CHAPTER-I
INTRODUCTION

Discourage litigation; persuade your neighbors to compromise wherever you can. Point out to them that a nominal winner is often a real loser—“in fee, expenses and waste to time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.”

-Abraham Lincoln

The ancient concept of settlement of disputes through mediation, negotiation or through arbitral process known as "Peoples Court verdict" or decision of "Nyaya Panch" is conceptualized and institutionalized in the philosophy of Lok Adalat. Some people equate Lok Adalat to conciliation or mediation; some treat it with negotiations and 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 resolution. The salient features of this form of dispute resolution are participation, accommodation, fairness, expectation, voluntariness, neighborliness, transparency, efficiency and lack of animosity.

The concept of Lok Adalats was pushed back into oblivion in last few centuries, before independence and particularly during the British regime. Now, this concept has, once again, been rejuvenated. It has, once again, become very popular and familiar amongst litigants. This is the system which has deep roots in Indian legal history and it shares close allegiance to the culture and perception of justice in Indian ethos. Experience has shown that it is one of the most efficient and important ADRs and most suited to the Indian environment, culture & societal interests. The evolution of this movement was a part of the strategy to relieve heavy burden on the Courts with pending cases and to give relief to the litigants who were in a queue to get justice. LokAdalat has been very successful in settlement of motor accident claim cases, matrimonial/family disputes, labour disputes, and disputes relating to public services such as telephone, electricity, bank recovery cases as so on.

The advent of Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalat. It is an Act to constitute Legal Services Authorities to provide free and competent legal services to the weaker sections of the society to ensure that
opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalatas to secure that the operation of the legal system promotes justice on a basis of equal opportunity. Even before the enforcement of the Act, the concept of Lok Adalat had been getting wide acceptance as People's Courts as the very name signifies. Settlement of disputes at the hands of Panchayat Heads or tribal heads was in vogue since ancient times. When statutory recognition had been given to Lok Adalat, it was specifically provided that the award passed by the Lok Adalat formulating the terms of compromise will have the force of a decree of a court which can be executed as a civil court decree.

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. Any one or more of the parties to a dispute can move an application to the court where their matter may be pending, or even at pre-litigation stage, for such matter being taken up in the Lok Adalat whereupon the Lok Adalat Bench constituted for the purpose shall attempt to resolve the dispute helping the parties to arrive at an amicable solution and once it is successful in doing so, the award passed by it shall be final which has as much force as a decree of a Civil Court obtained after due contest.

One issue which comes to light often is the finality of the award of the Lok Adalat. During the Lok Adalat, the parties agree to abide by the decision of the judge at the Lok Adalat. However, it is often seen that later, the same order is challenged on several grounds. In one of the recent decisions, the Supreme Court of India has once again laid to rest all such doubts. In unequivocal terms, the Court has held that award of the Lok Adalat is as good as the decree of Court. The award of the Lok Adalat is fictionally deemed to be decrees of Court and therefore the courts have all the powers in relation thereto as it has in relation to a decree passed by itself. This includes the powers to extend time in appropriate cases. The award passed by the Lok Adalat is the decision of the court itself though arrived at by the similar method of conciliation instead of the process of arguments in court.

The benefits that litigants derive through the Lok Adalats are innumerable. Firstly, there is no court fee and the dispute is settled at the Lok Adalat. Secondly,
there is no strict application of the procedural laws and the Evidence Act while assessing the merits of the claim by the Lok Adalat thereby offering more flexibility during the resolution of the dispute. Further, the parties to the disputes though represented by their advocate can interact with the Lok Adalat judge directly and explain their stand in the dispute which is not possible in a regular court of Law.

Thirdly, disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat. Fourthly, the decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat whereas in the regular law courts there is always a scope to appeal to the higher forum on the decision of the trial court, which causes delay in the settlement of the dispute finally. The reason being that in a regular court, decision is that of the court but in Lok Adalat it is mutual settlement and hence no case for appeal will arise. In every respect the scheme of Lok Adalat is a boon to the litigant public, where they can get their disputes settled quickly and free of cost. Last but not the least, faster and inexpensive remedy with legal status. The system has received laurels from the parties involved in particular and the public and the legal functionaries, in general. It also helps in emergence of jurisprudence of peace in the larger interest of justice and wider sections of society. Its process is voluntary and works on the principle that both parties to the disputes are willing to sort out their disputes by amicable solutions.

Through this mechanism, disputes can be settled in a similar, quicker and cost-effective way at all the three stages i.e. pre-litigation and post-litigation. Overall effect of the scheme of the Lok Adalat is that the parties to the disputes sit across the table and sort out their disputes by way of conciliation in presence of the Lok Adalat Judges, who would be guiding them on technical legal aspects of the controversies. The scheme also helps the overburdened Court to alleviate the burden of arrears of cases and as the award becomes final and binding on both the parties, no appeal is filed in the Appellate Court and, as such, the burden of the Appellate Court in hierarchy is also reduced.

The present day adjudicatory system is the legacy of British colonial rule that reigned over us for centuries. There are many sites to the existing judicial system but
its shortcomings have become more prominent than its achievements. The inherent shortcoming of this system of justice dispensation lies with its formalities and technicalities and on top of it, it is costly, takes approx. 15 to 20 years to be disposed of (sometimes, even a life time) and then of course, one has the recourse of appeals, review etc., which further prolongs final decision concerning the case. It is a fact that a large number of cases are pending for their disposal at different levels in various courts. Long pendency of matter in various courts frustrates the litigant public and also shakes their belief in the efficacy of the judicial system. This system of justice dispensation consumes to a great extent, time over procedural wrangles, technicalities of law and its costlier nature further delays the dispensation of justice to the needy. It is a well-known maxim of law 'justice delayed is justice denied" and our system just confirm the same.¹

It would be deleterious to the efficacy of not only judicial adjudication but also maintenance of rule of law if we continue with the existing Formal Legal System (FLS). Judicial process is set in motion by action of an aggrieved party. Each party's case is presented before the learned judge in straightjacket of rules of procedural and substantial law by advocates since common man is not well versed with the court crafts and the legal language to be used. The judge understands the dispute involved and then pronounces the decree keeping in mind the known legal concepts, precedents; arguments advanced and the evidence led before him. The parties are then bound by the verdict and may face legal sanctions if not complied with. Even though the dispute finally gets adjudicated but the interpersonal relationship of the parties worsen and hence, there again lies a dispute between the parties. Thus what the Formal Legal System aims are adjudication of the dispute and not the resolution of disputes. Humans are not known to throw up their hands in despair when any challenge arises. To counter the challenges of ever increasing pendency in courts, tardy procedures involved in litigation etc., new procedures which are more informal, cost effective and speedy have been looked for and all these procedures have come to be known by a compendious expression "Alternative Dispute Resolution" or simply

¹K.T.S., Legal System in India and America - A Comparative View, AIR 1987 Journal Section, p.81
ADR. Seekers of justice are in millions and it is becoming rather difficult for the Courts to cope up with the ever increasing cases with the present infrastructure and manpower. Courts are clogged with cases. There is serious problem of overcrowding of dockets, because of the ever increasing number of cases the court system is under great pressure. Therefore, if there was at the threshold a permanent mechanism or machinery to settle the matters at a pre-trial stage, many matters would not find their way to the Courts. Similarly, if there are permanent forums to which Courts may refer cases, the load of cases could be taken off the Courts. The need for ADR is being underscored in the context of the failure of the formal legal system. The shortcomings, which are more apparent in the existing Formal Legal System, may be enlisted as follows:

(i) **Awareness:** The general lack of awareness of legal rights and remedies acts as a formidable barrier to accessing the FLS.

(ii) **Mystification:** The language of the law, invariably in very difficult and complicated English, makes it unintelligible even to the literate or educated person, and this is the language that courts and lawyers are comfortable with. Very little attempt has been made at vernacular language of the law and making it, simpler & easily comprehensible to the person engaging with the FLS. This is the second major barrier.

(iii) **Delays:** The average waiting time, both in the civil criminal subordinate courts, can extend to several years. The position in most of the High Courts is not any different. This virtually negates the concept of fair justice.

(iv) **Expenses and Costs:** We all are aware of the ineffectiveness of our costs regime been the successful litigant is unable to recover the actual costs of the litigation. The considerable delay in reaching the conclusion of any litigation, which traverses through various stages of the judicial hierarchy, adds to the costs and makes the absence of an effective mechanism for their recovery even more problematic.

(v) **Geographical location:** This is an aspect that has not merited the attention it deserves. We need to audit the physical accessibility of courts from the point of view of user friendliness. And this need not involve additional costs. For instance, we
have not yet designed our courtrooms and buildings to account for the needs of differently-abled people.²

(vi) **Access to Constitutional Courts:** This is a matter of concern. In our Constitutional framework, petitions for protection and enforcement of fundamental rights can be filed only in the High Courts and the Supreme Court. Thus, for instance, even petitions arising out of issues such as disappearances, custodial violence, encounter killings or instances where the police cannot be activated due to various reasons, have to be sent or filed to the High Court. Relevance: The most serious aspect of concern is that of relevance. How relevant is the FLS for addressing the problems of the poor person? The FLS invariably rejects the demands arising out of social and economic rights. There is a need to satisfactorily resolve this conundrum of the FLS, in which the actual needs of an impoverished population fail to get addressed.

The above barriers to access to justice are today posing a serious problem of legitimacy of the FLS. Even while we examine the feasibility of ADR, we must ensure that the credibility of the FLS is not eroded. Often we talk of access to justice for the poor and identify poverty as the main barrier, however, all the above are barriers faced by all litigants while poverty is an aggravating factor.

These procedures which constitute ADR have been devised with an object to afford easy access to justice to all without undue delay and at a much lesser cost as compared to the FLS and the disputes involved through these processes are resolved and not adjudicated. The parties may have a direct, participation in resolution of disputes unlike litigation where they are kept apart from each other.

The primary object of ADR movement is avoidance of vexation, expense, and delay and promotion of the ideal of access of justice to all. To put it otherwise, ADR aims at providing cheap, simple, quick and accessible justice. In its philosophical perception ADR is considered to be the mode in which the dispute resolution is qualitatively distinct from the judicial process. It is a process where disputes are settled with the assistance of a neutral third person generally of parties own choice.

²D.H. Dharmaadhikari, Judge M.P., Law & Common Man, High Court, AIR S.C. 1990 Journal Section, p.41
This neutral person is generally aware and familiar with the nature of dispute and of the context in which such disputes normally arise. The proceedings under these procedures are mostly informal devoid of procedural wrangles and technicalities and are conducted in a manner agreed to by the parties.

The disputes under ADR procedures are therefore resolved expeditiously at much lesser expenses and the best part being the proceedings and the subject matter are kept confidential to a great extent. Therefore we can say that ADR process aims at rendering justice in a form and content which not only resolves the dispute but tends to resolve the conflict in the relationship of the parties which has given rise to the dispute. Late P.V. Narasimha Rao, former Prime Minister of India and regarded as father of Economic reforms in India once quoted:

While the reforms in the judicial sector should be taken with necessary speed, it doesn't appear that courts and tribunals will be in a position to bear the entire burden of the justice system. It is incumbent on the Government to provide at reasonable costs as many modes of settlement of disputes as are necessary to cover the variety of disputes that arises. Litigants should be encouraged to resort to ADR so that the court system would be left with a smaller number of important disputes that demand judicial attention.

These words expressly enunciate the urgency of introducing the ADR system in India with much more passion and vigor. It is high time the courts are overburdened with the pending judicial business and the mounting arrears may be removed as soon as possible with having recourse in the methods which are an alternate to the Formal Legal System.

Having recourse to ADR by no means intends to minimize the role of our Honorable Courts but it should be given a pragmatic view and may be considered as a supplement to the existing legal system so that our courts are less burdened and also the ideal of access to justice by all shall be achieved.³

The ADR procedures comprises of Arbitration and Mediation chiefly and with the enactment of Arbitration and Conciliation Act, Conciliation is also getting late

³Sr. Basudev Pujari, Free Legal Aid for a free, AIR 1960 (journal section), p.87
recognition as a mode of dispute resolution. With the Legal services Authorities Act in effect Lok Adalat has also become one of the most important dispute resolution procedure at pre-trial or post-trial stage and had achieved tremendous success in resolution of disputes in matters connected to endurance through the operation of Motor Accidents Claim Tribunal (MACT) and also achieved encouraging-results in the resolution of disputes between Government agencies and common man. These procedures are extra-judicial in character. They can be used in almost all contentious matters which are capable of being resolved, under the law, through agreements between the parties. These ADR procedures or techniques have been adopted all across the globe with both hands and with encouraging results. These techniques have been employed successfully, especially in the disputes relating to Civil, Commercial, Industrial and Family disputes. These techniques have been resorted to in the matters relating to Bank disputes, Performance of Contract, Insurance Coverage, Intellectual Property Rights etc. with commendable success. ADR is not intended to supplant the existing methods of dispute resolution altogether but it offers only an option to the Formal Legal Legal System and its cumbersome court procedure which consumes a lot of time while adjudicating the matter. There are still a large number of important areas, including constitutional law and criminal law, in respect of which there is no substitute to the normal court procedure and decisions. ADR may not be appropriate for every dispute pertaining to the above-mentioned categories of disputes and even if it is appropriate it can be involved only at instance of both the contesting parties. The advantages which are -offered to us by the ADR movement are as follows:-

(i) It can be used at any time, even when a case is pending before a court of law meaning thereby it is effective at both pre-trial and post-trial stage.
(ii) It can be used to reduce the number of continuous issues between the parties and can be terminated at any stage by any of the contesting parties.
(iii) It provides a better solution to dispute more expeditiously and at a cost less than litigation. It helps in keeping the dispute a private affair and promotes relative and realistic business solutions since the parties are in full command of the procedure involved to resolve the dispute.
(iv) ADR programs are flexible and not afflicted with the rigors of rules of procedure since the procedure to be adopted is decided by the parties themselves.

(v) ADR programs can be used with or without the intervention of the Lawyers. Presence of lawyers however is significant since it plays an important role in identification of the problem, contentious issues exposition of strong point etc. and therefore imparts professionalism to the ADR techniques.

(vi) It helps in reducing the ever-increasing burden of the court with respect to pending matters and consequently Courts will have much more time to adjudicate the matters of great importance that can be taken up in the Court of law only.

(vii) Even a failed ADR proceeding isn't futile in any sense (whether in terms of money or in terms of time spent over it). It helps in understanding & appreciating the dispute much better to the contesting parties.

Equal Justice to all is the cardinal principle on which the entire system of administration of justice rests. It is so deeply rooted in the body and spirit of jurisprudence of law that the very meaning-we ascribe to the word justice embraces it all. By no stretch of imagination we can perceive justice which is not given to all or given to one and denial to others. This cardinal principle has been embedded in our Hindu civilization as well as in the Christian Culture. The concept of 'Dharama' enunciated in our holy text books and the ‘Magna carta' of the charter of Liberties which read "to no man will we deny, to no man will we sell or delay justice or right".

Thus it can be inferred that it's not only now in the present scenario but also in the earlier year that delaying the justice was considered injustice. Therefore, ADR has a great importance since ages but has assumed another facet in the contemporary world to meet the ends of justice.

The judiciary is traditionally regarded as one of the three state powers. Hence it is the duty of the state to organize a justice system, build the necessary legal and tangible infrastructure, recruit judges and make the services available to the public at a small cost. The state subsidizes the system by employing and often training judges and accordingly guaranteeing their competence and independence.
In the wave of liberalization and privatization of public services that swept the western world, as well as the so-called emerging markets in the late twentieth century, alternatives to state judicial systems have been introduced. The motto of reform of the judicial system was the slogan "access to justice."\

Modern Alternative Dispute Resolution (ADR) is a voluntary system, according to which the parties enter into a structured negotiation or refer their disputes to a third party for evaluation and/or facilitation of resolution. Especially in the light of the fact that the justice system was flooded by disputes of variable importance and complexity, and that the parties are almost invariably intimidated by the atmosphere in the courtroom and the litigation process itself, ADR has now become an acceptable and often preferred alternative to judicial settlement or settlement of disputes by arbitration. A leading English textbook defines ADR as follows:

*A range of procedures that serve as alternatives to litigation through the courts for resolution of disputes, generally involving the intercession and assistance of a neutral and impartial third party. In some definitions, and more commonly, it excludes not only litigation, but all forms of adjudication.*

Thus, ADR encompasses a range of means to resolve conflicts short of formal litigation. The three most important types of ADR are Arbitration, Conciliation and Mediation. Ancient Indian texts clearly indicate that Alternative Dispute Resolution mechanisms have had a long history. The *Smritis*, refer in particular, to three types of popular courts (Gana, Sreni and Kula) and speak of the authority of these agencies to decide law suits. In medieval India, the panchayats served as the informal mechanism of accessing justice.

1.1 Lok Adalat

The success of Legal Aid Programs requires maximum participation by all persons including bar, bench and the general public. Government efforts, however, sincere and genuine, cannot bring about the desired results. It is desirable that all

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persons connected with the administration of justice make vigorous effort in this mass movement. The role of Law Court, Legal Profession, and Law School is equally important. Judicial tribunals have to change their traditional outdated and technical approach. In order to eradicate social disabilities of the poor, judges have to adopt more active and innovative approach in the administration of justice.\(^5\)

The existing composition of Law Courts can hardly be said to be conducive for giving adequate relief to the distressed people. The indigenous system of administration of justice with people's participation will surely create a suitable environment for tackling this problem at the grass root level. The Institution of Panchayat can be revived at the village level for setting some disputes by the people themselves. Some other structural changes may also be introduced if found necessary. Even with regard to the pending litigation, there are some cases, which can be easily resolved with compromise or reconciliation by associating eminent persons in the administration of justice. The institution of Lok Adalat is very important, therefore, it has been supported and strengthened by necessary legislation. Utility of this instrument has fairly been proved in practice also.

### 1.2 Meaning and Concept of Lok Adalat

Lok Adalat is one of the alternate dispute redressal forms to provide qualitative and speedy justice to a common man, thus it means it is a place of justice for a common man. 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 grapple with the problem of giving cheap and speedy justice to the people. Generally speaking, Lok Adalat is a para-judicial institution being developed by the people themselves, still in its infancy, trying to find an appropriate structure and procedure in the struggle of the common people for justice.

It is a forum where the parties to a dispute, by voluntary efforts, aim at bringing about settlement through convivial and persuasive efforts. Indeed, Lok Adalat is not a substitute for a present judicial system but to help the courts in reducing the arrears of

cases and to reduce the speed of new institutions. Lok Adalats do not decide cases on merits and demerits but they persuade the parties by explaining the advantages of compromising the case.⁶

The Lok Adalat is a novel system of dispensation of justice that has come into existence to meet out the problem of giving cheap and speedy justice to the poor person. We should be clear in our mind as to what this 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 Lok Adalat system is giving a practical shape to twin concept of Swaraj and Sarvodaya propounded by the founding fathers of the Nation. The concept of the Swaraj implies not merely liberation from the foreign power but also emancipation from backwardness, poverty and illiteracy. The concept of Sarvodayas means wellbeing of all, without any distinction between haves and have-nots. It casts duty upon us to work constructively and actively to uplift the downtrodden from the sin of poverty and ignorance in which centuries of subjugation has immersed them.

The Indian Constitution envisages providing all-justice, social economic and political and equality before law and equal protection of law. Lok Adalat implies resolution of people's disputes by discussion, counseling, persuasion and conciliation so that it gives speedy and cheap justice with the mutual and free consent of the parties. In short, the concept of Lok Adalat implies speedy and cheap justice to common man at his doorstep. It is a participatory justice in which people and judges participate and resolve their disputes by discussion and mutual consent of parties.

1.3 Historical Background of Lok Adalat

In ancient India, Lok Adalat system was popular in different names such as Panchayati system or Panchayati Justice or gram Panchayat. Thus Panchayati justice is not a novel idea but it is in ancient institution having its deep roots in the culture of India. The institution of Nyaya Panchayat in villages is virtually of immemorial

⁶S.K.Sarkar, Law relating to Lok Adalats & Legal Aid, 2010, p.174
origin. These Panchayats did not spring up due to some authority of the rulers but due to conflict in village life which necessitated the birth of such an institution. The Nyaya Panchayat was functioning fairly and satisfactorily in the villages during the Pre-British days. During British Rule, Nyaya Panchayat gradually lost their authority and influence and fell into disuse. Even in independent India, Nyaya Panchayat System was prevailing in some of the States including Rajasthan but it failed due to some drawbacks in the System.

Indian cultural history of several thousand years shows that the stress, strain and pressure of power group do not weave the strong thread of unity but the vision of seers, the vigil of saints, the speculation of philosophers and imagination of poets and artists weave it. Indian social system is based on principle of 'Swadharma' - righteou

sness of the self recognized and respected by the reality of diverse social groups and plurality. Disputes resolution was not a serious problem in ancient India. The rule of Law is conceived as a civilizing force, which replaces violence as a means of resolving conflicts. All men or women are supposed to be equal before law and, therefore, the conflict is not resolved with regard to the physical, economic and political power of one or the other.

The method of amicable settlement of dispute through mediation and conciliation was prevalent in Indian society from the very ancient time. There is considerable unanimity on the point that the institution of panchayat for settling local disputes is fairly ancient. The villagers were entrusted with the responsibility for settlement of disputes amongst themselves. Basically, Indians are accustomed to conciliated settlement with community intervention rather than adjudicated decisions through the process of formally constituted courts. The law was Dharma and the word Dharma which, in the context of today, corresponds to the concept of law, occurs in Rigveda about fifty-six times.

It is believed that king Prithu first introduced the system of such Panchayat. In the Manu smriti and Shanti Parva of the Mahabharat, there are many references to the existence of Gram Sanghas or rural communities. A description of these rural communities is also found in the Arthshastra of Kautaliya, who lived in 400 BC. Similarly, in Valmiki's Ramayana, we find reference about Ganapada, which was
perhaps a kind of federation of village republic. In India, Panchayat justice is as old as the Indian village itself. Most villages and towns were ruled by councils constituted by freely elected members, which were free in matters affecting taxation, justice and individual rights and police. There was parishad which had the jurisdiction to determine the truth of the accusation of sins and prescribed adequate penance. Even the king had no jurisdiction to interfere with the decision of Parishad, which used to give decisions with the help of justice.

There was a great thrust on the system of 'Madhyamasi'. The reference to the effect occurs in the "Rigveda" itself, which is understood by Vedic Scholars as an arbitrator or conciliator. There are number of Narad Smiriti which discloses four types of traditional courts of adjudication, namely, the family, occupational group, class and the king. Even at district level, the courts we presided over by Government Officers, who dispensed justice under the authority of the king. Similarly, Yagnavalkya Smriti makes it abundantly clear that it the duty of the king to cultivate and establish the family, the caste, the occupational groups, the class and the villages, so that they observe their respective paths. Pathayat was the lowest court, headed by Kinsmen, having the right to adjudicate upon small matters.

The 'Sereni' was the next higher court having jurisdiction over the traders, artisans and the like pursuing similar or related means of livelihood. The puja was the court having jurisdiction over members of different castes and occupations, inhabiting the same village or town. Though the king was an overall guardian and custodian of these institutions, the kind seldom interfered in their working.

In the Veda there were hardly any rigid and complex procedural laws dealing with the disputes in the peoples courts. The history of ancient India reveals that these peoples' courts were not required to have any type of legal or technical qualification. They had jurisdiction over almost every type of dispute. The decided both civil and criminal matters and their powers were not confined to cases within any financial limit. Their decisions and judgments were based on common sense. The fact that the panchas come from the very village had a salutary effect upon the litigants. The important aspect of these institutions was that they gave less importance to legal technicalities and laid much stress upon the amicable settlement of disputes. The
adjudicators were adored as panch parmashwar and their verdict was final and honoured. They had a deep faith in arbitration and conciliation. But it doesn’t, however, mean that courts in ancient India were ignorant about the law and legal procedure.

The law given by the Rishis of the remote past was very developed and advanced. The rules of evidence were as complete and perfect as we find them today. The judicial procedure was almost the same as it exists in our present system. A civil judicial proceeding commenced with the filing of a plaint known as purvapaksha. The reply required to be filed by the other party was known as uttarpaksha. The trial and investigation of disputes by the courts was known as kriyaa. On the conclusion of the trial, the nirnaya was pronounced and the winner became entitled to a jayapatra, and finally a decree could be executed by imprisonment, sale of property and fine.

In criminal cases, the accused was given an opportunity to produce witnesses to prove his innocence. Ordeal (a form of referring a disputed question to the judgment of God) as a method of proof was frequently used to determine the guilt of the accused. The qualification for Judgeship used to be that the person should be proficient in the text, should be master of Vedas and Smritis and follow the path of Dharma. Dishonesty of a judge was considered as a crime and rendered him unfit for continuance as a judge. In fact, the judges seemed to be more accountable to the king than to the people because their fate and future depended entirely on the pleasure of the former.7

With the advent of Muslim rule in India, the rulers made substantial inroads into the existing judicial system. Muslim rulers created courts of judicature totally at variance with traditional system. Thus, village disputes, which hitherto were settled locally, began to be referred to the central courts. Kizis Muftis and Mir Adals were appointed to dispense justice. However, these courts mostly functioned at the District level or above, leaving lower village level functioning of panchayats mostly untouched. Primary courts below those of Kazis, i.e. below urban and provincial courts. The villages along with the inhabitants of smaller towns, having no Kazis over

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7Nyaya Deep, Journal of Nalsa, January 2006, National Legal Services Authority, pp.77-78
them, settled their differences locally by appeal to the caste groups, courts, panchayats or by arbitration of an impartial umpire or by resort to force.

Between the 11th and 18th centuries, the Muslim and Mughal rule prevailed in India and the traditional disputes resolution system through panchayats and panchas was not very much effective by the introduction of ‘Kazi’ as a social adjudicator.

The twelfth century saw, more or less, the end of Hindu period. From 1206 to 1526, 33 Muslim kings of Turkish race ruled Delhi and during this period, the judicial system worked under various Sultans. The courts were established at Central, provincial, district and pargana levels. In 1526, Babar defeated Lodhi Sultan of Delhi and laid foundation of true Muslim rule. In 1540, Muslim lost to Sher Shah Suri who laid the foundation of Surya dynasty which ruled up to the year 1555 and the Muslim empire was re-established and continued up to 1750. The Emperor established a separate department of Justice known as Mahakma-e-Adalat. On the basis of administrative decision, at the official headquarters in each province, district, pargana and village, separate courts were established to decide civil, criminal and revenue cases.

At Delhi, which was the capital of the Mughal Empire, Emperor's Court was established. It was the highest judicial tribunal exercising, original and appellate jurisdiction. In the discharge of his judicial functions, the Emperor was assisted by Darogha-a-Adalat a Mufti, the Mohtasib-e- Mumaalik a Mir Adal, or the Chief Mohtasib. In order to hear appeals the emperor presided over a bench consisting of the Chief Justice (Qazi-ul-Qazar) and Qazis of the Chief Justice's Court. The Emperor appointed the Chief Justice and the other judges. It will not be out of place to mention that doctrine of justice was vigorously stressed in Quranic injunctions. Judges are ordered to do justice, and not to be led away by personal likes or dislikes, love or hate. The judges were supposed to be honest, pious and above suspicion. It was believed that one day spent in doing of the justice was equal to 70 years of continuous prayer.

The golden period of administration of justice during Mughal period was witnessed during Akbar's regime. In British period, in the beginning the magisterial functions were delegated to the native people due to reason that the British were not acquainted with local languages and the local laws. Besides, there was a lurking fear
in the mind of the British rulers that the act of punishment of the members of the native population could lead to agitation at any time. The result therefore, was that they inducted Indians to discharge the judicial functions in the early days of Company rule. There is ample evidence to show that an Indian in the service of Company since 1614 exercised the powers of Magistrate in the earliest days of Madras settlement.

The people's court in villages existed in the distant past, or indeed up to the Mughal rule were adversely affected during 1750-1850 owing to a variety of factors. However, the spirit of these landmark decisions reflects that these were actually not intended to reproduce the true characteristics of the old time Panchayat. Indeed, these reforms were based on the viewpoint that revival of the people courts in village was neither necessary nor possible.

The village administration as it developed from 1920 to 1947 consisted primarily of Panchayat bodies with a blend of administrative and judicial functions. However, in actual practice the functioning of this institution remained extremely unsatisfactory for several reasons. Professor Tinker has rightly indicated in his authoritative survey that the people's court could not fulfill the expectations in most of the provinces, because of the indifference shown by the officials and the people of villages as well. The ultimate result was that the people's courts in India ended into an era of lessening feudalistic control of the countryside. There came to an end a glorious chapter in the history of panchayats.\(^8\)

Unfortunately, as law developed in the last nine hundred year in the British tradition and became ever and ever more complex, both in terms of substance and procedure. As a result of which, the judicial administration at the lower level turned to be an instrument of exploitation for the obvious reason that the common man was at the victim end. British rulers tried to revive village panchayats only with a view to have complete grip over the Indian masses and not for justice. The truth was that it was nowhere intended to reproduce the characteristic of the old time panchayats.

The primary objective to revive the village Panchayat was deliberately designed to exercise a new and formative influence on the relations between the ruling

\(^8\) Article 40 of the Constitution.
power and the people of India. It was intended to secure the increased assistance of Indians in the administration of the country. The survey of foregoing study reveals that the Muslim moulded Indian existing legal system and British that prevalent legal system at present seems to be empty' suffocating with engulfing nothingness. The deepening tragedy, with our legal system is that we are entering into an area of darkness in the philosophy for which even the British cannot be fully blamed. Dr. Ambedkar's warning to the Constituent Assembly makes us really guilty when he observed:

*By independence we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. The whole system seems to be a judicial abyss. It has not established any instinctive union with our stream of life, with our ancient culture.*

The experience of ancient Panchayati Justice resulted into the establishment of Lok Adalat system in India. The experience of Rangpur (Gujarat) and Malaria village (Himachal Pradesh) reveals that still tribal way of administering justice is quite popular and effective. Malaria village comprises 160 households having population of eight hundred people. The tribal council of the village is vested with all civil, criminal, revenue and other administrative powers. The people of the village elect the council. They have unflinching faith and confidence in the working of the council and the past experience shows that there has been no disagreement with the Tribal Council.

**1.3.1 Idea of Revival of Nyaya Panchayats**

It was Mahatma Gandhi, who for the first time suggested the revival of Panchayat system at the time of the non-cooperation Movement in 1920-21 when he boycotted Law Courts. The graphic account of the working of the Nyaya Panchayat is given in an excellent report prepared by the Congress Gram- Panchayat committee set up by the Congress Working Committee on 23 May 1954. This committee consisted of eminent public leaders. The terms of reference of the committee were to examine question of setting up a Panchayat Raj in the country and in a well-considered report, the Committee examined various aspects of Panchayat Raj including administration of justice by Nyaya Panchayats. The Committee pointed out, how Nayaya Panchayats
were functioning in Pre-British days and rendering cheap and expeditious justice to the villagers in rural areas. The report emphasizes:

*The Village Panchayats in India played a very important role in the settlement of village disputes. Differences between the villagers were settled by the village elders of Panchayats. These village elders level -in the villages and were fully conversant with the local situation as well as customs and habits of the people. Practically each resident in the village was personally known to them and they had the social advantage of easily finding out the causes of their differences. As such they proved to be good arbitrators and the disputes were settled by them in the presence of the villagers as a whole. The procedure of opinion of the villagers had also a moralizing effect on the disputants and since justice was administered not at a distance but at the place where the causes of disputes arose, it was quick and cheap. Moreover, no attempt in that line was easily exposed. The fact that the village elders took to the responsibility of settling the disputes had a salutary effect on both sides and party fractions and quarrels did not prolong themselves. Independence in the matter of dispensation of justice was ensured by the confidence and respect of, the elders commanded in the village.*

The Law Commission of India in the 14th port also discussed the establishment of Nyaya Panchayat and recommended as follows:

*Having given full weight to the various criticisms levelled against Panchayat Courts, we feel justified in reaching the conclusion that with safeguards designed to ensure their proper working and improvement; these courts are capable of playing a necessary and useful part in the administration of justice in the country.*

The system of Nyaya Panchayat was also studied by the Study Team on Nyaya Panchayat appointed by the Government of India under the Chairmanship of Shri G.R. Rejgopalan in 1960 in which the following recommendations were made.

(i) Nyaya Panchayats are a respectable antiquity and their success in the past is a clear indication that by reviving and moulding them on the right line, we will be taking a much needed step in the direction of making law and administration of justice reflecting the spirit of the people.
(ii) The participation by laymen in the administration of justice in some of the leading countries of the work clearly reveals that with appropriate safeguards, it would not be difficult to make any institution of lay judges successful if the need for it is there.

(iii) The Process of democratic decentralization envisaged in Article 40 of the Constitution of India and already introduced to some extent in different parts of the country has resulted in greater awakening of the people in the villages and, in these circumstances, it is clear that, after giving appropriate guidance, Nyaya Panchayats can successfully work.

(iv) Nyaya Panchayats, wherever they are in existence serving a real felt-need of the villagers by disposing of cases more expeditiously and with minimum inconvenience and expense to the parties. Though, some of the criticism directed against Nyaya Panchayats may be justified, it is possible by criticism.

The purpose of these studies indicates that the machinery of justice should be restructured in such a manner so as to make the legal remedy available within the reach of the needy, resource less and backward villagers of the state. In the Report of Gujrat Legal Aid Committee, the question of Nyaya Panchayats should be revived in new form as a part of the Legal service Programme. Likewise, the Export Committee's Report on "processual Justice to the People" endorsed the vitalization of the defunct justice institution of Panchayati Justice. In the report on National Jurisdiccare it was recommended that the system of Nyaya Panchayats should be revived with some safeguards. Indeed, Article 40 of the Constitution of India directs the State to organize Village Panchayats and invest them with necessary authority and power.9

Regarding compositions of Nyaya Panchayat, there is uniform view that it would be dangerous to adopt election system. If Nyaya Panchayats are elected then there would be factionalism and groupism. There is some force in this point of view. In election system, Party Politics would certainly enter in the composition of Nyaya Panchayat and it would cripple its credibility in rendering justice to the people. The anti-social elements may get control over Nyaya Panchayats. If such a thing happens

then there will be no hope for poor and downtrodden sections of the community for justice.

The Bhagwati Committee in Gujarat also reached representatives of the village. Further, if the village members are only elected as Nyaya Panch then they would not be able to do justice to the poor and the down-trodden.

The Gujarat Committee suggested new device for composition of Nyaya Panchayat based on some definite basic principles like equality before law, respect for individual dignity, and acceptance of constitutional ideals and values of democracy, Secularism and egalitarianism. Nyaya Panchayats should consist of three members. One of them should be a person having knowledge of law. He would be the chairman of the Nyaya Panchayat and he may be called Panchayat Judge. There would be one Panchayat Judge for each Taluka and he would preside over a Nayaya Panchayat within the Taluka.

The state Government may constitute a new cadre of Panchayat Judge or appoint a senior practicing lawyer or a retired Civil Judge as Panchayat judge in a particular Taluka. The other two members of Nyaya Panchayats may be selected by Panchayat Judge from a panel of persons prepared by the Collector and called Nyaya Panchayat Panel.

So far as the procedure of Nyaya Panchayat is concerned, the Code of Civil Procedure or the Code of criminal Procedure of Indian Evidence Act should not govern it. The, Nyaya Panchayat may follow a procedure of its own so long as it conforms with the principles of natural justice and rules of fair play. There should be no formal prescription of procedure for the Nyaya Panchayat except perhaps laying down the broad guidelines and within such broad guidelines, it should be left free to comply with the rules of conscience, fairness and natural justice with an account of flexibility depending 'on the circumstances of each case. The Nyaya Panchayat need not adopt an adversary system of administration of justice. The administration of justice should not suffer from the vice of frequent adjournments. However, if a short adjournment is felt necessary then Nyaya Panchayat should not grudge it.

The question regarding representation by a lawyer is also considered at length by the Committee on ‘National Juridicare’ and expressed that the parties may appear
before the Nyaya Panchayat either themselves or through relations or friends but they should not be allowed to be represented by a lawyer. If legal representation is permitted many of the evils which today exist in administration of justice in the regular courts of law would enter the administration of justice by Nyaya Panchayat. Justice would cease to be cheap and expeditious, parties would have to pay the fees of the lawyers and legal gymnastics will start.

The Nyaya Panchayat should not continue itself to the actual dispute in an ordinary Court of Law, but it should also go into the social, economic and family circumstances which gives rise to the dispute. It must adopt wider view rather than a narrow down on actual legal dispute. In the first instance the jurisdiction of Nyaya Panchayat should be limited and the State Government may increase the jurisdiction of Nyaya Panchayat, if it is found that they are functioning efficiently and without jeopardizing the interest of justice. There should be no appeal against the decision of the Nyaya Panchayat. But the District Judge may make provision for the exercise of revisional jurisdiction, only if there is an error on a question of law.

The Committee on National Juridiccare emphasized that these Nyaya Panchayats should work like the people's Courts in the socialist countries has the power to issue supplemental direction in addition to giving judgments on issues directly arising in the case.¹⁰

The institution of Nyaya Panchayats should be in conformity with the ideal of democratic decentralization and ensure public participation in the administration of justice at the lowest level. It should also help in delivering justice to the poor and the backward in rural areas without any delay and practically at no cost. It would save them the inconvenience and expense to which they would necessarily subjected, if they have to approach the regular Court of Law situated in taluka or tehsil and sometimes, even district town. This would involve considerable waste of time and money, which the poor can ill afford. The delay in disposal of litigation in the Court may also be ruinous, because the poor people have to stay poor and with their back broken by poverty and suffering they cannot wait for justice. The Panchayati system may provide justice to them promptly and expeditiously. The institution of Nyaya

Panchayat would indeed, be a great boon to them, because it would bring justice to their door-step and make it cheap, easily and expeditiously available to them. It would also inspire confidence in the poor because they would be informal, their proceedings would be in a language, which the common man can understand, and they would not be encumbered by intricate and sophisticated rules of procedure. In this way, institution of Nyaya Panchayat would make the system of administration of justice more relevant and meaningful to the poor masses and thereby generate great confidence in them.

1.3.2 Panchayats as Mini form of Lok Adalats

Disputes are resolved by mutual consent and meditation by elder and wise persons of village. It resembles with present day Lok - Adalats. The problems detailed above are not new. During colonial times one observer has noted that references to the litigious Indian People, excessive case filings, numerous undecided suits, courts delays, high costs, and corrupt court officers peppered correspondence and highlighted testimony before the Select Committee of the House of Commons on the Affairs of the East India Company.\textsuperscript{11} Some British administrators suspected that there was a poor fit between the imposed British sought to incorporate panchayats - the indigenous tribunals of pre- British India\textsuperscript{12} into the administration. These schemes did not attempt to restore panchayats as they had persisted over the years but instead sought to establish purposefully designed, cheaper cousins of the formal courts garbed with a consensual gloss.

A movement to restore an indigenous legal system flourished briefly in the years just after Independence. The legal system inherited from the British was seen as unsuitable to a reconstructed India, in which faction and conflict bred by colonial oppression would be replaced by harmony and conciliation. Gandhians and socialists Within the ruling Congres proposed the displacement of modern courts by restored traditional panchayats - a proposal that met with the nearly unanimous disdain of lawyers and judges and the vitriolic scorn of Dr. Ambedkar, chair of the Constitution's

\textsuperscript{11} Meschievits
\textsuperscript{12} Rajeev Dhawan, \textit{Law & Society in Modern India}, 1989, pp. 15-36
Drafting Committee, who sidetracked the push for panchayats into a non-justifiable Directive Principles.\textsuperscript{13}

As a part of the Panchayati Raj policy of the late 1950s judicial, or nyaya, panchayats with jurisdiction over specific categories of petty cases were established.\textsuperscript{14} Although these \textit{nyaya panchayats} derived sentimental and symbolic support from appear to the virtues of the indigenous system, they were quite different than traditional panchayats. They made decisions by majority rule rather than unanimity; their membership was chosen by popular election from territorial constituencies rather than consisting of the leading men of a caste.\textsuperscript{15}

Indeed the focus on the "village" Panchayat represented an attempt to recreate an idealized version of traditional society that emphasized harmony and ignored the caste basis of that society and its justice institutions. Like their traditional counterparts, these official nyaya' panchayats encountered severe problems of establishing their independence of personal ties with the parties, enforcing their decrees, and acting expeditiously.

They never attracted significant support from the villagers in whose name they were established. Their caseloads declined steadily while those of the courts continued to rise. In Uttar Pradesh, civil filings in the Nyaya Panchayats fell from 82321 in 1960 to 22912 in 1970 just over 4 cases per nyaya panchayats. During the same period, civil filings in the Subordinate Courts rose from 74,958 to 86749. One indicator of their demise is found in the experience of a researcher in Uttar Pradesh in the 1970, frustrated by the rarity of nyay panchayat sessions, whose villager hosts graciously offered to convene one to facilitate her research. In little more than a decade, nyaya panchayats were moribund.

It is not clear whether they withered away because they lacked the qualities of the traditional indigenous tribunals or because they displayed them all too well. We believe that it was most likely because they represented an unappetizing combination of the formality of official law with the political malleability of village tribunals. As

\textsuperscript{13} Article 40 of the Constitution of India.
\textsuperscript{14} R. Kushwaha, Working of the Nyaya Panchayats in India, 1977
\textsuperscript{15} Mare Galanter and Upendra Baxi, Panchayat Justice: An Indian Experiment in Legal Access, in access to Justice; Vol. III.
cateherine Meschievits summed it up, "the Nyaya Panchayat is thus a body of men... that handles disputes without regard to applicable rules and yet appears to villagers as formal and incomprehensible."16

Nevertheless, the panchayat idea continued to exert a powerful attraction on legal intellectuals. The 1973 report of the Expert Committee on Legal Aid, chaired by (and consisting of ) Justice Krishna lyer, a report that viewed itself as a radical critique of Indian legal arrangement, speaks glowingly of nyaya panchayats as part of a larger scheme of legal aid and access to the courts. 17 Panchayats are endorsed as a method of incorporating lay participation into the administration of justice.18

But it is clear that the justice in mind is legal justice", the law of the land, and not that of the villagers or their spiritual advisors, Panchayats are commended a inexpensive, accessible, expeditious and suitable to preside over conciliatory proceedings. The panches envisioned by the report are not village notables but superannuated judges and retired advocates. The follows- up report of the Bhagwati Committee, (charged with proposing concrete measure to secure access to justice for the poor, endorses a system of "law and justice at the panchayat level with a conciliatory methodology".19 The argument was that panchayats would remove many of the defects of the British system of administration of justice, since they would be manned by people with knowledge of local customs and habits, attitudes and values, familiar with the ways of living and thought of the parties before them. Yet again the proposed panchayats do not depart from established notions of law. There was to be a presiding judge having knowledge of law and the lay members were to receive rudimentary legal training. There would be no lawyers and the tribunal would precede informally its decisions subject to review by the district court. What is proposed is an informal, conciliatory, non-adversarial, small claims court with some lay participation.

16 S.N. Mathu, Nyaya Panchayats as Instruments of Justice 43-77 (1977)
About the sametime, an influential article by Upendra Baxi described a "Lok Adalat" (People's court) run by a charismatic social worker in a tribal area of Gujarat.20

This forum was really independent of the official law, both institutionally and normatively, although it bore no evident connection to traditional tribal institutions. As in the Krishna Iyer and Bhagwati reports, the imaginary of indigenous justice was combined with celebration of conciliation and local responsiveness under the leadership of an educated outsider. These visions of paternalistic indigenous justice, published during the 1975-77 Emergency, provided the template for future developments The end of 'Emergency Rules and the return to democracy in 1977 brought great ferment in the Indian legal world and hope that institutions and organizations could be contrived to protect the rights of the powerless. 21

1.3.3 Lok Adalat System Adopted

Ultimately the system of Lok Adalat, in place of Nyaya Panchayat, became popular in India. Moreover, in which the whole emphasis is on conciliation and promotion of better relations. The parties come as foes but return as friends. It was thought that the Nyayat Panchayats are not the only methods of mobilizing and involving the people in the judicial process at the, grass-root level. The institution of Lok Adalat is also grappling with the problem of dispensation of cheap and speedy justice. Indeed, it is a voluntary and conciliatory agency and is becoming popular under different names, viz. People's Court. Nyayaalaya, Legal Ambulance, Chopal par Nyaya, etc. It operates on the principle that a settlement or compromise is to be preferred between the parties. There are no winners and no losers, and the conclusion of the dispute is blessed by a happy adjustment between the parties. It promotes an atmosphere or mutual satisfaction and goodwill. There is the enlightened participation in such Lok Adalat of the members of the legal profession and social action groups under the supervision of judicial officer to insure a fair settlement. The Lok Adalat is one of the important items of strategic Legal Aid Programmes adopted for implementing the Legal Aid Scheme in India.

20 Upendra Baxi, From Takrar to Karar: The Lok Adalat at Rangpur, 10, Journal Of Constitutional And Parliamentary Studies
The experiment of Lok Adalat in India was for the first time made in the State of Gujrat. Indeed, the idea of people's court (Lok Adalat) was first conceived by Shri Harivallabh Preek, one of the disciples of Mahatma Gandhi. He was very much disturbed by the miserable conditions of the tribal Adivasis of Rangpour (Baroda) on account of their involvement in various types of litigation which seriously affected their life style and financial position. In order to provide, relief to these Adivasis he made first experiment of Lok adalat in the year 1949 in Rangpur and continued the same for number of years. The system was very effective and was acclaimed by all concerned. No record of decisions was maintained, till 1960. Although they were properly implemented, however, only after 1960 the record of Lok Adalat is being maintained. Shri Harivallabh Pareek undertook the Padyatra from village to village and spread this movement as a result it came into existence as an institution of Anand Nikeran Ashram.

Honbie Mr. Justice P.N. Bhagwati observed the Utility of Lok Adalat and started holding of Lok Adalat in the State of Gujarat and after his elevation to the Supreme Court he spread this movement all over the Indian Territory. After Gujrat, the tribute for organizing fruitful Lok Adalats may be attributed to the State of Rajashtan.

1.3.4 Reason for the adoption of Lok Adalat System

The accumulated frustration of the people desirous of quick disposal of their cases, is the biggest single reason, for the people having responded with hope, excitement and zeal, in holding Lok Adalats, for dispute ending for pending disputes. The mounting arrears of cases stand as a testimony that the present system of administration of justice has become inadequate to meet the needs of time. Failure of the courts to deliver justice within a time frame has brought about a sense of frustration among the litigant public. The bitter truth, however, is that human hope has its limits and waiting too long in the present life style is not possible.

1.4 Significance of Lok Adalats

Although the principal objective of the Lok Adalat system is 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; 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. In India, where the entire dilatory procedure of litigation exists, the Lok Adalat system can give relief to the poor. 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, and also inculcating a nature of amicable settlement of disputes among the people. 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, waste weeks & months in town in litigation and be exploited by lawyers.

Lok Adalat enables the common people to ventilate their grievances against the state agencies, other citizens and to seek a just amicable settlement if possible. The Lok Adalat implies resolution of people's disputes by discussion, counseling, persuasion and conciliation. It precisely implies speedy and cheap justice to common man at his doorstep. Mutually agreed settlements arrived at by the disputants in the Lok Adalats contribute to the greater social solidarity and better cohesion among litigants.

The Lok Adalats provide justice without delay and much cost to the socially and economically backward people residing in distant villages. The Lok Adalats may bring consciousness among the poor regarding the benefits made available to them by the Central and State Governments. Lok Adalats may infuse the spirit of unity, amity and peace among the litigants. If the disputes are resolved through Lok Adalats parties may be saved from protracted litigation, anxiety, botheration and bitterness, apart from the saving of expenses on Court fees and other expenses which they are likely to incur in future litigation by way of further appear etc. Thus 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.

The concept of Lok Adalat implies resolution of people's disputes by discussion, counseling, persuasion and conciliation, which result in speedy and cheap dispensation of justice with the mutual and free consent of the parties. In short, the concept of Lok Adalat implies speedy and cheap justice to common man at his doorstep. It is a appropriate and well-known method of participatory justice.

Thus, 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 conation for amicable settlement of dispute Lok Adálats can thus be termed as conciliation courts and are basically judicial- aided and judge-guided strategies evolved to save time in obtaining justice and clear the backlog of arrears of cases.

Whenever a conflict arises between the parties, they try to resolve the conflict and differences bilaterally through negotiations without the aid of their party. When this bipartite technique fails then the disputants resort to tripartite techniques. This tripartite techniques take different forum based upon the persuasion to invite the third party to help negotiations but with no compulsion to accept the solution offered by the third party. In other words, the third part's view will not be binding as an award. The bipartite and tripartite techniques of dispute settlement include the collective bargaining conciliation, fact-finding arbitration and adjudication.

To sum up, the Lok Adalat contemplates a place of justice at the door of a common man, to settle their dispute at the earliest opportunity and without any delay and costs. The Lok Adalat is based on the principles of honesty. Lok- Nyayalaya contemplates to hear and settle the dispute in language of the people, in the public presence. The people's disputes by the medium of Lok Adalats are decided by mutually agreed amicable settlements.
1.5 Objectives of Lok Adalat

The basic objective of Lok Adalat is to friendly overcome the differences or hostility. They try to bring about a solution, which is acceptable to both the parties by intervention of the third party. The legal service, in its wider sweep includes every form of legal assistance, which brings justice nearer to people to make legal relief easily accessible to the indigent. If we want distributive justice to become a reality for those who now share stark deprivation and poverty, one of the basics should be easy access to institutions of justice. The restructuring of the judicial system at the grass-root level should also form part of an effective legal services programs. It is common knowledge that in litigation civil or criminal, whichever wins or loses, results in bad blood and financial ruination for both, apart from, undue delays and frustration. Therefore, law and justice at the grass-root level with a conciliatory methodology is an imperative in a country like India. The finest hour of justice is when foes compose their fight through fair settlement to become friends. This can be achieved only by having an alternative forum for conciliation and adjudication involving little cost and no delay with an informal procedure confirming only to the requirement of natural justice, where the key-note would be justice rather than law. The Nyaya Panchayats and Lok Adalats at the village level are the only answer. After the enactment of the Legal services Act, permanent Lok Adalats have been establishment at different levels by various legal services authorities but voluntary organizations can still organise Lok Adalats. Conciliation process believes in amicable and peaceful method of settlement of disputes in a peculiar area. Lok Adalat by conciliation process believes in amicable and peaceful method of settlement of disputes. Mediator or conciliator is either invited by one party or both the parties voluntarily or compulsorily to assist them to mutually arrive at an agreement or compromises. The third party conciliator is not arbitrator, whose award decision may be binding.

The conciliator must establish himself as a neutral, experienced, intelligent, objective and benevolent participant in the efforts of the parties to negotiate settlement knowing fully well, that he does not have a feeling of irritation and frustration in the event of no settlement. The method adopted by the third party is of per legal and factual guidance, advice, mutual give and takes.
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. The true basis of settlement of dispute by the Lok Adalat is the principle of mutual consent and voluntary acceptance of the solutions with the help of a 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 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 between the parties are shunned away by resolution of their case, Lok Adalat is to generate an environment of friendship by making the people 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.

The main aim of Lok Adalat is humanitarian aspect and the basic purpose of the Lok Adalat is not to impose the justice. 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 third party that is mediator or conciliator appointed by the Lok Adalats or by the parties. Actually none of the disputants is held totally guilty or totally innocent. The courts 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.
Lok Adalat works on the equitable principle rather than legal and technical considerations. It is not purely judicial in character. Lok Adalat tries to inculcate the sense of reasoning in the minds of disputants by having deep insight into their minds after the study of their psychology, alternative proposals for mutual settlement but would not impose its decision on the disputants. However, when consent decree is passed then decision becomes almost binding as it becomes psychologically difficult to rebut the consent once given by them. Lok Adalat is an institution and is the direct outcome of activist approach of judiciary.

It may justifiably be said that the concept of Lok Adalat is the brainchild of Justice P.N. Bhagwati, the then Hon'ble former Chief Justice of India. It is a judge-inspired, judge-induced and judge-aided strategy. Basically, this strategy aims at providing quick and cheap 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 mutual consent of the parties to dispute and persistent persuading pursuits of judiciary, social organizations and voluntary organizations. The strategy is based on the philosophy of justice in our Constitution in different provisions.

Thus, Lok Adalats are very helpful in resolving amicably because there is neither a cumbersome procedure like that of conventional courts nor evidence is needed nor recorded nor the presence of lawyer is necessary. Lok Adalats resolves cases at pretrial and in-trial level. One of the distinct advantages of the Lok Adalat is that it resolves disputes on the basis of consensus. This method of consensus-decision making can be equally and successfully made applicable to amicable settlement of individual disputes in the society. India has an open society, an elected government, vibrant opposition, a free press and in independent judiciary notwithstanding widespread illiteracy and grinding poverty can successfully achieve the method of ending disputes with consensus as the basis of arriving at decisions.

The concept of Lok Adalat deserves to be strengthened, developed for preventing litigation, ending the pending litigation and ultimately making Lok Adalat a peace-making and peacekeeping institution. Our dream, long cherished dream of justice cannot be achieved by our just wish but can be accomplished if we have
burning desire and firm determination and work for the goal and realize that" Law and Justice is meant for the people". We will have to give a clarion call "law and justice for the people, of the people & by the people' and there alone lies salvation out of our shivering, shaking shambling, dwindling and fading "Judicial System" which is all in fumes and fire.

Objective of Lok Adalat is to settle the disputes which are pending before the courts, by negotiations, conciliation and by adopting persuasive common sense and humane approach to the problems of the disputants. The large population of India and the illiterate masses has found the regular dispensation of justice through regular courts very cumbersome and ineffective. The special conditions prevailing in the Indian society and due to the economic structure, highly sensitized legal service is required which is efficacious for the poor and ignorant masses. The Lok Adalat movement is no more an experiment in India. It is now a success and but needs to be replicated in certain matters.

In this chapter the researchers have tried to arrive at whether there is any need for a judicial review in the current status and scenario of Lok Adalats with the necessary critical study over the matter with possible solutions and suggestions as and when needed. As aforesaid in the objective of the Lok Adalats, the intention of the legislator has been to put an end to the disputes summarily and reduce the burden of the courts. Therefore, the Lok Adalats decide the matters on a consent/compromise basis. The Lok Adalat passes the award after the parties have agreed on the settlement and have given consent over it.

The Lok Adalat will pass the award with the consent of the parties, therefore there is no need either to reconsider or review the matter again and again, as the award passed by the Lok Adalat shall be final. Even as under Section 96 of C.P.C. that "no appeal shall lie from a decree passed by the Court with the consent of the parties". The award of the Lok Adalat is an order by the Lok Adalat under the consent of the parties, and it shall be deemed to be a decree of the Civil Court, therefore an appeal shall not lie from the award of the Lok Adalat as under Section 96 C.P.C.
In *Punjab National Bank v. Lakshmichand Rai*\(^{22}\) the High Court held that "The provisions of the Act shall prevail in the matter of filing an appeal and an appeal would not lie under the provisions of Section 96 C.P.C. Lok Adalat is conducted under an independent enactment and once the award is made by Lok Adalat the right of appeal shall be governed by the provisions of the Legal Services Authorities Act when it has been specifically barred under Provisions of Section 21 (2), no appeal can be filed against the award under -Section 96 C.P.C." The Court--further stated that "It may incidentally be further seen that even the Code of Civil Procedure does not provided for an appeal under Section 96 against a consent decree. The Code of Civil Procedure also intends that once a consent decree is passed by Civil Court finality is attached to it. Such finality cannot be permitted to be destroyed, particularly under the Legal Services Authorities Act, as it would amount to defeat the very aim and object of the Act with which it has been enacted; hence, we hold that the appeal filed is not maintainable.

The High Court of Andhra Pradesh held in Board of Trustees of the *Port of Visakhapatnam v. Presiding Officer, Permanent, Lok Adalat* that the award is enforceable as a decree and it is final. The endeavor is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a Court on a regular suit by a Court on a regular trial, however, it is as equal and on par with a decree on compromise and will have the same binding effect and conclusive just as the decree passed on the compromises cannot be challenged-in a regular appeal.

The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end. And it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action.

\(^{22}\) AIR 2002, M.P., 30
To the like effect are the following observations of the Judicial Committee in *Kinch v. Walvott*. First of all their Lordships are clear that in relation to this plea of estoppel it is of no advantage to the appellant that the order in the libel action which is said to raise it was consent order. For such a purpose and order by consent, not discharged by mutual agreement, and remaining unreduced, is as effective as an 'order of the Court made otherwise than by consent and not discharged on appeal.

Dispute resolution is essentially required for peace in society, harmony, amicableness and easy accessibility to justice. The usual procedure of resolution of dispute by courts is time consuming and is an expensive affair. Any dispute between parties is like a disease, sooner you resolve it, better it is for the parties and the society. If disputes are not resolved at an initial stage then it may grow at a very fast rate as one issue may lead to another and the time and efforts required resolving the dispute will be increased. The dispute between the parties should be resolved at the initial stage to avoid the psychological, mental and physical loss which can be suffered by the parties.

The Indian constitution has provided for the citizens that-to secure to all the citizens of India, justice- social, economic and political; liberty, equality and fraternity. The constitution provides for rule of law which is based on three facets- rule by law, rule under law and rule according to law. Article 39-A of constitution of India provides that The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The entire mechanism of Lok Adalats designed and evolved is with the object of promoting justice. Justice has three connotations namely social, economic and political. The first two connotations are handled by the said mechanism. They not only give an opportunity to the parties to resolve disputes but such resolution is at lowest possible cost, achieved amicably with consent of parties concerned.

Lok Adalat strives for making peace and harmony in the society. The Legal Service Authorities Act, 1987 strives for providing free legal aid to the public. Section
89 of the Civil Procedure Code provides 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 observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for arbitration, conciliation, judicial settlement including settlement through Lok Adalat, mediation.

The methods of resolution of disputes by non-formal legal institutions are being followed from ancient times in India. The Lok Adalats are one of the most famous and effective way of awarding justice to the poor people. However the security of justice promised by the constitution of India is in question as the courts are overloaded with the cases coming to the every moment and is unable to provide speedy justice to the people.

1.6 Salient features of Lok Adalat

Lok Adalat means People's Court. Lok means People and Adalat means Court. The Legal Services Authorities Act, 1987 makes provision for free legal aid which can be availed both before the Courts and Lok Adalats so constituted. The features of Lok Adalat are as:

- It is based on settlement or compromise reached through systematic negotiations
- It is a win - win system where all the parties to the dispute have something to gain.
- It is one among the Alternate Dispute Resolution (ADR) systems. It is an alternative to "Judicial Justice"
- It is economical and no court fee is payable. If any court fee is paid, it will be refunded.
- The parties to a dispute can interact directly with the presiding officer, which is not possible in the case of a court proceeding.
- Lok Adalat is deemed to be civil court for certain purposes.
- Lok Adalat is having certain powers of a civil court.
- The award passed by the Lok Adalat is deemed to be a decree of a civil court.
• An award passed by the Lok Adalat is final and no appeal is maintainable from it.
• An award passed by the Lok Adalat can be executed in a court.
• The award can be passed by Lok Adalat, only after obtaining the assent of all the parties to dispute.
• Code of Civil Procedure and Indian Evidence Act are not applicable to the proceedings of Lok Adalat.
• A Permanent Lok Adalat can pass an award on merits, even without the consent of parties. Such an award is final and binding. From that no appeal is possible.
• The appearance of lawyers on behalf of the parties, at the Lok Adalat is not barred.

1.7 Benefits of Lok Adalat and Procedure

The institution of Lok Adalat has many advantages over courts and other methods Alternate Dispute Resolution. First, there is no court fee in Lok Adalat and even if the case is filed in the court then the court fees will be refunded if the dispute is settled by the Lok Adalat. Second, there is no strict application of procedural laws and the Evidence act while assessing the claims by Lok Adalat. Third, disputed parties can directly go to Lok Adalat for settlement of the dispute arising between them, prior without going to the Court. Fourth, the award given by the Lok Adalat is final and binding on the parties to the dispute. No appeal can be made against the order of the Lok Adalat. Fifth, Lok Adalats provide speedy justice to the disputes and provide inexpensive remedy with a legal status.

Pretty simple procedure is followed by the Lok Adalats in solving the dispute between the parties but an important condition is that the parties to the dispute should agree on submitting their dispute to Lok Adalat and will abide by the decision given by it. The Lok Adalat is presided over by a sitting or retired judicial officer with two members who are lawyers or social workers.

Any matter which is pending before the court of law or is in pre litigation period can be submitted to Lok Adalat and Lok Adalat has an effective jurisdiction to settle the dispute by way of compromise. Civil as well as Criminal matters can be
submitted to Lok Adalat for settlement but any dispute related to an offence which is not compoundable under any law cannot be settled by Lok Adalat even if the parties to the dispute agree to submit it to the Lok Adalat.

One of the parties or any of the parties to the dispute can submit the dispute to the Lok Adalat even if their dispute is pending in the court of law or is in pre-litigation period and Lok Adalat will try helping the parties to solve the dispute and reach to an amicable settlement. The award given by the Lok Adalat is final and cannot be challenged and is as much enforceable as a decree obtained from a court.

1.8 Legislation promoting Lok Adalat

Lok Adalats have been given a statutory status by the Legal Service Authorities Act, 1987, in pursuance to the Article 39-A of the constitution of India, which contains various provisions for settlement of dispute through Lok Adalats. The main objective of this act is to provide free and competent legal service to the weaker section of the society by the legal services authorities to provide equal opportunities to secure justice and prevent denial of justice to any citizen due to economic or other disability. This Act promotes Lok Adalat to provide equal opportunity to every citizen to get justice. Lok Adalats were in vogue even before this enactment, and were widely accepted by the people. In ancient time and still people used to settle their dispute from the head of panchayat or by tribal head; after the enactment of this act, Lok Adalats have received statutory status and any award given by them has same force as a decree given by the civil court.

1.9 Future Challenges for Lok Adalat

The Lok Adalat is a boon for Indian legal system. Lok Adalat is an effective measure for getting economical, easy and early settlement of dispute between the parties. Lok Adalat is an effective measure for getting effective and early justice for all the section of the Indian society. The concept of legal service which includes Lok Adalat is a "revolutionary evolution of resolution of dispute".

The Legal Service Authority Act, 1987 provides for the legal aid to the needy people. But the quality of Legal Aid needs to be improved. Millions of people who live below the poverty line in the tribal and backward areas look up to the Legal Service Authority Act, 1987 for legal guidance and support for the solution of their
legal problems. At the time of the litigation, such people feel cheated as if they are fighting an unequal battle against the person who is in the better economic condition than the other party, because they can get better legal assistance than the economically unsound party. Revising the payment schedule of the legal aid panel advocates and the panel should be given more work and remuneration so that the needy people should be served properly and be given proper advice which may be needed in settlement of dispute.

Legal Aid and legal literacy rate among the poor and needy people should be expanded. Even though with these flaws Lok Adalats have been able to provide speedy and economical settlement of the dispute between the parties.

Lok Adalats have been acting as an effective measure for solution of the dispute and reaching at an amicable settlement. But still the needy and poor people are still not getting proper legal knowledge and legal aid, which may be helpful to them at the litigation process. Proper legal knowledge camps should be conducted at regular intervals to impart knowledge and legal aid to the needy people for the solution and settlement of their legal issues.

There can be no second thought on the matter that Lok Adalats have been effective machinery for speedy and early disposing of disputes and reaching to an amicable settlement at an economical cost. The Legal Service Authority Act, 1987, which provides for the Lok Adalat for speedy and early settlement of dispute among the parties, is boon for Indian legal system.

Majority of Indian population which is illiterate seeks justice through regular court which is disadvantageous to both, the parties as well as to the courts as such on which an amicable settlement can be reached over burdens the courts and the procedure at the courts are expensive, ineffective and time consuming. With respect to the present condition prevailing in the society and the gap between the economic conditions of the people of the society asks for an effective and strong legal service for poor and needy people. The system of Lok Adalats is no more new to the legal system of India, it has become an effective part of Indian legal system and now is the time to bring such matters under the jurisdiction of Lok Adalats which do not fall under its domain. It is high time for law makers, jurists, lawyers and judges to help
modifying the current model law governing Lok Adalats and include such areas under its jurisdiction like business disputes or conflicts where public at large is involved and the matters where government is involved in One or the other way.

Lok Adalats as a part of alternate dispute resolution methods is an effective way of settlement of disputes in an amicable manner. Although in modern times it needs few changes to cope up with the present scenario. Lok Adalats need to be given more power to have their decisions accepted by the parties to the dispute. Lok Adalat being a new branch has a long way to go, even today it's an effective machinery but still needs some changes and more power to deal with present issues. Lok Adalat still has a long way to go, and its efficiency in future depends on what more powers are given to it to deal with present and future issues which may come to it.²³

1.10 Importance of Lok Adalat as an Alternative Dispute Resolution Mechanism

The emergence of alternative dispute resolution has been one of the most significant movements as a part of conflict management and judicial reform, and it has become a global necessity. Lawyers, law students, law-makers and law interpreters have started viewing disputes resolution in alternatives to the litigation. While ADR is, now, envisioned and ingrained in the conscience of the Bench and the Bar and is an integral segment of modern practice.

The Harvard Business School, also, a few years before added dispute resolution as a new course, as a part of its curriculum. The American Bar Association created a section of dispute resolution. In justice delivery system, ADR, is employed since the litigative journey in the court of law has become exorbitantly expensive long time consuming, cumbersome, dilatory, complex and also stressful, on account of variety of reasons which may not be deeply probed in this subject at this stage.

The necessity and utility of ADR is unquestionable since the enactment in 1990 of the Civil Justice Reform Act (CJRA) in US, there has been tremendous growth in the creation of ADR programmes and their implementations. Resolution of disputes is an essential characteristic for societal peace, amity, comity and harmony and easy access to justice. It is evident from the history that the function of resolving dispute

has fallen upon the shoulders of the powerful ones. With the evolution of modern States and sophisticated legal mechanisms, the courts run on very formal processes and are presided over by trained adjudicators entrusted with the responsibilities of resolution of disputes on the part of the State. The procession formalization of justice gave tremendous rise to consumption of time and high number of cases and resultant heavy amount of expenditure. Obviously, this led to a search for alternative complementary and supplementary mechanism to the process of the traditional civil court for inexpensive, expeditious and less cumbersome and, also, less stressful resolution of disputes.\(^{24}\)

As such, ADR has been, a vital and vociferous vocal and vibrant part of our historical past. Undoubtedly, Lok Adalat (Peoples' Court) concept and philosophy is an innovative Indian contribution to the world jurisprudence. It has very deep and long roots and only in the recorded history but even in pre-historical era. It has been proved to be a very effective alternative to litigation. Lok Adalat is one of the fines and familiar for which has been playing an important role in settlement of disputes.

The system has received laurels from the parties involved in particular and the public wisdom is far from the mark. In fact, while be no means yet conclusive, there is some evidence that the rate of utilization or invocation of the courts by the citizens of India is rather low. Reliable data are scarce and the state of record-keeping makes collecting them a daunting task. But there are some bits to suggest that India is among the lowest in the world in per capita use of civil courts. Before his death, the late Professor Christian Wollshlarger, the trailblazer of comparative judicial statistics, presented a comparison of the per capita rate of filing of civil cases in some 35 jurisdictions for the ten year period between 1987-1996. Annual rates of filing in courts of first instance per 1000 persons ranged from 23 in Germany and 111 in Sweden at the high and to 2.6 in Nepal and 1.7 in Ethiopia at the bottom. Since no national figures are available for India, Professor Wollshlarger included in his comparison figures on Maharashtra, one of India's most industrialized states, whose capital (Mumbai or Bombay) is India's financial center. Maharashtra ranked thirty-

\(^{24}\) *Ibid.*
second of the thirty-five jurisdictions with an annual per capita rate of 3.5 filings per 1000 persons.

1.11 Perceptions and Realities of Litigation in India

How can it be that so few Indian invoke the courts while there is a widespread perception that the courts are updated with cases, that frivolous litigation is rife, and that there is an abundance of hungry lawyers? Is there a connection between the relative scarcity of litigation and the impression that there is so much of it? Certainly the Indian courts are desperately congested, even though the number of cases filed is small on a per capita basis. The courts appear to be heavily used because here are relatively few courts.

In our country, the ratio between the population and the judges is unrealistic. Therefore, the judiciary is unable to cope up with the food of litigation. Hence, the number of judges needs to be increased in proportion to the population. India has fewer than 15 judges per million people, a figure that compares very poorly with countries, such as Canada (about 75 per million) and the US (104 per million). In 2002, the Supreme Court had directed the Union Government that the judge-population ratio be raised to 50 per million in a phased manner.

In this respect, traditional system of justice is not enough for the larger societal interest and for the people committed to peace and inquisitive of expeditious inexpensive and less complex settlement of their disputes. Therefore, even the sacred texts of the major religions and also reflections of words of great philosophers and thinkers are pertinent and evident. Aristotle in Rhetoric and on Poetics said "Arbitration was introduced to give equity its due weight'. Cicero has also said that for a larger assessment of fairness procedural justice many times would march over the substantive justice. He has also advocated the process of arbitration. Blackstone in his famous Commentaries on the Law of English has observed about the strict justice and formal rules on process and the requirement of adopting principles of process to deal with equities which matter in the controversy. George Washington, he first President of the United States, borrowing from his experience as on arbitrator of private disputes in the 1770s, crafted it into his last will and testament as:
I hope and trust, that no disputes will arise concerning them; but if, contrary to expectations, of the usual technical terms, or because too much or too little has been said on any of the devices to be consonant with law, my will and direction. expressly is, that all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and understanding; two to be chosen by the disputants - each having a choice of one - and the third by those two. Which three men thus chosen, shall, unfettered by law, or legal constructions, declare their sense of the testators' intention; and such decision is, to all intents and purposes to be as binding on the parties as if it had been given in the Supreme Court of the United States.

Mahatma Gandhi, the father of the nation in his own words has described:

I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a 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.

1.12 Setting the Stage for Lok Adalats

(A) Panchayat justice in India

The common man has started looking upon legal system as a foe and not as a friend. For him, law is always staking something away. When we go to court, we know that we are going to win all or lose all. Whereas when we go to any method of ADR or for informal settlement with different expectations, we know that we may not get all that we want, but we will not lose everything. In India, arbitration and domestic or the house tribunals are alternatives to formal courts. However, tribunalisation of justice has yet not, successfully, clicked to prove its true mettle. Many a times, experience has shown that the tribunals often end up as dead cycles of litigative voyage in the courts and resultant lengthening of the life of dispute resolution process.
While we encourage ADR mechanism, we must, also, create a culture of settlement of disputes through such mechanisms. Various ADR methods have been experimented different environments in different countries. The ancient concept of settlement of dispute through mediation, negotiation or through arbitral process known as "Peoples' Court verdict" or decision of "Nyaya-Panch" is conceptualized and institutionalized in the philosophy of Lok Adalat.

Some people equate Lok Adalat to conciliation or mediation; some treat it with negotiations and arbitration. Those who find it different from all these, call it "Peoples' Court". It involves people who are directly or indirectly affected by dispute resolution. It is, rightly, said participation, accommodation, fairness, expectation, voluntariness, neighbourliness, transparency, efficiency and lack of animosity are undoubtedly, all important characteristics of this unique Indian institution rooted in India's history and culture and environment.

The concept of Lok Adalat was pushed back into oblivion in last few centuries before independence and particularly during the British regime. Now, this concept has, once again, been rejuvenated. It has, once again, become very popular and familiar amongst litigants. The Legal Services Authorities Act, 1987, pursuant to the constitutional mandate in Article 39-A of the Constitution of India, contains various provisions for settlement of disputes through Lok Adalat. Thus, the ancient concept of Lok Adalat has, now, statutory basis. This is the system which has deep roots in Indian legal history and its close allegiance in the culture and perception of justice in Indian methods.

This concept is, now, again very popular and is gaining historical momentum. Experience has shown that it is one of the very efficient and important ADRs and most suited to the Indian environment, culture and societal interests. The finest hour of justice is the hour of compromise when parties after burying their hatchet reunite by a reasonable and just compromise. This Indian-institutionalized, indigenized and now, legalized concept for settlement of dispute promotes the goals of our Constitution Equal justice and free legal aid are hand in glove. It is, rightly said, since the Second World War, the greatest revolution in the law has been the mechanism of evolution of system of legal aid which includes and ADRM. The statutory mechanism of legal
services includes concept of Lok Adalat in the Legal Services Authorities Act. The legal aid, in fact, is a fundamental human right.

**(B) Concept of Legal Aid**

The term legal aid implies in itself the term social justice. It was first used in 1840 by a Sicilian priest, Luigi Taparelli d'Azeglio, and given prominence by Antonio Rosmini serbati in La Constitution Civil Second la Giustizia Sociale in 1848. It has also enjoyed a significant audience among theorists since John Rawls book A Theory of Justice has used it as a pseudonym of distributive justice.

The concept of social justice is a revolutionary concept which provides meaning and significance to life and makes the rule of law dynamic. When Indian society seeks to meet the challenge of socio-economic inequality by its legislation and with the assistance of the rule of law; it seeks to achieve economic justice without any violent conflict. The ideal of a welfare state postulates unceasing pursuit of the doctrine of social justice. That is the significance and importance of the concept of social justice in the Indian context of today.

The idea of welfare state is that the claims of social justice must be treated as cardinal and paramount. Social justice is not a blind concept or a preposterous dogma. It seeks to do justice to all the citizen of the state. Democracy, therefore, must not show excess of valour by imposing unnecessary legislative regulations and prohibitions, in the same way as they must not, show timidity in attacking the problem of inequality by refusing the past the necessary and reasonable regulatory measures at all. Constant Endeavour has to be making to sustain individual freedom and liberty and subject them to reasonable regulation and control as to achieve socioeconomic justice. Social justice must be achieved by adopting necessary and reasonable measures.

That, shortly stated, is the concept of social justice and its implications. Citizens zealous of their individual freedom and liberty must co-operate with democracy which seeks to regulate freedom and liberty in the interest of social good, but they just are able to resist the imposition of any restraints or individual liberty and freedom which are not rationally and reasonably required in the interest of public good, in a democratic way. It is in the light of these difficult times that the rule of
law comes into operation and the judges have to play their role without fear or favor, uninfluenced by any considerations of dogma or maxim. The term social justice is a blanket term so as to include both social justice and economic justice.

(C) The problem of Poverty in India

This vice of social inequality assumes a particularly reprehensible form in relation to the backward classes and communities which are treated as untouchable; and so the problem of social justice is as urgent ad important in India as is the problem of economic justice. Equality of opportunity to all the citizens to develop their individual personalities and to participate in the pleasures and happiness of life is the goal of economic justice. The concept of social justice thus takes within its sweep the objectives of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities.

The problem of poverty and unequal distribution of wealth may be confined to the bigger cities and towns in India but the problem accentuated by the vice of social inequality existing in a gross form prevails in all of our villages. For instance, the harijans constitute a large class of landless labourers who are treated as untouchables by the rest of the community, who have no house to live in generally no clothes to wear, who do not get food to eat & sometimes even decent drinking water is beyond their reach. The poor also have no access to legal assistance. Poor people are vulnerable to injustice. Poverty fosters frustration, ill feeling and a brooding sense of injustice. Democracy realizes that this problem which concerns a large number of citizens cannot be successful met unless law is used wisely to restore balance to the economic structure and to remove the causes of economic inequality

1.13 The Constitution of India and Social Justice

The Constitution of India has solemnly promised to all its citizens justice—social, economic and political; liberty and thought of expression, belief, faith and worship; equality of status and of opportunity; and to promote among the all fraternity assuring the dignity of the individual and the unity of the nation. The Constitution has attempted to attune the apparently conflicting claims of socio - economic justice and .of individual liberty and fundamental rights by putting some relevant provisions.
Article 19 of enshrines the fundamental rights of the citizens of this country. The seven sub-clauses of Article 19(1) guarantee the citizens seven different kinds of freedom and recognize them as their fundamental rights. Article 19 considered as a whole furnishes a very satisfactory and rational basis for adjusting the claims of individual rights of freedom and the claims of public good.

Articles 23 and 24 provide for fundamental rights against exploitation. Article 24, in particular, prohibits an employer from employing a child below the age of 14 years in any factory or mine or in any other hazardous employment. Article 31 makes a specific provision in regard to the problem of compulsory acquisition of property.

Article 38 requires that the state should make man effort to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform all the institutions of national life. Article 39 clause (a) 24 says that the State shall secure that the operation of 'the legal system promotes justice, on the basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes, or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 41 recognizes every citizen's right to work, to education & to public assistance in cases of unemployment, old age, sickness & disablement and in other cases of undeserved want. Article 42 stresses the importance of securing just and humane conditions of work & for maternity relief. Article 43 holds before the working population the ideal of the living wage and Article 46 emphasizes the importance of the promotion of educational and economic interests of schedule castes, schedule tribes and other weaker sections.

The social problem presented by the existence of a very large number of citizens who are treated as untouchables has received the special attention of the Constitution as Article 15 (1) prohibits discrimination on the grounds of religion, race, caste, six or place of birth. The state would be entitled to make special provisions for women and children, and for advancement of any social and educationally backward classes of citizens, or for the SC/STs. A similar exception is provided to the principle of equality of opportunity prescribed by article 16(1) in as much as Articles 16(4)
allows the state to make provision for the resolution of appointments or posts in favour of any backward class of citizens which is the opinion of the state. Article 17 proclaims that untouchability has been abolished & forbids its practice in any forms. It provides that the enforcement of untouchability shall be an offence punishable in accordance with law. This is the code of provisions dealing with the problem of achieving the ideal of socio-economic justice in this country which has been prescribed by the Constitution of India.

Indian socio-economic conditions warrant highly motivated and sensitized legal service programmes as large population of consumers of justice (heart of the judicial anatomy) are either poor or ignorant -or illiterate or backward, and, as such, at a disadvantageous position. The State therefore has a duty to secure that the operation of legal system promotes justice on the basis of equal opportunity. Alternative dispute resolution is, neatly, worked out in the concept of Lok Adalat. It has provided an important juristic technology and vital tool for easy and early settlement of disputes. It has again been proved to be a successful and viable national imperative and incumbency, best suited for the larger and higher sections of the present society and Indian system. The concept of legal services which includes Lok Adalat is a 'revolutionary evolution of resolution of disputes'.

India has only one-tenth to one-sixth the number of judges per capita that are found in the developed parts of the common law world. Indian courts tend to be poorly equipped and inefficient. Apart from the physical and technical deficiencies of these courts, outmoded procedural laws provide abundant scope for delaying tactics, especially interlocutory appeals and stay orders. Judges fearful of the bar, lack leverage to discipline lawyers or use the available tools to expedite proceedings. Delay is endemic; in 1997, almost one-third of the cases on the dockets of the district courts were sitting anywhere from one to ten years, while a quarter of cases sat for this same period of time in subordinate courts.

A recent story by The New York Times epitomizes the present situation. The Times highlighted a relatively simply property law dispute between two neighbors, a milkman and a meatcutter. Apparently the milkman had built a wall with two drains that leaked into the meatcutter's yard. The meatcutter had won a judgment in 1961
declaring the drains illegal, but because of the inordinate number of appeals allowed by the Indian legal process the case remained open for thirty-nine years—long after both parties had died. In the state High Courts, more than half of all cases were over three years old. 37% were more than five years old, and 140% were more than ten years old. Cases linger interminably and arrears mount. Lawyers, fiercely loyal to existing practices, resist reforms by collective action and by wielding their "street power."

One sign of the courts' infirmity is public disdain for these lower courts. The public has low (and generally realistic) expectations of law, lawyers, and courts. Discontent with the lower courts goes back to the colonial period. A scholarly British District Officer concluded in 1945 that "In Indian condition the whole elaborate machinery of English law, which Englishman tended to think so perfect, simply didn't work and has been completely perverted." A long string of observers agreed that the working of the legal system at that level was perverse or even pathological. Potential users forgo the lower courts or avoid them wherever possible, many from ignorance and most from calculation.

The source of the low use of courts and lawyers is neither that the courts are congested nor the absence of "legal literacy" among the masses of Indian; it is that lawyers and courts are able to deliver too little in the way of remedy, protection, and vindication. The courts provide a useful facility for those who wish to postpone payment of taxes or debts and those who wish to forestall eviction or other legal action. Generally, they serve those who benefit from delay and non-implementation of legal norms that is, parties who are satisfied with the status quo. (as it existed ex ante or after obtaining an interim order)

Backlog and delay provide a profound disincentive to settlement. Defendants, who have achieved preliminary injunctive relief, benefit from the time value of money by refusing to settle, even in cases that they realize they are likely to lose. Observers conclude that in this setting" the honest litigant is impeded in the asserting of his legal rights, while paradoxically enough, the dishonest litigant is encouraged to assert unfounded or exaggerated claims. As a local banker recently confided to a journalist, awe till our clients to settle if they have a strong case and to go court if it a weak.
A very high percentage of cases involve government bodies as parties - one analyst estimates that the government is a litigating party in more than 6000 of court cases and an even higher percentage of cases before tribunals. When the government is a litigant it tends to pursue cases simply for delay and engages in relentless appeals even where the chance of winning is remote. For example, in the state of Uttar Pradesh, the government has lost virtually every case in which it has participated in the Public Services Tribunal, but of nevertheless it still appeals a large percentage to state's High Court. Again, UP's state-owned bus company is involved in thousands of pending motor accident cases, but refuses to make reasonable settlement offers and forces the victims in each case to take the case to trial which the state loses on most occasions.

This pattern of scorched earth litigation fills the courts (and tribunals) with merit-less claims (and defenses) and discourages meritorious claims by increasing the expense and delay of using these forums. For those who require vindication and prompt implementation of remedies and protections against dominant parties-women from husbands or relatives, laborers from, landowners, citizens from government- the system works only haltingly, partially, and occasionally. Since so many of the potential meritorious claims are absent from the courts, it is not surprising that the claims that are present include a significant portion that are "frivolous" this sense of being brought or maintained for purposes of harassment and delay.

Given the long delays (and high interest rates at which future value must be discounted) mounting expenses and meager damage awards, the present value most suits for money damages is probably close to zero if it is not negative Indeed much litigation in India can be described as a "sunk cost auction" in which the competitors invest ever-higher amounts in the hope of staving off larger losses. Widespread popular intuition of this produces avoidance of the civil courts. Many potential seekers of money damages instead pursue 'criminal complaints or seek injunctive relief.

Legal controversy in India is not typically about money or reducible to money. It is frequently about control of some valued resource: land, a house, a job, government recognition, a license, etc. that may not be readily reducible to a monetary equivalent. Even if a claim is phrased as one for money damages it is rarely resolved
by someone writing a check. Claims for money damages are often part of a more complex struggle between the parties. Because outcomes may not be readily reducible to a monetary equivalent, it is difficult for parties to quit the sunk-cost auction.

For large sectors of society and large areas of conduct courts afford no remedies or protections to the sufferer. When pressure builds up to provide usable remedies for a particular sort of 'grievance, the solution, understandably, is not to undertake the Sisyphean task of reforming the lower courts but to bypass them.

1.14 Objectives of the Study

1. To find out whether the concern of litigants is of highest priority for the judicial system.
2. To determine Constitutional and Judicial Mandate of Justice.
3. To ascertain Mandate regarding ADR modes and speedy disposal of cases in CPC.
4. To find out the deficiencies of Indian system of judicial as administration.
5. To ascertain the nature of Lok Adalats as mode of justice delivery and compare its working with Courts' procedure.
6. To find out to what an extent modes of ADR—mainly Lok Adalats are resorted by common man for dispute Resolution
7. To find out the procedure adopted by Lok Adalats in India
8. To find out the genesis of Lok Adalat existed in India during an ant, Medieval and Modern era.
9. To find out the revival the reasons of revival of the Lok Adalat Scheme in post independent period.
10. To analysis the powers, functions, jurisdiction and area of operations of Lok Adalat.
11. To find out the level of legal awareness of the people about this scheme and to know the interest of the people in the functioning of Lok Adalat.
12. To gather the knowledge a Govt. the monitoring aspect of the Lok Adalat and find out the source from which the Lok Adalats.
13. Whether the organization of Lok Adalat in India effective.
14. Whether the existing power of Lok Adalat are sufficient.
15. To know whether the people have a popular facts to Lok Adalat.
16. To find ways and means for making the Lok Adalat Scheme Successful venture.
17. Lastly, what suggestions/recommendations can be made to effectively tackle the menace of corruption in India?

1.15 Methodology

Methodologically, the recent study is essentially doctrinal, based on critical analysis of primary as well as secondary sources. The researcher has used multi-pronged approach to collect as much relevant information as possible through the above said sources. The study is purely exploratory and evaluative in nature. The primary material includes the relevant national and international legal instruments, such as, Constitution of India, Legal Service Authorities Act, 1987, Legal Services Authority (Amendment) Bill, 2002, Arbitration and Conciliation Act, 1996, Grain Nyayalaya Act, 2008 etc. and their official and judicial interpretations as contained in the case laws decided by the Supreme Court of India. As the scope of the subject is expanding with the regular output of the decisional material from the Information Commission, a representative selection of landmark decisions has been analyzed to cover all important aspects of the study. The secondary material includes, books, research articles and comments published in various journals and brought out by various organizations. The existing legal and other relevant literature has been surveyed and scanned for the present study. Legal literature on the topic has been collected from the Indian Law Institute (I.L.I) Library, New Delhi, Access to internet (Website) has also been made to scan the latest data/material on the subject.

1.16 Framework of the study

The present study is divided into nine chapters. Chapter I is devoted to the General Introduction of the subject. It explains generally the scope of the study and provides conceptual basis by discussing the significance of the topic. In addition, it describes its objectives, methodology, organization and other aspects in general. Chapter II is an endeavour to have a glance on the history and trace out the genesis. Constitutional Directives for lok adalat have been discussed in Chapter III. Chapter IV deals with role of judiciary in strengthening Lok-Adalat. Chapter V deals with the
organization of Lok-Adalat in India. Impact And Powers of Lok Adalat in India have been discussed in Chapter VI of the thesis. Chapter VII deals with the Lok-Adalat in India and its legal regime. Problems and prospectives of lok-Adalat have been discussed in chapter VIII. Chapter IX of the thesis has been devoted to conclusion and suggestions drawn from the present study.