CHAPTER - III

CONSTITUTIONAL DIRECTIVES FOR THE LOK ADALAT

Equal justice, for all is a cardinal principle on which entire system of administration of justice is based. It is so deep rooted in the body and spirit of Common Law as well as Civil Law jurisprudence that the very meaning which we ascribe to the word, justice, embraces it.\(^1\) We cannot conceive of Justice that is not fair and equal, which is given to one and denied to another. This idea has always stirred the hearts of men since the dawn of civilization and so far as Anglo-Saxon legal history is concerned, we find it manifested in the earliest laws, which continually directed that justice be done alike to rich and poor. It is embedded in Indian ethos of justice –Dharma- equally. It was asserted in the charter of liberties of Henry II and it received its classic statement in the fortieth paragraph of Magna-Carta, where it is inscribed:

"To no man will we deny, to no man will we sell, or delay, justice or right"

Do the goal of providing justice- with the fundamental principle of equality achieved? Has the Constitutional mandate of providing justice equally irrespective of rich, poor, caste, creed, achieved? Are the Constitutional mandates for providing legal aid, which is also embedded in Articles 7, 8, 10 of Universal Declaration of Human Rights being provided to the needy?

No one can deny the fact that the great principle of justice as inscribed in the Magna Carta and which is the basic principle of all National Charter has not been translated into reality. It did not inaugurate an era of absolute freedom and equality of justice.\(^2\) Even in England the author of the 'Justice and The Poor in England' felt so strongly about the non-fulfillment of the promise of providing equitable justice, that he printed an appendix to his book, a draft bill, to repeal the aforesaid section of the 'Magna-Carta' in so far as the poor persons were concerned.

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1. Justice K. Ramaswamy, Settlement of disputes through Lok Adalat is one of the effective dispute resolution on statutory basis, In, P.C.Rao, A.D.R: What it is and How it works, (1997), P 93.
2. K. Ramaswamy, Settlement of disputes through Lok-Adalat is one of the effective ADR on statutory basis, P 93, in P.C.Rao, ADR: What it is and how it works, (1997).
Rendering justice to the people is an obligation on the State to provide a judicial system where its people are able to redress their grievances and have justice without any delay. Today, in order to provide justice equally and without any delay to every person, high or low, the philosophy of social justice under Art. 39A requires a radical change in the judicial process. Justice Krishna Iyer said on such requirement of judicial activism:

*We want revolutionary judicial system which will fight for people’s sake, even the Cabinet’s policy - not a dependent creature funded and controlled by the administration.. We want legal social research lobbying for legislations, new models' of mobile, people oriented tribunals. We want justice to be a proletarian estate. This is the preambular tryst.*

Indian Constitution is first and foremost a social document that symbolizes the hopes and aspirations of the people. Granville Austin called it a corner stone of social change. In order to provide equal justice, the framers of the Constitution inscribed the mandate for social, economic and political justice in the national charter. While the Chapter on Fundamental Rights incorporates the idea of political and equal justice the Chapter on Directive Principles of State Policy along with Preamble incorporates economic, social and cultural justice. These provisions make it a Constitutional duty of all the three organs of the State to participate in the Constitutional march towards securing equal justice and social justice for all.

Thus, in order to fulfill the Constitutional mandate of providing equal justice, all machineries of State attempted to find out the means of providing justice. The ways and forms of providing justice, particularly in disputes, by the means of adversarial mechanism, made justice inaccessible to large number of masses. Such performance of adversarial system made despair to legal fraternity. If the constitutional mandates have to fulfill, which is fundamental to governance, the means for providing justice has to evolve. In order to provide justice to all by making it

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accessible to all, the institution of Lok-Adalat evolved, as one of the instruments to fulfill the Constitutional obligation. Thus, a clear mandate and directive for such instrument subsist in the Constitution.

3.1 Preambular Spirit of Justice and Lok-Adalat

A Government founded on anything except liberty and justice cannot stand. It is intended by the members of the Constitution that the largesse of law must belong to all, not as now, to those who use the Constitution for unconstitutional ends. The Preamble of the Constitution itself represents the aspirations of the people. However, for the materialization of such aspiration, the Government has to march towards the cherished goal of justice, as enshrined in the Preamble of the Constitution. The Preamble of the national charter solemnly resolves to constitute India as a Sovereign, Socialist, Secular, Democratic, Republic. It commands for securing justice, not only social justice but economic and political justice too, for the citizens of the country. It enshrines the liberty of thought, expression, belief, faith and worship. It mandates for equality of status and opportunity. It also proscribed for promoting fraternity, dignity of every citizen and the unity and integrity of nation.

The test of the Preamble makes it abundantly clear that Government should aim to achieve justice, Social, economic and political. The philosophy of Justice enshrined in Preamble of our Constitution is based on the spirit contained in clause (5) of Objective Resolution of Nehru which was adopted by the Constituent Assembly on 22nd June 1947 and which inspire the shaping of the Constitution through all its subsequent changes. It says, "This Constituent Assembly declare its firm and solemn resolve to proclaim India as an independent Sovereign Republic and to draw up for her future governance a Constitution wherein shall be guaranteed and secured to all the people of India Justice, Social, Economic and political, Equality of Status,

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Opportunity and before the law; Freedom of thought, Expression, Belief, Faith, Worship, Vocation, Association and Action subject to law and Public Morality.\textsuperscript{6}

This spirit of justice has not materialized till today for a large number of citizens of this country. The aim was that the Constitution makers would wipe every tear from every eye and it is expected that law must do the same and not compel the litigant to reach an urban lawyer and a judge. But sadly the same has not been achieved in the true sense.

Article 14 of the Constitution\textsuperscript{7} enshrines the philosophy of equality. It directs the State not to deny equal protection of laws within its territory. Justice Bhagwati said:

\textit{Article 14 shines like a beacon light pointing towards the goal of classless egalitarian socio-economic order which we promised to build for ourselves when we made a tryst with destiny.........when we adopted our Constitution.} \textsuperscript{8}

This philosophy of equality of justice based on the last clause of 14th amendment of American Constitution, which enjoins that the equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favoritism. Though the philosophy of equality is enshrined in the Art of the Constitution, today it is a most difficult challenge before the legal fraternity and Governmental machinery to provide equal justice.

It is an established reality that the guarantee of equality before law does not mean anything to the poor if there is no one to tell him what the law is or that the Courts 'are open to him on equal terms with every other person. Solely this, will not able to take care of the economic status. Even after having information, there are rare chances for the poor to get equal justice because inequality exists in the economic status of the litigant Acknowledging the fact of inequality in the society Dr.Ambedkar

\textsuperscript{6} Constituent Assembly Debate, C-59 (moved by Pt. Nehru) of the Resolution. Book No. 1, 59 (1947), dt 13.12.1946,
\textsuperscript{7} Indian Const. art. 14: Equality before the law "The state shall not deny to any person equality before the law or equal protection of the law within the territory of India."
\textsuperscript{8} Maganlal Chhaganlal V. Municipal Corporation. 435-436, 1974 (2) SCC 402.
said that on the social plane, we have in India a society based on the principles of graded inequality, which means elevation of some people as against the general elevation of the community or social up-gradation.⁹

So long as socio-economic and other forms of inequality exists, the implementation of national charter becomes impossible, until or unless we evolve the process of administration of justice where the economic differences is not a factor for getting justice. Expenses, which can only be affordable by parties with strong economic capacities, create an unfortunate situation for the poor, litigants where they are getting priced out of Court. The dispensation of justice has thus become lopsided. The economically disadvantaged litigant is overwhelmed by his opponents who can engage senior Counsels with ‘best of legal talents. Even if the Courts try to keep the scale even, an impression is created that the legal system in India is only for economically advantaged litigants. This gives rise to a sense of hopelessness among the general people of India

It is a stark reality today that a large number of men, women and children who constitute the bulk of our population are living in sub-human conditions. They accept social and economic exploitation and denial of legal rights as their fate. As a result, millions of people of the 'Country have badly lost their trust over the existing legal system. Therefore, the basic rights as enshrines in the national charter became meaning less to those millions of people of the Country. Thus, in reality equal justice for them is nothing but a formal promise.

Supreme Court showing concern about these dark realities said,¹⁰ The rule of law does not mean that the protection of laws must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them 'also, though today it exists only on papers and not in reality... so far

⁹ State of Kerala V. N. H. Thomas. AIR 1976 SC490 at 513
¹⁰ Peoples Union for Democratic right & other V. Union of India & other AIR 1982 SC 1473 at P 1478, Bandhua Mukti Morcha V. Union of India. AIR 1984 SC 802
the Courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only those privileged classes who have been able to approach the Courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the door of justice They (poor) have been crying for justice but their cries have so far been in the wilderness: They have been suffering injustice silently But time has now come when the Courts must become the Court for poor and struggling masses of this country... It is true that there are large arrears pending in the Courts but that cannot be any reason for denying access to Justice to the poor and weaker sections of the community. No state has right to tell its citizens that because a number of cases of the rich and the well-to-do are pending in our Courts, we will, not help the poor to come to the Courts for seeking justice until the staggering load of cases of people who can afford, is disposed of.

Thus, in the present scenario, if goal of providing equal justice has to be fulfilled, we require to evolve a participatory form of justice dispensation system. Lok Adalat is one such instrument, if utilized in the right direction. Although Lok-Adalat has not been mentioned explicitly under the provisions enumerated in the Constitution, it is implicit in it because of its philosophy of providing justice equally to all irrespective of their status, which can only be achieved by participatory form of 'dispute resolution mechanism.

3.2 Legal Aid Dictate, Panchayat Justice and Lok-Adalat

Since long it was felt necessary to enjoin the legislatures to get clear guidelines from the Constitution as to how they should function as Legislature to remove disparity in the context between litigants in the Courts of law so that the poor litigants may not feel helpless and priced out of justice, at all levels. With this goal, Directive Principles of State Policy was added as part IV and by way of 42nd Amendment of the Constitution Article 39A was inserted, which directs the State to establish such legal

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11 Justice S. B. Majumder, Profile of legal Aid Scheme in India post and presents Nyaya Path. Souvenir, 37 (2000)
12 Indian Constitution. Art 39A: Equal justice and free legal aid: 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 the
machineries by which justice can be provided based on equal opportunity. It also mandates that free legal aid shall be provided so that the opportunity of securing justice are not denied to any citizen by reason of their economic and other disabilities.

Article 40 of the Constitution\textsuperscript{13} provides directives for the state to organize village panchayat and to empower them in such a manner that they can function as a self-governing unit. One hundred and fourteenth report of the law commission suggests the formation of Gram Nayalay (Nyaya Panchayat) for decentralization of the system of administration of justice and to make effective the participatory form of dispute settlement mechanism.\textsuperscript{14}

The 42nd Amendment, which made explicit the guidelines providing opportunity to secure justice on the basis, of equality, was implicit in the Article 14 and Preamble of the Constitution. Though Article 39A is a directive on the State which is unjustifiable\textsuperscript{15} but once it is read with Article 21 and Article 14 which guarantees a fundamental right of equality before law and equal protection of laws within the territories of India to all its citizens, it can easily be visualized that provision for free legal aid to needy litigants cannot remain an idle direction. Its enforceability may be guaranteed by issuing Part III, Articles 14 & 21, of the Constitution.

opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities.
\textsuperscript{13} Article 40 of the Constitution: Organisation of village Panchayat: The State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as unit of self-government.
\textsuperscript{14} Justice D.A. Desai was the Chairman of the Law Commission and submitted its report on 12th August 1986. The Law Commission suggested that at village level the 'Nyaya Panchayat' shall be constituted so that large number of disputants can get justice quickly through such Panchayat Courts. Commission suggested for formation of three member Nyaya Panchayat in which one person should be trained judicial personnel and other two would be lay men of village. Such three member Court will provide justice at lowest level even on the spot enquiry they can verdict immediately.
\textsuperscript{15} Art 37 of Constitution: Application of the principles contained in this Part. The provision contained in this Part shall not be enforceable by any Court, but the Principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these Principles in making laws.
Several judicial pronouncements have made this right of legal aid a fundamental right. Long ago in Keshvananda Bharti, Justice Dwivedi observed that the Constitution is not intended to be the arena of legal quibbling for men with long purses. It is made for the common people. Learned Judge again said: *It is really the poor, starved and mindless millions who need the Court's protection for sewing to themselves the enjoyment of human rights.*

This justice order is vibrantly implicit in Part III and Part IV of the Constitution, both of which are fundamental in the governance of the Country. The judiciary, in India is expected to be the sentinel, sword and shield of rights of the humblest millions with an assurance to bring social salvation of the weaker section. That is why Article 39A likewise obligates the State, which includes the Judiciary, to secure that the operation of legal system promotes justice on the basis of equal opportunity to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities.

Legal aid is not only human right enshrined in the Constitution but also a recognized international human right. Legal aid as human right is also implicit in Articles 7, 8, and 10 of the Universal Declaration of Human Right and more particularly it flows clearly and inevitably from clause 3(d) of the International Covenant on civil and political rights.

Article 14(3) of the International Covenant on Civil and Political rights prescribes: ‘The right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, to be informed, if he does not have legal assistance, of his right, and to have legal assistance assigned to him in any case where

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18 Sunil Deshta. LokAdalat in India; genesis and functioning, 63 (1995).
19 The Universal Declaration reads: ‘Everyone has right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law’. See K. Raniaswamy, Settlement of Dispute Through Lok Adalat, In, P.C. Rao & William Sheffield, ADR what it is and how it works, 94, (1997).

82
the interest of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it’.

The developed countries have begun to discuss the subject of access to law as of grave concern. The Massachusetts Constitution adopted in 1780 declared to provide equal justice to all.\textsuperscript{20} Even in England, Access to justice Act was passed in order to provide access to all the judicial administration system and no one can be denied access due to lack of financial resources.\textsuperscript{21}

Traditionally, legal aid is conceived as the representation by the counsel in Court proceedings. However, the Indian concept of, 'legal aid' is much wider in scope and application. All types of legal services including public legal education (legal awareness), legal advice and counseling, public interest litigation, legal clinics in law teaching institutions, Lok-Adalat and settlements through similar alternative dispute resolution system in the community, legal mobilization for social justice, para legal and preventive legal services, law reform initiatives intended to help the poor are brought within the meaning of legal aid.\textsuperscript{22} Several expert committees on legal aid were appointed, by the Central Government. Justice Krishna Iyer Committee on Procedural Justice (1973) advocated for implementation of effective legal aid schemes and the Committee for Implementing Legal Aid Scheme (CILAS) in 1980 popularized such wide meaning to legal aid, taking into consideration the socio economic condition of the people of India and the inability of the formal legal system to penetrate into the rural countryside where poor people live They canvassed for a proactive, people friendly scheme of legal aid for providing meaningful access to justice.\textsuperscript{23} The CILAS, successfully attempted to provide access to justice to large number of people by holding Lok-Adalat. Thus under the directives and guidelines of the CILAS, different

\textsuperscript{20} The Massachusetts Constitutional provisions reads, "Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely and without being obliged to purchase it; completely, and without any denial, promptly, and without delay; conformably to the laws”. See K. Ramaswamy, id at 95.


\textsuperscript{22} N. R. Madhava Menon. An Indian Contribution to world jurisprudence, Nyaya Path, Souvenir 2000 Pg. 57.

\textsuperscript{23} See N.R. Madhava Menon, id.
Legal Aid and Advice Boards were constituted and started holding 'Lok-Adalat as legal aid strategy. Thus the institution of Lok-Adalat evolved as an instrument to provide access to justice to all in equal terms and to provide justice quickly and without any Cost. So the institution, of Lok-Adalat as evolved by CILAS is nothing but an instrument to fulfill the Constitutional obligation, for which the Constitution has clear directives.

It will be worthy here to mention that Delhi High Court, while directing different Governmental agencies like Delhi Vidyut Board, Municipal Corporation of Delhi, Mahanagar Telephone Nigam Limited, General Insurance Corporation to constitute permanent Lok-Adalats to redress the disputes between general public and such companies or between employees and companies through negotiated settlement, highlighted the great principles enshrined in Article 39A. The Court says:

"The language of Article 39A is couched in mandatory terms. This is made more than clear by the use of the twice occurring word "shall" in Article 39A. It is emphasized that the legal system should be able to deliver justice expeditiously on the basis, of equal opportunity and provide free' legal aid to ensure that opportunities of securing justice are not denied to any citizen by reason of economic and other disabilities."  

Though Article 39A has not said anything about Lok-Adalat but to fulfil the goal, enshrined in Article 39A, Lok Adalat is being effectively used as an instrument to provide equal justice, based on negotiated settlement through participatory form of judicial administration system.

The genesis of Lok Adalat can be found in our traditional Panchayat system. Article 40 of the constitution provides directives for the state to organise village panchayat and to empower them in such a manner that they can function as a self-government unit. The philosophy behind 'Article 40 is that village Panchayat as a unit of self-government would go a long way in ensuring democratic decentralization and

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24 Abul Hasan V. Delhi Vidyut Board. AIR 1999 Del. 88 at 89.
creating an exhilarating feeling and sense of confidence among the villages in the sphere of decision making. The statement made by the Law Minister in the Parliament in 1959 also reminds us of the fact that small disputes must be left to be decided by the system of Panchayt Justice the People's Courts or institutions like Lok Adalat. To quote:

There is no doubt that the system of justice which obtained today is too expensive for the common man. The small disputes must necessarily be left to be decided by a system of panchayat justice call it people's Court, call it popular Court call it anything but it would be certainly subject to such safeguards as we may desire in the village level that the common man can be assured of a system of judicial administration which would not be too expensive for him and which would not be too dilatory for him.

The modern concept of Lok Adalat appeared on the concern shows by different bodies on failure of Anglo-Saxon judicial system to provide justice to a larger number of people and on the recommendation of different Committees for promoting participatory form of administration of justice, particularly the CILAS. The Constitutional directives for forming Lok-Adalat, for the people and by the people, are implicit in the Preamble, Articles 14, 39A, 40 and other provisions of the Constitution. Thus it is crystal clear from the aforesaid study that the organization of the Lok-Adalat is a mandate provided by the Constitution. The march towards making Lok-Adalat a great success is a Constitutional goal, for which everyone has obligation to fulfill.

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26 Sibnath Bhattacharya, Rural Poverty in India, 137 (1989)
27 Rajya Sabha. DEB, 1959 Vol. 27, No. 3, Col 388, p.71 - 72