction procedure and position of Gram Nyayalayas. The State Government is authorized to establish Gram Nyayalayas for every Panchayat or a group of contiguous Panchayats.<sup>110</sup> Such Nyayalayas are empowered to decide both kind of matters civil and criminal in the manner and to the extent provided under this Act.<sup>111</sup> The Gram Nyayalaya upto some extent shall follow the various provisions of the Limitation Act, 1963, Code of Criminal Procedure, 1973 and Code of Civil Procedure, 1908 during its proceeding.<sup>112</sup> It is obligatory for applicant to pay the prescribed fee for the institution of civil case before the Gram Nyayalaya.<sup>113</sup> It will apply the special procedure for deciding the civil disputes.<sup>114</sup> It will not follow strictly the provisions of the Evidence Act, 1872 while receiving as an evidence, any report, statement, document, information or matter about its admissibility or relevancy.<sup>115</sup> It is also empowered to dismiss any case for default or to proceed *ex parte* and to set aside such order. It is bound to dispose of the civil suit within six months from the date of its institution.<sup>116</sup> The judgment in every suit, trial, claim or dispute shall be pronounced in open court by it after conclusion of hearing.<sup>117</sup> Where there is a reasonable possibility for settlement of civil dispute, then it is a duty of Gram Nyayalaya to make efforts for conciliation and settlement of such dispute.<sup>118</sup> Plea bargaining proceeding can be initiated before Gram Nyayalaya as per the provisions of Cr.P.C.<sup>119</sup>

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110. The Gram Nyayalaya Act, 2008, Sec. 3.

111. *Id.*, Sec.11.

112. *Id.*, Secs.15, 18, 19, 21 and 23.

113. *Id.*, Sec.24.

114. *Ibid.*

115. *Id.*, Sec.30.

116. *Id.*, Sec. 24.

117. *Id.*, Secs. 22 and 24.

118. *Id.*, Sec.26.

119. *Id.*, Sec.20.

The Gram Nyayalaya is empowered to execute its own judgment which shall be deemed to be a decree of Civil Court. For this purpose, it shall have all the powers of a Civil Court. It shall not be bound by the procedure of CPC while executing the decree but it shall be guided by the principles of natural justice.<sup>120</sup> An appeal shall lie against the judgment, order and sentence of Gram Nyayalaya to the Court of Session in criminal cases and to District Court in civil cases only in accordance with the provisions of the Gram Nyayalaya Act, 2008.<sup>121</sup> It means limited right of appeal is provided to the affected party against the decision of Gram Nyayalaya. So, it can be said that the establishment of Gram Nyayalaya is a welcome step to dispense justice at the village level which was the noble wish of Mahatama Gandhi. The success of Gram Nyayalayas will be evaluated in the future on the basis of its working because now it is like a new born child who has to grow.

On the other hand, Lok Adalats are working effectively as one of the alternative tools for dispute resolution in accordance with the provisions of Legal Services Authorities Act, 1987. Lok Adalats are organised by various legal services authorities or committee<sup>122</sup> at such intervals and places and for exercising distinct and separate jurisdiction over areas as it thinks fit.<sup>123</sup> It has power to determine the civil, revenue and compoundable criminal cases, even these are pending before courts or at pre-litigation stage. Permanent Lok Adalat are established for the settlement of disputes related to public utility services and compoundable criminal offences which have not brought before the courts.<sup>124</sup> It is a participatory justice mechanism in which

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120. *Id.*, Sec.25.

121. *Id.*, Secs. 33 and 34.

122. *Supra note* 83.

123. *Supra note* 84..

124. *Id.*, Sec.22B.

judges serving or retired, advocates and social workers become the part of Lok Adalat or the Permanent Lok Adalat and persuade the parties to settle dispute in friendly atmosphere.

Lok Adalat and Permanent Lok Adalat, both try to settle the dispute amicably but if the dispute is not settled then the Lok Adalat has no power to decide it. While the Permanent Lok Adalat can decide such dispute on merit if not settled.<sup>125</sup> Both kinds of Lok Adalats are guided by principles of natural justice, objectivity, fair play, equity and other principles without being bound by the Code of Civil Procedure and the Evidence Act. It enjoys the same powers as that of a Civil Court.<sup>126</sup> The award passed by Lok Adalat or Permanent Lok Adalat is deemed to be a decree of Civil Court and final and binding on the parties to dispute and no appeal is provided therefrom.<sup>127</sup> It means the litigation comes to an end if case is determined by Lok Adalat while Gram Nyayalaya does not end the litigation process due to appeal provisions in the Act. Lok Adalat's main focus is only to make a compromise among the parties to dispute while Gram Nyayalaya decide the matters on the basis of evidences as other formal court does. Keeping in view the Constitution, powers, procedures and jurisdiction of Gram Nyayalaya, it seems that it is a court which is established at Gram Panchayat level.

## 6.2 Khap Panchayat vis a vis Lok Adalat

“Who rules Haryana? The Law or the Khaps?” and “Punish the Khaps, Haryana Govt. is not acting tough”, these are the editorial titles which indicate about the present working of khap Panchayats in Haryana and other states. Khap Panchayats are in news because of number of cases in which these panchayats have openly defied the law of land by issuing

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125. *Id.*, Sec.22C(8).

126. *Id.*, Sec.22.

127. *Id.*, Secs. 21 and 22E.

illegal diktats, which has increased manifold. Attack on young people, dalits and progressive minded people have become order of the day. These panchayats are not working against female foeticide, increasing drug addition problem in youth, problem of dowry, increasing costs of marriages and social and family functions, criminals, unemployment, inflation, even in connection with crisis in agriculture and other socio-economic problems.<sup>128</sup> But they are only challenging the law of democratic government by passing the orders of social boycotts and excommunication on the basis of feudal values. They proclaim to represent themselves as the voice of society. Now, the Khap Panchayats are pressurizing the Government to grant them the status of Lok Adalats so that these are bestowed with judicial powers.<sup>129</sup>

Keeping in view these developments of Khap Panchayats, it becomes essential to describe the constitution and nature of these panchayats and compare to it with the Lok Adalats. In this context, it may be submitted that according to the social scientist Prem Choudhary, Khap Panchayats are caste panchayats. But the anthropologist M.C. Pradhan regards them as clan council and the sociologist Khajan Singh considers them to be multi village panchayat. However, all of them agree that they are traditional panchayats<sup>130</sup> but not as the elected Panchayats under the Panchayati Raj Act. The Khap Panchayat was organized and constituted on the basis of gotra or a number of closely related gotras which administered in the republics of Northwestern Indian States such as Haryana,

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128. Jagmati Sangwan, "Khap Panchayat: Signs of Desperation" at <http://beta.thehindu.com/opinion/lead/article424506.ece>. visited on 10/6/2010.

129. *The Tribune*, dated August 2, 2010 at 3.

130. Ranbir Singh, "Khap panchayats continue to have a strong hold over Jat-dominated villages in Haryana" at <http://www.hinduonnet.com/thehindu/fline/fl2617/stories/20090828261701700.htm>-visited on 12/6/2010.

Rajasthan and Uttar Pradesh since ancient times.<sup>131</sup> Khap is a term for a social-political group which is also used in geographical sense. The Sarv Khap Panchayat represents all the Khaps. In ancient time, it was a political organization, composed of all clans, communities and castes of the region. But, now, the peculiar feature of Khap Panchayats is that they are institutions of Jat Community which represents all the gotras of the community. It is a social body which helps in settlement of disputes out of courts within the boundaries of laws and social norms.<sup>132</sup>

Whenever there is a problem or dispute, a gathering of the Khap Panchayat is called and every member of Khap has a right to attend, express his views and casts his vote for or against the proposal. All decisions of these Panchayats are taken after open hearing, full and voluntary expression of views and consensus on votes. Even if one of the contending parties considers the Panchayat decision unfair but it is accepted and complied with without any question.<sup>133</sup> In ancient and medieval period, the Khap Panchayats worked effectively as a dispute resolution system and provided justice speedily and without cost to the litigants and participated in various battles in the region.<sup>134</sup> But, in 21<sup>st</sup> century, it is being criticised on the grounds of its involvement in illegal activities and disturbing peace of the whole society.

It is true, the Khap Panchayat functions as a dispute resolution institution but only based on the feudalistic approach and generally, against the modern, democratic and secular political system. These Panchayats follow their own rules and they adjudicate not according to laws of land but

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131. Khap at <http://en.wikipedia.org/wiki/khap-visited> on 4/7/10.

132. *Supra note* 128.

133. *Supra note* 131.

134. *Ibid.*

summarily according to their own law which they deem fit. The decisions of these Panchayats can not be enforced by law but can only be implemented due to social pressure and some time due to physical force used by members of these Panchayats. It is not a Constitutional or statutory body so it is not governed by any statute. If these bodies do not follow the Constitutional mandates such as equality, justice, integrity fraternity and principle of rule of law, then these bodies must be declared as unconstitutional and illegal. On the other hand, Lok Adalats are people, judges, lawyers, social workers and parties supported institutions. These are governed by the Legal Services Authorities Act, 1987. These bodies provides quicker and cheap justice to the people in accordance with the provision of the Act and rules and regulations made for the purpose to implement the object of the Act. Thus, Lok Adalat is a statutory body whose decision can be enforced by law as the decision of the court of law.

### 6.3 Plea Bargaining and Lok Adalat System

Plea Bargaining as a method of disposing of pending cases and rendering justice is extremely new to Indian Criminal Justice System. To reduce the delay in disposal of criminal cases, as recommended by the Law Commission of India in its 154<sup>th</sup> Report and also by the Malimath Committee Report on Reforming Criminal Justice system, the provisions of Plea Bargaining have been incorporated as a new chapter XXI-A into Code of Criminal Procedure through the Criminal Law Amendment Act, 2005. A Plea bargain is an agreement in a criminal case in which a prosecutor and a defendant arrange to settle the case against the defendant. The defendant agrees to plead guilty or no contest in exchange for some agreement from the prosecutor as to the punishment. A plea bargain can also include the prosecutor agreeing to charge a lesser crime, and

dimissing some of the charges against the defendant. In most cases, a plea bargain is used to reduce jail sentence, time or fines associated to the crime being charged with.<sup>135</sup>

It is needful to make a mention that the chapter related to Plea Bargaining is applied in respect of an accused against whom, if the report about the commission of an offence has been forwarded by the Police Officer under Section 173 of CrPC or if a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of punishment for life or of punishment for a term exceeding seven years has been provided.<sup>136</sup> But, the system of Plea Bargaining does not apply in socio-economic offences or the offences against a woman, or a child below the age of fourteen years.<sup>137</sup>

In the process of Plea Bargaining, firstly, an accused files an application which contains the brief description of the case and offence, in the court where the trial is pending. Such application is accompanied by an affidavit of accused in which he states that he has voluntarily preferred the plea bargaining after understanding the nature and extent of punishment provided under the law for the offence committed by him and that he has not previously been convicted by a court in a case for the commission of the same offence. After receiving the application, the court calls to the public prosecutor or the complaint and to the accused to appear on the date fixed for the case. Then on fixed date, the court examines the accused in camera to ascertain whether the application has been filed voluntarily. If the Court is satisfied that the application has been filed voluntarily, it provides time to the public prosecutor

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135. Saumya Mishra, "The Criminal Justice System and Plea Bargaining in India," CrPC 2008 Jour 145.

136. Code of Criminal Procedure, 1973, Sec. 265A.

137. *Ibid.*

or the complainant, and accused to work out a mutually satisfactory disposition of the case voluntarily which may include the compensation and other expenses to the victim by the accused.<sup>138</sup> If a settlement is reached, the court can award compensation based on it to the victim and then hear the parties on the quantum of the punishment. The Court may release the accused on probation or may sentence the accused to half of such minimum punishment; if the offence committed does not fall within the ambit of the above, then the accused may be sentenced to one-fourth of the punishment provided or extendable for such offence.<sup>139</sup> The court then delivers the judgment in open court according to the terms of the mutually agreed disposition and the formula prescribed for sentencing.<sup>140</sup>

It is essential to note here that the judgment is final and no appeal lies other than filing a writ petition under Articles 226, 227 and 136 of the constitution.<sup>141</sup> The statements or facts disclosed by an accused in an application for Plea Bargaining can not be used for any other purpose. The system of Plea Bargaining is merely applicable in limited criminal cases, and not in serious crimes such as murder, rape, dacoity, etc. and socio-economic offences. The Plea Bargaining provides opportunity to an accused who feels contrite and wants to make amendments or is honest and candid to plead guilty in the hope that the community will enable him to pay the fine for the crime with a degree of compassion, then he deserves to be treated differently from the accused who seeks trial involving considerable time, cost and money at the cost of the community.<sup>142</sup> Therefore, the plea bargaining is the concept

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138. *Id.*, Sec. 265B.

139. *Id.*, Sec. 265E.

140. *Id.*, Sec. 265F.

141. *Id.*, Sec. 265G.

142. *Supra note* 135, 147.

which is only concerned with the settlement of criminal cases and does not bring the civil cases in its scope.

On the other hand, the Lok Adalat system has jurisdiction to settle both kinds of disputes such as civil and criminal. But serious criminal offences are kept beyond its domain. Lok Adalat only strives to make a compromise between the parties while Permanent Lok Adalat has also power to adjudicate the dispute if no settlement is made by the parties. The Lok Adalats are authorized to deal with the disputes at pending litigation stage as well as pre-litigation stage. The resemblance between these two system as Plea Bargaining and Lok Adalat, is that both lays down emphasise on the amicable compromise between the disputants in their respective field.

In the light of comparative study of Lok Adalat system with other systems, it is observed that Lok Adalat is an unique institution which is supported by all the segments of people such as judges, lawyers, law teachers, social workers litigants and common masses also. It does not only stress to end the dispute between the parties but also strongly convince the parties to harmonise their relation which will strengthen the unity of society.

## 7. Advantages of Lok Adalat System

On the basis of study of concept and nature of Lok Adalat following are the striking advantages of the Lok Adalat system .

1. There is no court fee and if the court fee is already paid at the time of institution of the case such amount will be refunded to the concerned party if the dispute is resolved by the Lok Adalat. The dispute are settled without bearing any expenses by the parties.
2. Lok Adalats are empowered to settles the both kind of matters which are already pending before courts and which are at pre-litigation stage. The parties have an

opportunity to bring the dispute before this institution at any time irrespective of whether the case is instituted in the court of law or not.

3. The procedure followed by Lok Adalat is simple, flexible, non-technical and informal. There is no strict application of procedural laws like Civil Procedure Code and Evidence Act while determining the claims of the parties by Lok Adalat.
4. The lawyers are not essential to be appeared during the conciliation process of Lok Adalat. However, they can assist the Lok Adalat in its proceeding by helping the parties to understand contentious issues and available alternatives and can persuade them to arrive at a settlement of the dispute.
5. It dispenses justice to the disputants through collaborative and participatory efforts of lawyers, law teachers, judges, administrative authorities and social workers who actively participate in the resolution of the dispute by discussion, counselling, persuasion, conciliation and humane approach.
6. Lok Adalat provides justice speedily to the parties, generally, when it resolve the cases in a single day. In this sense it helps to reduce the huge arrears in courts of law.
7. The award of Lok Adalat is final and binding. There are no further appeals, revisions or review applications. Therefore, the dispute ordinarily comes to an end.
8. The Lok Adalat system helps to create awareness among the people about their rights and duties mentioned in numerous social and welfare legislations. Lok Adalats are organised at various places such as villages, slum areas, industrial areas, labour colonies, towns and in jails, etc.

In this way, it takes justice at the door-steps of the people.

9. The Lok Adalat settle the dispute on the basis of compromise and in the spirit of 'give and take'. Thus, there is neither a victor nor a vanquished and both the contestants are gainers and winners. They leave the premises smiling with no rancour or ill feeling for the other which ultimately leads to happiness and well being of the society. So, the drive behind the Lok Adalat is the roused consciousness of the community to prevent disruption of local unity and to secure substantial equity and social justice, in a mood of human solidarity.

#### 8. Conclusion

The quest for equal, fair and even handed justice has been the passionate demand of human being from the emergence of the society in all civilisations. Therefore, the right of effective access to justice has developed as the most basic human rights of a legal system which purports to guarantee the legal, social, political, cultural and economic rights in a country. The term access to justice connotes the ability of a person to participate in the judicial process for the protection and enforcement of his rights. It covers more than bare court entry and includes the ability to reach the lawyers, police, enforcement machinery and capacity to bear the costs and time of litigation. In this backdrop, the right to access to justice through efficacious justice delivery mechanism, is imperative to secure justice under the Constitution. The Preamble makes it abundantly clear that justice social, economic and political are the cherished objects. With the purpose to implement this object of trilogy of justice, the various mandates enshrined in Part III and Part IV of the Constitution lay down emphasise on the establishment of a qualitative justice dispensation system and at the doorsteps of people. Similarly, the Apex Court has played

a significant role through its number of judgments for the betterment of administration of justice by declaring the right of free legal aid and speedy trial as a part of fundamental rights under Article 14 and 21 of the Constitution.

However, in reality, our present judicial system based on Anglo-Saxon jurisprudence is being buried under the monumental weight of arrears. Because, litigation has increased manifold, not only on account of population growth but also in view of new laws, legal awareness, shortage of judges, industrial and commercial increasing involvement of government in everyday life of people, growth, besides urbanization. The formal judicial machinery has failed to administer qualitative and effective to the people due to delay, corruption, highly cost of litigation, non access to justice, lengthy legal process due to technical procedural laws and less number of courts etc.

These drawbacks of judicial system shakes the confidence of the people in its capacity and capability adequate and timely relief. Therefore, to tackle this situation, the Alternative Dispute Resolution (ADR) mechanism has been introduced to achieve the objects such as (i) to enhance the people's involvement in the justice delivery process; (ii) to relieve the court congestion as well as undue cost and delay, and (iii) to facilitate access to justice. ADR refers to a set of practices and techniques to settle the dispute outside the courts. The major methods of ADR are arbitration, conciliation, mediation, negotiation and Lok Adalats as supplement to the formal court system. Under Sec. 89 of CPC, the court is also empowered to refer the case for settlement either to (i) arbitration, or (ii) conciliation, or (iii) Judicial settlement including the settlement through Lok Adalat, or (iv) mediation. Lok Adalat is a significant forum in the hierarchy of various ADR methods where justice is dispensed summarily without too much emphasis on legal technicalities.

Lok Adalat means people's court which solves the disputes of parties by discussion, counselling, persuasion and conciliation so that it gives speedy and cheaper justice with the free and mutual consent of the parties. The institution of Lok Adalat is not the substitute of existing judicial system but only works as supplementary to it so that mounting arrears are reduced and quick justice is provided. It is a participatory justice mechanism in which judges, lawyers, social workers law teachers and disputants altogether settle the dispute in friendly atmosphere and in this way, they further the unity and integrity of society. Professor Upendra Baxi, on the basis of nature of the Lok Adalat institution, has stated about two type of functions which it must perform to justify its role as a best supplement to regular courts. These functions may be divided into two categories, viz., (i) manifest functions which may be specified as: (a) conflict resolution, (b) dispensation of justice, (c) Ombudsman type function, (d) legal aid and services, (e) legislative innovation, (f) public record, (g) marital counselling, and (h) initiation of social change or development function, and (ii) latent functions and dysfunctions. Latent functions may be called as observable consequences which are neither intended nor recognised by the challenge elites. The aim of latent function is to be corrective in nature so as to improve the working efficiency of Lok Adalat. They provide a working efficiency and help in accelerating the speed of rendering justice to the needy, rising above the legal complexities created by law courts.<sup>143</sup>

Lok Adalat system is a medicine in litigating with hardly any adverse effects. In fact, apart from easy accessibility, quicker and cheaper justice, the chief beauty of Lok-Adalat is

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143. Upendra Baxi; *From Takrar to Karar : The Lok Adalat, Rangpur*, 53-64 (1976).

the decimation of bitterness, because compromise is the very soul of the Lok-Adalat justice.<sup>144</sup> It is based on the spirit of equality, justice and rule of law enshrined our National Charter with a view to improving the prevailing judicial system with functional process and promotion of justice through law.

Hence, the study reveals that the Lok Adalat system is people oriented and people supported mechanism which has received wide support from different sections of the society. Due to, its features, it has not only resulted in lessening the workload of our regular courts but has also provided efficacious justice to those who cannot afford to fight the costly legal battle for the assertion and protection of their rights under the prevailing justice delivery mechanism. Therefore, the forum of Lok Adalat deserves to be strengthened, developed for preventing litigation, ending the pending litigation and ultimately forming the Lok Adalat a peace-making and peacekeeping institution so that it may play a significant role in development of country.

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144. M.G. Chitkara, *Lok Adalat and the Poor*, vii(1993).