ENHANCING ACCESS TO JUSTICE IN GOA THROUGH LOK ADALATS : A CRITICAL LEGAL STUDY

A Thesis

Submitted to Goa University
for the Award of the Degree of

DOCTOR OF PHILOSOPHY

IN

LAW

By

Ms. Kim Rocha Couto

Research Guide

Prof. (Dr.) M. Pinheiro

Goa University
Taleigao Plateau
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DECLARATION

I hereby declare that this thesis titled, **"ENHANCING ACCESS TO JUSTICE IN GOA THROUGH LOK ADALATS: A CRITICAL LEGAL STUDY"** submitted for the award of the **Degree of Doctor of Philosophy in Law**, to Goa University, Panaji, is an original research work done by me.

I also hereby declare that this thesis or any part of it has not been submitted to any other University for the award of any Degree or Diploma or Fellowship.

Kim Rocha Couto

Date:

Place: Panaji

CERTIFICATE

This is to certify that the thesis titled, **"ENHANCING ACCESS TO JUSTICE IN GOA THROUGH LOK ADALATS:A CRITICAL LEGAL STUDY"** submitted for the award of the Degree of Doctor of Philosophy in Law, is a record of the research work done by Ms. Kim Rocha Couto under my guidance and supervision during 2011- 2014.

I certify that this is a *bonafide* work of **Ms. Kim Rocha Couto**

Prof. (Dr.) M. Pinheiro
Research Guide ,
Former Dean Faculty of Law,
Goa University
&
Former Principal ,
V. M. Salgaocar College of Law

Date:

Place: Panaji

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LIST OF ABBREVIATIONS

UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ECHR	European Convention on Human Rights
ECHR	European Court of Human Rights
PLA	Permanent Lok Adalats
SCC	Supreme Court Cases
EHRR	European Human Rights Reports
KAR	Karnataka
KER	Kerala
M.P.	Madhya Pradesh
A.P.	Andhra Pradesh
VSC	Supreme Court of Victoria
IBR	Indian Bar Review
Adel L.Rev.	Adelaide Law Review
Mod. L.Rev.	Modern Law Review
Wash L.Rev.	Washington Law Review
NALSA	National Legal Services Authority
GSLSA	Goa State Legal Services Authority

LIST OF STATUTES AND RULES

1. The Code of Civil Procedure, 1908, (Act No. 05 of 1908).
2. The Code of Criminal Procedure, 1973, (Act No. 02 of 1974).
3. The Legal Services Authorities Act , 1987 (Act No. 39 of 1987)
4. National Legal Services Authority Rules,1995.
5. National Legal Services Authority (Lok Adalats) Regulations,2009.
6. The Goa State Legal Services Authority Rules,1996.
7. The Goa Lok Adalat Scheme
8. The Goa State Legal Services Authority Regulations,1998.
9. The Constitution of India 1950.

CONVENTIONS

I. Universal Declaration of Human Rights, 1948

II. International Covenant on Economic Social and Cultural Rights 1966

III. International Covenant on Civil and Political Rights, 1966

IV. Optional Protocols to the International Covenant on Civil and Political Rights,1966.

V. The European Convention for the Protection of Human Rights and Fundamental Freedoms ,1950

VI. American Convention on Human Rights,1969

VII. The African Charter on Human and Peoples' Rights,1981.

VIII. Charter of Fundamental Rights of the European Union,2000.

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Hussainara Khatoon v. Home Secretary, State of Bihar AIR 1979 SC 1360.

Interglobe Aviation v. N. Satchidanand AIR 2011 SC 1989.

Imtiyaz Ahmed v. State of Uttar Pradesh and ors. (2012) 2 SCC 688.

Kanti Devi v. State of Bihar AIR 2012 Pat 86.

Khatri v. State of Bihar AIR 1981 SC926.

K.M. Govind Kutty Menon v. C. D. Shaji AIR 2012 SC 719.

Kishan Rao v. Bidar, District Legal Services Authority, AIR 2001 Kar 407.

Life Insurance Corporation v. Suresh Kumar (2011) 7 SCC 491.

M.H. Hoskote v. State of Maharashtra AIR 1978 SC 1548.

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Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180.

Punjab National Bank v. Laxmichand Rai AIR 2000 M.P. 301.

P.T.Thomas v. Thomas Job AIR 2005 SC 3575.

Reliance General Insurance Co. v. Subhash Gupta AIR 2013 (NOC) 69 (P&H) .

S.P. Gupta v. Union of India(1981) SUPP SCC 87.

State of Punjab v. Jalour Singh AIR 2008 SC 1209.

S. Manicklal Panicker v. Tito Abraham AIR 2012 Ker 51.

Salem Advocates Bar Association, Tamil Nadu v. Union of India AIR 2003 SC 189.

S.N. Pandey v. Union of India Writ Petition (Civil) No. 543/2002

Tomasevic v. Travaglini and anr. Tomasevic (2007) VSC 337 (139)

Union of India v. Ananto AIR 2007 SC 1561.

Chapter 1

Introduction

1. Introduction

Man is a social animal. In his interaction with fellow humans, there are often clashes on account of conflicting interests. Whether at home within the family or between neighbors, or at work, disputes pervade interpersonal relationships.[1] In fact they are endemic among societies, religions, nations and cultures.

Disputes often originate due misinformation or a lack of information between parties. Frequently, strong emotions and stereotypes or repetitive negative behavior result in strained relationships. On other occasions, differences in ideology, the unequal distribution of power and competition over resources, are some of the primary sources of conflicts[2]. Conflicts are thus a natural and inevitable part of life.

Unresolved conflicts on a large scale can tear apart the peace and harmony of a society. Hence dispute - resolution becomes fundamental to the existence of a stable society. An ordered society hinges on two points: firstly, a set of principles or rules that regulates its members and secondly, a means of resolving the disputes which arises among the members. In order to secure social order, the State has created norms and institutions establishing dispute resolution processes which facilitate the ends of justice.

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[1] A dispute is a difference or conflict between two or more than two parties. Where such dispute is a wrong which is either intended or done otherwise towards a person by another, such that it infringes on his legal rights, it is a legal dispute. The terms 'conflict' and 'dispute', in the present thesis, have been used interchangeably, although some scholars are of the view that there are differences between them. See Bansal Kumar Ashwanie, *Arbitration Agreements and Awards* (Second Edition, Universal Law Publishing Co. Pvt. Ltd., 2006) p.10.

[2] Christopher Moore mentions five primary causes of conflict in his work, *The Mediation Process: Practical Strategies for Resolving Conflict*, available at http://unpan1.un.org/intradoc last viewed on 7th April 2012.

Justice is the highest interest of man, which he seeks persistently, fights for resolutely and expects confidently from the ruler and neighbours. Civilization, it is rightly said, has the first thirst for justice. Its denial or its absence, shakes the very foundation for social security and the general happiness of the people. As a bond holding society together, its sacrifice would threaten or endanger societal harmony. As has been observed:

> "It is justice that saveth and defendeth a nation, that maketh it happy, fruitful and prosperous. The frontiers of a nation may be guarded with men at arms, but it will not be preserved thereby: it must be justice in the midst of all…Injustice discontents a people and usually the foundations of change are laid upon the discontent of the people."[3]

Justice brings happiness, delight, hope, reassurance and peace to the society at large and to the individual in particular. But injustice brings pain, horror, despair, shock and resentment. No wrong is resented more fiercely than an injustice. Injustice is a tormenting and unforgettable experience for every human being. To echo the words of Edmond Cahn, in a sense, "justice is remedying or preventing what would arouse the sense of injustice." [4]

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[3] Sorabjee Soli, *Law and Justice - An Anthology* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2003) p.371.
[4] Cahn Edmond, *The Sense of Injustice –An Anthropocentric View of Law* (New York University Press, 1949) p.13.

The appeal to justice is universal, transcending boundaries of territory, culture, language, race, color, sex and time. As early as the thirteenth century, the Magna Carta[5] had in it imprinted, *"To no one will we sell, to no one will we deny or delay, right or justice.[6]"* More than seventeen centuries later, the Charter although providing the term no definition, serves to affirm and establish significant truths that justice is priceless and should neither be denied nor delayed.[7]

A. Concept of Justice

The concept of justice is as old as the origin and growth of human society itself. Treatises and volumes written and spoken on justice suggest both its universality and innate power. Justice, like beauty or goodness, is ethereal and hard to define. Perhaps owing to imperfections in language as well as uncertainty about its form and content, ascertaining the real meaning of justice has proved very challenging.[8] Nonetheless, its different conceptions while illuminating its splendor have also revealed that "many different elements and considerations must necessarily enter into the elucidation of the concept.[9]"

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[5] 'Magna Carta' - Latin for the 'Great Charter', or the Great Charter of the Liberties of England was signed on 15th June 1215 between the barons of medieval England and King John at Runnymede. See Garner Bryan, *Black's Law Dictionary* (Eighth Edition, West Publishing Company,2004) p.971.

[6] See Clause 40 of the Magna Carta which states ' Nulli vendemus, nulli negabimus, aut differimus rectum aut justiciam', available at www.bsswebsite.me.uk/history/ last viewed on 10/ 4/2012.

[7] The Australian, New Zealand, Canadian and American Constitutions in particular have been influenced by the Magna Carta, available at http://www.princeton.edu/~achaney/tmve/wiki100k/docs/Magna_Carta.html last viewed on 16/1/2013.

[8] Desai Ashok, *Justice versus Justices* (Taxmann, Allied Services Pvt. Ltd., New Delhi, 2000) p.7.

[9] Bodenheimer Edgar, *Jurisprudence, The Philosophy and Method of the Law* (Third Indian Reprint, Universal Law Publishing Co. Pvt. Ltd., 2001) p.141. See also Das Gobind, *Justice: A Many*

(i) Justice as virtue

For the ancient philosophers, among the virtues most extolled by human beings everywhere, justice consisted in not merely doing what is just, but consisted also, in possessing a certain moral disposition or state of character.[10] "Justice is virtue in action arising out of and expressing itself in, obligations towards others."[11]

As a virtue, justice also demands that it is exercised not for one's own, but for another's benefit. In Ulpian's words, "Justice is *a constans et perpetua voluntas* to give each man his due". To David Miller, justice as *suum cuique*, "to each his due", is the most valuable general definition of justice, as it brings out its distributive character.[12] In their dealings with others, men have to perfect the ideal of justice as a good habit. Cultivation of a certain attitude of the human mind, a willingness to be fair and a readiness to give recognition to the claims and concerns of others are subjective aspects of justice denoted by these definitions[13]. Thus, while to the philosophers, justice stands high and mighty in the moral hierarchy as the epitome of virtue, to the theologians, it partakes of divinity itself, it being a divine dictate "written on the hearts of men."[14]

Splendoured Thing, in Justice in India, A Study of Last Two Decades (Shangon and Shangon, Cuttack,1967)p.15.

[10] Allen C.K., *Aspects of Justice* (Stevens and Sons Limited, London, 1958) p.5.

[11] *Ibid*.

[12] Miller David, *Social Justice* (Clarendon Press, Oxford, 1976) p. 20.

[13] Bodenheimer Edgar, *Jurisprudence,The Philosophy and Method of the Law(* Universal Law Publishing Co. Pvt. Ltd.,2001) p. 208.

[14] Allen C.K., *Aspects of Justice* (Stevens and Sons Limited, London,1958) p.10.

To Julius Stone, "justice is an ethical value by which men judge the conduct of reasonable beings, that is, behaviour directed by the will of the actor." [15] As a moral and social value therefore, justice pertains to that conduct which takes places in the context of inter –personal relations. In this sense, justice commands attention to the actual relations of men inter se and with the environment, to the effects of law and machinery upon those relations and to their effect in turn upon the propositions and machinery of law.[16]

Viewed from this perspective, "the sense of justice encompasses all those moral requirements which are most essential for the well being of mankind and which human beings therefore, regard as sacred and obligatory.[17]"

(ii) Justice as fairness

Many scholars and jurists affirm that equality lies at the heart of justice.[18] David Miller asserts that justice as *suum cuique,*[19]to each his due, is the most valuable general definition of justice, as it reveals its aspect of fairness and distributive character[20].

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[15] Stone Julius, *Human Law and Human Justice* (Second Indian Reprint, Universal Law Publishing Co. Pvt. Ltd., 2004) p.31.
[16] Stone Julius, *Social Dimensions of Law and Justice* (Universal Law Publishing Co. Pvt. Ltd., First Indian Reprint,1966) p. 793.
[17] Vyas M.K., *Concept of Justice*, *Utilitarianism and other Modern Approaches*, Banaras Law Journal, Vol. 35 & 36 (January 2006 -2007) p.104- 113.
[18] Riddall J.G., *Jurisprudence* (Butterworths, London, 1999) p.200. See also Sir Denning Alfred, *The Road to Justice* (Steven and Sons Ltd.,London,1955)p.4.
[19] *suum cuique* in Latin means 'to each his own', available at www.merriam-webster.com last viewed on 23/4/2012.
[20] Miller David, *Social Justice* (Clarendon Press, Oxford, 1976) p. 20.

The image of the blind- folded goddess with sword and scales, symbolizes, as it were, the omnipotence of justice. The blind fold signifies complete fairness and objectivity, the scales, reflect even-handedness and truth and the sword – the power to enforce the decision – all convey its majesty. Unmistakably, impartiality, equality and fairness are integral components of justice. Plainly, partiality in the sense of showing preference to one over the other, is inconsistent with justice. As an attribute of justice, impartiality refers to a situation where one is exclusively influenced by considerations which it is supposed, ought to influence the particular case in hand, and resisting the solicitations of any motives which prompt conduct different from what those considerations would dictate.

Again, associated with the idea of impartiality, is that of equality, which is also the essence of the concept of justice. If justice connotes equality, justice demands that the things of this world shall be equitably allotted to the members of the community according to the principle of proportionate equality.[21] Equality is the dictate of justice, except where expediency may require inequality.

Fairness also brings out the aspect of reciprocity in justice. Reciprocity signifies the expectation that others will respond to one in a similar manner. The idea of reciprocity suggests that those engaged in cooperation with each

[21] Aristotle's distributive justice envisages the fair division of benefits and burdens, that of giving to each according to his just deserts. See Doherty Michael, *Jurisprudence: The Philosophy of Law (*Old Bailey Press, 2001) p.277.

other, should not merely regard their own benefit, but should seek mutual benefit on terms that are fair and show regard for the claims of others. It is clear from this view that justice is identified with the application of the principles of fairness in determining the proper balance of claims, for the purpose of achieving social good.[22]

(iii) Justice as Mediator

A mental attitude of fairness and concern for others itself would not be sufficient to bring in the reign of justice. Can there be harmony without justice? The social nature of man demands that he lives peacefully and maintains cordial relations with others around him. Where rights are violated and relations strained, justice focuses on setting things right to ensure that social order is restored. In case of injustice, justice mediates to rectify the injustice inflicted by one person on another, to reestablish the initial equality.

Applying the Aristotelian dual conception of justice, when a norm of distributive justice is violated by a member of the community, justice plays a corrective role in restoring a fair equilibrium by redressing an unfair distribution.[23] In a way, this idea of justice corresponds to the benefit of an efficacious mechanism for protecting basic human rights. Ensuring that rights

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[22] John Rawl's concept of justice involves a set of principles for assigning basic rights and duties and for determining the proper balance of the benefits and burdens of social cooperation. See Parker Christine, *Just Lawyers: Regulation and Access to Justice* (Oxford University Press, 1999) p.42.

[23] Bodenheimer Edgar, *The Philosophy and Method of the Law* (Universal Law Publishing Pvt. Ltd. Co., Third Indian Reprint, 2001) p.210.

and duties are duly respected by the people, justice in this sense is a conventional device for the regulation of disputes over limited or scarce resources. For Christine Parker, justice refers to "those arrangements by which people can successfully make claims against individuals and institutions in order to advance shared ideals of social and political life." [24]

From this perspective, the notion of justice encompasses within it, "the means by which people seek to secure the type of social and individual relations they think right and to rectify them when they have gone wrong in particular circumstances. Moreover, it also includes the assurance of having the means to make a claim in an individual dispute about what is the correct way to solve it and incorporates legal and quasi-legal justice arrangements as well as even the most informal methods of dispute resolution."[25]

Thus, by affording reasonable solutions to conflict, justice coordinates and regulates social interaction. In the ultimate analysis, it may be safely concluded that justice consists of restoring a disturbed equilibrium by the correct application of the law and through practical measures and institutional means, designed to achieve the goals of a just society.

[24] Parker Christine, *Just Lawyers: Regulation and Access to Justice* (Oxford University Press, 1999) p.42.
[25] *Ibid*.

1.1.4 Justice as Dharma

Embedded in Indian ethos as 'Dharma', the ideal of justice has always held the pride of place in men's hearts. 'Dharma', a unique tradition of ancient Indian polity and incapable of a single definition, encompasses justice, right, morality, truth, duty, virtue and law[26], all in one. It is characterized as "what is firm and durable, what sustains and maintains, what hinders fainting and falling".

To Manu, "Lord Justice (Dharma) is the revered vrsa (bull) and he who commits the violation of it (alam), him the Gods regard as vrsala, low-born. Hence one shall not trample justice". Accordingly, "Dharmoraksati raksitah". "Dharma when violated, verily, destroys, dharma when preserved, preserves; therefore dharma should not be violated, lest the violated dharma, destroys us".[27](Manu Samhita 8.15).

It is evident that in Manu's understanding, Justice personified as God, is pure virtue, bearing a mandate for its preservation. Where justice (dharma) pierced by injustice (adharma) comes to the court for redress and the court officials do not pluck out that dart from him, then, they are themselves pierced by it[28]. As "Dharma (Justice) is king of kings", no one, not even the king, is above or superior to it.

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[26] Kane P.V., *History of Dharmasastra, Ancient and Medieval Religious Civil Law in India*, (Vol.1, Second Edition, Bhandarkar Oriental Research Institute, Poona, 1968) p.1.
[27] Olivelle Patrick, *Manu's Code of Law - A Critical Edition and Translation of the Manava-Dharmasastra* (Oxford University Press, 2006) p.166.
[28] *Ibid*.

Manu, thus, plainly cautioned about appropriate conduct in the dispensation of justice. The administrator of justice (king) is the arm of the law, the fountain of equity and the ultimate defender of society through justice. In any event, in case of conflict between Dharma (law) and Dharma-nyaya (justice or equity), dharma-nyaya would prevail.

Thus, according to Indian socio- legal philosophy, firstly, the virtue of Justice (dharma) forms the basis of the social order cementing the society together. Secondly, political order, economic prosperity, moral welfare and cultural advancement are dependent on justice. In the third place, it subordinates the administrator of justice to dharma in the discharge of his duties. Adherence to dharma as well as its protection and preservation are enjoined on the administrator (king), as his own righteousness is dependent on the maintenance of justice[29].

With the passage of time and the impact of different politico-legal experiences, justice in this sense of the self-regulatory, morality-based dharma,[30] shifted to justice (nyaya) according to law,[31] under the Indian Constitution.

From the diverse interpretations discussed above, there is hardly any doubt that "justice is so often a matter of perception on which opinions can genuinely

[29] Sreenivasa Murthy H.V., *History of India*,Part-1,Eastern Book Company, Lucknow, Reprint 2010,p.194.
[30] Dr. Vijaya Kumar P.B., *Dynamics of Justice a la Supreme Court of India* (Gogia Law Agency, 2010) p. 461.
[31] *Ibid*.

differ."[32] Embracing a complex set of interacting variables, justice brings within its ambit, entitlement, justification, equality, impartiality, proportionality, reciprocity, desert and participation.[33] Finally, justice is an ideal of the highest rank whose positive embodiments are so thoroughly alloyed with other values and interests that it can never be completely refined out.[34]

(v) Justice under the Indian Constitution

In India, dharma is the foundation of the legal order. The Indian Constitution incorporates the ancient *dharmic* tradition in its myriad tones, with an accentuation on the rule of law. The rule of law does not mean rule according to statutory law, pure and simple, but connotes some higher kind of law which is reasonable, just and non-discriminatory.[35]

The rule of law under the Indian Constitution, embodies the notion of supremacy of the law and of equality before the law and equal protection of laws and the accountability of the government and its officials, under the law. It requires that laws protect and promote fundamental rights, and the process by which the laws are enacted, administered and enforced, is accessible, fair and efficient. It also maintains that access to justice is provided by an independent

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[32] Justice Raveendran R.V., *Mediation : Its Importance and Relevance,* (2010)8SCCJour.1.
[33]Parker Christine, *Just Lawyers: Regulation and Access to Justice* (Oxford University Press,1999) p.42.
[34] Cahn Edmond, *The Sense of Injustice –An Anthropocentric View of Law* (New York University Press, 1949) p.12.
[35] Jain M.P., *Indian Constitutional Law* (Fifth Edition, Reprint, Wadhwa and Company, Nagpur,2008) p.6

and impartial judiciary which ensures that there is no discrimination in the administration of justice.[36]

The Indian Constitution does not merely provide the apparatus for governance, but is committed to establish a new social order based on social, economic and political justice. A conspectus of the Constitution of India reveals that it incorporates justice in all its forms and facets-whether social, economic and political[37].

To carry forward this objective, the Constitutional scheme provides for the Fundamental Rights in Part III which are justiciable and the Directive Principles of State Policy which though non- justiciable are fundamental to the governance of the country. While Part IV along with the Preamble of the Constitution envisions the goals, Part III and the other Constitutional provisions[38] in a sense, stipulate the means to secure them.[39]

The Preambular idea of social justice which takes within its sweep the removal of inequalities, provision of equal opportunities to citizens in social as well as economic activities and the fair distribution of resources, is to be found from a

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[36] Declaration of Delhi on the Rule of Law evolved in 1959 by the International Commission of Jurists.

[37] Preamble of the Indian Constitution.

[38] Article 32,226 ,124,214 of the Constitution

[39] In *Unni Krishnan, J. P. v. State of Andhra Pradesh* (1993) 1 SCC 645, Justice Jeevan Reddy observed, "The provisions of Parts III and IV are supplementary and complementary to each other and not exclusionary of each other and that the fundamental rights are but a means to achieve the goals indicated in Part IV." See also *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461.

combined reading of the Preamble, the Fundamental Rights in Part III and the Directive Principles of State Policy enshrined in Part IV of the Constitution.[40]

While the Constitution seeks to ensure economic justice primarily through the Directive Principles of State Policy and political justice by permitting participation in the political process, the right to vote and contest for elections without any discrimination, the framers of the Constitution, envisioned political justice as the means to achieve social and economic justice.[41]

The judiciary on its part, has harmoniously interpreted the constitutionally guaranteed Fundamental Rights in the light of the Directive Principles of State Policy, to ensure the establishment of an egalitarian and just social order. The enormous efforts of the Supreme Court in securing justice for all, has prompted noted jurist Upendra Baxi to conclude that the Apex Court has evolved "from being the Supreme Court of India into a Supreme Court for Indians-all Indians alike."[42] The tribute has shown that the apex court in particular exists not just to resolve disputes and vindicate rights but also to provide equal justice to all.

Thus the Indian Constitution while eulogizing justice as one of the principal ideals, also obligates the State to ensure that the legal system operates to secure and promote this constitutional goal. In doing so, the Constitution has laid

[40] Available at http://www.legalserviceindia.com/articles/sojt.htm last viewed on 23/5/2012.
[41] Available at http://www.supremecourtofindia.nic.in/speeches/speeches_2007/jamia_millia_islamia speech_nov.pdf last viewed on last viewed on 29/5/2013.
[42] Bhagwati P. N. & Dias, C. J., *The Judiciary in India: A Hunger and Thirst for Justice*, available at http://clpr.org.in/wp-content/uploads/2013/08/pn-bhagwati-and-cj-dias.pdf last viewed on 20/4/2013.

down the framework for access to justice so as to bring to life the ideals enshrined in it.

B. Concept of Access to Justice

The word 'access to justice', generally connotes 'the ability to reach the process of law in order that justice is done'. In the words of Upendra Baxi, "it is the availability of effective means to seek justice by which one can participate in the judicial process"[43]. Access to justice requires that people are able to seek and obtain a remedy for their grievances through effective justice delivery mechanisms.

On a broader level, this right is encompassed within the more general right to legal aid. Legal aid connotes that equality is the basis of all modern systems of jurisprudence and administration of justice. In so far as a person is unable to obtain access to a court of law for having his wrongs redressed for defending himself, justice becomes unequal and laws that are meant for his protection have no meaning and to that extent fail in their purpose.

The concept of access to justice thus takes in within itself, normative legal protection, legal awareness, legal aid and representation, adjudication and

[43] Chitkara M.G., *Accessibility of Justice*, Nyaya Path, Vol.1.(4) 2000,p.81.

enforcement[44]. It also encompasses the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.[45]

Thus access to justice in its true sense refers to ability of individuals to secure just and equitable outcomes for wrongs through legitimate means and these may transcend the formal judicial system to include informal justice systems.
It being absolutely vital for any democratic State committed to the rule of law, its effectiveness ensures the proper enforcement and protection of rights conferred by the law.

Access to justice therefore includes access to the law, legal representation, appropriate set of institutions in which disputes can be settled, appropriate remedies, timely solutions to problems, education about law, the institutions and procedures[46].

Wider in meaning than access to courts and litigation, it even encompasses a wide range of alternative methods for dispute resolution within its amplitude. In the ultimate analysis, it is evident that the concept of access to justice is comprehensive but not exhaustive.

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[44] See http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/7-rule-law/access-justice last viewed on 23/4/2012.
[45] See http://www.gaatw.org/atj/index.php?option=com_content&view=article&id=105&catid=18last viewed on 23/4/2012.
[46] Dias Kadwani Ayesha and Welch H. Gita(eds.) *Justice for the Poor, Perspectives on Accelerating Access* (Oxford University Press,2009) p. 5.

C. Concept of Lok Adalats as a Means of Access to Justice

Enhanced access demands effective justice–delivery mechanisms that ensure justice efficiently. Alternative Dispute resolution systems supplement courts in the dispensation of justice. Alternative Dispute Resolution system is defined as "a range of procedures that serve as alternatives to litigation through the courts for the resolution of disputes, generally involves the intercession and assistance of a neutral and impartial third party".[47]Although there are many forms, in India, arbitration[48], conciliation[49], mediation[50] and settlement by Lok Adalats has received statutory recognition under respective laws, and under the Code of Civil Procedure, 1908.[51]

Lok Adalats, or literally People's Courts [52], have their roots in the tradition of communitarian justice in India[53] and at the same encompass elements suitable

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[47] Ishwara Bhat P., *Law and Social Transformation*(Eastern Book Company, Lucknow, Reprint 2012) p.872.

[48] Arbitration: The term arbitration as derived from Roman law means resolving the dispute or difference between two or more parties after hearing both sides in a judicial manner by an impartial person or persons other than a court of competent jurisdiction. The changing conditions in modern times saw the substitution of the old law of 1940 with the enactment of the Arbitration and Conciliation Act in 1996, in harmony with the arbitral law existing in developed countries.

[49] Conciliation: Conciliation is a private, informal process in which an impartial third party assists the parties to a dispute in reaching a mutually satisfactory settlement of the dispute. In India, besides the Arbitration and Conciliation Act of 1996, conciliation is also provided under various statutes as for instance, in the Industrial Disputes Act, 1947, the Family Courts Act, 1984, the Legal Services Authorities Act 1987, among others.

[50]Mediation is a neutral, non- coercive, non- adversarial third party coordinates and facilitates negotiations between the parties to the dispute. Its procedure outlined in UNCITRAL conciliation rules, WIPO Mediation Rules and Jagannadha Rao Committee Draft Mediation Rules 2003.

[51] Section 89 of the Code of Civil Procedure inserted by Amendment Act, of 1999 states *(1)* 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 observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for- *(a)* arbitration; *(b)* conciliation; *(c)* Judicial settlement including settlement through Lok Adalat; or *(d)* mediation.

[52] See *infra* Chapter IV.

for the dispensation of justice in modern times. A unique Indian contribution to world jurisprudence,[54] Lok Adalats seek to resolve disputes through conciliatory methods expeditiously and inexpensively.

Although a precise definition of the term Lok Adalat, has not been provided under the Legal Services Authorities Act 1987,[55] it is clear from the legislative intention,[56] that the Lok Adalat is not a court within the accepted connotation of the word although it has the trappings of the latter. [57]

By applying principles of justice equity, fair play and legal principles, Lok Adalats strive to bring about an amicable settlement between the parties which, where reached, is final and binding. Statutorily created, the forum of Lok Adalats is thus a promising avenue of effective access to justice.

1.1. Statement of the Problem

It is common knowledge that justice dispensation by courts is "interminable, time-consuming, complex and expensive."[58] Complexities of the law and procedure have aggravated the problem of access to justice for litigants. A

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[53] Gandhi B.M. , *V.D. Kulshestra's, Landmarks in Indian Legal and Constitutional History* (Ninth Edition, Eastern Book Company,Lucknow,2009) p. 543.
[54] Prof. Dr. Madhava Menon N. R., *Lok Adalat: An Indian Contribution to World Jurisprudence*, Nyaya Path, December 2000,Year 1(4)56.
[55] Section 2(d) of the Legal Services Authorities Act 1987 lays down that Lok Adalat means a Lok Adalat organized under Chapter VI.
[56] Sarkar S.K., *Law relating to Lok Adalats and Legal Aid* (Orient Publishing Company, Allahabad, First Edition, 2006) p.105.

[58] Rao P.C. & Sheffield William (eds.), *Alternative Dispute Resolution –What it is and how it works*, (Universal Law Publishing Co. Pvt. Ltd, 2002) p.35.

fairly large population and an increasing consciousness of rights among the people has resulted in a spurt of litigation in the State of Goa.

High costs involved in litigation, the formal atmosphere of the court room, and time- consuming litigation inherent in the adversarial form of justice coupled with the geographical location of courts adversely affects the accessibility of courts.

A low ratio of judges per population, a huge pendency of cases, a lack of physical infrastructure, are some of the reasons among others, for inadequate access to justice in the State. In the context of growing dissatisfaction with the formal system of justice, the importance and need of dispute resolution by Lok Adalats to enhance access to justice is imperative.

1.2. Significance of the Study

The significance of the study lies in the fact that it provides an insight into the structural and operational obstacles[59] that impede access to justice through courts. The study provides an opportunity to appreciate the various facets and

[59] Operational barriers are those that are related to the efficiency and effectiveness of the administration of justice system. Structural barriers reflect problems that have to do with the very basic form of societal organizations and are inherently linked to the administration of justice,available at http://www.peacebuildinginitiative.org/indexa8b0.html?pageId=1813 last viewed on 12/12/2013.

dimensions that access to justice has acquired under international human rights law and further interpreted by the courts.

From meaning merely access to courts, access to justice has evolved to include access to legal representation, the right to legal aid, equality before the law, the right to a speedy trial, the right to a fair and public hearing. Besides, fair, just and equitable outcomes also form an integral part of it. In short, access to justice refers to the ability to vindicate rights through formal or informal justice systems in an effective manner.

Further, the importance of the study lies in the fact that, it involves an analysis of the provisions of the Legal Services Authorities Act, 1987 under Chapter VI and Chapter VI -A relating to the formation, organization and functioning of Lok Adalats and Permanent Lok Adalats for public utility services respectively. The National Legal Services Authorities Rules, 1995 wherever applicable and National Legal Services Authority (Lok Adalat) Regulations, 2009 as well as the Goa Lok Adalat Scheme have also been analyzed.

The landmark judgments of the Supreme Court of India and of the High Courts' on significant aspects of the Lok Adalats, have also been highlighted and relevant case-law analyzed.

The study has also brought to light the inadequacies in the legislation and flaws in its implementation by the concerned authorities. Based on the findings from the research undertaken, valuable suggestions for the improvement in the functioning of Lok Adalats in the State of Goa have been offered. It is believed the study would be useful in carrying out the necessary amendments to the Legal Services Authorities Act, 1987. Lastly, its importance also lies in the fact that it is an original contribution in the field of law, as it assesses the potential of Lok Adalats to enhance access to justice in the State of Goa.

1.3. Objectives of the Study

The study was undertaken with the following objectives:

1. To clarify the concepts of 'justice' and 'access' access to justice, 'alternative dispute resolution system', 'Lok Adalat,' which have frequently been used in the study. Although courts are seen as the primary means of access to justice, they are structured in a manner that does not facilitate equal access. In the present study the nature of the impediments that obstruct the path to equal justice were examined and highlighted.

2. To ascertain the exact meaning, nature content and scope of the right to access to justice along with the judicial interpretation which the right has received from the courts, since the drawing up of the Universal Declaration of Human Rights in 1948 and thereafter. Furthermore, in that regard, the extent to

which the existing justice mechanisms in India fulfill the norms of international human rights law relating to access to justice was also sought to be determined.

3. To contextualize access to justice in India through a historical perspective and assess the role and relevance of formal and informal justice mechanisms since ancient times up to the contemporary period.

4. To examine and analyze the provisions of the Legal Services Authorities Act, 1987(amended in 2002), the relevant rules and regulations, pertaining to Lok Adalats, the National Legal Services Authorities (Lok Adalat Regulations) 2009 and the Goa Lok Adalat Scheme, so as to ensure whether in its implementation, the law is achieving the objectives for which it was enacted and to make recommendations for change where ever necessary. Furthermore, the study has also sought to ascertain whether the Lok Adalats were being organized and conducted in accordance with the law and whether the procedure followed is in conformity with the provisions of the Act.

5. To examine the impact of the Lok Adalat functioning at the level of the High Court, district and taluka levels in the State of Goa, from 2005 to 2012, through an empirical study, so as to ascertain their effectiveness in the realization of the objectives which the Legal Services Authorities Act, 1987, was designed to achieve.

6. The ultimate objective of the study is to make proposals and recommendations charting out the future course of action to enhance effective access to justice in the State of Goa through Lok Adalats.

1.4. Research Questions

1. Are the mechanisms for dispensing justice in the State, out of step with social justice thereby defeating the constitutional commitment for universal access to justice?

2. Does adjudication by courts need to be complemented with non adversarial alternative dispute resolution systems?

3. Are Lok Adalats suitable mechanisms to enhance access to justice in Goa?

1.5. Hypotheses

The researcher proceeded on the following hypotheses which were formulated for the purpose of the research.

1. There is only limited access to justice from courts in Goa which is not to the extent mandated by international human rights law relating to access to justice.
2. The prevailing formal adjudicatory mechanisms for the dispensation of justice are not fulfilling the Constitutional mandate of 'equal justice' in the State of Goa.

3. The effective implementation of Chapter VI of the Legal Services Authorities Act, 1987, (Act No 39 of 1987) and the Goa Lok Adalat Scheme, 1998, has resulted in providing better access to justice in the State of Goa.

4. The institution of Lok Adalat has adequately enhanced the access to justice system in the State of Goa.

The hypotheses were verified and tested by the researcher in the course of the empirical investigation.

1.6. Methodology

The methodology that was adopted for the purpose of the study was both doctrinal and empirical. The doctrinal study included an analysis of several research articles, law books, and law reports as well as cases decided by the Indian Supreme Court and High Courts.

An empirical study was also conducted for which the tools used for the collection of data were questionnaires and interview schedules. Data relating to Lok Adalats was collected by way of questionnaire for which the random sampling method was used to collect the responses of 400 respondents. 50 respondents who are members of the legal profession, having several years of experience and practicing in the courts and appearing before the Lok Adalats and 75 respondents from each of the District Courts i.e. North Goa and South

Goa districts and approximately 200 respondents at the taluka level mainly at the court of the civil judges junior and senior division.

The researcher also interviewed the distinguished sitting and former Hon'ble Judges of the High Court of Bombay at Goa, in order to get their valuable opinions regarding the functioning of Lok Adalats in Goa.

The views of the Presiding Officers and Members of the Goa State Legal Services Authority and the North and South District Legal Services Authorities were obtained regarding the functioning of Lok Adalats in the State of Goa .

Advocates practicing in courts and appearing before the Lok Adalats in their interaction with the researcher also shared their opinions on the dynamics of the functioning of Lok Adalats in the State.

Various Lok Adalats organized at the High Court, District and also the Taluka level were personally attended and observed so as to analyze the actual functioning of the Lok Adalats.

1.7. Scope and Limitation of the Study

The area of research besides clarifying various concepts involves an analysis of international laws recognizing and affirming the human right of access to

justice. As the spectrum of such laws is wide, the analysis in the present research is restricted to international human rights instruments relating to access to justice, legally binding on Member States.

Access to Justice encompasses the idea of giving people a choice and providing an appropriate forum for each dispute, and also facilitating a culture in which disputes are resolved as quickly and simply as possible, whether formally or informally.

Although dispensation of justice by adjudicatory mechanisms and alternative dispute resolution methods was touched upon, the thrust of the study was on Lok Adalats as an alternative dispute resolution method. Since there is a wide array of non- adversarial forms of alternative dispute resolution, the research has been confined to Lok Adalats which are an indigenous form of dispute resolution, prevalent in India in various avatars, since times immemorial.

The legislative framework governing Lok Adalats has been analyzed and judicial interpretation and development of those laws has been examined. The Legal Services Authorities Act, 1987, enacted by the Parliament of India provides free and competent legal services to the weaker sections of the society and provides for the organization of Lok Adalats and Permanent Lok Adalats for the public utility services, to ensure that the legal system promotes justice on the basis of equal opportunity.

Although the said Act governs both legal aid and Lok Adalats, the present research is confined to the study and critical analysis of Chapters VI and VI – A of the of the Legal Services Authorities Act, 1987 which relate to the organization of Lok Adalats and Permanent Lok Adalats for the public utility services, respectively.

Judicial opinion and interpretation by the Supreme Court as also of various High Courts in the country, with regard to Lok Adalats and Permanent Lok Adalats for public utility services, has also been examined and considered.

The empirical study has focused on the functioning and performance of the Lok Adalats organized under Chapter VI of the Legal Services Authorities Act,1987, at the taluka, district and at the level of the High Court, in the State of Goa ,for a period of seven years from 2005-2012 .

Statistical data collected was limited to the organization of Lok Adalats, the number of cases taken up, the number of cases settled and the types of cases settled by the Lok Adalats, which was analyzed and interpreted. Permanent Lok Adalats held in respect of public utility services, under Section 22-A in Chapter VIA of the same Act, were not brought under the purview of the present study.

An epigrammatic study of the functioning of Lok Adalats in the States of Maharashtra and Karnataka with the data available during the same period, has also been made to ascertain the performance of Lok Adalats in the neigbouring states.

1.8. Structure of the thesis

The entire thesis spans over six chapters.

Chapter 1: **Introduction**

This chapter highlights the importance of the study and the need for undertaking the study. It includes the statement of the problem, the objectives of the study, hypotheses, research questions, methodology and limitation of the study. The chapter also contains an elucidation of the concepts and principles relating to justice and access to justice that form part of the research work. The chapter also gives an insight into the various modes of alternative dispute resolution with special emphasis on Lok Adalats.

Chapter 2: A Human Rights Perspective of Access to Justice: The International Legal Regime

The second chapter traces the evolution of access to justice as a human right. The international legal framework relating to access to justice from a human rights perspective and the three waves of access to justice reform are discussed

and analyzed. Various dimensions of access to justice enshrined in the various international human rights norms further illumined by the interpretation of foreign courts is also highlighted. A case for reconstructing the notion of access to justice in line with international legal regime principles for the purpose of strengthening access has been made out.

Chapter 3: The Milestones in Access to Justice: the Indian Journey

The third chapter provides a glimpse of access to justice in each period of Indian legal history beginning from ancient times, and traversing through the medieval period up to the contemporary times. The chapter also unveils and examines the impetus to the human right of access to justice in India through the initiatives of the law, policies, schemes of the State and the creative interpretation of the courts.

Chapter 4: Lok Adalats under the Legal Services Authorities Act,1987: A Critical Appraisal

The fourth chapter has focused on the provisions of the Legal Services Authorities Act, 1987 along with the amendments, which have provided a statutory basis for the institution of the Lok Adalats and Permanent Lok Adalats in the country. An analysis of Chapter VI and Chapter VI A of the Legal Services Authorities Act, 1987, pertaining to Lok Adalats and Permanent

Lok Adalats respectively, along with the relevant Rules and the Goa Lok Adalat Scheme 1998, as instruments of access to justice, have been analyzed and discussed. Judgments of the Supreme Court and the various High Courts clarifying the nature and extent of powers of the Lok Adalats have also been dealt with in the chapter.

Chapter 5: Critical Analysis of the Functioning of Lok Adalats in Goa

The empirical study on the impact of the Lok Adalats in providing access to justice in the State of Goa forms part of the fifth chapter. The chapter has examined the functioning of Lok Adalats in the entire State, at the taluka, district and High Court levels. Data was collected by administering questionnaires and interview schedules.

Statistical data collected from the legal services authorities regarding the organization of Lok Adalats, the number of cases taken up, the number and kinds of disputes settled and their performance as a whole, was analyzed and interpreted. For this purpose, the data was tabulated and graphs were prepared depicting the various findings. Based on the analysis, the hypotheses initially set out were verified and tested and findings were drawn regarding the functional effectiveness of Lok Adalats in dispensing justice in the State.

Chapter 6: Conclusions and Recommendations

'Access to Justice – A Dream to Come True: Means and Ends'

This chapter encompasses the conclusions and suggestions. Based on the analysis of the empirical data obtained the researcher has drawn inferences regarding the effectiveness of Lok Adalats as an instrument to enhance access to justice and recommended the institution of Lok Adalats as the principal form of alternative dispute resolution as it allows citizens to overcome operational, structural, economic and procedural barriers which would otherwise prevent them from accessing justice.

Chapter II

A Human Rights Perspective of Access to Justice : The International Legal Regime

2. A Human Rights Perspective of Access to Justice: The International Legal Regime

Access to Justice presupposes the existence of laws that establish rights and provide mechanisms for the resolution of disputes. An apparatus of laws and justice systems provide a starting point for both individuals and communities to claim and demand entitlements.

While the non existence of the latter tantamounts to the denial of justice, the absence of the former is a sheer mockery of justice itself. The ideal therefore unquestionably is for justice to be translated into effective reality.

Emergence of legal recognition and protection to access to justice by established legal systems dates back to olden times. It is not surprising to find legal attention paid to the components of access to justice which have eventually given the right its current form.[1]

The present chapter traces the evolution of access to justice as a human right and examines the relevant human rights instruments providing the right its normative basis.

[1] *Supra*, Chapter I.

2.1. Legal Overtones of Access to Justice

Access to justice is not a modern concept. Scholars suggest that the seeds of access to justice were sown in the laws of the ancient communities. Traceable to the principle of '*ubi jus ibi remedium'* [2] of the Roman law, the maxim draws attention to the nexus between right and remedy thereby highlighting the crucial importance of access to justice in the enforcement of rights.[3] The institution of the system of writs enabling litigants of all classes to avail themselves of the king's justice, during the reign of Henry II, is a manifestation of early endeavours at providing access to justice.[4]

Social struggles and reform movements several centuries later, saw the triumph of the 'right' to justice , equality and constitutional government[5] in the Magna Carta drawn up in 1215[6],which paved the way for a concrete and broad human rights jurisprudence years later.[7]

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[2] *Ubi Jus Ibi Remedium* is a Latin legal maxim which means "where there is a right there is a remedy" available at www.oxfordreference.com/view/last viewed on 8/1/2014.

[3]See also ,Prof. Dr. Singh,Ranbir, *Access to Justice and Legal Aid Service with Special Reference to Specific Justice Needs of the Underprivileged People* available at http://saarclaw.org/publicationFile/1023_last viewed on 8/1/2014.

[4]Schroeter, Leonard, *The Jurisprudence of Access to Justice* available at http://www.seanet.com/~rod/marbury.htmllast viewed on 10/1/2012.

[5] Krishna Iyer V.R., *The Dialectics and Dynamics of Human Rights in India* (Eastern Law House, Reprint, 1999) p. 105.

[6] *Supra*. The Magna Carta is regarded as one of the great common law documents and as the foundation of constitutional liberties.

[7] Justice Ganguly A.K., *Access to Justice,* Nyaya Deep, Vol. VIII Issue 1(Jan.2007)p. 15.

It is pertinent to note that the rights to legal representation and legal aid integral to access justice, were found enumerated in the Statute of Henry VII as early as 1495. [8] This statute enjoined provision of counsel for the poor. Prior to this statute, under Henry III , poor men were not obliged to pay for their writs.

The guarantee that courts would remain open and dispense justice freely to remedy the wrongs done, permeated the core international human rights instruments as the 'inalienable rights' of human beings. Access to justice thus came to be framed in the language of human rights.

2.2 International Human Rights Treaties on Access to Justice

The right of access to justice has its foundations in various provisions of international human rights law which has developed standards in respect of it. The various human rights instruments recognize an individual's right of access to justice for the violation of rights suffered. While they envisage protection to individuals in case of violation of rights, they also emphasize the obligation of States to respect and promote the same. On the one hand therefore, the Human Rights instruments cast a negative duty on States not to impede the right of access in all its components and, on the other, they also

[8] The Statute of Henry VII of England waived all fees for indigent civil litigants in the common law courts and empowered the courts to appoint lawyers to provide representation in court without compensation. See Fox Russell, *Justice in the Twenty First Century* (First Edition, Cavendish Publishing Ltd., Australia, 2000)p.81.

impose a positive duty to ensure that justice institutions are in place in order that individuals can access the remedies available to them under the law.

Although there a number of human rights instruments with provisions on access to justice, the core human rights treaties on the subject have been analyzed in the present chapter.

2.2.1 Access to Justice inbuilt in Universal Declaration of Human Rights, 1948[9]

Access to justice received formal attention from 48 member States of the UN on 10th December 1948, with the proclamation of the Universal Declaration of Human Rights (UDHR). [10] This Declaration came to be seen as the most important document[11] recognized internationally as the yardstick for human rights and in particular for laying down for the first time, the key components of access to justice. [12]

[9] The Universal Declaration of Human Rights was proclaimed by UN General Assembly Resolution 217 A(III) available at www.un.org/en/documents/udhr/last viewed on 21/9/2013.
[10] Universal Declaration of Human Rights shall be hereinafter referred to as the UDHR for short.
[11] Prior to the Universal Declaration of Human Rights, the UN Charter signed on 26th June 1945, affirmed faith in fundamental human rights, the dignity and worth of the person and in the equal rights of men and women and endorsed the establishment of conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.
[12] Dias Kadwani Ayesha & Welch Gita (eds.), *Justice for the Poor, Perspectives on Accelerating Access (*Oxford University Press, New Delhi,2009) p.22.

The Universal Declaration of Human Rights affirms the right to be treated fairly[13] in all spheres of human action including a fair hearing at a tribunal or court[14] and a fair, just and effective redressal for the violation of rights, which though stipulated in different Articles, converges to form the right of access to justice.[15]

Article 8 of the Declaration deserves special mention for its rich content in the context of access to justice. The said Article reads,

> "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law."

The use of the word 'effective remedy' in Article 8, makes it amply clear that the Universal Declaration has laid down a yardstick as far as the qualitative aspect of the remedy is concerned. Containing two important aspects, Article 8 of the Declaration clearly signifies that rights without remedies would be meaningless and its corollary that the States should protect and promote the fundamental rights by ensuring their accessibility to tribunals or courts which have the capacity to enforce their claims.

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[13] Article 7 of the Universal Declaration of Human Rights states "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

[14] Article 10 of UDHR

[15] Article 8

Envisaging that the enforcement power of the remedy is the quality that converts pronouncements of ideal into operational rights[16], the Declaration urges States to put in place competent mechanisms that would ensure the enforcement of rights of individuals by providing effective remedies.[17]

Thus, the Declaration stipulates the right of recourse to a domestic tribunal or court to safeguard the violation of fundamental constitutional or legal rights of a person.[18] Hence where a man has a right, he must have the means to vindicate and maintain it and must be able to avail of an effective remedy, in case of its violation.

Elsewhere[19], the Universal Declaration of Human Rights, also acknowledges,

> " Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him."

This Article provides for the basic right to a fair trial not only in criminal cases but also in civil disputes concerned with the determination of individuals' rights. A combined reading of both the Articles suggests an emphasis on a 'fair legal system', where individuals, whose rights are violated are assured

[16]Ziegler Donald, *Rights, Right of action, and Remedies*: *An Integrated Approach*, 76, WASH L.REVIEW,67,(2001).
[17] Article 8 of the Universal Declaration of Human Rights.
[18] *Ibid*.
[19] Article 10 of the UDHR

of an effective remedy on being heard by a competent court. Thus the Declaration has pronounced access to justice as one of the important rights of man.

While emphasizing protection of human rights by the rule of law, the Declaration in particular, also underscores the responsibility of States to protect human rights by the administration of justice. [20] It lays down that States should take care that no situation should arise or no circumstance should be used as a pretext for the violation of a person's rights outlined in the Declaration. Thus the Declaration has expressly stipulated normative principles and protection of human rights and freedoms with respect to access to justice.

Inspired by the Declaration, many Constitutions of the World have been embellished with rights, there from.[21] The Universal Declaration of Human Rights being a 'common standard of achievement for all peoples and all nations', the principles enshrined therein developed into binding 'juridical commitment' with the International Bill of Rights.[22] The rights outlined in the Universal Declaration of Human Rights became binding with the adoption of two treaty instruments namely the International Covenant for Economic,

[20] See Articles 28 and 30 of the UDHR.
[21] Sudarshan R., "*Avatars of Rule of Law and Access to Justice*", in Justice for the Poor, Perspectives on Accelerating Access (Oxford University Press, New Delhi,2009)p.588.
[22] The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights,1966 and the International Covenant on Civil and Political Rights,1966 and their Optional Protocols.

Social and Cultural Rights,1966 and the International Covenant for Civil and Political Rights,1966, along with their Optional Protocols discussed below.

2.2.2 Access to Justice through International Covenant on Economic, Social and Cultural Rights[23]

The International Covenant on Economic Social and Cultural Rights (ICESCR),[24] the other component of the International Bill of Rights, is a legally binding document that protects a range of economic, social and cultural rights without discrimination on the basis of creed, political affiliation ,gender of race.[25]

Article 2(1) of the Covenant indirectly addresses the right to access to justice by providing for State Parties to take steps ,individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.[26]

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[23]The International Covenant on Economic Social and Cultural Rights was adopted by the United Nations General Assembly on 16th December 1966. It entered into force on 3rd January 1976.See Brownlie Ian (ed.) , *Basic Documents on Human Rights* (Third Edition ,Clarendon Press, Oxford, 1998) p. 114.

[24] The Covenant is referred to by its abbreviated form as ICESCR in this work.

[25] Dias Kadwani Ayesha & Welch Gita (eds.),*Justice for the Poor, Perspectives on Accelerating Access* (Oxford University Press, New Delhi, 2009) p. 23.

[26]*Ibid*. at p. 24. See also the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008 , which affirms the interdependence and indivisibility of all human rights and strengthens access to justice by providing the possibility to access a procedure to seek justice at the international level when access to justice at the national level has been denied or does not exist.

The Covenant has its own monitoring and compliance committee which is the Committee on Economic, Social and Cultural Right responsible for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights. [27]

2.2.3 Access to Justice through International Covenant for Civil and Political Rights, 1966. [28]

The third component of the International Bill of Rights is the International Covenant for Civil and Political Rights,1966 (ICCPR). [29] Adopted on 16th December 1966 ,the Covenant sets out the significant human rights of persons which member States are obliged to respect.

As far as this Covenant is concerned, [30] the right to access to justice is recognized more specifically in two separate but complementary articles[31], although not in the expansive sense understood in contemporary times. Paragraph 3 in Article 2 in of the Covenant, envisages protection to an individual's rights by States in a three-fold manner. In case of violation of rights or freedoms, the States would have to ensure an effective remedy, the

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[27] *Ibid*.
[28] Adopted by GA Resolution A/RES/2200A(XXI)of 16th December 1966. It came into force on 23rd March 1976. See Brownlie Ian (ed.) , *Basic Documents on Human Rights* (Third Edition ,Clarendon Press, Oxford, 1998) p. 125.
[29] International Covenant on Civil and Political Rights is referred to by the abbreviated form as ICCPR in this work.
[30] Covenant or Convention is a binding treaty coming into force on the ratification by a certain number of States available at http//www.humanrights.gov.au /human rights last visited on 26/6/2012.
[31]Article 2 paragraph 3 and Article 14of the ICCPR.

right to which would have to be determined by competent judicial, administrative or legislative authorities and the enforcement of the right would also have to be provided for.[32]

It must be noted that although the right of access to justice is not expressly mentioned in the Covenant, some of the components which are an integral part of access to justice, are expressly and also by implication, found contained therein. Article 14 of the Covenant, in addition to giving an assurance of equality before the courts and tribunals to all persons, mandates a fair and public hearing by a competent, independent and impartial tribunal established by law.[33]

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[32] Article 2 paragraph 3 of the ICCPR stipulates (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

[33]Article 14 of the Covenant states As under:
1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;
(d) 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 this right; and to have legal assistance

Although envisaged in case of criminal offences, the International Covenant on Civil and Political Rights sets out specific obligations of States to ensure a speedy trial and provide state-funded counsel for indigent persons. While Article 14 (3) (c) mandates "trial without undue delay", Article 14(3)(d) of the Covenant requires that an accused offender is entitled "to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it."[34] It is heartening to find that the right to legal is given adequate weightage in the Covenant.

A comprehensive reading of article 14 of the Covenant, along with its relevant paragraphs, indicates emphasis on certain rights which currently form an integral part of the concept of access to justice. Thus, in addition to the right to

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assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.
See Brownlie Ian(ed.),*Basic Documents on Human Rights* (Third Edition ,Clarendon Press, Oxford,1992) p.130.

[34] Article 14 of the ICCPR

an effective remedy spelt out in Article 2 paragraph 3 of the Covenant ,the said Covenant also lays emphasis on

i. the right to equal justice before the courts of law
ii. right to a fair and public hearing by a competent court established by law
iii. the right to a speedy trial
iv. the right to legal assistance and free legal aid ,on the existence of certain circumstances, as expressed in the Covenant.[35]

A plain reading of article 14 under the Covenant in its entirety, reflects a relatively broader interpretation to the concept of access to justice as compared to the understanding received by it under the Declaration, though it is important to draw attention to the fact that, the former is to a certain extent linked to the administration of criminal justice.[36]

Interestingly, the right to fair hearing expressly mentioned in Article 14 paragraph 1 of the Covenant , came in for interpretation before the Supreme Court of Victoria in Australia. The Australian Court after considering the legal significance of the Covenant and following a detailed review of the relevant authorities, in *Tomasevic v. Travaglini & Anor. Tomasevic* [37] , held that 'every judge in every trial, both criminal and civil, has an overriding duty to ensure that the trial is fair.' Further, the Court also considered fair trial to be

[35] See Article 14 of ICCPR
[36] Article 14 paragraph 3
[37] [2007] VSC 337 [139].

'inherent in the rule of law and the judicial process' and also stated that 'the proper performance of the duty to ensure a fair trial would also ensure that the rights specified in the Covenant are promoted and respected.'

Again in the same case[38], the learned judge aptly established the link between equality before the law, fair hearing and access to justice, stating that "the inherent duty to ensure a fair trial and the human rights of equality before the law and access to justice may be said to breathe the same air."

Interpreting Article 14 of the Covenant, in significant decisions,[39] the European Court of Human Rights held the said Article to signify that "all persons must be granted, without discrimination, the right of equal access to the justice system. The Court emphasized that the administration of justice must effectively be guaranteed in all cases to ensure that no individual is deprived of his/her right to claim justice in procedural terms."[40]

A combined reading of the two Articles along with the other provisions of the Covenant , makes it abundantly clear that almost fifty years ago, the State Parties to the Covenant were conscious about protecting and preserving human rights. Accordingly it is observed:

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[38] *Tomasevic v Travaglini & anor. Tomasevic* available at www.hrlc.org.au/ last viewed on 10/7/2012.
[39] *Ciorap v Moldova* [2007] ECHR Application No 12066/02 (19 June2007) and *Bakan v Turkey* [2007] ECHR Application No 50939/99 (12 June 2007)
[40] *Ibid*.

Firstly, that the right to access to justice is fundamental and indispensable to the protection and enjoyment of all rights including human rights. A mere proclamation of individuals' rights and entitlements without effective means for their realization would be meaningless.

Secondly, human rights being interdependent, State Parties have to ensure the protection of a number of other human rights in order that the right to access to justice be real and effective. The guarantee of equality before the law and equal protection of the law suggest both formal equality, which means, the application of the law, and substantive equality, meaning, the result and benefits of applying the law. In other words, for these equality rights to be effective, individuals must be given the ability to obtain legal assistance when required and thereby effective access to the courts and the legal process.

Thus in addition to reiterating the guarantee of the right to an effective remedy by a competent judicial administrative or legislative authority, along with its enforcement, the Covenant like the Universal Declaration of Human Rights, also provides an assurance of equality under the law and the access rights.[41]

[41] Dias Kadwani Ayesha & Welch Gita (eds.), *Justice for the Poor, Perspectives on Accelerating Access* (Oxford University Press, New Delhi,2009) p.23.

The General Comment[42] on Article 14 of the Covenant deserves mention for its important observations. It states that the provisions of the Article are aimed at ensuring the proper administration of justice for which equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law form significant components[43].

In addition, the General Comment also specifies that Article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law.[44]

Although the Covenant in a way, expanded the interpretation of what is conceptually understood as access to justice, there are obvious shortcomings evident on its plain reading. Even though it addresses some of the relevant components of the right to access to justice, the Covenant does not specifically address the question as how to ensure access to justice is provided.

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[42] The Human Rights Committee established under the ICCPR publishes its interpretation of the content of the human rights provisions in the form of General Comments on thematic issues available at www2.ohchr.org/english/bodies/hrc/comments.html.

[43] From the General Comment 13, it is abundantly clear that Article 14 is the foundation necessary for the proper implementation of all basic substantive rights. The protections therein have a rich history traceable to the Anglo-Saxon concept of "due process of law" and its origins in the Magna Charta Libertatum of 1215. Embodying the principle of separation of powers, Article 14 makes the existence of an independent and impartial judiciary, a positive obligation of States.

[44]General CommentNo.13:04/13/1984.(Twenty-first session,1984) available at http://www2.ohchr.org/english/bodies/hrc/comments.htmllast viewed on 18/7/2012.

Another concern mentioned is that this provision is too trial- centered without the proper recognition of fairness and equal access to justice.[45]

Nonetheless, ratified by most countries[46], the International Covenant on Civil and Political Rights adopted in 1966 has further enriched the normative basis for the rule of law and access to justice.[47]

Again there is a direct means of enforcement since the Covenant's Optional Protocol provides individuals the right to submit complaints to the Committee created by the Covenant for the violation of the rights under the Covenant.[48]

Member States are warned against violation of rights under the Covenant on account of the creation and existence of the Special Rapporteurs and United Nations Human Rights Commission. In short, it is abundantly clear that by the standards laid down in the Covenant ,State Parties should ensure that justice is accessible through substantive and procedural access measures.

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[45] Skinnider Eileen, *The Responsibility of States to provide Legal Aid*, Paper presented for Legal Aid Conference, Beijing, China available at http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/beijing.pdf last viewed on 15/7/2012.

[46] In 2012, 167 States are Parties to the ICCPR

[47] Sudarshan R., *Avatars of the Rule of Law and Access to Justice: Some Asian Aspects,* in Justice for the Poor, Perspectives on Accelerating Access (Oxford University Press, New Delhi,2009) p.588.

[48] Optional Protocol supplements the original convention with additional obligations. The Covenant's Optional Protocol to the International Covenant on Civil and Political Rights,1966 entered into force on 23rd March 1976.

In addition to the major United Nations instruments recognizing the right to access to justice as a fundamental human right, the International Convention on the Elimination of All Forms of Racial Discrimination,1965; Convention on the Elimination of All Forms of Discrimination against Women,1979; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,1984; Convention on the Rights of the Child,1989 and the International Convention on the Protection of the Rights of all Migrant workers and Members of their families,1990,are some of the other United Nations standards related to Access to Justice.[49]

Some of these human rights instruments mentioned above, focus on protection to vulnerable people and communities. The Convention on the Rights of the Child, keeping in mind the best interest of the child ,recognizes the right of child to prompt access to legal and other appropriate assistance including the right to challenge the legality of his deprivation of his /her liberty, in case of its occurrence.[50]

An interesting aspect about the various instruments mentioned is that they all affirm and promote the right to access to justice. Though they may differ in their specific provisions, they all condemn any practice that encroaches upon

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[49] UNDP: *Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice*, available at http://www.unrol.org/doc.aspx?d=2311last viewed on 16/7/2012.

[50] Ayesha Kadwani Dias & Gita Welch (eds.), *Justice for the Poor, Perspectives on Accelerating Access*(Oxford University Press, New Delhi, 2009) p. 25.

the individual's right to fair and equal treatment. Moreover, even as they envisage traditional protection under the civil and criminal laws, they stipulate protection in all spheres of human endeavor and interaction. Various other United Nations instruments also affirm the rights to access to justice and for treatment.[51]

2.2.4 Access to Justice in Major Regional Human Rights Instruments

Various regional human rights instruments elaborated also provide protection to civil, political, economic, social and other rights including access to justice. Intergovernmental arrangements for the promotion and protection of human rights have been established in the European, American and African regions,[52]which are considered below:

2.2.4(i) European Convention for the Protection of Human Rights and Fundamental Freedoms[53]

The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 gives specific legal content and practical form to the human rights set out in the Universal Declaration of Human Rights .

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[51] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,1985 and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, 2005.

[52] Dr. Chandra U., *Human Rights* (Allahabad Law Agency Publications ,Reprint 2001) p.273.

[53] The European Convention on Human Rights and Fundamental Freedoms was signed in Rome (Italy) on 4 November 1950 by 12 member states of the Council of Europe and it entered into force on 3rd September 1953. The said Convention is referred to in this work by its abbreviation ECHR.

Although binding on the member states in Europe, its elaboration on fair trial rights serves as a classical example for future human rights instruments on access to justice.

The European Convention stipulates that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."[54] The Article postulates a fair and public hearing to one with a grievance, within a reasonable time, by an independent and impartial tribunal instituted by law, as the three significant components of the right.

Thus, the European Convention incorporates the broad contours of the human right of access to justice, in the sense of the right to a "fair hearing". Being a legally binding instrument, the content and scope of the provisions in the Convention, have been further evolved and developed by the interpretation of the European Court of Human Rights.[55]

[54] Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950**.** See Brownlie Ian, *Basic Documents on Human Rights*(Third Edition , Clarendon Press, Oxford, 1998) p.329.

[55] The European Court of Human Rights set up under Article 38 of the Convention is machinery constituted for the supervision and enforcement of rights in the Convention.

Interestingly, the right set out in Article 6 has received a broad interpretation from the European Court of Human Rights[56], as early as 1975. In that year, in the case of *Golder v. United Kingdom,*[57] the European Court held that although Article 6(1) did not expressly state a right of access to the courts, the procedural guarantees it provided would be meaningless without such a right.

The European Court observed that the fair conduct of a civil proceeding is meaningless, if one does not have the right to bring the proceeding in the first place, and explained that the Convention presupposes the right of access to the courts, just as it presupposes the existence of the courts themselves. The Court held that Article 6 paragraph 1, was in respect of not only the conduct of the proceedings once they have been instituted, but also included the right to institute them in the first place. Any other interpretation of Article 6, would, according to the Court, contradict a universally recognized principle of law and would allow the State to close its courts without infringing the Convention.

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[56] Established under Article 19 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ,1950

[57] [1975] 1EHRR 524 . Mr Golder was serving a fifteen-year sentence for robbery in Parkhurst Prison on the Isle of Wight. He claimed to have been wrongly accused by a prison officer of participating in a jailhouse disturbance. Even though no disciplinary charges were ever pursued, the allegations remained in his prison record and may have adversely affected his prospects for parole. He asked for permission from the Home Secretary to consult a solicitor in order to sue the guard for libel to challenge the accusation. Permission to contact a lawyer was refused. The European Court of Human Rights found a violation both of his right to correspondence under Article 8 and his right of access to court under Article 6(1). The Court observed that the right to a fair hearing under Article 6(1)includes the right of access to a court itself.

Moreover, two recent decisions[58] of the European Court of Human Rights regarding the scope and content of Article 6 of the European Convention on Human Rights have confirmed that the right to a fair hearing subsumes a right of access to the courts.

Again, in *Airey v. Ireland,*[59]the European Court held that the fulfillment of a duty under the Convention requires positive action by the State and thus it involves a positive duty to ensure effective access to the courts[60]. The Court made it clear in the same case that this right should be 'practical and effective' and not theoretical and illusory.

Nonetheless, being aware of the reality, in *Ashingdane v. United Kingdom*[61] the Court also accepted that limitations may apply in respect of this right, as this right "by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals". However, the Court observed that although a State-party enjoys a certain "margin of appreciation," it cautioned that the limitation must not be such that "the very essence of the right is impaired." As with most of the limitations which are permissible under the Convention, a restriction to the right of access must, in addition, have a legitimate aim, and comply with

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58 *Ciorap v Moldova* [2007] ECHR Application No 12066/02 (19 June2007) and *Bakan v Turkey* [2007] ECHR Application No 50939/99 (12 June 2007).
59 ECHR (1979) 2 EHRR 305
60 The European Court of Human Rights also made it clear in the same case that legal aid in civil cases should be considered as an aspect of fair trial.
61 (1985) 7 E.H.R.R. 528, [1985] E.C.H.R. 8225/78, at para.57.

the proportionality test, in that, there must exist "a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."

Interestingly, the European Convention on Human Rights in Article 13 stipulates an effective remedy before a national authority for the violation of rights and freedoms.[62] Despite these broad guarantees, there is little guidance as to what exactly constitutes an "effective remedy" according to the Court.[63] The paucity of case -law under Article 13 of the European Convention seems to result from the Court's reluctance to examine a complaint under Article 13 if it has considered a remedy under another Article, as the requirements of Article 13 are less stringent than under Article 6.

What this actually means is that a violation of Article 6 of the Convention automatically encompasses a violation of Article 13 and the court rarely considers a claim under Article 13 on its own. In addition, it is clear that Article 13 can only be used with respect to rights guaranteed under the

[62] Council of Europe, *Human Rights in International Law* (Third Edition, First Indian Reprint, Universal Law Publishing Co. Pvt. Ltd. 2009) p.313.
[63] Rozakis Christos, "*The Right to a Fair Trial"*, available at http://www.jsijournal.ie/html/ volume.pdf last viewed on 20/8/2012. See also Pinedo Méndez Elvira, *Access to Justice as Hope in the Dark in Search for a New Concept in European Law* ,International Journal of Humanities and Social Science Vol. 1 No. 19; (December 2011) p.12 available at http://www.ijhssnet.com/journals.pdf last viewed on 21/8/2014.

European Convention and not to enforce rights guaranteed under state laws that do not come within the ambit of the framework of the Convention.[64]

A significant highlight of the Convention is that it obligates the States to provide an effective right to access to court. However, despite stipulating this obligation, the Convention permits the States to select the method of securing this right, whether by providing legal aid in civil cases, by simplifying the procedural requirements or through other means.[65]

From an analysis of the relevant articles of the Convention, it follows that the Convention recognizes the right of an aggrieved individual whose right has been violated to have access to the courts for an effective remedy. Further, the legal remedy should be made available within a reasonable time after a fair and public hearing is given by an independent and impartial tribunal.

A look at the relevant provisions of both the International Covenant on Civil and Political Rights and the European Convention of Human Rights reveals some elements in common as far as the components of access to justice are concerned.

[64] See, The Treaty on the Functioning of the European Union (TFEU)that contains a specific reference to access to justice in Article 67(4) . It stipulates that "the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters."

[65]Available at http://web.worldbank.org.html available last viewed on 21/82012.

At the outset, the guarantee of the right to a fair and public hearing within a reasonable time, by an independent and impartial tribunal established by law ,in the determination of an individual's civil rights and obligations or of any criminal charge against him or her is visible.

Secondly, both the instruments in common, echo the key ingredients necessary for a "fair trial."[66] Thus the Covenant includes provides guarantees with regard to a fair trial[67] and also encompasses a stipulation[68] with regard to access to court. In addition, Article 2[69] requires States to ensure the existence of effective remedies. In turn, the European Convention stipulates the right to access to court[70], an important element in remedying violations , the right to an effective remedy [71] and reparation in case of violations[72] and affords them due weightage.

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[66] *Supra.* Article 6 paragraph 1 of the ECHR lays down that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

[67] Article 14 of the ICCPR paragraph 1.

[68] *Ibid.*

[69] Article 2 paragraph 3 of the African Charter on Human and Peoples' Rights,1981

[70] Article 6 ECHR

[71] Article 13 ECHR

[72] Article 41 of ECHR

2.2.4(ii) Charter of Fundamental Rights of the European Union[73]

With the formation of the European Union, the Charter of Fundamental Rights of the European Union (EU) was drawn up in the year 2000.[74] The Charter which is legally binding on member States of the European Union , reiterates the fundamental right to an effective remedy and to a fair trial in one of its provisions.[75]

In the said Article, the Court of Justice of the European Union,[76] has emphasized that for the right therein to be effective, a formal entitlement to institute proceedings is not enough. To be effective, the right of access requires that practical impediments must not unduly obstruct the exercise of the right. The Court accentuated that the exercise of the right to an effective remedy must not be rendered 'virtually impossible or successively difficult.'[77].

Despite its imperfections, the European Convention on Human Rights and Fundamental Freedoms,[78] became a beacon of light for international human

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[73] 2000/C364/01.See Council of Europe in *Human Rights in International Law*(Third Edition, First Indian Reprint 2009,Universal Law Publishing Co.) p.521.

[74] The Charter of Fundamental Rights of the European Union has been referred to by the abbreviation EU Charter in this work

[75] Article 47 of the Charter of Fundamental Rights of the European Union stipulates "Right to an effective remedy and to a fair trial"- Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. See Council of Europe in *Human Rights in International Law,* (Third Edition, First Indian Reprint 2009,Universal Law Publishing Co.) p. 529.

[76] The Court of Justice of the European Union Rules on the law of the European Union, but at the same time, acknowledges the European Convention on Human Rights , as a guiding principle in the development of fundamental human rights.

[77] http://158.109.131.198/catedra/.pdf last viewed on 30/8/2012.

[78] European Convention on Human Rights is binding on the whole of Europe.

rights instruments of the future. It served as a model for the International Covenant on Civil and Political Rights discussed above, and also for various regional human rights treaties for the Americas[79] and for Africa, discussed hereafter. [80]

2.2.4.(iii) American Convention on Human Rights,1969

The American Convention on Human Rights enetred into force on 18th July 1978.[81] The American Convention on Human Rights, 1969, imposes a general legal obligation on State Parties to respect the rights and freedoms recognized in the Convention. It specifically recognizes the rights to a fair trial[82] and to equal and judicial protection.[83]

As regards the right to a fair trial, Article 8 of the Convention underscores a person's right to a hearing with due guarantees and within a reasonable time by a competent tribunal. This right is further reinforced by Article 25 which stipulates the right to simple and prompt recourse or any other effective recourse, to a competent court or tribunal in case of violation of fundamental rights recognized by the Constitution or the Convention.[84]

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[79] American Convention on Human Rights, 1969
[80] Available at www.un.org/law last viewed on 3/9/2012.
[81] Brownlie Ian(ed.),*Basic Documents on Human Rights* (Third Edition ,Clarendon Press, Oxford, 1998) p. 495.
[82] Article 8 of the American Convention on Human Rights, 1969
[83] Articles 24 and 25 of the American Convention on Human Rights, 1969
[84] Everyone has the right to simple and prompt recourse, or any other effective recourse, to competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or the laws of the State concerned or by this Convention even though such violation may have been committed by persons acting in the course of their official duties.

The bodies responsible for ensuring compliance with the provisions of the Convention are the Inter-American Commission on Human Rights and the Inter American Court of Human Rights.

2.2.4.(iv) African Charter on Human and Peoples Rights,1981

The African Charter on Human and Peoples' Rights 1981, commonly known as the Banjul Charter, was adopted on 17th June 1981.[85] It is noteworthy to find that the Charter expressly lays down that every individual shall have the right to have his cause heard.[86] Besides stipulating the right to appeal to competent national organs against acts of violation of fundamental rights, the Convention also emphasizes protection against undue delay in the trial of a case.

From the discussion above, it is clear that there is a very broad base of international law instruments that deal with access to justice.[87] The human rights conventions[88] include various provisions relating to measures aimed at ensuring effective remedies for persons whose human rights have been violated.

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[85] The Charter entered into force on 21st October 1986.See Brownlie Ian (ed.),*Basic Documents on Human Rights* (Third Edition ,Clarendon Press, Oxford, 1998) p. 551.
[86] Article 7 para 1of the African Charter on Human and Peoples' Rights,1981
[87] In addition to the core international instruments recognizing and protecting access to justice as a fundamental right there are also other human rights instruments which affirm the right to access to justice.
[88] A Convention sometimes called a covenant is a binding treaty coming into force upon ratification by a certain number of States available at www.humanrights.gov.au/humanrights last viewed on 21/8/2012.

Under the rule of law, efficacious remedies, effectiveness of justice and notably, the provision for effective recourse to anyone who alleges that her or his rights have been violated, is essential. Conscious that without such recourse justice is of little use, it is striking that the Conventions stipulate remedies that have partly been included in the provision on fair trial and partly in separate provisions.

Thus, whether as the right of access to courts or as the right to a fair trial or as the right to an effective remedy or as the right to judicial protection,the contours of access to justice are clearly visible in most of the international and regional human rights instruments, discussed above.[89]

Another significant aspect of the said Conventions, is that the above mentioned right is subject to restriction and regulation, as is the case, with all other rights. While observing that states could regulate the right of access with procedural or other limitations, the courts have cautioned that such regulations should not be to the point of impairing the "very essence" of the right.[90]

Thus the imposition of time limits, the grant of immunities , the requirement of leave, or the mandatory compliance with a certain legal proecedure, are some

[89] *Supra,* 2.2.4.(i)
[90] Available at http://web.worldbank.org/last viewed on 22/8/2012.

of the valid restrictions on the right of access to courts, that have been acknowleged in the Conventions.

Finally, it is also evident that although some of the essential dimensions of access to justice,[91] have been touched upon, some of its other components have been overlooked in the core human rights instruments, discussed.

Nonetheless, the Courts wherever possible, have by a liberal interpretation given a more expansive meaning to the 'right to a fair hearing', thereby ensuring that there is a lesser likelihood of justice being denied to individuals.

Although uncertainty and indecision exist as to its exact content and scope, it is evident that, underlying the concept of access to justice are the notions of equality and fairness which are the bedrocks of human rights. Accordingly, equal treatment of all by the law, the right to initiate proceedings, the right to legal counsel ,the right to a fair hearing before the courts ,the humane and fair treatment by law enforcement officials and most important of all, the right to effective remedies are some of the main protections to every human being, envisaged under the various human rights instruments.

[91] The right to an effective remedy, right in full equality to a fair and public hearing by an independents and impartial tribunal, right to be tried without undue delay in criminal cases ,right to legal assistance, among others.

In conclusion, a perusal and analysis of the various human rights law instruments relating to access to justice it can be inferred: Firstly, that the various facets of the right of access to justice are well-established and implicit in international human rights law.

Secondly, that the content of the human rights instruments points towards access to courts or lawyers and accessible judicial or remedial mechanisms easily available to the litigant public.

Thirdly, effective access also accentuates the requirement of a strong and effective legal system with rights enumerated and supported by substantive legislations.

Fourthly, that although the international instruments have declared access to justice as an essential feature of a civilized legal system, it is largely left to the domestic law as well as the courts to define the status of access to justice as a juristic principle in their respective jurisdictions.

In sum, human rights law on access to justice demonstrates a jural relation between a citizen or a group with rights and the State as an independent service provider. Further, it may be said to have two dimensions-the first being, procedural access which includes receiving a fair hearing at reasonable cost before an impartial and independent tribunal and secondly, substantive justice which includes receiving a fair and just remedy for the violation of one's rights.

2.3 Contexting India with International Human Rights Regime

As far as India is concerned, India being one of the 48 original member countries that adopted the Universal Declaration of Human Rights, 1948, the rights found in the Declaration were given concrete shape in the Indian domestic law with their incorporation in Part III and Part IV of the Constitution.[92]

Furthermore, the Declaration that forms the basis of two Covenants that is, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights were ratified by India in the year 1979 and thus are legally binding documents requiring commitment.

In accordance with treaty obligations, India has attempted to address the human right of access to justice, through its constitutional framework[93], statutes, and its inventive and activist judiciary[94], although not completely, as stipulated in the international human rights treaties.[95]

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[92] Justice Mathur G.P.,"*UN Human Rights Standards and Criminal Law in India"*, in World of All Human Rights, Soli Sorabjee : A Festschrift (Universal Law Publishing, 2010) p. 85.
[93] *Infra*,Chapter III.
[94] Galanter & Krishnan, "*Bread for the Poor": Access to Justice and the Rights of the Needy in India,*. Hastings Law Journal, Vol. 55:789, 2004.
[95] Available at http://pfhrgd.org/human-rights-obligations/last viewed on 14/9/2012.

2.4. Access to Justice Law and the Three Waves of Reform

Increasing international focus on effective access to justice as a human right saw strategies for enhancing access to justice, more than four decades ago .As rightly said, "the lack of access to justice is often the entry point for reform.[96]"

The access to justice movement arose, so to speak, in the form of three waves.[97] The "first wave" reflects the emergence of legal aid. This wave focused on providing access to legal representation in the courts for the economically disadvantaged. As such, major efforts were made at first, to improve access to justice by ensuring litigants, especially the poor, the benefit of legal services.

The "economic obstacle", that is, the poverty of the poverty of many who due to economic reasons are unable to have or have limited access either to information or to adequate representation caused the access movement to focus on the devices of legal aid and advice[98] as key agents of change, the provision of legal aid and advice was seen as an effective means for the poor to vindicate their rights.

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[96] Available at www.webworldbank.org last viewed on 14/9/2012.

[97] The three waves or approaches emerged more or less in chronological sequence. See Cappelletti M. & Bryant Garth(eds.), *Access to Justice, A World Survey* (BookI,Sijthoff and Noordhoff, Alphenaanderijn, Milan,1978) p.21.

[98] Cappelletti Mauro, *Alternative Dispute Resolution Processes within the Framework of the World-Wide Access-to-Justice Movement,* 56 Modern Law Rev.282 (1993).

But as was evident, the 'legal aid solution' with its limitations cannot be the singular solution to the problem of effective access. With the transformation of the economy from one based primarily on individual rights to one in which production, distribution and consumption become mass phenomena, an emphasis on group and collective rights or class action as a means of achieving justice occurred, in the "second wave".

This phase addressed the limitations of legal aid by allowing the discriminated or weak persons such as children, women, old people, racial or linguistic minorities or those affected by a handicap and such others, with collective or diffuse interests, the vindication of rights through 'class' or 'collective' action.[99] Consequently, at this juncture, class actions and public interest actions are seen as "devices" capable of eliminating "the organizational obstacle" and thus enlarging the scope of access to justice.[100]

In the "third wave" of the access to justice movement, attention was drawn to the alternatives to legal justice. This phase witnessed the development of a range of alternatives to litigation in court through the introduction of less formal courts and tribunals, court -based mediation and arbitration alternative

[99] Cappelletti M. and Garth B.(eds.), *Access to Justice: A World Survey*,(Vol. I, Sitjoff and Noordhoff – Alpehenaan den rijn, Milan, 1978) p. 44.
[100] See also Justice Krishna Iyer V.R., "*Access to Justice –Promise or Menace", in* Indian Justice : Perspectives and Problems (Vedpal Law House, Indore,1984) p.29.

dispute resolution and community justice centers, for the purpose of resolving disputes and justice problems.[101]

The "third wave of reform" addressed the inadequacy of the traditional, ordinary types of procedure. In the words of Cappelletti ,

> "In certain areas or kinds of controversies, the normal solution - the traditional contentious litigation in court- might not be the best possible way to provide effective vindication of rights. Here the search must be for real (stricto sensu) alternatives to the ordinary courts and the usual litigation procedures."[102]

Thus the third wave of the access to justice movement encompassed, as it were, a broad range of efforts to make truly effective the rights of individuals denied justice, effective access through the removal of "procedural" impediments that hinder it. The "third wave" therefore, represented institutions and devices, personnel and procedures used to process and even prevent disputes in modern societies including the formulation of alternative methods to decide legal

[101] Parker Christine, *Just Lawyers, Regulation and Access to Justice* (First Edition, Oxford University Press, 1999) p. 36.
[102] Cappelletti Mauro, *Alternative Dispute Resolution Processes within the Framework of the World-WideAccess-to-Justice Movement,* 56 Modern Law Rev.282 (1993).

claims[103].It contained a clear expression of the idea that legal strategies are not enough to solve the access to justice problems of the poor.

While the adversarial and litigious approaches of the traditional justice system remain important, they are only very slowly, being combined with 'holistic' approaches, recognizing restorative justice approaches in criminal justice and various forms of alternative dispute resolution in civil justice. Cappelletti and Garth referred to the 'third wave' as the emergence of a fully developed access to justice approach which "built upon the achievements of the earlier reforms but in addition, expanded both the goals and means of achieving them."[104]

The three waves of reform indicate a shift towards a more citizen- centred and community -focused justice system, one that makes the law more purposeful and meaningful to those for whom justice is out of reach.[105]

The 'Access to Justice Movement' brought home the realization that a system of justice is more than a system of dispute resolution, whether it operates in court or out of court. It must be one that the people regard as satisfactory and which has a transparently moral ethic.[106]

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[103] Cappelletti M. and Garth B.(eds.), *Access to Justice: A World Survey*, (Vol. I, Sitjoff and Noordhoff – Alpehenaan den rijn, Milan, 1978) p. 49.

[104] Available at http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_2/p1.html last viewed on 12th July 2012.

[105] According to Cappelletti and Garth, the fourth wave emphasizing the introduction of competition reforms to the legal profession, would find acknowledgement in this background.

[106]Hon. Fox Russell, *Justice in the 21st century* (First Edition, Cavendish Publishing Ltd.,Australia,2000) p.7.

2.4.1 Access to Justice Law and Three Waves of Reform in Indian context

It is not true to say that the internationally impacting three waves of reform have not affected India. The context and consequences might have been different but among the developing nations, India is a fore runner in providing access to justice and the three waves of reform are very well evident in the Indian context.

The idea of legal aid, class action and informal forms of settlement are not new to Indian soil. However one cannot overlook the pivotal role of the Indian judicial system in the realization of access to justice.

To effectualize its commitment to the cause of justice enshrined in the Constitution, the State has made available formal justice -delivery mechanisms at the village or grassroots level, the district level, taluka level and also at the State level.[107]

As the highest court of law of the land, the Supreme Court has refashioned constitutional law into a 'weapon of the weak', giving the weak access to courts, through its creative jurisprudence. [108] The Supreme Court through its

[107] See *infra*,Chapter III.
[108] Sudarshan R., *"Avatars of Rule of Law and Access to Justice"*, in Justice for the Poor, Perspectives on Accelerating Access (Oxford University Press, New Delhi,2009) p.588.

significant pronouncements on free legal aid , the right to representation and speedy trial have been recognized as a part of the fundamental right to life and liberty. The Apex Court through the powerful tool of Public Interest Litigation has brought justice closer to the marginalized sections of society.

The State has provided statutory recognition to various alternative modes of dispute –resolution to reinforce the Constitutional mandate.Greater efforts to broaden the horizons for access to justice in India must come from all corners to ensure that access to justice is no longer a distant dream for millions.

Taking guidance from the core human rights treaties, significant developments in Indian law and practice in the sphere of access to justice that have shaped access to justice in the country , will be discussed in the next chapter.

Chapter III

The Milestones in Access to Justice: The Indian Journey

3. The Milestones in Access to Justice: The Indian Journey

International human rights law has laid down a broad base of standards and norms for the protection, promotion, enforcement and realization of the human right of access to justice . In effect it is a roadmap for States in the administration of justice,for its effective implementation. India by having ratified some of the human rights treaties on Access to Justice, has reinforced her commitment to uphold the principle of justice enshrined in the Preamble and other provisions of the Constitution. [1]

In this chapter an attempt is made to discover the milestones in the evolution, growth and development of access to justice in India in the ancient times , the medieval and modern periods of Indian legal history to ascertain the manner and mode of fulfillment of justice needs in the respective periods.

3.1. Access to justice in India: A Historical Perspective

The history of access to justice is inevitably linked to the history of the legal system of which it forms a part. The historical study of any discipline or of a concept or phenomenon there under, provides an understanding of the phases of its development, the situation which warranted such a growth, the factors that

[1] See *supra* ,Chapter II.

influenced it and the socio-political or other blockades which hindered the progress from having its full bloom and blossom.[2] A historical overview of the mechanisms for access to justice distinctive to each period of history helps locate the present as much as it helps understand the developments that led to it so as to envision its future.

3.1.1 Access to Justice in Ancient Times

Under early Indian jurisprudence dispensing justice and awarding punishment was one of the primary attributes of sovereignty. Justice and its administration was an obligation with moral and religious overtones, as through justice alone the welfare of the people as a whole would find realization and *Dharma* complete. [3]

3.1.1. (i) King as the fountain of justice

In ancient Indian tradition, the King as the fountain of justice was responsible to secure to his subjects an equitable solution of disputes that arise between them[4]. Respected as the 'Lord of *Dharma*,' he was entrusted with the supreme authority of administering justice to the people in his kingdom without favour .

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[2] Singh Sujjan, *Legal Aid: Human Right to Equality* (First Edition, Deep & Deep Publication, New Delhi,1997) p. 128

[3] Justice Rama Jois M., *Legal and Constitutional History of India: Ancient Legal ,Judicial and Constitutional System (*First Edition, Reprint, Universal Law Publishing, 2008) p. 3.

[4] Lingat Robert ,*The Classical Law of India* (Oxford University Press, New Delhi,1998) p.246 .

His was the highest court of appeal as well as an original court in cases which were of vital importance to the State.[5]

3.1.1. (ii) Royal Court

In addition to the King himself, *Nripa* , as a court of ultimate resort, there were four classes of courts. The Court appointed by the King or *Adhikrita* was presided over by the Chief Judge or *Pradvivaka*. Apart from the Chief Judge, the court consisted of a board of judges who would provide assistance to him. Sometimes some of the judges constituted separate tribunals with specified jurisdiction[6]. At the same time, in towns and districts Government officers administered justice under the authority of the king.[7]

3.1.1 (iii) People's Courts

At the village level also, jurisdiction was decentralized. In the villages, the local village councils dispensed justice to the villagers. Every body of persons exercising a particular activity seemed to have been invested with the legal right to hear disputes between its members.[8]While this position indicated "legal" competence on account of specific or specialized skill and knowledge, there

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[5] Gandhi B.M., *V.D. Kulshrestha's Landmarks in Indian and Constitutional Legal History (*Ninth Edition, Eastern Book CompanyLucknow,2009)p.8.

[6] Brihaspati mentions fours kinds of tribunals namely stationary, movable, courts held under royal signet in absence of king and commissions under the king's presidency.

[7] Gandhi B.M., *V.D. Kulshrestha's Landmarks in Indian and Constitutional Legal History* (Ninth Edition, Eastern Book Company Lucknow,2009) p.9.

[8] According to Brihaspati "Cultivators, artisans, artists, money lenders, guilds of merchants, dancers, those who wear the signs of religious order and thieves, should arrange their affairs following the rules of their profession". See Lingat Robert, *The Classical Law of India* (Oxford University Press, New Delhi,1998) p.246.

was on the other hand, a more general competence attributed to bodies called the *kula, sreni,gana or puga.*[9] "Mostly customary in origin, these bodies did not administer justice by virtue of delegation from the king but by virtue of their own power which was organically attached to the very existence of the body itself" [10]. Nonetheless, they were subject to the king's control.

The *Kula , Sreni and Gana* commonly referred to as 'People's Courts' were not constituted by the King. They were People's tribunals**,** which were part of the regular administration of justice and whose authority was fully recognized. The composition, powers and jurisdiction of these courts finds mention by Brihaspati .

(a) Kula Court

The *Kula* court has been defined by the Mitakshara as "consisting of a group of relations near or distant." *Kulas* or joint families were very extensive in ancient India and in the occurrence of a quarrel between members; the elders would attempt to settle it. The *Kula* court was this informal body of family elders or alternatively, it may have been a court, taking cognizance of quarrels arising in family units of ten, twenty or forty villages. [11]Thus the *Kula* was the judicial assembly of relations by blood or marriage.

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[9] *Ibid* at p. 246.
[10] *Ibid*.
[11] Altekar A.S., *State and Government of Ancient India* (Motilal B. Publishers,Delhi,1962)p.250.

(b) Sreni court

When the effort at family arbitration failed, the matter was taken to the *Sreni* court. The term '*Sreni*' was used to denote the courts of guilds, which became a prominent feature of the commercial life in ancient India from c. 500 B.C. *Srenis* had their own executive committees of four or five members and it is likely that they may have functioned as the *Sreni* courts also for settling the disputes among their members. The *Sreni* thus was a court of judicial assembly consisting of the members of the same trade or calling, whether they belonged to the different castes or not.[12]

In order to deal with the disputes amongst members of various guilds or associations of traders or artisans , various corporations, trade-guilds were authorized to exercise an effective jurisdiction over their members. These tribunals consisting of a president about four or five co-adjudicators, as mentioned, were allowed to decide their civil cases regularly just like other courts.

(c) Puga court

The *Puga* court consisted of members belonging to different castes and professions but staying in the same village or town.[13]The *Puga* thus was the court of fellow-townsmen or fellow-villagers, situated in the same locality, town

[12] Altekar A.S., *State and Government of Ancient India (*Motilal B. Publishers, Delhi,1962) p.251.
[13] *Ibid*.

or village, but of different castes and callings. The popular courts were arranged in an ascending order of importance which indicates their different jurisdictions. "When a cause had not been duly investigated by *Kula* it could be decided by the *Sreni*. When a cause had not been examined by the *Sreni*, it could be decided by the *Puga* and finally by the royal judges."[14] Brihaspati , in turn points out that an appeal would lie to the *Sreni* court from the decision of the *Kula* court and to the *Puga* court from the decision of the *Sreni* court[15]. Finally the *Kula*, *Sreni* and *Puga* could decide all disputes except those falling under the jurisdiction of the king.

3.1.1.(iv) Panchayats

The Panchayats were courts that were popular in the villages. Invested with judicial powers, these courts played a prominent part almost throughout the long course of Indian history.[16]These courts performed judicial functions and settled disputes among the inhabitants of the village.[17]Though they were essentially non official and popular, it seemed they had the royal authority behind them.

The judicial procedure of some of these was similar to the royal courts although with necessary modification.[18]While some had regular procedures ,others were

[14] Murthy Sreenivasa, *H.M. History of India* ,Part I (First Edition, Eastern Book Company, Lucknow, 2011) p.198.
[15] Altekar A.S., *State and Government of Ancient India*(Motilal B. Publishers, Delhi) p.250.
[16] Murthy Sreenivasa, H.M. *, History of India* (First Edition, Eastern Book Company, Lucknow, 2011) p.201.
[17] *Ibid.*
[18] *Ibid.*

not formal bodies but were more in the nature of extended discussions among interested persons in which informal pressure could be generated to support a solution arrived at by negotiation or arbitration.[19]Although the King was the supreme judicial functionary in ancient India, in actual practice, considerable powers were delegated to these local popular courts or Panchayats. Various authors[20] as well as reports[21] seem to suggest, that the popularity of these courts lay in the fact that that these courts were founded on community or caste, which was in consonance with the social organization of those days.

Thus it may be concluded that administration of justice in the ancient period of Indian legal history was based on sound principles of jurisprudence.[22]One of the cardinal rules of the administration of justice in those times was that justice should not be administered by a single individual. A bench of two or more judges was always preferred to administer justice. "No decision shall be given by a person singly", is a formula found frequently repeated in the old texts[23]. This being the case, it is quite natural to find in ancient times, the settlement of disputes through the intervention of elders.[24]That Ancient Indians had a high sense of justice becomes evident from the establishment of gradation of courts

[19] Galanter Marc, *Law and Society in Modern India* (Oxford University Press,1989)p.55.
[20] *Ibid.*
[21] Fourteenth Report of the First Law Commission established in 1958 under the Chairmanship of Shri M.C. Setalvad to make recommendations regarding Judicial reforms in the administration of justice in the post independence period, available at http://lawcommissionofindia.nic.in/1-50/Report14Vol 1.pdf last viewed on 25/6/2012.
[22] Singh Sujjan , *Legal Aid: Human Right to Equality* (First Edition, Deep & Deep Publications, New Delhi,1997)p. 79.
[23] Gandhi B.M., *V.D. Kulshrestha's Landmarks in Indian and Constitutional Legal History* (Ninth Edition, Eastern Book CompanyLucknow,2009) p.10.
[24] Singh Sujjan, *Legal Aid: Human Right to Equality* (First Edition, Deep & Deep Publication, New Delhi,1997) p. 73.

from the village to the capital of the State, classification of courts into civil and criminal and the formation of rules for judicial procedure.[25]

Availability of courts and in that sense access to courts was available for justice seekers . Justice in ancient India was dispensed by the official law courts and also by the popular courts which were given power to hear and decide cases.[26]The existence of the village courts or Panchayats is also indicative of a fairly well developed system of administration of justice.[27]

Despite the miniscule drawbacks, the official courts along with the unofficial or popular courts drew John Spellman, an English writer to comment, "In some respects, the judicial system of ancient India was theoretically in advance of our own today."[28]

3.1.2. Access to Justice in the Medieval Period

Change was inevitable in the early medieval period, with the arrival of invaders and their foreign concept of governance on the Indian soil. The exit of the erstwhile Hindu dynasties of ancient India brought about political disintegration and the commencement of the rule of the Turko-Afghans or the Delhi Sultanate

[25] Murthy Sreenivasa H.M., *History of India* (First Edition, Eastern Book Company, Lucknow,2011) p. 214
[26] Rama Jois, *Seeds of Modern Public Law in Ancient Indian Jurisprudence* (Second Edition, Eastern Book Company, Lucknow,2000) p.121.
[27] *Ibid,* at 122.
[28] Justice Dhavan S. S., *The Indian Judicial System -A Historical Survey*, available at www.allahabadhighcourt.in/event/theIndian Judiciary last viewed on 2/7/2012.

for three centuries from 1206 A.D. until the arrival of the Mughals into India in 1526. [29] The age-old tradition of justice which existed in ancient India generally seemed to be followed by the Muslims in the medieval period in India. An assessment of administration of justice in India during the mediaeval period, is made with respect to the reign of the Sultanate of Delhi and the Mughal period both of which held political sway in India for long.

3.1.2. (A) Key Features of Administration of Justice during the period of the Sultanate of Delhi (1206-1526)

The judicial system under the Sultans was organized on the basis of administrative divisions of the kingdom. A systematic classification and gradation of the courts existed during this period. The apex court was located at the capital with the seats below in the provinces, districts, *parganahs*, going down to the villages[30]. A hierarchy of courts existed during the period of the Sultanate as under:

(i) Royal Court

The Sultan was the fountain-head of justice. The Sultan being the head of the State was considered the supreme authority to administer justice in his kingdom. Administration of justice being an important function, it was done in his name in three capacities: firstly, as arbitrator in the disputes of his subjects he

[29] Mehta J..L., *Advanced Study in History of Medieval India*, Vol.III (Third Edition Reprint, Sterling Publishers Pvt. Ltd., 1999) p. 1.

[30] *Ibid* at p.81.

dispensed justice through the *Diwan-i-Qaza* ; secondly, as head of the bureaucracy, justice was administered through the *Diwan-i-Mazalim*; thirdly, as the Commander-in-Chief of Forces through his military commanders who constituted *Diwan-i-Siyasat* to try the rebels and those charged with high treason.[31]

The powers and jurisdiction of each court was clearly defined. At the Central capital there were six courts namely, the King's Court, *Diwan-i-Mazalim, Diwan-i-Risalat, Sadre Jehan's* court, Chief Justice's Court and *Diwan-i-Siyasat*. The King's court was the highest Court of Appeal in the realm. It was presided by the sultan who was assisted by two reputed *Muftis*, highly qualified in law. Courts of appeal were provided. The Court of *Diwan-i-Mazalim* and the Court of *Diwan-i-Risalat* were the highest court of criminal and civil appeal respectively .

(ii) Provincial courts

As far as the Provinces were concerned, in each Province (*Subah*) there were five Courts established at the provincial headquarters.. These were namely, the *Adalat Nazim Subah, Adalat Qazi-e-Subah*, Governor's Bench *(Nazim-e-Subah's Bench), Diwan-e-Subah and Sadre Subah.* The *Adalat Nazim Subah* was the Governor's (*Subehdar*) Court. In the provinces the Sultan was

[31]Singh Sujjan, *Legal Aid: Human Right to Equality* (First Edition, Deep & Deep Publication, New Delhi,1997) p. 81.

represented by him and like the Sultan, he exercised original and appellate jurisdiction. Thus courts were set up at each of the administrative units with special officials those knowledgeable in the law exercising judicial functions.[32]

(iii) District courts

At the level of each District (*Sarkar*) , at the District Headquarters, six courts were established, namely, *Qazi, Dadbaks* or *Mir Adls, Faujdars, Sadr, Amils, Kotwals.*

(iv) Parganah courts

In the fourth administrative unit namely the *Parganah*, two courts were established, namely, *Qazi-e-Parganah* and *Kotwal* at each *Parganah* Headquarters for the purpose of dispensation of justice.

(v)Village courts

Finally, in case of the villages which were the lowest administrative unit there was a Village Assembly or Panchayat, a body of five leading men to look after the executive and judicial affairs,for each group of villages. The Sarpanch or Chairman was appointed by the *Nazim* or the *Faujdar*.[33] The Panchayats

[32] Vincent J., *Legal Culture and Legal Transplants –the Evolution of the Indian Legal System*, Report to the XVIIIth International Congress of Comparative Law, Washington,2010,p.17 available at http://isaidat.di.unito.it/index.php/isaidat/article/viewFile/44/50 last viewed on 10/7/2012.

[33] *Ibid*.

decided civil and criminal cases of a purely local character, by placing reliance upon the facts of the cases and in light of the local customs.[34]Although they worked not strictly according to the law of the Kingdom, still there was no interference in the working of the Panchayats.

There has been a difference of opinion regarding the administration of justice under the Delhi Sultanate. While the hierarchy of courts, the independence and impartiality in the administration of justice during the reign of the Delhi Sultanate have been commended, [35] there is also a contrary though unsupported view that the Department of Justice was the most ill-organized of all Sultanate's departments.[36]

Although there were different types of courts, the area of their jurisdiction and their relations with each other were neither clear nor definite[37]. In such case, it could have been probable that access to justice for people during this time was limited. However, there are works of a number of poets and historians that acclaimed the administration of justice done by some of the rulers of those times.[38]

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[34] Singh Sujjan, *Legal Aid: Human Right to Equality* (First Edition, Deep & Deep Publication, New Delhi,1997)p.82.
[35] Gandhi B.M., *V.D. Kulshrestha's Landmarks in Indian and Constitutional Legal History* (Ninth Edition, Eastern Book CompanyLucknow,2009) p.24.
[36]http://www.preservearticles.com/2012041030179/get-complete-information-on-the-judicial-system-of-sultan period.html last viewed on 24/7/2012.
[37] Sreenivas Murthy, *History of India* , Vol.1 (First Edition Reprint, Eastern Book Company,2011) p. 269.
[38] Dr. Vijaya Kumar P.B., *Dynamics of Justice a la Supreme Court of India* (Gogia Law Agency ,Hyderabad ,2011) p. 223.

3.1.2. (B) Key features of Administration of justice under the Mughal period

The Mughal period in Indian history approximately corresponds from 1555 to 1750, after they gained victory over the Sultanate of Delhi. [39] During their reign, the erstwhile judicial system of the Sultans continued to exist without any major changes. Administration of justice was thus regarded as a religious duty by the Muslim kings.[40]

A systematic gradation of courts with well defined powers of the presiding judges existed all over the Empire.[41] At the Imperial Capital at Delhi, three important courts were established which were the Emperor's Court, Chief court of the empire and the Chief Revenue court. There were also courts at the provincial, district , *parganah* and village level.

(a) Emperor as fountain of justice

The Emperor as the fountain of justice was the head of the judiciary. He created a separate department of justice known as the *Mahukama –e –Adalat*, to regulate and ensure that justice was administered properly. Civil, criminal and revenue cases continued to be decided by the courts established at the level of

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[39] It actually first began in 1526 with Babur's victory over Lodi but the former's son Humayun having lost it to Sher Shah regained it only in 1555. See Singh Sujjan, *Legal Aid: Human Right to Equality*, (First Edition, Deep & Deep Publication, New Delhi,1997) p. 82.

[40] According to the Quran which proclaimed that , "to God, a moment spent in the dispensation of justice is better than the devotion of the man who keeps fast every day and says prayer every night for 60 years," quoted in Justice Dhavan S.S., *The Indian Judicial System-A Historical Survey*, available at www.allahabadhighcourt.in/event/theIndian Judiciary last viewed on 2/7/2012.

[41] *Ibid*.

the Imperial capital, provinces, districts, *parganahs* and villages. The Emperor was also the final tribunal of appeal.[42]He would administer justice in person in open court and would decide all types of cases. He was assisted in the dispensation of justice by the Chief *Sadr* in respect of cases of religious nature and by the Chief *Qazi* in all other cases.

(b) Chief Court

Next to the Emperor was the Chief *Qazi ul-Qazat* who was the highest judicial officer of the country. Under him, were *qazis* in the provincial capitals, headquarters of districts and *parganahs* and even in cities with a large Muslim population. They were appointed by the Emperor on the recommendations of the Chief *Qazi* for deciding religious cases dealing with the personal law of the Muslims.[43]

(c)Chief revenue court

Next in line stood the Chief Revenue court which was the third important court established at Delhi. It was the highest court of appeal to decide revenue cases.[44] Apart from these courts, there were also two lower courts at Delhi, namely, the Court of *Qazi* of Delhi and *Qazi–e-Askar*, to decide local cases. The former

[42] Murthy Sreenivasa, *History of India*, Part I (First Edition Reprint, ,Eastern Book Company,2011) p. 268.
[43]*Ibid*.
[44] Gandhi B.M., *V.D. Kulshrestha's Landmarks in Indian Legal and Constitutional History* (Ninth Edition, Eastern Book Company Lucknow,2009)p. 26.

who enjoyed the status of Chief *Qazi* of a province, decided local civil and criminal cases .

(d) Provincial courts

As far as the Provinces were concerned, there were three courts, namely, the Governor's Court known as the *Adalat –e-Nazim –e-Subah* and the Bench, the Chief Appellate Court, the Chief Revenue Court in each Province or *Subah*.[45]

(e) District courts

At the district level , there were four courts, namely, the Chief Civil and Criminal Court of the District, *Faujdari Adalat, Kotwali, Amalguzari Kachehri* which exercised jurisdictions in their respective spheres, in each district or *Sarkar*, which also formed one of the administrative divisions.[46]

(f) Parganah Courts

As far as the *Parganahs* were concerned, in each *Parganah* ,there were three courts, namely, *Adalat-e-Parganah*[47], *Kotwali*[48] and *Kachehri*.[49]

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[45] *Ibid* at p. 27

[46] *Ibid*.

[47]Adalat-e-Parganah exercised jurisdiction over civil and criminal cases arising within its original jurisdiction.

[48] Kotwali decided cases as are found in the modern Police Act .See Gandhi B.M., *V.D. Kulshestra's Landmarks in Indian and Legal History (*Ninth Edition, Eastern Book CompanyLucknow,2009) p. 27.

[49] *Ibid*. See Kacheri decided revenue cases .

(g) Village Courts

Lastly, in the villages which were the smallest administrative units, the large village councils or Panchayats of ancient India administered justice in all petty civil , criminal matters and in religious matters filed by the Hindus in their respective villages. These were presided by the five panchas elected by the villagers who were expected to give a patient hearing to both the parties and deliver their judgment in the panchayat meeting.[50]

Much importance was attached to administration of justice during the Mughal period so much so that legend has it that one of the Mughal Emperors launched the chain of justice,[51]which was required to be pulled by anyone who did not obtain justice from anywhere else, except the King.[52]

Firstly, a system of justice took shape with an efficient system of government under the Mughal Empire [53].

Secondly, the caste and village panchayats were left undisturbed which enabled the former to continue and exercise the same influence as before.

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[50] Gandhi B.M., *V.D. Kulshrestra's Landmarks in Indian Legal and Constitutional History* (Ninth Edition, Eastern Book CompanyLucknow,2009) p. 28.

[51] Emperor Jahangir was famous for his "Chain of Justice", which was a golden chain attached to some bells outside his palace. Anyone in despair could pull the chain and go in for a personal hearing from the emperor himself available at http://www.iloveindia.com/history/medieval-india/mughal-empire/jahangir.htmllast viewed on 25/8/2012.

[52] Dr. Vijaya Kumar P.B., *Dynamics of Justice a la Supreme Court of India*(Gogia Law Agency,Hyderabad,2011) p.232.

[53]Available at http://www.legalindia.in/evolution-of-law-%E2%80%9Ca-short-history-of-indian-legaltheory%E2%80%9D last viewed on 25/8/2012.

Thirdly, they explored various ways and means to impart justice to the people and lost no opportunity to make themselves 'approachable' to the common people who were seeking justice.[54]Their love for justice goaded them to respect and believe in speedy justice as one of their important duties.[55] Nevertheless historians differ in their appreciation of administration of justice under the Mughals.[56]

Analyzing access to justice in the Mughal period it is found that courts with specific jurisdiction were made available at each administrative unit from the lowest to the highest. The indigenous informal justice systems which existed in the ancient times by and large continued to impart justice to the local population. Systematic judicial procedure and legal representation through the institution of lawyers both of which form essential components of access to justice existed.

3.1.3. Access to justice in the Pre- Constitution era

The Pre-Constitutional era refers to the period immediately preceding the enactment of the Indian Constitution. Prior to the enactment of the Constitution, India was a colony of the British for more than three centuries, after the downfall of the great Mughal empire. "Constituting a major breakthrough from

[54] Dr. Vijaya Kumar P.B., ,*Dynamics of Justice a la Supreme Court of India* (Gogia Law Agency, Hyderabad,2011) p.233.
[55]Available at http://www.drgokuleshsharma.com/pdf/mughal%20rule.pdflast viewed on 26/8/2012.
[56] Justice Dhavan S.S., *The Indian Judicial System -A Historical Survey*, available at www.allahabadhighcourt.in/event/theIndian Judiciary last viewed on 12/9/2012.

the past practices and traditions", access to justice in the pre -Constitution period has been examined in the context of unique law and justice institutions developed by the British in India during such time.[57]

3.1.3. (a) Judicial Administration in British India

Allured by the prospect of trade in the East Indies, the English East India Company came to India for the purpose of trade.[58] However various exigencies gradually transformed the essentially trading motives of the company into political ones.[59]A weakened Mughal Empire in India, which finally declined in the first half of the eighteenth century provided a golden opportunity to the British to establish a territorial empire in India.[60] Aware that it was important to have a sound judicial system in the territories under their sway, the British initiated judicial measures although elementary,[61] in some of the towns where they carried on their trading operations.

(i) Access to Justice in British India in the 16th -17th centuries

With their eyes set on trade, the British following their arrival, gave administration of justice less thought than required. Empowered to settle disputes among themselves according to English law and tradition, the

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[57] Gandhi B.M. ,*V.D. Kulshestra's Landmarks in Indian Legal and Constitutional History* (Ninth Edition, Eastern Book Company, Lucknow,2009)p.32.
[58] Charter of 1600.
[59] After 1660 the Company changed its character from a purely trading concern into a territorial power. See Gandhi B.M., *V.D.Kulshrestra's Landmarks in Indian Legal and Constitutional History* (Ninth Edition, Eastern Book Company, Lucknow,2009) p. 34.
[60] *Ibid*.
[61] Jain M.P. , *Outlines of Indian Legal History* (Fifth Edition, Reprint ,Wadhwa and Company, Nagpur, 2008)p. 2.

Company servants permitted the *Qazis* of the place to do justice. Probably for this reason administration of justice in the settlements was not of high order.[62] Scant attention was paid to judicial independence, fair justice and the rule of law. An improperly organized form of administration of justice which lacked uniformity, remained disoriented, was informal and unsatisfactory, characterized justice administration in the early seventeenth century.

(ii) Access to Justice in British India in the 18th century

A more uniform pattern of administration of justice in the eighteenth century emerged with the establishment of the Mayor's Courts. The Mayor's Courts derived their authority directly from the Crown administering justice according to justice and right with a system of first and second appeals . While the first appeal lay to the Governor General in Council from the decision of the Mayor's Court, a second appeal was allowed from the former's decision to King- in-Council or the Privy Council. Consequently, the King of England became the ultimate fountain of justice for litigants in this India during this period.[63]

In the late eighteenth century,[64] the Mayor's Court was replaced with a Supreme Court in the Presidency town of Calcutta.[65] This was the first attempt to create a

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[62] Rai Kailash, *History of Courts, Legislature and Legal Profession* (Third Edition, Allahabad Law Agency, Allahabad,2002) p. 2

[63] Gandhi B.M.,*V.D. Kulshestra's Landmarks in Indian Legal and Constitutional History* (Ninth Edition, Eastern Book Company, Lucknow,2009) p.69.

[64] 1774.

[65] Rai Kailash, *History of Courts, Legislature and Legal profession* (Third Edition, Allahabad Law Agency, Allahabad, 2002) p. 55.

separate and independent judicial organ in India, under the direct authority of the King. The Chief Justice and Puisne Judges were appointed by the King. This court had jurisdiction over civil, criminal, admiralty and ecclesiastical matters and was required to formulate rules of practice and procedure.[66] Appeals from this court lay to the Privy Council.[67]

Along with the Supreme Courts in the Presidency towns of Madras and Bombay also, the *Adalats* in the mofussil areas outside the Presidency towns, formed a parallel system of courts. In the mofussil areas, local civil and criminal justice was left in the hands of the locals, functioning under a system known as the "*adalat* system". [68] Ultimately with the British Crown replacing the Company's administration in 1858, greater uniformity in the judicial structure became possible.[69]

(iii) Access to Justice in British India in the 19th -20th centuries

With the Crown taking control of India in 1858, a number of significant changes in the scenario of administration of justice are noticed. The Supreme Courts and the *Sadr Adalats* were merged so as to create High Courts with jurisdiction over the Presidency Town and the Mofussils.

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[66] *Ibid* at p. 53.
[67] *Ibid* at p.54.
[68] Gandhi B.M., *V.D. Kulshestra's Landmarks in Indian Legal and Constitutional History* (Ninth Edition, Eastern Book Company, Lucknow,2000) p.148.
[69] The Adalat system and Supreme Court were abolished, and a High Court was established in each presidency town and later in other provinces also available at http://www.sci.nic.in/speeches/speeches_2008/abu_dhabi__as_delivered.pdf last viewed on 9/9/2012.

By this arrangement the High Court became the superior court in the Presidency Town and all other lower courts in the Presidency Town were under the control of the High Court. With the establishment of the High Courts, a regular hierarchy of civil courts was established in the various Indian provinces and the criminal courts were organized under the Criminal Procedure Code of 1898. At the same time, by the Letters Patent of 1865, provision was made for the enrolment of the legal practitioners.[70]

The creation of a Federal Court with earmarked jurisdiction to hear appeals from the orders of the High Court , set the stage for a organized hierarchy of courts and sound procedural practice leading to a uniform judicial system for the whole country by the twentieth century. Thus a number of changes with far reaching consequences were made in an effort to bring about uniform and efficient judicial administration.

The availability of local courts of lowest jurisdiction in every administrative district with their power to compel attendance of parties and witnesses and the compulsory execution of decrees, motivated disputants to resort to the governments' courts for what they could not obtain from village justice.[71]

Thus access to a hierarchy of courts with various kinds of jurisdiction was made available to justice seekers during the latter part of British rule in India.

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[70] Rai Kailash, *History of Courts, legislature and legal profession* (Third Edition, Allahabad Law Agency, Allahabad 2002) p.359.
[71] Galanter Marc, *Law and Modern Society* (Oxford University Press, Delhi,1989) p. 19.

British rule in India for nearly three hundred years made a lasting impact on Indian political, legal, social and cultural institutions. While the British supplanted the ancient Indian law with their own law,[72] they left behind a well –organized legal system based on common law ,which went on to become a part and parcel of the modern Indian judicial system.

The reorganization of the traditional Indian judicial system based on Anglo-Saxon jurisprudence caused the traditional systems involved in the dispensation of justice to fall into disuse. Further, the establishment of the High Courts and the institution of the system of appeals leading up to the Privy Council in London although advantageous could only be obtained at the price of the ruin of the traditional system.

With the introduction of adjudication by the courts, the procedure for obtaining justice was formalized. Parties had to engage lawyers who demanded high fees. Besides they were required to pay a high stamp fee in advance of filing a case. The procedure of the courts was highly complicated and the court proceedings which were conducted in the English language were hardly intelligible to the indigenous or local population. Many in fact were ruined by litigation.[73]

In conclusion, in the British period , although courts were made available to the local populace , "the formal, elaborate ,professional system of courts" [74] along

[72] Available at http://www.orientalthane.com/speeches/speech_6.html last viewed on 10/9/2012.
[73] Mahajan V.D., *Modern Indian History from 1707 to the Present Day* (Seventeenth Edition, S. Chand and Co.Ltd.,2009) p.659.
[74] Cappelletti Mauro & Weisner,John (eds.)*Access to Justice, Promising Institutions* (Vol.II., Sijthoff and Noordhoff, Milan, 1979) p.11.

with regulations which imposed court- fees,[75] turned out to be expensive and thus far from accessible to the general population.[76]

This formal and hierarchical court structure continues long after India attained independence and the adoption of the Indian Constitution.

3.1.4. Access to justice and the Constitution of India

The Constitution of India which came into force on 26th January 1950, envisions justice to all, through the Preamble, the Fundamental Rights as well as the Directive Principles of State Policy enshrined in it.[77] With a strong framework for access to justice in letter and spirit , the Constitution kindles hope in the justice seeker that his pleas for justice will not go unheard.

(i) Access to justice in letter and spirit

Founded on the rule of law, equality, as do justice and liberty, pervades the entire Constitutional philosophy. The mandate of equality enshrined in Articles 14 and 15 of the Constitution touches every aspect of human life and activity, including access to justice. Both the Articles affirm that every person should not be denied equal access, on grounds such as religion, race, caste, sex, place of

[75] Justice Sachar Rajindar, *Abolition of Court Fee: Demand of Social Justice*,Vol.12(3) IBR (1985)p.346.
[76] Commenting on the British Judicial system adopted by India ,Mac Donald, J R, in 1910 observed: "We have thus driven the people to the pleader and barrister and the law court and those things are like alcohol they create appetite for themselves."
[77] See *supra,* Chapter I.

birth. By implication it follows that there should be no discrimination in providing justice seekers an opportunity to approach the court .

While equal opportunity is the hall mark of Article 14 and 15, it also accentuates the obligation of the State to minimize the existing inequalities. Furthermore, it mandates special care and protection to the underprivileged. Besides equality, the Constitution takes care of the right to legal representation and fair procedure, both of which are essential components of access to justice.

Article 21 makes a right, just and fair procedure mandatory to avoid violation of the right to personal liberty stipulated therein. From the point of view of access to justice, Article 21 necessarily implies fair representation before the court which in turn entails legal representation and in the event of any person being unable to afford legal representation, it also implies the provision of free legal aid. Since judicial interpretation made principles of natural justice an integral part of Article 21, fair hearing which is an essential component of access to justice, is therefore implicit in the fundamental right under Article 21.

In a similar vein, Article 22 recognizes legal representation as a fundamental right in case of arrest or detention, where a person so arrested or detained, has the right to consult and be defended by a legal practitioner of his choice. Still more encouraging is the fact that the right to free legal aid is also implicit in the said Article.

A legal environment for access to justice has been created by Article 32, itself a fundamental right, which provides the highest protection to the Fundamental Rights of all by allowing direct access to the highest court in the event of their violation . Hand in hand with it, Article 226 its jurisdiction being wider, also assures protection not just to Fundamental Rights but to all other legal rights. Thus the Constitution assures ample protection to the right of access to justice by allowing accessibility to the Supreme Court and High Court. Moreover, if by law, there is a restriction on the right to access to justice, it would not affect Articles 32,136 and 226 of the Constitution.

Constitutional assurance of access to justice is further secured by the relaxation of the traditional rule of locus standii through Public Interest Litigation (PIL).[78] Actions which according to the traditional notions of justiciability, were not considered capable of being resolved though judicial process, has been brought within judicial purview through the potent weapon of Public Interest Litigation.

Apart from the Fundamental Rights, Article 39- A in Part IV of the Constitution[79] contemplates constitutional status to legal aid in all cases thereby bringing justice within the reach of the poor and downtrodden sections of

[78] The definition of Public Interest Litigation as meaning a legal action initiated in a court of law for the enforcement of public interest or general interest in which public or class or class of community have pecuniary interest or some interest by which their legal right or liabilities are affected, cited in Janata *Dal v. H.S. Choudhary* (AIR 1993 SC 892).

[79] Article 39-A inserted by the Constitution(Forty Second Amendment)Act.1976 .See Shukla V.N., *Constitution of India* (Eleventh Edition, Eastern Book Co.,Lucknow,2011) p.350.
See also Krishna Iyer V.R., *Our Courts on Trial* (B.R. Publishing Corporation, New Delhi,1987) p.37.

society. Certain other Directive Principles of State Policy expand access to justice by minimizing inequalities in status ,facilities and opportunities among individuals and groups [80].Thus the Constitutional concern to make effective access to justice real and meaningful is evident from its various provisions.

(ii) Hierarchy of Courts under the Indian Constitution

The Constitution promotes the cause of access to justice by providing for a unified judicial system organized in a hierarchical pattern.[81] Establishing the Supreme Court as the highest court of the territory of India,[82] the Constitution stipulates a High Court in states[83] and a subordinate judiciary[84] at the various rungs in the judicial hierarchy. The Supreme Court is invested with original, appellate, revisional and advisory jurisdictions[85] . The Constitution permits the Supreme Court to exercise writs or orders for purposes other than the enforcement of fundamental rights under Article 32, where authorized by Parliament.[86] Moreover, the power of the Supreme Court to do complete justice cutting across all procedural wrangles has been recognized in Article 142 of the Constitution.

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[80] Article 38 and Article 46 of the Constitution

[81] "The builders of the Indian Constitution believed not in severing their links with the past but rather in treasuring all that had been useful and to which they had been accustomed .The structure which emerged was, therefore ,not only basically British in its framework but took the form of an alteration and extension of what had previously existed." M.C. Setalvad quoted in B.M. Gandhi,*V.D. Kulshestra's Landmarks in Indian Legal and Constitutional History (* Ninth Edition, Eastern Book Company, Lucknow,2009)p.348.

[82] Article 124 of the Constitution.

[83] Article 214 of the Constitution.

[84] Article 233 of the Constitution.

[85] The Supreme Court is the highest court of appeal rather than the Privy Council during the British administration of justice in India.

[86] Article 139 of the Constitution of India.

As far as the High Courts are concerned, they along with the Supreme Court constitute the Superior judiciary. Under the Constitution, each State[87] has a single judicial hierarchy with a High Court at its apex[88]. Where High Courts handle a large number of cases of a particular region, they have permanent benches established there[89].

A High Court is generally the last court of regular appeals from the judgments, decrees and orders from courts subordinate to it. The High Courts are also termed as the courts of equity, and can be approached under its writ jurisdiction[90] not only for the enforcement of fundamental rights conferred by Part III of the Constitution, but also for any other purpose , under Article 226 of the Constitution. In view of Article 226 of the Constitution,[91]aggrieved individuals have the right of access to the High Court not just for the protection of their fundamental rights but also in the case of other legal rights.

Citizens can therefore also request writs enforcing their fundamental rights from the High Court in their State there by having ready access to the higher judiciary.[92]

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[87] There are a few exceptions, where two states share one High court.
[88] Article 214 of the Constitution.
[89] Article 231.
[90] Article 226.
[91] Extraordinary jurisdiction of the High Court under Article 226 of the Constitution
[92] Embree Ainslie(ed.) *Judicial and Legal Systems of India* in Encyclopedia of Asian History, Vol.2, (Charles Scribner's Sons, London, 1988*)* p.413 available at http://marcgalanter.net/Documents/papers/scannedpdf/judicialandlegalsystemsofindia.pdfhttp://marcgalanter.net/Documents/papers/scannedpdf/judicialandlegalsystemsofindia.pdf last viewed on 2/10/2012.

Moreover, they also have the powers to supervise over all courts and tribunals falling within their territorial jurisdiction, under Article 227 of the Constitution. Apparently, where there is no effective remedy available to a person, in equity, he or she can always move the High Court in an appropriate writ. In addition to the extraordinary jurisdiction they possess, the High Courts in India are the principal civil courts of original jurisdiction in the State and can try all offences including those punishable with death. They also hear civil and criminal appeals from the orders of the lower courts.[93]They also possess revisional jurisdiction under the Code of Criminal Procedure and the Code of Civil Procedure, 1908.They are thus possessed of original, appellate and supervisory jurisdiction.[94]

Below the High Courts, is the subordinate judiciary.[95] The subordinate courts represent the first tier of the entire judicial structure in the country. The hierarchy, powers and functions[96] of civil courts as well as the classes of criminal courts are governed by certain enactments respectively.[97]The structure and functions of the subordinate courts are generally uniform throughout the country, except for minor local variations.

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[93] Available at http://indiancourts.nic.in/sitesmain.htm last viewed on 3/10/2012.

[94] See also Dr. Myneni S.R., *Legal Systems in the World* (First Edition, Reprint, Asia Law House, Hyderabad, 2011) p.339.

[95] Chapter VI of the Constitution on Subordinate Courts. See Bakshi P.M..*The Constitution of India* (Universal Law Publishing Co.Pvt.Ltd.,1999)p.173.

[96]Section 3 of Civil Procedure Code 1908 envisages the setting up of a District Court as the principal civil court of original jurisdiction subordinate to the High Court. Provisions of Code of Civil Procedure,1908 are to be read with local statutes pertaining to civil courts. Section 6 of the Code of Criminal Procedure 1973 provides for classes of courts.

[97]Dr. Myneni S.R., *Legal Systems in the World* (First Edition, Reprint, Asia Law House, Hyderabad, 2011) p. 330.

A three -tier system of subordinate courts exists in most of the States, with each State being divided into districts and each district divided into talukas or *tehsils*. Ordinarily, the Court of *Munsiff* or Civil Judge Junior Division is set up at the taluka or *tehsil* level. Immediately above the district *Munsiff's* court is the court of the subordinate civil judge class (senior division) with specified jurisdiction.

Vertically moving upward in the hierarchy, the next set of courts are the courts of the District and Sessions Judge which also include courts of Additional Judge or Joint or Assistant Judge. The establishment of Revenue Courts in each State under Land Revenue Acts helps in the disposal of revenue matters.

Clearly, the Indian Constitution has maintained a court structure and organization which though pyramidal in nature, administers justice at various levels, with the Supreme Court of India as the highest judicial authority at the top, followed by the High Courts in the states and subordinate courts. Investiture of these courts with various judicial powers has enabled the people of India to obtain justice.

(iii) Challenges in access to courts in India

Despite existing legal and institutional mechanisms to facilitate access to justice a number of challenges confront the dispensation of formal justice in the country. Some of the main areas of challenge are discussed below:

(a) Professional Legal Representation

"A unified nation-wide modern legal system where the rules are administered by a hierarchy of courts, staffed by professionals, organized bureaucratically and employing rational procedures,"[98] postulates a properly equipped and efficient Bar.

The formal system of adjudication by courts has created a need for lawyers whom justice -seekers have to approach in order that their concerns rephrased in acceptable legal garb, are placed before the courts.

In the legal scenario of complex laws and procedures, members of the legal profession become absolutely indispensable.[99] Needless to say, procurement of legal assistance and legal professional services come at an exorbitant price, with lawyers charging high fees to their clients, thereby making justice financially beyond the reach of practically everybody but the affluent[100]. In the words of Nani Palkhiwala, "the commercialization of the legal profession is one of the grave shortcomings of the present systems of administering justice."[101]

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[98] Dr. Sridhar Madabhushi, *Alternative Dispute Resolution System* (First Edition, Lexis Nexis, Butterworths, New Delhi, 2006) p.88.

[99] One Hundred Thirty First Report of the Law Commission of India on the Role of the Legal Profession in the Administration of Justice,1988, available at http://lawcommissionofindia.nic.in/101-169/Report131.pdf last viewed on 3/11/2012.
See also the One Hundred Twenty Eighth Report on Cost of Litigation ,1988 available at http://lawcommissionofindia.nic.in/101-169/Report128.pdf last viewed on 4/11/2012.

[100]Fox Russell, *Justice in the Twenty First Century* (First Edition, Cavendish Publishing Ltd.,Australia,2000) p. 37

[101] Palkhiwal Nani, *We, the Nation :The Lost Decades* (Sixteenth Reprint, UBS Publishers, New Delhi, 2000)p. 215.

(b) Prohibitive costs

Cost of litigation is also a major drawback to effective access to justice. The cost of engaging a lawyer to represent one's case before the court, payment of court –fees[102] and other incidental expenses involved in the conduct of the case weigh down the litigant who approaches the court for justice. The cumbersome and complex procedural laws lengthen the time taken for the disposal of cases and further enhance litigation costs.[103]

Concerned with the soaring costs of litigation and the delays in justice, in *M/s Guru Nanak Foundation v. M/s Rattan Singh and Sons*[104], the Supreme Court more than two decades ago, observed, "interminable, time consuming, complex and expensive court procedures have impelled jurists to search for an alternative forum, less formal, more effective and speedy for the resolution of disputes avoiding procedural clap trap and this has led them to Arbitration Act of 1940.[105]

Finding no significant improvements in the access to justice situation in India even after a lapse of twenty years, the Supreme Court in *Imtiyaz Ahmed v. State of U.P and ors.* [106],lamented "that undue long delay in the delivery of justice restricts the right of access to justice itself, thus

[102] Regarding the insistence on payment of court-fee , Justice Krishna Iyer, condemned the 'Anglo-Indian' practice, as smacking of the sale of justice in the Indian Republic **.** See also Justice Sachar Rajindar, *Abolition of Court Fee: Demand of Social Justice*,Vol.12(1985) IBR p.346.
[103] See also Justice Raveendran R.V., "*Mediation: Its importance and relevance*",2010(8)SCC Jour.p.1.
[104] AIR 1981 SC 2075. See also *Salem Advocates Bar Association, Tamil Nadu v. Union of India* AIR 2003 SC 189.
[105] AIR 1981 SC 2075.
[106] (2012) 2 SCC 688.

amounting to a violation of the citizens' rights under the Constitution ,in particular Article 21."

(c) Inordinate delays

The greatest drawback of the administration of justice in the country is delay.[107]A huge backlog of cases and delay in disposal are gradually contributing to people losing faith in the court system.[108] The delay in the disposal of cases has affected not only the ordinary type of cases but also those which by their very nature, call for early relief. Inordinate delays in the administration of justice have brought a sense of frustration among litigants. [109] Distressed with the long wait for justice, many litigants have moved away from the courts and turned to other modes of dispute resolution.

(d) Congestion in courts

The current access to justice scenario in India is bleak for several reasons. Access to justice has remained a distant dream for many litigants on account of huge backlog of cases,[110] a high number of

[107] Palkhiwal Nani, *We, the Nation:the Lost Decades* (Sixteenth Reprint, UBS Publishers,New Delhi, 2000) p.215.
[108] Bhat Ishwara P., *Law and Social Transformation* (First Edition, Reprint ,Eastern Book Company Lu,cknow,2012) p.873.
[109] Palkhiwala Nani, *We, the Nation: the Lost Decades* (Sixteenth Reprint, UBS Publishers, New Delhi, 2000)p.215.
[110] Statistical information shows that 65,52 cases were pending before the Supreme Court of India at the end of June 2012, 26851766 cases were pending before the district and subordinate courts as on 31-3-2012 and 43,40867 cases were pending as on 31-3-12, available on http://supremecourtofindia.nic.in/p_stat/February2014.pdf last visited on 4/2/2014.

vacancies in the courts and a low judge –population ratio along with increased institution of cases have contributed to congestion in the courts. [111] In terms of figures, it means that almost three crore cases are pending in the courts of India. To make matters worse, with approximately only about fifteen thousand judges shouldering the Herculean task of dispensing justice to a million litigants , it is a major setback to the successful implementation of the Constitutional mandate of justice. [112]

Further aggravating the problem of access to justice in the country are "more and more laws and their complexity which have added to the size of litigation."[113]

(e) Ratio of judges per million population

Difficulties in access to justice are exacerbated by the low ratio of judges to population in India. It is disheartening to find the judges' ratio corresponds to less than 13 per 10 lakhs of population in India.[114] In these circumstances, the right to access to justice which is the duty of the State to provide is adversely limited. Despite recommendations, very

[111] The total number of vacancies in the High Courts of India was 259 as on 30-6-2012, available at http://supremecourtof india.nic.in/courtnews/2012.last viewed on 19/4/2013.
[112] http://ghconline.gov.in/Document/Article-2.pdflast last viewed on 20/4/ 2013.
[113] See Patil Dhairyasheel, *Justice Delivery System and Socio Economic Realities*, 1987 IBR Vol.14 (3) 373.
[114] In developed countries such as the USA, the ratio of judges per million population is 107.

little has been done to remedy the existing situation, as a result of which justice is dispensed at snail pace.

(f) Adversarial nature of administration of justice

Administration of justice in India is adversarial in character. The passive role of the judge and the absolute indispensability of the lawyers are the distinctive characteristics of the adversarial system of justice.[115] Often viewed as a battlefield, low priority to expense, delay, compromise and fairness result in excessive expense and unreasonable delay.[116]

Keen on the redesign of the Indian delivery system so as to accelerate people's access to effective litigative justice, Justice Krishna Iyer said, "justice in the constitutional connotation embraces many dimensions, not mere adjudication between two litigants visualized by the gladiatorial scenario of the adversary system." [117]

3.1.4. (iv) Role of the Superior Judiciary in Promoting Access to Justice

The superior Courts in India have responded to the Constitutional exhortations for justice through their dynamic and creative interpretation in the protection of human rights.

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[115] One Hundredth and Thirty First Report of the Law Commission of India,1988. available at lawcommissionofindia.nic.in/last viewed on 3/1/2013.

[116] (1996) 59 Modern Law Review 773.

[117] Justice Krishna Iyer V.R, *Justice at Crossroads (*Deep and Deep Publications, 1992) p. 104.See also Krishna Iyer V.R., *Access to Justice- A Case for Basic Change* (B.R. Publishing Corporation Delhi,1993) p.89.

Holding that "fundamental rights do not constitute separate islands into themselves but constitute a continent," the Hon'ble Supreme Court of India by developing a 'theory of inter relationship of rights' incorporated the guarantee of substantive due process into the language of Article 21 thereby opening the doors wide for the realization of meaningful justice. [118]

In the landmark case *M.H. Hoskote v. State of Maharashtra*[119], the Supreme Court drawing strength and support from Maneka's case, has held the right to legal aid to defend in criminal proceedings as a duty of the State and not a charity of the Government.

Reinforcing this strong base still further, the Supreme Court in *Hussainara Khatoon v. Home Secretary, State of Bihar*[120], declared that "speedy trial although not specifically enumerated as a fundamental right is implicit in the broad sweep and content of Article 21."

"Every wrong must have a remedy and every right to relief must have a forum for enforcement" was strongly affirmed by the Supreme Court in *Dhannalal v. Kalawatibai & Ors*.[121] The Court in that case emphasized that "if a man has a right, he must have the means to vindicate and maintain it and indeed it is a vain thing to imagine a right without a remedy for want of right and remedy are reciprocal".

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[118] *Maneka Gandhi v. Union of India* AIR 1978 SC 597.
[119] AIR 1978 SC 1548,(1979)1 SCR 192.
[120] AIR 1979 SC 1360.
[121] (2002) 6 SCC 16.

Putting aside unfounded apprehensions in the matter, in *Bar Council of Maharashtra v. M.V. Dabholkar*[122], the Supreme Court ruled, that "the view that access may unloose a flood of litigation is a misplaced idea." In the view of the Hon'ble Court , "resort to the Court in great numbers, is a tribute to the justice system".

Aware that 'access' is a sine qua non to achieve justice, the Apex Court emphatically observed that the goal of access to justice would stand defeated if public- minded citizens or organizations with serious concern for conservation of public resources and for correction of public power so as to promote justice in its triune facets, were forced to choose the streets rather than the courts to dispense justice.[123]

Acknowledging that millions of people in the country were denied their fundamental rights, the Supreme Court allowed petitions to be made on their behalf by 'public-spirited' persons or organizations. Aware that by the traditional rule of locus standii the courts remained accessible only to those who could afford to pay, the Supreme Court has enlarged the rule of locus standii[124] so as to enable issues of public interest to be brought before it.

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[122] (1975)2 SCC 702.

[123] *Akhil Bhartiya Soshit Karmachari Sangh v. Union of India and ors* AIR 1981 SC 298 in which the concept of PIL(Public Interest Litigation) was initiated .

[124] The rule of locus standii is a Latin term which means legal standing before a court. It refers to the ability of a party to demonstrate to the court sufficient connection and harm from the law or action challenged, to support that party's participation in the case.

Devising the unique concept of 'Public Interest Litigation',[125] the Supreme Court paid heed to the cries of justice of the poor in the country, even going to the extent of devising new kinds of reliefs[126] for the enforcement of rights of those affected.

Moreover, even letters written to the Supreme Court [127]were treated as sufficient for the Court to take cognizance. Thus, those who were aware and could access the courts had the opportunity to serve the cause of those who were unaware or at least unable to reach the courts themselves. Through this development, the Court was able to rule upon the right of legal aid[128] and speedy justice[129], grant compensatory monetary relief and such other remedies. Thus, the Supreme Court by liberalizing access to justice through the broad interpretation of the Preamble, the Fundamental Rights and the mandate in Part IV of the Constitution competently discharged its duty to promote a just social order.[130]

Again, in *Salem Advocates Bar Association Tamil Nadu v. Union of India*,[131] the Apex court correctly observed, "Keeping in mind the laws delays, and the limited number of judges which are available, it has now become imperative

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[125] *Supra*. Some of the early Public Interest Litigations cases filed are *Hussainara Khatoon v, Home Secy. State of Bihar*(AIR1979SC1360); *Olga Tellis and ors .v. Bombay Municipal Corporation and ors*. (AIR 1986 SC180).
[126] Monetary compensation in the case of human rights infringement .
[127] *S.P. Gupta v. Union of India* (1981) SUPP SCC 87.
[128] *M.H. Hoskote v. State of Maharashtra* (AIR 1978SC1548).
[129] *Hussainara Khatoon v. State of Bihar* (AIR 1979SC 1371) reiterated in *Khatri v. State of Bihar* (AIR 1981 SC 926)
[130] Justice Ganguly A.K., *Access to Justice* (Vol.VIII, Issue 1, Nyayadeep, January 2007) p. 17.
[131] AIR 2003 SC 189.

that resort should be had to alternate dispute resolution mechanisms with a view to bring to an end litigation between the parties at an early date".

Thus it is clear beyond doubt that "the Indian judiciary is a bastion of rights and justice[132]", in the manner envisioned by the founding fathers of the Constitution.

3.1.4.(v) State Initiatives to Advance Access to Justice

Access to justice initiatives to improve access to justice began even before independence.[133] In the post –independence era, access to justice initiatives received an impetus through the formulation of schemes, policies, and legislations, some of which, were the outcome of the recommendations of the Law Commissions of India. Appreciably, efforts at judicial reform and at providing sensible alternatives to litigation which have materialized are discussed below:

(a) *Affordable justice*

To ensure the availability of affordable justice to the socially and economically weaker sections of the population the Government of India constituted several committees to make valuable recommendations to ensure equal opportunity to seek justice. The first Committee on "Processual Justice to the People" headed by Justice V.R. Krishna Iyer, highlighted in its Report that "law and justice can no longer remain

[132] 2013 GJLS Vol.1.No.1,p.83.

[133] Section 340(1) of the Criminal Procedure Code of 1898 provided when a man was charged with an offence punishable with death, the court could provide him with a counsel at his request.

distant neighbours. Such a consummation is possible only through an activist scheme of legal aid, conceived wisely and executed vigorously.[134]"

In 1976 the Report on "National Juridicare: Equal Justice –Social Justice" was submitted making more focused recommendations regarding legal aid and the establishment of conciliation cells to minimize litigation, under the chairmanship of Justice P.N. Bhagvati.[135]The Committee also recommended that access to justice must be made easy.[136]

To give effect to the recommendations of the Bhagvati Committee, the Committee for Implementing Legal Aid Schemes (CILAS) was constituted under the chairmanship of Justice P.N. Bhagwati on 26th September 1980 to monitor and implementing legal aid on a uniform basis[137]. The model Legal Aid scheme[138] paved the way for a statutory basis for legal aid and Lok Adalats with the enactment of the Legal Services Authorities Act,1987 by Parliament.

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[134] The Committee was set up in 1972 and submitted its report in 1973.An important outcome of the Report was the inclusion of Article 39-A by virtue of the 42nd Amendment of the Constitution in 1976.

[135] Galanter and Krishnan,*"Bread for the Poor:"Access to Justice and the Rights of the Needy in India*" (Hastings Law Journal,Vol.55,2004)p.794 available at http://www.gsdrc.org/docs/open/ssaj115.pdf.last viewed on 18/4/2013.

[136] See Jain M.P.,*Outlines of Indian Legal History* (Fifth Edition, Reprint ,Wadhwa and Company, Nagpur, 2008) p.263.

[137] Pursuant thereto several Legal Aid and Advice Boards were set up in all the States and Union Territories of India.

[138] To give effect to Article 39- A which was inserted into the Constitution by The Constitution (Forty-Second Amendment) Act, 1976.

(b) Speedy and Swift justice

The State has also undertaken various legislative measures[139] for the purpose of securing speedy justice and reducing the burden of cases on courts. New mechanisms in the form of Consumer Dispute Redressal Agencies, Family Courts, Fast Track Courts, and such other bodies, have been created under various laws for the speedy, cheap and effective dispute settlement.[140]

Moreover, arbitration , conciliation, mediation and Lok Adalats have been statutorily recognized and accepted as alternative options to court actions for the purpose of securing expeditious and affordable justice.[141] The addition of section 89 along with Rules 1-A to 1-C to Order X by the Civil Procedure Code(Amendment) Act 2002,[142]which emphasizes settlement of disputes outside the court, has given a boost to swift justice.In addition to the courts providing justice, there are specialized

[139] For instance, conciliation in case of family disputes under Order XXXII –A, Section 89 of the Code of Civil Procedure, Plea bargaining in stipulated in sections 265A to 265L in Chapter XXI-A .

[140] Consumer Protection Act 1986, Family Courts Act,1984 and the Legal Services Authorities Act, 1987 brought about the institution of consumer fora, Family Courts and Lok Adalats respectively.

[141] See Justice Verma J.S., *Remedies to Reduce the Laws' Delays*, in New Dimensions of Justice (Universal Law Publishing, Pvt. Ltd., 2000) p.104.

[142] By the Amendment Acts of 1999 and 2002, to the Code of Civil Procedure 1908, a strict time frame for the various stages of the civil proceeding, reduction of opportunities for appeal ,submission of evidence on affidavits and such other provisions have been introduced to expedite justice.

tribunals[143] that have been constituted to handle only particular matters[144].

(c) Justice at the door step

Confident that with safeguards to ensure their smooth and proper working, these courts would be "capable of playing a necessary and useful part in the administration of justice in the country",[145] Nyaya Panchayats established in many States were empowered to deal with petty civil and criminal cases[146].

In 2008, Gram Nyayalayas have been established[147] at the Panchayat level for the purpose of providing access to justice to the citizens at their door step and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities[148].

[143] Part XIV A of the Constitution stipulates creation of tribunals in Article 323A and 323 B of the Constitution. Motor Accidents Claims Tribunals, Industrial Tribunals, Labour tribunals, Administrative tribunals, Income Tax Tribunals, Railway Rates Tribunals, Telecom Dispute Settlement Appellate Tribunal, Cyber Appellate Tribunals, National Green Tribunals and others.
[144] Embree Ainslie(ed.) *Judicial and Legal Systems of India* in Encyclopedia of Asian History (Vol.2, Charles Scribner's Sons, London, 1988*)* p.413 available at http://marcgalanter.net/Documents/papers/scannedpdf/judicialandlegalsystemsofindia.pdf last viewed on 5/4/2013.
[145] Jain M.P., *Outlines of Indian Legal History* (Fifth Edition ,(Reprint),Wadhwa and Company Law Publishers,1999) 242 .
[146] Baxi Upendra, *The Crisis of the Indian Legal System (* Vikas Publishing House, New Delhi ,1982) p.91
[147] Gram Nyayalayas have been established under the Gram Nyayalayas Act,2008.
[148] The Act came into effect on 2nd October 2009 available at http://doj.gov.in/?q=node/104last viewed on 13/4/2013.

Many of the measures in enhancing access to justice emerged on account of the warnings and recommendations of the Law Commissions of India .[149] In its One Twenty Sixth Report on Government and Public Sector Undertaking Litigation –Policies and Strategies, the Law Commission has made observations on the effectiveness of Lok Adalats as means to resolve simple disputes and expressed its reservations in settling disputes between the Government and citizens ,between public undertakings and other instrumentalities of the State.[150]

From the discussion, it is clear that various efforts have been made by the Legislature, Executive and the Judiciary towards achieving the constitutional goal of justice encapsulated in the Part III and Part IV of the Indian Constitution. Indeed there seems to be a realization that "justice in the constitutional connotation embraces many dimensions, not mere adjudication between two litigants visualized by the gladiatorial scenario of the adversary system."[151]No longer is access to justice legally conceived as being merely justice in the ordinary sense, but justice which needs to be accessible ,quick, effective and low-cost, in compatibility with international human rights law instruments to which India is also a party.[152]

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[149] The First Law Commission of India in its Fourteenth Report in 1958 stressed the great necessity of legal aid. In the One Hundred Twenty Eighth Report on Cost of Litigation 1988, the Law Commission observed that one of the main barriers to access to justice is the economic barrier. Numerous litigants for lack of wherewithal would give up the idea of approaching the courts because of the prohibitive costs involved in litigation and in such cases even suffer the injustice done to them.

[150] Justice Sethi R.P., *The Code of Civil Procedure as amended by Code of Civil Procedure (Amendment) Act 1999(46 of 1999)and Code of Civil Procedure (Amendment) Act 2002* (Professional Book Publishers, New Delhi,2002) p. 182.

[151]Justice Iyer Krishna, *Justice at Crossroads* (Deep and Deep Publications, New Delhi, 1992) p .104.

[152] *See ,supra,* Chapter II.

In India, a conspectus of the three periods of Indian legal history shows that access to justice has since long been associated with access to courts, particularly, formal and informal systems of justice for those seeking justice in the country. In course of time access to justice received a broader interpretation to include the notion of legal aid for those unable to afford legal services. While the Constitution has provided the blue print, it has been mainly due to the efforts of the Supreme Court that access to justice has also been comprehended in a wider sense to include speedy justice, fair hearing, a fair and just procedure, legal representation and legal aid.

Assistance in litigation, the provision of legal aid and advice, conciliation facilities as well as legislative recognition to non- litigative dispute resolution processes are some of the major milestones on the Indian journey to access to justice. These efforts of the State towards equal access to justice within the broad parameters laid down by the Constitution though commendable are not sufficient. Concerted and concentrated efforts to enhance access to justice are the need of the hour.[153]

In a democratic system as it exists in India, reformation and transformation do not manifest themselves except through appropriate legislations. Being a

[153] See Hidayatullah M., "*Law's Delays", in* Miscellanea: The Pick of the Four Judges *(* M.N. Tripathi Pvt. Ltd.,1988) p.27. See also, Patil H.K.," *Strengthening the Justice Delivery System : the Karnataka Experience*", in Carving a caring System (Macmillan India Ltd.,2007) p. 5.

constitution based democracy ,any legislation has to stand the test of constitutionality to see the light of the day.

Lok Adalats are indeed an ancient institution but their legitimization will come into existence only through an appropriate legislation.

Aggressive targets for the journey onward, during next decade and beyond, have to be earmarked to ensure that those who need it have better access to justice. The institution of the Lok Adalat as a non- litigative dispute resolution system created under the Legal Services Authorities Act 1987 to enhance access to justice has been critically examined in the following chapter .

Chapter IV

Lok Adalat under the Legal Services Authorities Act,1987: A Critical Appraisal

4. Lok Adalat under the Legal Services Authorities Act, 1987[1]: A Critical Appraisal

"No polity can claim to be just if it cannot provide access to justice for all the sections of its population." [2] The Legal Services Authorities Act, 1987, was passed by the Indian Parliament to ensure free legal services to the weaker sections of society and for the purpose of establishing Lok Adalats on a uniform basis throughout the country. Having emerged as the outcome of consolidated efforts to sub serve the aspirations of equal justice to its seekers[3], the underlying reason behind its enactment is to effectuate the objectives enshrined in Article 39-A of the Constitution**.**

The Act seeks to bring justice closer home through the instruments of legal aid and Lok Adalats. The present Chapter examines the efficacy of the Legal Services Authorities Act, 1987, as a catalyst to revolutionize access to justice in the country, particularly through the establishment of Lok Adalats . The National Legal Services Authority Rules, 1995,[4] and the National Legal

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[1] The Legal Services Authorities Act,1987(39 of 1987) as amended by The Legal Services Authorities(Amendment)Act,1994 (59 of 1994) and The Legal Services Authorities(Amendment) Act,2002 (37of 2002).

[2] Available at http://pib.nic.in/newsite/terms last viewed on 15/11/2012.

[3] *Supra.* Chapter III. Under the auspices of Committee of Legal Aid Schemes (CILAS) Lok Adalats first started out as an experiment in Junagarh, in the State of Gujarat in 1982 , from where it spread to several states in India.

[4] The National Legal Services Authority Rules 1995 vide G.S.R.762(E)dated 27th November,1995,published in the Gazette of India,Extn.,PT.II,Sec.3(ii)dated 27th November, 1995.

Services (Lok Adalats) Regulations,2009,[5] which make stipulations regarding the composition, conduct and organization of Lok Adalats in the country, have been discussed wherever necessary. The Goa Lok Adalat Scheme which provides for the organization and procedure to be followed by the Lok Adalats in the State has also been examined.

The organization of Lok Adalats being a core function under the Act, several states have laid down detailed regulations for holding Lok Adalats while other States have taken care of this aspect through rule –making.[6]

Special emphasis has been placed on the dynamics of Lok Adalats and Permanent Lok Adalats as a vehicle to effective access to justice so as to bring out the facilitative and pre-emptive aspects of the Legal Services Authorities Act, 1987, of which it forms the pivot . Judicial opinion regarding the material aspects of the functioning of Lok Adalats also forms a part of the chapter.

4.1. Scheme of the Legal Services Authorities Act, 1987

The Legal Services Authorities Act, 1987[7] is a path breaking legislation that unfolds the noble vision and the pragmatic action for social justice envisioned

[5] The National Legal Services Authority (Lok Adalats) Regulations, 2009,vide Notification No.L/28/09-NALSA(ADVT-III/4)123/09/EXTY,DT.14.10.2009.National Legal Services Authority is abbreviated as NALSA.

[6] Goa, Andhra Pradesh ,Madhya Pradesh, Punjab and West Bengal. See Muralidhar, *Law, Poverty ,and Legal Aid:Access to Criminal Justice* (Lexis Nexis, Butterworths, New Delhi ,2004) p.121.

in the Constitution. The provisions of the Act , except Chapter III, came into force on 9th November 1995. [8]

The Legal Services Authorities Act is a concise enactment consisting of thirty sections only . The first part of the Act deals extensively with the constitution and functions of various authorities and legal aid. The second part outlines the framework for the organization, procedure and functioning of Lok Adalats. Its strategy for pursuing the goal of equal justice to all is through the legal aid and Lok Adalat schemes coordinated by the authorities specifically designated under the Act.

4.1.1 Authorities under the Act

There are several authorities created under the Legal Services Authorities Act,1987, to ensure the efficient organization of free legal services in the country. [9] Chapter II and Chapter III of the Act deals with the constitution and functions of the authorities under the Act.

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[7] Legal Services Authorities Act, 1987 (Act No.39 of 1987) received the assent of the President on 11th October 1987 and was published in the Gazette of India Extraordinary Part II, Sec.I , No.55dated 12/10/1987.

[8] The coming into force of the Legal Services Authorities Act was delayed on account of disapproval by the judiciary and the legal fraternity. The Legal Services Authorities Act ,1987 as amended by the Legal Services Authorities (Amendment) Act 1994 received the assent of the President on 29th October 1994 and was published in the Gazette of India on 31st October 1994. See Muralidhar, *Law, Poverty ,and Legal Aid: Access to Criminal Justice* (Lexis Nexis, Butterworths, New Delhi ,2004) p.112.

[9] Under section 29A of the Legal Services Authorities Act,1987, the Goa State Legal Services Authority Regulations,1998 have been enacted.

The Act in the first place provides for the setting up of the National Legal Services Authority[10], the State Legal Services Authorities[11] in different States and the District Legal Services Authorities[12] at the district levels. The National Legal Services Authority (NALSA) acts as the apex and nodal agency for laying down schemes, principles, guidelines and policies for the purpose of making legal services available as provided under the Act.[13]

In every State a State Legal Services Authority[14] is constituted to give effect to the policies and directions of the Central Authority (NALSA) ,to give legal services to the people and conduct Lok Adalats in the State.[15]

A District Legal Services Authority[16] is constituted in every District to organize Lok Adalats in the district.[17]

The constitution of certain Committees such as the Supreme Court Legal Services Committee[18], the High Court Legal Services Committee[19]and the

[10] Section 3, 4 and 5 of Legal Services Authorities Act,1987 ,for constitution and functions of National Legal Services Authority.
[11] *Ibid*. Section 6. See also The Goa State Legal Services Authority Rules,1996 for the number, experience and qualifications of other members of State Authority.
[12] *Ibid*. Section 9.See also The Goa State Legal Services Authority Rules,1996,for the number ,experience and qualifications of members of the District Authority.
[13] See NALSA Rules 1995(Vide Notn. No. G. S. R. 762 (E) dated.27th November, 1995, published in the Gazette of India, Ext. pt. II, S.3(ii) dt. 27 – 11 – 1995) and NALSA (Lok Adalats) Regulations, 2009.
[14] State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman and such number of other members possessing such experience and qualifications as may be prescribed by the State Government ,to be nominated by that Government in consultation with the Chief Justice of the High Court.
[15] Section 7(2)(b).See also Regulation 4 of the Goa State Legal Services Authority Regulations,1998.
[16] The District Judge in of the District is its ex-officio Chairman.
[17] Section10(2)(b).See also Regulation 10 of the Goa State Legal Services Authority Regulations,1998

Taluka Legal Services Committee is laid down under the Act.[20] The Act provides for the overseeing and supervision of the functioning of the authorities and committees constituted at each level.[21]

4.1.2. Entitlement to legal services

The Legal Services Authorities Act also makes provision for legal aid to the economically weaker sections of society.[22] Chapter IV of the Act lays down the criteria for giving such assistance and states who is entitled to receive the same.[23]

4.1.3. Provision for finances for implementing Legal Aid Schemes

The Legal Services Authorities Act also provides for the allocation of funds and grants to be utilized to carry out and implement the objectives of the Act.

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[18] *Ibid.* Section 3-A .

[19] *Ibid*. Section 8-A. See also Regulations 5-7 of the Goa State Legal Services Authority Regulations,1998.

[20] Section11-A of Act**.** Taluk Legal Services Committees are constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organize Lok Adalats. Its function is also to organize Lok Adalats within the district under section11-B(b). See the Goa State Legal Services Authority Rules which stipulate the number, experience and qualifications of members of the Taluka Legal Services Committee.

[21] The Act provides for the supervision of the functioning of the State Legal Services Authorities by the National Legal Services Authority and in case of the District Legal Services Authorities by the State Legal Services Authorities. Likewise, the Committees mentioned above are required to perform the functions as assigned to them by the respective authority within whose jurisdiction they function.

[22] The National Legal Services Authority (Free and Competent Legal Services) Regulations,2010 has made stipulations regarding free legal services. See also Regulations 16- 21 of the Goa State Legal Services Authority Regulations,1998.

[23] See Rule 14 of the Goa State Legal Services Authority Rules,1996 .

Chapter V of the Act stipulates the establishment of the National Legal Aid Fund, State and District Legal Aid Funds.

4.1.4. Statutory Scheme for Lok Adalats

Besides legal aid, the organization of Lok Adalats is also an important function of the National and State Authorities and the Committees constituted by them. Chapter VI of the Legal Services Authorities Act,1987, lays down the scheme for the organization and functioning of Lok Adalats.

4.1.4(i) Definition of Lok Adalats

The term 'Lok Adalat' referred to in Chapter VI has been defined in Chapter 1 of the Act. Although not specifically explained, the term Lok Adalat is defined in section 2(1)(d) of the Act as "Lok Adalat organized under Chapter VI." One significant highlight of the Legal Services Authorities Act, 1987, is that it has not altered the traditional meaning, the term 'Lok Adalat' has come to be associated with. [24]

Literally, "People's Court"[25], Lok Adalats as envisaged under the Legal Services Authorities Act, have only a few features in common with the

[24] See Madhava Menon, N.R,, *"Lok Adalat : People's Progrmme for Speedy Justice*",(1986) IBR 13 (2) 129.
[25]As 'Lok' stands for people and the vernacular meaning of the term 'Adalat' is court.

formal courts. Like courts, they too, are official instrumentalities constituted and recognized by the State to deliver justice.[26] As institutions created to sub serve the aspirations of justice of the people, Lok Adalats resolve disputes only after careful deliberation as do the courts, thereby qualifying as People's Courts in letter and spirit.[27]

Under the Legal Services Authorities Act, two kinds of Lok Adalats are envisaged. The first is a Lok Adalat constituted under Section 19 of the Act which has no adjudicatory functions or powers and which discharges purely conciliatory functions. The second is a Permanent Lok Adalat established under section 22-B(1) of Legal Services Authorities Act to exercise jurisdiction in respect of public utility services, having both conciliatory and adjudicatory functions. It will not be out of place to mention that after the constitution of the Central Authority and the establishment of National Legal Services Authority in 1998, Permanent and Continuous Lok Adalats have been created in all the Districts in the country ,for the disposal of pending matters as well as disputes at pre-litigative stage.[28]

Dr. Justice Lakshmana ,*Voice of Justice* (First Edition, Universal Law Publishing Co. Pvt. Ltd .,Delhi. ,2006) p.253.

[26] See Rayappa K.M. H., *Lok Adalat: Objectives, Prerequisites, Strategies and Organization*.(1987) IBR 14 (4) 711.

[27] Sarkar, S.K., *Law Relating to Lok Adalats and Legal Aid* ,(First Edition Reprint, Orient Publishing Company, Allahabad, 2006),p.104.

[28] A Permanent and Continuous Lok Adalat Scheme has been formulated and implemented to establish Lok Adalats under Section 19 of the Act in all the districts of the country. Under this scheme, the Lok Adalats are now organized regularly at designated venues, even away from court complexes and the cases which remain unsettled are taken up in the next Lok Adalat. Lok Adalats have thus acquired permanency and continuity and are no more occasional ,available at http://nalsa.gov.in/last viewed on 21/11/2012.

The Supreme Court in *Interglobe Aviation v. N. Satchidanand*[29] clarified that the word 'Permanent Lok Adalat' refers only to Permanent Lok Adalats established under section 22B(1) of the Legal Services Authorities Act and not to the Lok Adalats constituted under section 19, as there seemed to be confusion regarding the name and description received by Lok Adalats in some States.[30] It is heartening to find that the Apex Court has laid to rest doubts regarding the nomenclature of the Lok Adalats which probably arose on account of the intermittent sittings by the latter.

4.1.4.(ii) Constitution of Lok Adalats

The Act contemplates justice at the door step by the organization of Lok Adalats at various levels . The Act contains provisions for the establishment and constitution of Lok Adalats not only at the State level but also at the district and taluka levels.[31]

Although no specific mention is made regarding the organization of Lok Adalats at the village level, disputes that arise at the village level, may be taken

[29] AIR 2011 SC1989

[30] In many states, when Lok Adalats are constituted under section 19 of LSA Act for regular or continuous sittings (as contrasted from periodical sittings), they are also erroneously called as Permanent Lok Adalats even though they do not have adjudicatory functions.

[31] Organization of Lok Adalats – Section 19 (1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluka Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

for settlement by the Lok Adalats organized by the District Legal Services Authorities or Taluka Legal Services Authorities.

Besides, as and when found necessary, the Authorities may be approached for organizing Lok Adalats at the village level also, which is clear from the language of the relevant provision.[32] Probably its potential to meet the exigencies of the situation, prompted Justice P.N. Bhagwati[33] to comment thus, "Until now the litigating parties had to bang the doors of law courts for justice .Now under the Lok Adalat system, justice is taken to the door step of the parties." [34]

4.1.4.(iii) Organization of Lok Adalats

The Act stipulates that Lok Adalats may be held at regular intervals and at such places as deemed fit.[35] Although Lok Adalats are a fixed and continuous institution, its frequency of sittings is ordinarily determined by the Legal Services Authorities concerned.[36]

Information regarding the date, place time , names of the panel members and the cases to be taken up about the impending Lok Adalats, is made available

[32] *Ibid*.
[33] Former Chief Justice of India.
[34] Justice Gupta J.V., *Lok Adalat and the Poor* , Nyaya Path ,December 2000,Year:1 Issue:4, p. 85.
[35] Section 19(1) Legal Services Authorities Act,1987
[36] *Ibid*. See also Regulation 3 of NALSA (Lok Adalats) Regulations ,2009.

well in advance.[37] There is wide publicity given about the Lok Adalat sitting , in newspapers, Legal Services Authorities websites and by notices pasted on the doors of the Court premises.

In practice, as per the Lok Adalat schemes of the States, generally Lok Adalats are a held on the weekends and at times even on holidays.[38]

Perhaps such an arrangement has been worked out to make it convenient for people, whether working or otherwise, to attend and participate in the Lok Adalats. As far as the functioning of Lok Adalats on week- ends and holidays is concerned, it may be a step in the right direction as the arrangement may ensure larger public participation. But at the same time, with its sittings being organized intermittently, the likelihood of the Lok Adalats system being internalized by the public, may take an even longer period of time. If on the other hand, Lok Adalats functioned on a day- to -day basis these changes may possibly add to their success.

An important aspect of Lok Adalats is that as in the case of regular courts, cases are taken up in the Lok Adalat in the open and in public, in the presence of all other disputants who have assembled for their respective cases.

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[37] See Regulations 3-5,NALSA (Lok Adalats) Regulations,2009, where prior intimation of the proposal to hold Lok Adalats to the State Legal Services Authority and notice to the parties concerned is stipulated.

[38] See also Regulation 8 of NALSA (Lok Adalats) Regulations,2009. See also Goa Lok Adalat Scheme – HOLDING OF LOK ADALAT—A Lok Adalat may be organized at such time and place and on such days, including Saturdays, Sundays, and holidays as the State Authority, High Court Legal Services Committee, as the case may be, organizing the Lok Adalat deems appropriate.

Moreover, where parties are willing to settle their differences, the members of Lok Adalats actively and openly assist the parties in reaching a compromise. Moreover, Lok Adalats are generally conducted in the court premises which gives them sanctity, as though they were a court.[39]

Thus, in consonance with the law relating to access to justice, impartiality, transparency and independence of the justice -delivery mechanism is sought to be achieved by the Legal Services Authorities Act.

4.1.4.(iv)Composition of the Lok Adalat Bench[40]

The Legal Services Authorities Act, lays down the composition of the panel that settles disputes brought before it. According to the Act, Lok Adalats are to consist of three members including a sitting or retired judicial officer, a member of the legal profession and other person[41] which includes a social worker, [42] who are to be guided by the principles of justice, equity, fair play and other legal principles while determining any reference before it. [43]

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[39] At times Mobile Lok Adalats are also held which are not conducted in the court premises.

[40] The term 'Bench' has been used in the National Legal Services Authority (Lok Adalats) Regulations,2009.However in the present study, the terms 'bench' and 'panel' with reference to the Lok Adalat have been used interchangeably.

[41] Goa State Legal Services Authority Rules. 1996: The experience and qualifications of 'other persons' of the lok adalats referred to in cl. (b) of sub-section (2) of sec. 19 other than referred to in sub-section (3) of sec. 19—(a) an eminent Social Worker who is engaged in the upliftment of the weaker sections of the people; including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour; or (b) a lawyer of standing; or(c) a person of repute who is specially interested in the implementation of the Legal Services Schemes and Programmes.

[42] S.19 (3) and (4) Legal Services Authorities Act 1987. The number qualifications and experience of other members of the Lok Adalats are prescribed by the Central Government or State Government through rules in consultation with the Chief Justice of India or the Chief Justice of the High Court as the case may be. See also Regulation 6 of NALSA(Lok Adalats) Regulations,2009.

[43] *Ibid*.S.20(4)LSA

The composition reflects a judicious blend of persons trained in the law and those with adequate experience in social service. Legislative intention in balancing informal yet effective dispensation of justice founded on solid legal principles is clearly stipulated in the panel composition.

The provision for the inclusion of a social worker preferably a woman[44] is probably is to shift the emphasis from technicalities to principles of equity, justice and good conscience for the purpose of ensuring a fair and equitable justice system which is the primary objective behind the enactment of the Legal Services Authorities Act,1987.[45] As is evident , the panel of Lok Adalat members is to be drawn from amongst the Bench and the Bar and from amongst those involved in social work.[46] The qualifications and experience of the members has been provided for in the rules [47] made to this effect, thereby ensuring competency, expertise and independence of the dispensers of justice.

Although the qualifications and experience of panel members has been provided for, there does not seem to be a procedure in place for selecting the

[44] At the taluka level under the Goa Lok Adalat Scheme.
[45] Article 39-A.
[46] Goa State Legal Services Authority Rules. 1996**:** The experience and qualifications of other persons of the lok adalats referred to in cl. (b) of sub-section (2) of sec. 19 other than referred to in sub-section (3) of sec. 19—A person shall not be qualified to be included in the Bench of Lok Adalat unless he is:— (a) an eminent Social Worker who is engaged in the upliftment of the weaker sections of the people; including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour; or (b) a lawyer of standing; or(c) a person of repute who is specially interested in the implementation of the Legal Services Schemes and Programmes.
[47] National Legal Services Authority Rules, 1995.

panel members.[48] In such a situation, subjective satisfaction of the Chairpersons of the Legal Services Committees could interfere with the smooth working of the institution. Thus, whether the composition of the Lok Adalat is adequate to ensure the faith and confidence of public on it, is questionable. Nonetheless, keeping in mind the larger objective of the Act which is to provide social justice as envisaged under the Constitution, the composition of the panel may be suitable in giving effect to that objective.

Indisputably, Lok Adalats have their eyes on achieving social goals in a harmonious manner which would restore peace not just in the family, but to the locality and community at large.[49]

4.1.4.(v)Jurisdiction and competency of Lok Adalats

The Legal Services Authorities Act also provides for the jurisdiction and competency of the Lok Adalats.[50] Accordingly, Lok Adalats are competent to decide any matter falling within their respective jurisdictions, with the exclusion of those specifically barred under the Act and the regulations.[51]

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[48]Justice Agarwal B.D.,*Transformation in trial system in India*, Vol.VIII, Issue 1, Nyaya Deep ,January 2007, p.76

[49]Professor Dr. Sharma S.S., *Public Courts and Access to Justice*, Civil and Military Law Journal, Vol.43, Numbers 3 and 4, July – December 2007,p. 73.

[50] Section 19(5) specifies the jurisdiction and competency of the Lok Adalats. See also Regulations 9 and 10 of NALSA (Lok Adalats) Regulations , 2009.

[51] Proviso to Section 19(5).See also Regulation 17(7) of NALSA (Lok Adalats) Regulations,2009.

The Act has spared no efforts to ensure that the doors of justice are thrown wide open, without geographical access, financial capacity and subject –matter concerns posing as barriers to it. Indeed, for the purpose of giving effect to its noble objectives,[52] broad jurisdiction has been conferred on Lok Adalats to bring about a settlement in respect of any case or matter before it. Disputes which are already pending before the court[53] or which are falling within the jurisdiction of the court but are still not brought before it[54], can be brought before the Lok Adalats for settlement.[55] Thus both pending and pre- litigative matters can be brought for settlement before the Lok Adalats.

4.1.4.(vi) Scope and Ambit of Lok Adalats

Lok Adalats can settle cases brought directly to them[56] or referred to them by the court. In respect of the latter, where the dispute is pending before the court, the court[57] is empowered[58] to refer the matter to the Lok Adalat for settlement either on the volition of both the parties, or, on its own, or at the behest of one of the parties to the court.[59] But in case of the latter situation, the reference by

[52] Inexpensive, speedy, non adversarial and participatory justice
[53] Section 19(5) (i)
[54] Section 19 (5) (ii)
[55] Regulation 12 of NALSA (Lok Adalats) Regulations , 2009.
[56] Section 19(5) (ii) r/w section 20(2) and proviso thereto
[57] 'Court' under Legal Services Authorities Act means a civil, criminal, or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force to exercise judicial or quasi judicial functions.
[58] Section 20 (1) LSA 1987.See also Regulation 10 NALSA (Lok Adalats)Regulations ,2009.
[59] Section 20(1)(i)(a),(b) and (ii).

the court is required to be done only after giving the parties a reasonable opportunity to be heard.[60]

It is crystal clear from the section that a Lok Adalat has to take cognizance of a case only when it is received by it from the court on a reference made to it under section 20(1); or when the case has been referred to it by the concerned Authority or committee organizing the Lok Adalat under section 20(2) and in no other manner. It follows there from, that the Lok Adalat has no power to take cognizance of a case and decide it at the instance of any party thereto, independently of the references specified in subsections (1) and (2) of section 20.[61]

It also follows from a reading of the section that Lok Adalats are not empowered to pass ex parte awards, in the interest of justice.

Consent and willingness of both the parties to submit their dispute to the forum either as a reference from a court or directly, therefore ,is the primary prerequisite for reference and settlement by Lok Adalats. [62] However, in both the cases, the parties ought to be heard before such reference. In *Kishan Rao v. Bidar District Legal Services Authority*[63], the question raised before the

[60] Proviso to section 20(1).
[61] Justice Narayana's, *Law Relating to ,Lok Adalats*, *(Legal Services Authorities Act, 1987)* (Third Edition, Asia Law House , Hyderabad,2004) p.108.
[62] *Ibid*. Section 20(2).
[63] AIR2001Kar 407.

Karnataka High Court was whether the Lok Adalat could pass a decree when all the parties had not appeared before the Lok Adalat nor was notice issued to them. The Karnataka High Court interpreted Section 20(3) of the Legal Services Authorities Act to hold that all the parties to the suit must be present if the compromise was to be a valid one. The impugned decree was struck down as being a nullity by reason of violation of the principles of natural justice.

In a similar vein, the National Legal Service Authority Regulations, 2009, stipulate that the reference is to be made to Lok Adalats only at the behest of the court under section 20 of the Legal Services Authorities Act or Section 89 of the Code of Civil Procedure, 1908. Among the various stipulations, the regulations caution against a mechanical reference of pending cases to Lok Adalat.[64] In its view a reference may be made only where the referring court is prima facie satisfied that there are chances of settlement of the case through Lok Adalat and the case is appropriate to be referred to Lok Adalat.[65]

Thus, as is clear from the unambiguous language used in the section, Lok Adalats can entertain cases referred to them irrespective of their nature [66]and irrespective of whether the case is pending or not in the court. However, they have no jurisdiction with respect to serious offences which are non –

[64] Regulation 10 (2)NALSA (Lok Adalats) Regulations ,2009.
[65] Divorce matters and criminal cases which are not compoundable under the Code of Criminal Procedure, 1973 should not be referred.
[66]Although the language of the section conferring competency on the Lok Adalats is wide, nonetheless, in view of section 20(4),the Lok Adalat has to be guided not merely by the principles of justice, equity and fair play but must also be guided by other legal principles.

compoundable in nature. The upshot of the above provisions is that Lok Adalat are empowered to settle various types of cases whether civil cases, revenue cases, compoundable criminal cases, insurance cases, motor accident claims tribunal cases ,land acquisition cases, matrimonial[67] and family disputes, bank loan cases, cases under Section 138 of Negotiable Instruments Act and several others.

4.1.4.(vii) Review of settlement provisions

The rationale behind Lok Adalats being, to provide equitable justice, Lok Adalats have to strive to "arrive at a compromise or settlement" upon a reference of disputes made to them .[68] In doing so, they are required to act with utmost expedition and have to be guided by the principles of justice, equity ,fair play and other legal principles. As rightly observed, "Lok Adalats are morally bound to ensure that the settlements or compromises which form the basis of their decision are founded on solid principles of justice." [69] This provision while giving effect to the philosophy of Lok Adalats also ensures that the terms of settlement or compromise by Lok Adalats are reached purely by the application of justice , equity ,fair play and other legal principles.

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[67] Except matters relating to divorce.

[68] Section 20(3): Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. See also Regulation 15 and 16 of the NALSA(Lok Adalats)Regulations),2009.

[69] *Ibid*. See also Dr. Paranjape N.V., *Studies in Jurisprudence and Legal Theory* (Sixth Edition, Central Law Agency,Allahabad,2011) p. 446.

In the case of *Union of India v. Ananto*[70], the Apex Court while clarifying the terms of compromise and settlement, discussed the scope of Section 20(3) of the Legal Services Authorities Act. It held that the specific language used in that section makes it clear that the Lok Adalat can dispose of a matter either by way of a compromise or a settlement between the parties . The Court went on to explain the significance of the terms "compromise" and "settlement" used in the Act.[71] It stated that a compromise involves the settlement of differences by mutual concessions. Explaining the meaning of a compromise, the court observed that a compromise is a mutual promise of two or more parties that are at controversy.

It is "an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon. The Court made it clear that the word "compromise" implies some element of accommodation on each side but does not imply a total surrender.

With regard to "settlement," the court observed that a settlement is the termination of legal proceedings by mutual consent. The Supreme Court in this case stressed that compromise and settlement should be arrived at by disputants through the Lok Adalat, in which some element of accommodation from both sides on the basis of mutual consent of the parties is evident . Lastly,

[70] AIR 2007 SC 1561.
[71] Section 20(3) and (5).

the court cautioned that where no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat.[72] Thus in keeping with the law relating to Lok Adalats , the Supreme Court has laid emphasis on a compromise or settlement between the parties to enable Lok Adalats to perform their statutory functions, as otherwise ,there would be a risk of Lok Adalats drifting away from the conciliatory philosophy underlying them and embarking upon adjudication like the courts.

The Supreme Court in *B.P. Moideen Sevamandir and anr. v. A.M. Kutty Hassan*[73] suggested certain precautions to be observed by the Lok Adalat while attempting a settlement between the parties. The Court was keen that courts should encourage litigants to settle disputes in an amicable manner. The Court observed that there should be no pressure, force, coercion, threat to litigants to settle disputes against the wishes.

The Court also expressed concern that different Lok Adalats followed different procedures was of the view that the National Legal Services Authority as the apex body would have to issue uniform guidelines for the effective functioning of Lok Adalats.[74]

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[72] AIR 2007 SC 1561.
[73] AIR 2008 SC (Supp)1123.
[74] The Supreme Court of India in *Moideen Sevamandir v. A.M. Kutty Hassan*, directed the National Legal Services Authority to formulate uniform guidelines for the effective functioning of Lok Adalats. Accordingly, the National Legal Services Authority (Lok Adalat) Regulations, 2009, were made and notified in the Gazette of India on 20th October, 2009. This has brought a uniform pattern for organizing and conducting of Lok Adalats in the country.

True to the spirit of reconciliation underlying its philosophy, Lok Adalats are empowered to resolve disputes where both the parties are amenable or agreeable to a compromise or settlement. The Legal Services Authorities Act, directs that in matters of reference of disputes to it, the Lok Adalat should comply with principles of natural justice. Thus, on the one hand, Lok Adalats ensure a pathway to justice which is devoid of obstacles,[75] and on the other, give a free hand[76] to the parties to exercise their choice with assistance from the Panel to settle the dispute. Moreover, parties can directly interact with the judge, which is generally not possible in the courts.

A significant aspect also taken care by the Legal Services Act, 1987, is that on failure of the Lok Adalat to make an award in the manner provided, on the ground that no compromise or settlement could be arrived at between the parties in a case referred to it by the Court, the record of the case has to be returned by it to the concerned Court for disposal, in accordance with law.[77]

Where the Lok Adalat refers back the matter to the Court for failure of settlement, the court has to proceed to deal with the case from the stage, which was reached before such reference.[78]

Where no compromise is reached by the parties in a matter which has been placed before the Lok Adalat directly without reference from a court, the Lok

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[75] *Supra*. See Chapter I .
[76] Proviso to section 20 (1) directs that reference to the Lok Adalat shall be made only after giving a reasonable opportunity of being heard to the parties.
[77] *Ibid* S.20(5).
[78] *Ibid* S.20(7).

Adalat has to advise the party to seek a remedy in a court .Advice regarding the availability of legal aid is to be given in appropriate cases. [79] In the alternative, the Lok Adalat may advise the parties to resort to other alternative dispute resolution techniques. [80]

Thus care and caution is ensured that there is no denial of justice to the parties in the event of a failure of compromise. Thus unsuccessful proceedings before a Lok Adalat do not preclude or jeopardize a litigant from approaching the court for resolution of their dispute.

In *State of Punjab v. Jalour Singh*[81] , the Supreme Court ruled that Lok Adalats do not have the power to "hear" parties to adjudicate cases as a court does. It discusses the subject - matter with the parties and persuades them to arrive at a just settlement. The terms "determination" and "award" by the Lok Adalat specified in the Legal Services Authorities Act ,does not contemplate nor require an adjudicatory judicial determination, but a non - adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The Court went on to clarify that Lok Adalats should not substitute regular courts for they are meant for conciliation alone.[82]

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[79] S.20(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.
[80] Regulation 19 of NALSA(Lok Adalats) Regulations,2009.
[81] AIR 2008 SC 1209.
[82] *Ibid* AIR 2008 SC 1209

4.1.4.(viii) Expeditious disposal of cases

Lok Adalats provide an opportunity to parties to resolve their disputes amicably at the least possible cost and within a reasonable period of time. According to the Legal Services Authorities Act, where a reference of a dispute is made, the Lok Adalats are required to arrive at a compromise or settlement with utmost expedition.[83] In view of speedy disposal of cases being one of the objectives of the Act, the Lok Adalats are required to settle cases promptly. At the same time, although inexpensive and speedy justice through Lok Adalats is envisaged under the Legal Services Authorities Act, sufficient caution is taken to ensure that "justice hurried is not justice buried" in as much as the panel is required to be guided by principles of justice, equity, fair play and other legal principles.[84]

4.1.4.(ix) Court-fees exemption in Lok Adalats

There is no court fee required for Lok Adalat[85] and even if a case is filed in the regular court with payment of court -fee, there is a provision for refund of the court- fee, where a matter referred to the Lok Adalat has been compromised or settled.[86] In *S. Manilal Panicker v. Tito Abraham*[87], the Kerala High Court

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[83] Section 20 (4) LSA :Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity fair play and other legal principles.
[84] Section 20(4)
[85] Disputes can be brought directly to the Lok Adalat instead of going to a regular court first.
[86] Section 21(1) of LSA 1987 Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).]
[87] AIR 2012Kerala 51

has held that where a dispute is settled upon a reference either under section 20 of the Legal Services Authorities Act or under section 89 of the Code of Civil Procedure[88], it is section 21 of the Legal Services Authorities Act, which will govern the question regarding the refund of court fee .The Court also mentioned that the entire court fee would have to be refunded in the manner provided in the Central Court Fees Act.

Lok Adalats are therefore economically viable[89] and are easily accessible even to the disadvantaged sections of society. Lok Adalats therefore provide affordable justice.

4.1.4.(x) Lok Adalats conferred powers of Civil Courts

For the purpose of carrying out their statutory duties, the Lok Adalats have the powers of the civil courts in respect of summoning and examining witnesses, discovery of documents, receiving evidence on affidavits and requisitioning public records.[90] This provision explains that Lok Adalats have the power to summon the parties or witnesses or examine them on oath. Similarly they can take evidence on oath or by affidavit and can summon any public record or

[88] Section 89of the Civil Procedure Code, inserted by Amendment Act, of 1999 states *(1)* 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 observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for- *(a)* arbitration; *(b)* conciliation; *(c)* Judicial settlement including settlement through Lok Adalat; or *(d)* mediation.

[89] There is no provision for payment of court fees for referring a matter to the Lok Adalat.

[90] S.22(1) (a) Legal Services Authorities Act, 1987.

document related to the case. Lok Adalats are deemed to be a Civil Court for the purpose of certain provisions of the Code of Criminal Procedure 1973.

All the proceedings before the Lok Adalats are deemed to be judicial proceedings within the meaning of certain provisions[91] of the Indian Penal Code 1860. Legal Services Authorities Act, 1987.

4.1.4.(xi) Status and impact of awards passed by Lok Adalats

The Act along with the Regulations specifies the manner of drawing up of the award and the particulars it should contain, once the award is signed by the contesting parties and the members of the Lok Adalat. The drawing up of the award is merely an administrative act by incorporating the terms of the settlement.[92]

The significant aspect regarding awards by the Lok Adalat is that every award of the Lok Adalat is deemed to be a decree of a Civil Court and as such it is executable by that court.[93] Its status being as good as the decree of a court itself, the award of the Lok Adalat is equally capable of execution through the legal process.

The Legal Services Authorities Act has conferred a status on the award passed by the Lok Adalat equal to that of the decree of a Civil Court. The Supreme

[91] Sections 193, 219 and 228 of the IPC.
[92] See Regulation 17(1) NALSA (Lok Adalats) Regulations,2009.
[93] Section 21(1) of the Legal Services Authorities Act 1987.

Court in the case of *P.T. Thomas v. Thomas Job*[94], in keeping with legislative intent observed that the award passed by the Lok Adalat is the decision of the Court itself though arrived at by a simpler method of conciliation instead of the process of arguments in court . Holding that the award of the Lok Adalat is fictionally deemed to be a decree of the Court the apex court was of the view that the court would have all the powers in relation thereto as it has in relation to a decree passed by itself and this power would include the power to extend time in appropriate cases.

In another case[95], observing that the Legal Services Authorities Act does not make out any distinction in reference to a Lok Adalat made by a civil court or a criminal court, tribunal, family court, rent control court, consumer redressal forum, motor accident claims tribunal and other forums of a similar nature , the Supreme Court in the landmark case of *K.N. Govind Kutty Menon v. C.D. Shaji*[96] held that there is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in a case referred to it by a criminal court under section 138 of the Negotiable Instruments Act and by virtue of the deeming provision, the order of the criminal court has to be treated as a decree capable of execution by a civil court. The Apex Court has therefore favourably regarded the power of the

[94] AIR 2005 SC 3575
[95] *K.N. Govind Kutty Menon v. C.D. Shaji*
[96] AIR 2012 SC 719

Lok Adalat to pass an award which is deemed to be a decree capable of execution, in cases falling under the Negotiable Instruments Act.

Another significant feature of the Lok Adalat award is that where a settlement is reached ,the award made is final and binding between the parties.[97] The objective behind making the award of the Lok Adalats final is that being a compromise, it involves the mutual consent of both the parties. Since an award of the Lok Adalat is based on compromise or a settlement between the parties, none of the parties are in a win or lose situation aware that the decision is reached on consent of both and to their mutual satisfaction.

It is pertinent to note that the provision regarding the finality of the Lok Adalat award under the Legal services Authorities Act, is effective as an estoppel on the parties, in the same manner as a judgment, with the difference that the method adopted in the former is the process of conciliation, instead of the adversarial procedure of courts.

Secondly, unlike the regular litigative process in which there is generally scope for appeal to a higher court, the Act offers no provision for appeal from an award of the Lok Adalat.

[97] Section 21(2)

Interestingly, in *Punjab National Bank v. Lakshmichand Rai*[98], an appeal was filed under section 96 of the Code of Civil Procedure against the award passed by the Lok Adalat. In this case, the Madhya Pradesh High Court interpreting Section 21 (2) ,the Court held that an appeal would not lie under section 96 of the CPC holding that the Lok Adalat is conducted under an independent enactment which is the Legal Services Authorities Act and once the award is made by it , the right of appeal shall be governed by that Act. The Court clarified the matter by laying emphasis on section 25 of the Act which gives the Act over riding effect. Viewed thus, the Court concluded that section 25 of the Act shall prevail in the matter of filing an appeal and an appeal would thus not lie under the provision of the Code of Civil Procedure,1908.

The above analysis drives home the point that the award being a compromise and final, it cannot be challenged by invoking the remedy under Article 226 or 227 of the Constitution.[99] However, the Courts seem to be open to the idea of an appeal in exceptional situations where the award is passed by a Lok Adalat without jurisdiction or without a compromise between the parties or in cases of impersonation or fraud.[100]

In consonance with the concept of access to justice a final disposal and solution to the dispute is made possible through the mechanism of the Lok Adalat.

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[98] AIR 2000 MP 301

[99] There is no provision for appeal against the award of the Lok Adalat to the higher court.But see NALSA Regulation 12(3) in case of awards in pre-litigation matters

[100] *Chaluvadi Murali Krishna v. District Legal Services Authority* AIR 2013 AP 41.

4.1.4.(xii) Procedural formalities

To approach the Lok Adalats for the purpose of dispute settlement, the parties in question have only to comply with minimal procedural formalities laid down in the Act[101].The Legal Services Authorities Act stipulates not only the early settlement of the dispute[102] but also its easy settlement. With this objective, Lok Adalats are not bound to follow the procedural laws in the assessment of the merits of the claim in proceedings before it.

The Act also lays down that every Lok Adalat is empowered to specify its own procedure for the determination of any dispute coming before it.[103] A flexible rather than a rigid procedure conducive to bringing about a settlement between the parties, is the hallmark of the institution of Lok Adalats.

Nonetheless, such procedural latitude would need to be exercised in accordance with the principles of justice, equity, fair play and other legal principles outlined in the Act.[104]

The NALSA Regulations of 2009, make further stipulations regarding the procedure to be followed in Lok Adalats emphasizing the conciliatory over judicial role of Lok Adalats in accordance with the latter's philosophy.[105]

[101] Section 20(1) and (2).
[102] S.20(4).
[103] Section 22(2).
[104] Section 22(4) of the Legal Services Authorities Act 1987.
[105] See Regulation 13 of NALSA (Lok Adalats) Regulations 2009

There is also no room for the use of coercion or pressure as a means to secure a compromise before the Lok Adalats. More importantly, the regulations lay down that there should be a discussion of the subject matter with the parties concerned.[106]

The Regulations also provide that the appearance of lawyers on behalf of the parties is not barred. The only stipulation made in this regard is that lawyers should avoid wearing their robes and bands during the proceedings before the Lok Adalat.

Nonetheless the Regulations also encourage and support the personal presence and participation of the parties when their cases were taken up.[107]

Among the other miscellaneous provisions, the Regulations stress the need for the maintenance of confidentiality in all matters relating to the proceedings in the Lok Adalat, failing which the erring member is to be removed from the panel of members.

Associating members of the legal profession, college students, social organizations, charitable and philanthropic institutions in organizing the Lok Adalats is another of the goals of the NALSA Regulations. [108]

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[106] Regulation 13 (3) NALSA (Lok Adalats) Regulations 2009.
[107] Regulation 23 of NALSA(Lok Adalats) Regulations ,2009.

From the analysis above it is evident that the Legal Services Authorities Act 1987,along with the rules and regulations, endeavors to bring about an amicable settlement of disputes at no expense and with the least amount of delay through the creation of Lok Adalats. It also provides the framework for a participatory and inclusive justice system .

4.1.5. Emergence of Permanent Lok Adalats (PLA)[109]

The Legal Services Authorities Act was amended in 2002, with the inclusion of Chapter VI-A[110] relating to Pre- Litigation Conciliation and Settlement. The amendment Act provides for the establishment of Permanent Lok Adalats[111] to exercise jurisdiction in respect of public utility services to further the objective of speedy and inexpensive justice to litigants. This novel feature introduced in the Act, empowers the Lok Adalats to settle cases with respect to Public Utility services, even before they are filed in the Court.[112] Various public utility services have been categorized whereby pre-litigation cases in respect of these services can be taken cognizance for the purpose of the chapter.[113]

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[108] *Ibid*.
[109] Permanent Lok Adalat defined in Section22-A (a) means a Permanent Lok Adalat established under subsection (1) of section 22-B.
[110] Inserted by Act 37 of 2002 dated 11.6.2002.
[111] Section 22-B
[112] Section 22 C(1)
[113] Section 22-A (b) A public utility service for this purpose means transport service for the carriage of passengers or goods by air, road or water; or postal, telegraph or telephone service; or supply of power, light or water to the public by any establishment; system of public conservancy or sanitation; service in

It is clear from the same that all other disputes are excluded from the ambit of Permanent Lok Adalats. [114] Accordingly, the law stipulates that any party in a dispute with respect to a PUS may, before the dispute is brought before any court, make an application to such Permanent Lok Adalats for its settlement.[115]

The Act clearly stipulates that the Permanent Lok Adalats have no jurisdiction to deal with any matter relating to an offence not compoundable under any law and it has also limited their jurisdiction to matters where the value of the property does not exceed twenty five lakhs of rupees.[116] In various cases, the High Courts have ruled that Permanent Lok Adalats have no inherent jurisdiction to adjudicate or decide issues relating to the grant of permanent injunction, declaration or fraud, even where the parties agree to submit to their jurisdiction.[117]

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hospital or dispensary; or insurance service; and includes any service which the Central Government or the State Government as the case may be, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.

[114] Section 22- C LSA- Disputes with the exception of non compoundable offences come within the jurisdiction of regular Lok Adalats .

[115] *Ibid*. Sec.22C (1).

Section 22 (2) stipulates : After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

[116] Section 22 C (1)

[117] *Kanti Devi v. State of Bihar (*AIR 2012 Patna 86). See also (NOC) 221 (P&H).

The Act lays down that where the dispute is brought before the Permanent Lok Adalat, the parties thereto are barred from invoking the jurisdiction of the court of law in the same dispute.[118]

Where a dispute is brought before it, the Permanent Lok Adalats are required to deal with matters and decide such disputes by assisting the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.[119]

Where no settlement is arrived at, the Permanent Lok Adalat is empowered to decide the dispute on merits. [120] Although the provision is very unambiguous and clear in its terms, the Supreme Court in *Life Insurance Corporation v. Suresh Kumar* [121] held that the Permanent Lok Adalat is not a regular court authorized to adjudicate the dispute between the parties on merits. The Court mentioned further that the Permanent Lok Adalat had no jurisdiction or authority vested in it to decide any *'lis'* as such between the parties, even where the attempt to arrive at an agreed settlement between the parties has failed.

Although no specific procedure is made out in the Legal Services Authorities Act, the latter expressly lays down that the Permanent Lok Adalat while deciding the dispute on merits is not bound by the Code of Civil Procedure

[118] 22 (2)(c)
[119] Section 22-C (5)
[120] Section 22-C (8). See also proviso to Section 22 C(1)The section does not provide for Permanent Lok Adalats to have jurisdiction in respect of non compoundable offences and in respect of matters where the property in dispute exceeds twenty five lakh rupees.[120]
[121] (2011)7 SCC491.

1908 and the Indian Evidence Act ,1872.[122] This provision which enables the Permanent Lok Adalats to determine the dispute in the event of failure of settlement has a two- fold objective. In the first place, it would help to avoid a protracted dispute which may have resulted in irretrievable damage to either party to the dispute. Secondly, it indirectly would help reduce the burden on the regular courts and thus enable the courts to concentrate on other cases requiring application of the mind. At the same time, the tardy procedures followed in the courts of law would not be very suitable for the adjudication of disputes relating to public utility services.

Besides being in consonance with the age-old adage, "prevention is always better than cure", the concept of Permanent Lok Adalats is clearly poor-friendly in as much as it allows a person from the lowest level to get judicial relief and justice without much delay and expense.[123] Furthermore, the Permanent Lok Adalats are to be manned by a person who holds or has held a judicial office of a District Judge or an Additional District Judge or has held judicial office higher in rank than that of a District Judge , who shall be its Chairman, and two other persons having adequate experience in public utility services, to be nominated by the Central or State government on recommendation of the Central or State authority as the case maybe.[124] The legislative intent of having non-judicial members in a tribunal like the

[122] Section 22 -D
[123] Agarwal B.D., *New Road to Speedy Justice,* Vol.V Issue 2, Nyaya Deep, April –June 2002, p. 16 .
[124] Sec. 22 B.

Permanent Lok Adalat , according to the Supreme Court of India, "is to make sure that the legal technicalities do not get paramount in conciliation or adjudicatory proceedings." [125]

While conducting conciliation proceedings or deciding a dispute, the panel of the Permanent Lok Adalat is required to be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice.[126] Thus, while bringing an end to lengthy proceedings and giving a go-bye to the complexities of procedural laws, Permanent Lok Adalats also ensure the independence and competency of the members forming it.

Finally, every award of the Permanent Lok Adalat should be made by a majority of the persons constituting it.[127] Where fears were expressed regarding the composition of the Permanent Lok Adalat comprising of two non judicial members, the Supreme Court dispelled the fears observing in *Bar Council of India v. Union of India*[128], that even where the two non-judicial members disagree with the judicial member in respect of a matter, that does not mean that such majority decision lacks in fairness or sense of justice.

Where an award was passed by the Chairman sitting singly, the award of the Permanent Lok Adalat was held to be invalid and liable to be set aside as it was

[125] *Bar Council of India v. Union of India* (2012)8SCC243.
[126] *Ibid*. Sec 22D.
[127] Section22-E(3).
[128] (2012) 8 SCC 243.

in clear violation of statutory provisions.[129] Moreover, an award which is made either on merit or in terms of a settlement agreement, is final and binding on all the parties and cannot be called into question in any original suit, application or execution proceeding .[130] As the award passed is final, there is no further need for reconsideration in panel or review.[131] This aspect therefore brings an early end to the proceedings.

Deemed to be a decree of the civil court, the Lok Adalat is empowered to transmit the award made by it, to the Civil Court for execution.[132] Thus the award of the Lok Adalat which has the status of a decree of a civil court ,being final and permanent, ensures that litigation among the parties is brought to an end within a reasonable span of time.

Many fears with regard to the Permanent Lok Adalats had been voiced through a writ petition, the Supreme Court of India in *S.N. Pandey v. Union of India*'[133] dismissed the petition and held that the said Amendment to the Act was valid . The Court observed that the Permanent Lok Adalats introduced by amendment to the LSA, were established for deciding disputes in which specified public utility services are one of the parties involved, for decreasing

[129] *Reliance General Insurance Company v. Subhash Gupta* AIR 2013(NOC) 69(P &H)
[130] Sec 22 E (1), (2)
[131] Section 22-E(4)
[132] *Ibid*. Sec 22E(4), (5)
[133] Writ Petition (Civil) No.543/2002 decided on 28.10.2002 available at http://judis.nic.in/supremecourt/imgs1.aspx?filename=39448. See also (2012) 8 SCC 261

workload in courts, and for the purpose of ensuring that justice is available to litigant speedily and impartially.[134]

The Supreme Court reiterated in *Bar Council of India v. Union of India*[135], that the establishment of PLA and conferring on them jurisdiction up to a specified pecuniary limit is not anathema to the rule of law. Alternative institutional mechanisms for the adjudication of disputes cannot be said to be contrary to the constitutional scheme or against the rule of law. The Apex Court was clearly of the opinion that institutional mechanisms with adjudicatory powers set up by law cannot be faulted on the ground of arbitrariness or irrationality where the principles of natural justice are complied with. The Court also explained that no person has a constitutional right to have the dispute adjudicated by means of a court only and if at all a party to a dispute has a grievance against the award of the Permanent Lok Adalat, he can always approach the High Court under its supervisory and extraordinary jurisdiction under articles 226 and 227 of the Constitution of India.

In conclusion, it may be said that where disputes occur in respect of public utility services, Permanent Lok Adalats are empowered to resolve such disputes at the earliest opportunity before they are instituted before the court for adjudication. The establishment of Permanent Lok Adalats has opened a

[134] (2012) 8 SCC 261.
[135] AIR 2012 SC 3246.

single window and independent judicial redressal forum providing prospective litigants a scope for pre- litigation conciliation and settlement of cases.[136]

The importance of the Permanent Lok Adalat lies in its ability to promote and protect the welfare of consumers who are able to resolve their disputes with the Public Utility Services in a straightforward and unsophisticated manner.

As discussed, Lok Adalats in the country are governed by the Legal Services Authorities Act, Rules, Regulations and Schemes made there under. Lok Adalats in several States are also regulated by schemes drawn up by for the purpose. [137]

4.2. The Goa Lok Adalat Scheme: An appraisal

The organization and conduct of Lok Adalats in Goa is specifically provided for in the Goa Lok Adalat Scheme of the Goa State Legal Services Authority.[138] This authority manages and controls the overall conduct of the Lok Adalats at the taluka level, district level and at the High court levels.

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[136] Section 22-A LSA,1987

[137] The Lok Adalat Scheme was drawn up by the Central Authority in exercise of the powers conferred by Section 4(b)of the Legal Services Authorities Act,1987 (No.39 of 1987) as amended. See Sarkar S.K.,*Law Relating to Lok Adalats and Legal Aid*(First Edition ,Reprint, Orient Publishing Company, Allahabad,2006,) p.335.

[138] The Goa State Legal Services Authority functions from the High Court Complex, Altinho, Panaji, Goa and has constituted the High Court Legal Services Committee to exercise the powers and perform functions as determined by the former[138]. Likewise, the North Goa and South Goa District Legal Services Authority[138] constituted for each district of Goa respectively, as well as the eleven

Lok Adalats are organized[139] by the Chairman of the Taluka Legal Services Committee, the District Authority and the Secretary of the High Court Legal services Committee, respectively ,in accordance with the schedule drawn up for the purpose each year.[140]

Each year therefore, Lok Adalats are periodically held at the High Court level , district and taluka levels. Permanent and Continuous Lok Adalats are organized at the headquarters of each district as well. Likewise, Lok Adalats are held at the eleven talukas of Goa and Permanent Lok Adalats under section 22-A of the Legal Services Authorities Act, 1987 are held for Public Utility Services, once every month.

The scheme deals with the nitty-gritties and minute details for the conduct of Lok Adalats in Goa .The scheme mentions the composition of the panel for the Lok Adalats in Goa. Although the number of members to constitute the panel is the same, the designation of the members varies according to the level at which the concerned Lok Adalat is held.[141]

Taluka Legal Services Committees[138] constituted for each Taluka or for a group of them, is entrusted with the organization and conduct of Lok Adalats in their respective jurisdictions.[138].

[139] The organization is in accordance with the provisions of the Legal Services Authorities Act, 1987 read with the Legal Services Authority Rules, 1996 and the Goa Lok Adalat Scheme of 1998

[140] Rule 2 of the Goa Lok Adalat Scheme

[141] COMPOSITION OF THE LOK ADALAT.— (1) At High Court Level.—The Secretary of the High Court Legal Services Committee organizing the Lok Adalat shall constitute Benches of the Lok Adalats, each Bench comprising two or three of the following:—(i) a sitting or retired Judge of the High Court: (ii) a member of the legal profession;and (iii)asocial worker.
(2) At District Level—The Secretary of the District Authority organizing the Lok Adalat shall constitute Benches of the Lok Adalat, each Bench comprising two or three of the following:— (i) a

According to the Scheme, the concerned authorities are required to assign specific cases to each bench of the Lok Adalat , prepare a relevant cause list and hold the Lok Adalat after prior intimation is provided to those concerned.[142] The scheme empowers authorities to conduct Lok Adalats any day including Saturdays, Sundays and holidays as deemed appropriate.[143] While exhorting sincere conciliation efforts from panel members, the scheme categorically prohibits the use of coercion, threat, undue influence, allurement or misrepresentation to arrive at such award.[144]

Categorical and lucid awards signed by the panel and also by the parties[145] may be drawn up in English or the regional language.[146] Once a settlement or compromise is effected, a copy of the award certified to be true by the panel should be furnished to the parties.[147] Provision to permit lawyers to appear on behalf of the parties at the Lok Adalat has been made.[148] The scheme also makes it clear that no fees shall be payable by the parties in respect of cases brought before or referred to a Lok Adalat.[149]

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sitting or retired judicial officer; (ii) a member of the legal profession; and (iii) a social worker or para-legal of the area.
(3) At Taluka Level—The Chairman of the Taluk Legal Services Committee organizing the Lok Adalat shall constitute Benches of the Lok Adalat, each Bench comprising two or three of the following:—(i} a sitting or retired judicial officer; (ii) a member of the legal profession;
(iii) a social worker or para-legal of the area, preferably a woman.

[142] Rule 7 of the Goa Lok Adalat Scheme.
[143] Rule 8 of the Goa Lok Adalat Scheme.
[144] Rule 7 (3).
[145] Rule 9 (1) and Rule 10(2)
[146] Rule 10
[147] Rule 9
[148] Rule 18(1)
[149] Rule18(2)

From the analysis above, it is observed that the Legal Services Authorities Act, 1987, provides for the establishment of Lok Adalats and Permanent Lok Adalats on an uniform basis throughout the country. While it has given statutory recognition to the institution of Lok Adalats ,the Act has preserved its flexibility to encompass different situations in the complex structure of the Indian society.[150]

It is clear from a perusal of the Act that there are significant differences between Lok Adalats and Permanent Lok Adalats. Lok Adalats under Chapter VI are conducted for cases which are either pending in the courts or for pre-litigative cases[151] ,whereas Permanent Lok Adalats under Chapter VI A are established for pre-litigation conciliation and settlement in respect of public utility services.[152] Another essential point of distinction between both the forums is that even where no settlement is reached between the parties, the Permanent Lok Adalat is empowered to determine the dispute on merits. However, this is not the case with the regular Lok Adalats.

While the Legal Services Authorities Act, has its merits, there are certain difficulties in its implementation that required to be urgently addressed. In the event of failure of a compromise or settlement is reached by Lok Adalats

[150] Dr. Deshta Sunil, *Lok Adalat in India: Justice at the door steps*, Nyaya Deep, Vol. V,Issue: 3, July-September 2002,p. 20
[151] See section 19(5) of Legal Services Authorities Act 1987, for jurisdiction of Lok Adalats.
[152] See Sections 22A -22E of Legal Services Authorities Act, 1987.

constituted under Chapter VI of the Act, the case is either returned to the court of law or the parties are advised to seek a remedy in the courts. Concerns are expressed that such a provision creates unnecessary delay in the dispensation of justice but if Lok Adalats were empowered by the law to adjudicate the matter, it would ensure speedier justice. However, the researcher is of the view that such if such an amendment had to be effected, it would defeat the very purpose and object of the Legal Services Authorities Act,1987.

In the interest of justice, one matter of genuine concern is that the Act does not mandate the applicability of the rules of procedure and evidence generally followed in dispute resolution by courts. Moreover, with finality to the award and the absence of appeal from the award, a threat to justice is feared. Some mechanism to ensure the accountability of Lok Adalats is important, particularly, given the discretion of the Permanent Lok Adalat to decide the dispute without involvement of the parties.

As far as Permanent Lok Adalats are concerned, the provision that the award shall be by a majority of persons constituting it. It seems right that the provision has raised doubts and created apprehension as it implies that the non -judicial members could overrule the decision of the judicial members. Such a provision does merit reconsideration in the interest of justice.

The enforcement of the National Legal Services Authority Regulations, 2009, has dispelled fears about the lack of uniformity in the organization of Lok Adalats across the country. Greater awareness about the Legal Services Authorities Act, 1987, and of the Rules and Regulations thereunder , is required to ensure greater success.

Despites its finer points, the Act has come in for criticism on several counts. In the first place, there is an apprehension that the rationale of the Legal Services Authorities Act is likely to bring about the substitution of the rule of law with non -legal values and thereby encourage second class justice. [153] Critics argue that as in the case of most alternative dispute resolution methods, parties approaching Lok Adalats are less likely to "win" a case, on account of the conciliatory philosophy and cooperative approach the forums follow.[154]

It is also contended in this regard, that while the law generally aims to resolve disputes on the basis of well established rules , the Legal Services Authorities Act,1987, enjoins the Lok Adalat merely to be guided by the principles of justice ,equity, fair play and other legal principles in arriving at a settlement .[155]

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[153] See Joseph Jasmine, "*Alternate to Alternatives: Critical Review of the Claims of ADR*"**,**NUJS Working Paper Series NUJS/WP/2011/01 available at http://www.nujs.edu/nujs-working- papers-research-series.html last viewed on 30/8/2013. See also, Massey, I.P., .*Erosion of the Judiciary*, 1987 IBR 14 (4) 722.

[154] Mack Kathy, *Alternative Dispute Resolution and Access to Justice for Women* , (1995) 17 Adel LR 137 .

[155] *Supra.* Section 20(4)

As the Act confers a free hand to the Lok Adalat to specify its own procedure for the purpose of determining any dispute coming before it,[156]it is argued that with such a shift of decisional standards from legal principles to principles of justice , justice itself is at risk.[157]

Fears are also expressed that the system of Lok Adalats is meant to supplant or substitute the regular courts of law. Lok Adalats are not intended to supplant the courts as the law has been specifically enacted to ensure that justice is not denied on economic or other considerations , in keeping with the mandate of social justice under Article 39-A of the Constitution of India .

However all the apprehensions are unfounded as the philosophy of Lok Adalats is entirely different from that of the courts which is adversarial in nature and which resembles warfare.[158] The purpose of establishing Lok Adalats under the Act is not to dispense justice but to facilitate agreement when people are willing to settle their dispute amicably.

Justice in terms of society would meaningless if, only a privileged few could access it.[159] The Legal Services Authorities Act,1987, through the institution

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[156] Section 22(2).
[157] Kumar Das Atin, *Impact of Lok Adalat in India: An Analytical Study,* IBR Vol.XL(4) October – December 2013,p.154.
[158] Frank Jerome, *Courts on Trial: Myth and Reality in American Justice*(Second Print , Princeton University Press, 1950) p.5.
[159] Available at nalsa.gov.in/schemes/Qinquennial.doc last viewed on 17/12/2013.

of the Lok Adalat has made the difference. Any analytical conclusion on the impact of Lok Adalat could be a dream only if one studies and ponders over the ground realities of the functioning of such an institution. The researcher therefore has undertaken this venture to personally scrutinize the effect of such an institution on the State's justice delivery system as part of the study

The impact of Lok Adalats in bridging the gap between citizens, the law and justice in the State of Goa, has been analyzed and discussed in the next chapter.

Chapter V

Critical Analysis of the Functioning of Lok Adalats in Goa

5. Critical Analysis of the Functioning of Lok Adalats in Goa

"The health and wealth of a society or its humanity can, in part, be gauged in terms of the accessibility and quality of its justice systems.[1]"

A diverse range of strategies to enhance access to justice have emerged in India over a period of time. Among these, the Legal Services Authorities Act ,1987 through the institution of the Lok Adalats ,crystallizes the policy of the State for equal access to justice. Equal access to justice connotes a situation where all citizens are able to use justice institutions to obtain solutions to their common justice problems.

It is an indisputable fact that the mere existence of law does not automatically guarantee citizens the enjoyment of rights. It remains to be seen whether the law in its implementation has efficaciously succeeded in achieving that objective.

Of critical importance therefore is that citizens have effective access to the systems and procedures for the settlement of their legal disputes and that those justice institutions function effectively to provide redress.

[1]Dias Kadwani A. & Welsh Gita, (ed.) *Justice for the Poor, Perspectives on Accelerating Access,* (Oxford University Press ,New Delhi.,2011) p.208.

The present chapter initially provides a picture of access to justice in the State of Goa before and after its liberation with emphasis on the circumstances that have given access to justice its contemporary form.

The arrangement of the chapter is structured around the functional effectiveness of the Lok Adalats as an alternative dispute resolution mechanism, data of which has been collected evaluated and critically analyzed, for the period 2005 to 2012, for the purpose of assessing its impact on justice- dispensation in the State .

In order to arrive at a representative sample for the purpose of authentication of the research findings, the researcher arrived at a total sample of 400 respondents by a system of random sampling . However, in order to ensure equitability of distribution and of views, the respondents were chosen as below. 50 respondents from the High Court of Bombay at Goa ,75 respondents from each of the District Courts i.e. North Goa district and South Goa district and approximately 200 respondents are from eleven talukas mainly at the civil judges' courts. This was done to ensure that the sample was truly representative for the State of Goa. The responses obtained were classified, tabulated, analyzed and inferences drawn to enable the researcher to make suggestions to streamline the functioning of Lok Adalats in the State. The data has been tabulated and appropriately explained in the respective sections. However it was felt that in order to obtain a general view, this tabulated data has been converted into a percentage basis and depicted as a pie –chart so that the reader

would obtain an overall view of the situation rather than limiting the same to actual numbers and figures of the sample.

The researcher also collected data from the office of Goa State Legal Services Authorities[2] and from the District Legal Services Authorities[3] relating to the number of Lok Adalats held, the organization of Lok Adalats in the State, the institution of new cases before the Lok Adalats from 2005 to 2012, the categories of cases coming before the Lok Adalats, and the extent of settlements before the Lok Adalats.

In addition to the above two, the researcher was also able to draw from the well of experience of the distinguished sitting as well as former judges of the High Court of Bombay at Goa through interviews conducted with them.[4] The practical recommendations made by them are incorporated in the analysis to highlight the directions for future change.

Officials of the Legal Services Authorities were also interviewed regarding their views on the organization and conduct of Lok Adalats. Senior Advocates and members of the legal profession practicing in various parts of Goa were interviewed to ascertain their views and opinion regarding the functioning of Lok Adalats in the State of Goa.

[2] Office of the Goa State Legal Services Authority, High Court Building, Altinho, Panaji, Goa.
[3] Office of the North Goa District Legal Services Authority, Civil Courts Building, Panaji-Goa and the Office of the South Goa District Legal Services Authority ,District Court Building, Margao,Goa
[4] Interview Schedule in Annexure B

In order to comprehensively analyze the data , the Chapter is divided into five parts:-

The first part 5.1.gives a profile of the significant legal institutions and access to justice in Goa during the pre-liberation and post- liberation periods.

The second part i.e. 5.2. deals with dispute resolution through courts in the State of Goa as litigation is the traditional form of dispute resolution through the courts.

The third part i.e. 5.3. reviews the effectiveness of Lok Adalats as an instrument of access to justice.

An epigrammatic appraisal of Lok Adalats in the states of Maharashtra and Karnataka forms part 5.4 .of the Chapter.

An overall review of the collected data and analysis is provided in 5.5. of the Chapter .

5.1. Access to Justice in Goa: Pre-Liberation and Post- Liberation Experience

Goa, originally known as 'Kalyan', meaning happy, is situated on the western coast of the Indian peninsula and nestled between the Western Ghats and the Arabian Sea.[5] With picturesque landscapes, a favourable climate and a people in deep harmony with their land and nature[6],Goa, has been witness to several political onslaughts throughout her history.

The legal system of Goa in the pre-liberation period was mostly based on the traditions of the invading forces of the time. Most of the invading powers introduced their own courts to dispense justice while also recognizing the indigenous forms of justice traditionally present.

5.1.1 Access to Justice in Pre-Liberation Goa

Goa was ruled by Adilshah, the Sultan of Bijapur just before the advent of the Portuguese to India. At that time, the Sultanate judicial system comprised of the Sultan as the headand a Qazi.[7] Below the Qazi, there were Judicial Magistrates, such as Vazirs and Amirs vested with original and appellate powers within their territorial jurisdiction. There were also other subordinate Judicial Officers that administered justice.[8]

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[5]Available at www.goa-world.com/goa/about_goa/hist.htm last viewed on 4/5/2013.
[6]Before its colonization, Goa comprised of a number of village republics or 'ganvs'. A sense of '*ganvponn'* or a sense of belongingness, held its people together. See Pereira Andre, *Restore the Communidades*, available at http://www.nizgoenkar.org/archiveDetails.php?id=2288 last viewed on 12/5/2013..
[7]Available at hcbombayatgoa.nic.in/hc_hist.htm last viewed on 9/6/2013.
[8]Available at http://www.hcbombayatgoa.nic.in/ last viewed on 10/6/2013.

While Hindu and Muslim invasions influenced Goa's legal history and justice traditions, the greatest impact came from Goa's conquest and occupation by the Portuguese for 450 years.

The Portuguese introduced their judicial system comprising of a Tribunal de Relacao system corresponding to the High Court, appeals from which lay to the Supreme Court at Lisbon. Below the High Court, there were Comarca Courts[9] and Julgado Municipal Courts.[10] Comarca and Municipal Courts had civil, commercial criminal jurisdiction and appellate jurisdiction.

In the villages, there were 'Juizes Populares' whose function was to hold conciliation proceedings and to judge certain cases summarily on equity and good conscience.[11]

It is also noteworthy that Portuguese laws in force in Goa at the time emphasized the settlement of disputes in an amicable manner.[12] The laws made it imperative for the judges to have a preliminary hearing after the institution of the suit. A duty was cast on the court to firstly, attempt conciliation between the parties having in mind an equitable solution.[13]

[9]Goa, Daman and Diu and Dadra and Nagar Haveli had been divided into six judicial divisions or Comarcas viz., Bardez, Bicholim, Daman ,Tiswadi,,Quepem and Salcette. Comarca courts were established at the headquarters of these divisions.
[10] Courts of Julgado Muncipais Especias were established in municipal areas which were not the headquarters of the Comarca.
[11]Available at http://www.kar.nic.in/fnjpc/h-goa.html last viewed on 16/6/2013.
[12]Portuguese Civil Procedure Code of 1939 approved by the Decree with force of law No.29637, dated 28th May 1939.
[13] Articles 512 and 513 of the Portuguese Civil Procedure Code 1939 .

Interestingly, it is found that Portuguese laws made available judicial assistance roughly corresponding to modern legal aid in civil matters, as early as 1907.[14] The privilege continued even later under the Decree No.33.548 of 1944.[15]Thus a well-organized judicial system was the contribution of the Portuguese to the people of Goa.

Unfazed by the political upheavals,the people of Goa preserved the customs and traditions they were generally habituated to, one of which was the *Gaunkaria* system, unique to it[16]. Adopting informal methods, the *Gaunkaria* settled disputes and their mandate which possessed the sanctity of law, was respectfully obeyed. [17]

Contemporaneous with their takeover of Goan territory, the invading powers therefore adopted their own policies regarding the form of government and the administration of justice in particular. Customary and traditional justice mechanisms that were an integral part of indigenous life, long before the arrival of the invaders, operated, wherever permitted, alongside alien laws and institutions.

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[14]See Gazette of Estado da India no.42 dated 28/5/1907.
[15]Decree No.33.548 dated 23.2.1944.
[16]Local autonomous bodies known as *Gaunkaria* ,which evolved from customary law, functioned in the village communities of Goa. These bodies exercised among other functions, judicial functions to settle disputes between the locals at the village level. On Goa's colonization, the system of Gaunkaria came to be known as Communidades. The Portuguese permitted the exercise of the judicial functions, until they were completely abolished in 1826. See D'Souza Carmo, *Legal System in Goa-Judicial Institutions (1510-1982),*Vol.1, (New Age Printers, 1994) p.24.
[17] Records suggest that each village had its boundaries fixed and the Council of elders with the help of other members or gaonkars resolved and even today resolve the litigation .Appeal was resolved by a group of the elders of the villages, who were supposed to have a brotherhood link. See Sinai Dhume Ramesh, *The Cultural History of Goa From 10000B.C.-1352 A.D.* (Mapp Printers,Panaji, Goa,)p.177.

Access to justice needs, therefore were sought to be met through the relatively organized judicial system and the relevant laws in existence during the Portuguese regime.

5.1.2. Access to Justice in Post -Liberation Goa

On its liberation from Portuguese rule, Goa was integrated into the Union of India on 19th December 1961 and Portuguese laws were gradually replaced by Indian laws and legal system.[18]

Goa underwent a transition from the civil law tradition under the Portuguese to the British common law system, followed in the rest of India. In addition, the inquisitorial system of justice was replaced by the adversarial system of justice in Goa which continues till date. At the time of Liberation therefore, Goa had a well-developed judicial system based on continental jurisprudence which was substituted with the Indian administrative set up with the Indian Constitution being extended to the territory of Goa, Daman and Diu on her liberation.

5.1. 2 (i) Present Judicial Set up in Goa

Administration of justice which is a function of the State is carried out by the various superior and subordinate courts in Goa. Established in accordance with the provisions of the law, there is a hierarchy of courts in Goa[19], at the apex of which, is the High Court of Bombay at Goa.[20]

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[18] D'Souza Carmo, *Legal System in Goa-Laws and Legal Trends (1510-1969)* Vol. II (New Age Printers, 1994) p.253.

[19]District and Subordinate Civil Courts were established under the Goa, Daman and Diu Civil Courts Act, 1965.See also Chapter III for hierarchy of criminal courts under the Code of Criminal Procedure, 1973.

For the purpose of administrative convenience, the State is divided into two districts, the North Goa and South Goa districts with headquarters at Panaji and Margao respectively and comprises of eleven talukas.

In each of the two districts, there is a District Court which is the principal court of civil jurisdiction within the meaning of the Civil Procedure Code,1908. Besides, the District Courts also function as courts of appeal from all decrees or orders passed by the subordinate courts from which appeal lies under the law.

There are Additional and Assistant District Judges who are invested with coextensive powers and concurrent jurisdiction with the District Judge.[21]

In each taluka, there are Courts of the Civil Judge Senior Division and the Courts of the Civil Judge Junior Division exercising their respective jurisdictions according to law.

For the purpose of administering criminal justice, there are two sessions divisions each being co-terminus with the two districts. The Sessions Judge at each Session division is assisted by the Additional Sessions Judge and Assistant Sessions Judge. There is a Chief Judicial Magistrate in each district

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[20] A Permanent Bench of the High Court of Judicature at Bombay has been established as per the provision of the High Court at Bombay(Extension of Jurisdiction to Goa, Daman and Diu)Act, 1981. With the passing of Goa, Daman & Diu Re-organization Act, 1987 by the Parliament, conferring Statehood to Goa, the High Court of Bombay became the common High Court for the states of Maharashtra and Goa and the Union Territories of Dadra & Nagar Haveli and Daman & Diu w.e.f. 30-05-1987.

[21] Available at http://www.hcbombayatgoa.nic.in/last viewed on 1/7/2013.

and all civil judges at the taluka level are invested with magisterial powers of the first class. The jurisdictions and powers of each of the classes of courts is as laid down in the law.[22]

5.2. Contemporary formal justice- dispensation scenario

A well-organized court system exists in the State of Goa in contemporary times. However, the ills affecting the courts in the rest of the country have not spared the courts in the State of Goa as well.

The growing consciousness of legal rights among a 'litigious population,'[23]has resulted in an unprecedented spurt in litigation. With a huge backlog of cases awaiting disposal [24]litigation is turning out to be both time- consuming and expensive.[25]

There was a total pendency of 33,730 cases in the High Court, District and Subordinate courts of Goa, as on 31st December 2012.[26] In addition to the pending cases , the courts are burdened with the institution of new cases.[27]

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[22] Available at http://www.hcbombayatgoa.nic.in/last viewed on 12/7/2013 last viewed on 20/7/2013.
[23]Jose Nicolau da Fonseca, *An Historical and Archaeological Sketch of the city of Goa* (Thacker and Co.Ltd.,1878) p.35 . See also views of Shri S.C Jamir, Governor of Goa, in a speech delivered in 2006 at an inaugural function. "The level of legal awareness of the population is remarkable. Goans may be seen as a very litigious people, but this litigiousness is because of the people's awareness of their rights, duties and responsibilities coupled with knowledge about legal provisions", available at http://www.mail-archive.com/goanet-news@goanet.org/msg00921.html last viewed on 12/7/2013.
[24]See southgoacourts.nic.in/pendency.pdf and northgoacourts.nic.in/pendency.pdf last viewed on13/7/2013.
[25]Available at http://mediationbhc.gov.in/common/chairman.aspx last viewed on 14/12/2013.
[26]Available at southgoacourts.nic.in/pendency.pdf and northgoacourts.nic.in last viewed on 20/7/2013.
[27] Although no updated data as regards the institution and disposal of new cases in Goa for the year 2012 is available, data regarding the pendency of cases for the year 2009 was obtained showing as being 11,914, The institution of new cases in the same year was 7,614 and the disposal was 6,500

Delay in the disposal of cases has become inevitable with an increasing backlog year after year. [28]Filing of appeals and revisions, has further delayed the final disposal of cases. The cumbersome procedures have resulted not only in delay but also in great expense, strain and stress to the litigants seeking justice from the courts. One look at the prevailing justice sector and it is clear that justice dispensation in the State has fallen victim to the pressures and pulls of the adversarial system.

5.2.1. Justice through contemporary court system

The very existence of an orderly society depends on a sound and efficient functioning of its justice delivery system. Given the high pendency of cases, a low ratio of judges per population and delayed disposals, the effectiveness of courts in delivering justice was evaluated by the researcher through specific questions in the questionnaire and the findings thereon have been explained below.

Table 5.1. below provides an insight into the view held by the respondents regarding the efficacy of the present court system in delivering justice.

cases. Available atsouthgoacourts.nic.in/pendency.pdf *and*northgoacourts.nic.in last viewed on 21/7/2013.

[28] 'Delay' in the context of justice denotes the time consumed in the disposal of case, in excess of the time within which a case can be reasonably expected to be decided by the Court.

Table 5.1

Q. 1 Contemporary court system and effective Justice	Number of Respondents
Strongly Agree	48
Agree	246
Disagree	82
Strongly Disagree	24
Total	400

Source: Primary Data[29]

To the question whether the present court system is providing justice , 48 respondents strongly agreed that the courts were providing justice. 246 were also of the opinion, although not strongly. While 82 disagreed, 24 respondents strongly disagreed, that the courts were providing justice.

The details of the Table 5.1. are depicted in the form of a pie chart below.

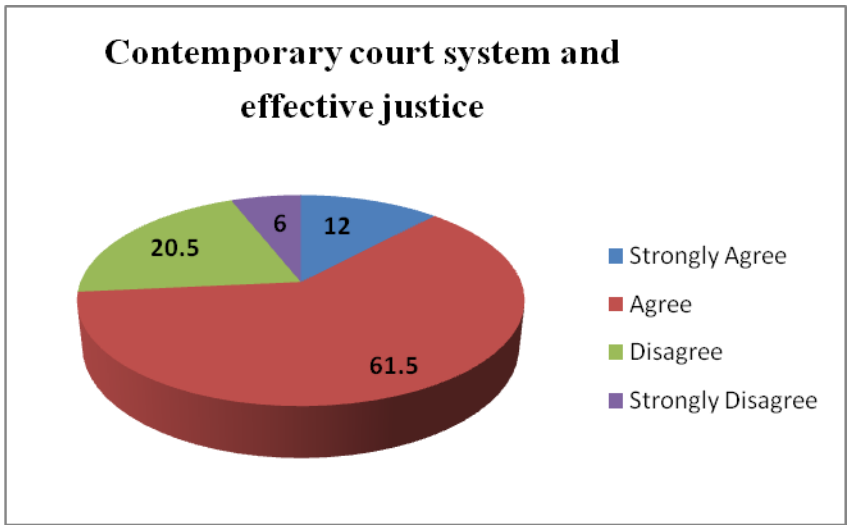


Fig.5 (i)

[29] See Question 1 in Questionnaire Annexure A

Figure 5(i) above reveals that while 12% of the respondents strongly believed that courts in Goa were delivering justice, 61% of the respondents also subscribed to the same view. In other words, while a majority of 73% of the respondents believed that the courts in Goa dispensed justice, 27% did not agree with the view. The majority view therefore is that the courts in Goa are providing justice although there is also a minority opinion to the contrary.

The analysis makes it clear that the traditional and long standing view that courts generally dispense justice continues to prevail. It must also however be noted that the responses given to the question above represents the views of the advocates who perceive the courts as the true dispensers of justice.

5.2.2. Accessibility of Courts in Goa

Effective access to justice presupposes the accessibility of the justice systems to its users. [30] Accessibility of courts guarantees the realization of constitutional and legal rights. Inaccessibility in any of its forms hampers the effective dispensation of justice. The researcher thought it fit to ascertain whether courts in Goa were easily accessible to those seeking justice.

Table 5.2. below depicts the views regarding the accessibility of courts in Goa.

[30]Dias Kadwani Ayesha& Welch Gita (eds.), *Justice for the Poor-Perspectives on Accelerating Access (*Oxford University Press, New Delhi,2009) p.490.

Table 5.2

Q. 2 Accessibility of courts	**Number of Respondents**
Strongly Agree	30
Agree	94
Disagree	238
Strongly Disagree	38
Total	400

Source: Primary Data[31]

To the question whether it is difficult to approach courts in the State , 30 respondents strongly felt that it is difficult ,while 94 also agreed about it being difficult to approach courts. 238 disagreed, expressing that there was no such difficulty. 38 strongly disagreed about the existence of any such difficulty.

The details of the Table 5.2. are depicted in the form of a pie chart below as Fig. 5(ii).

[31] See Question 2 in Questionnaire Annexure A.

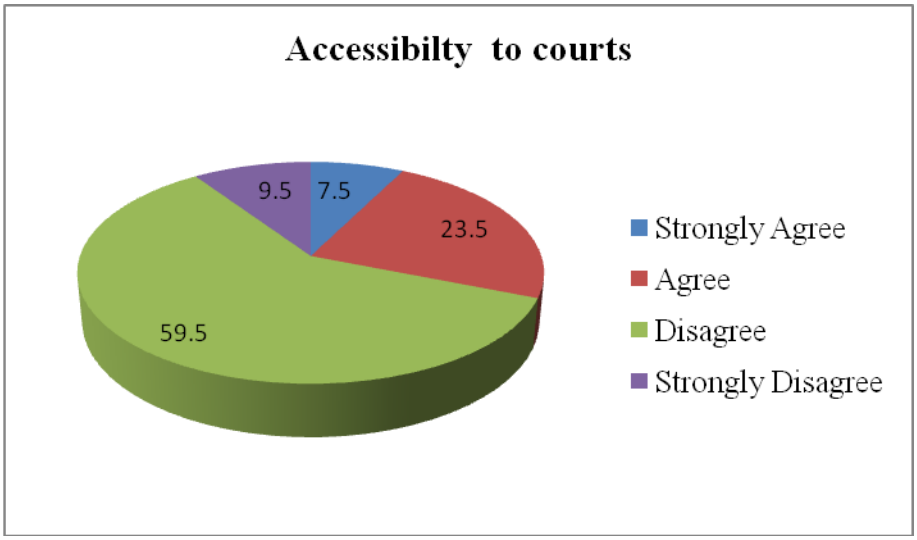


Fig.5(ii)

From the responses given, it was found that 7.5% strongly agreed that it was difficult to approach courts. 23.5% expressed the view that justice seekers experienced difficulties to approach courts. 31% of the respondents as a whole therefore believed that difficulties did exist in accessing justice from courts. On the other hand, 59.5% of the respondents disagreed that it was difficult to approach courts while 9.5% opined that there were no such difficulties. In all, an overwhelming majority of 69% opined that it was not difficult to obtain justice from courts.

It is clear that there are divergent views about the effectiveness of justice-dispensation in the State. While there is no doubt that the courts are imparting justice, the analysis and interpretation of the data reveals a clear admission and acknowledgement of the limitation of courts in delivering complete justice.

It is submitted that although the views expressed may be honest and objective, yet this view is not correlated to the high pendency of cases, delay in disposal

of cases, inadequate number of judges and expensive litigation , all of which have been found to plague the formal justice system in Goa as in the other parts of the country.[32]

5.2.3 Main Factors hindering Access to Justice

The researcher ascertained from the respondents through the questionnaire, the various factors that obstructed the path of justice from courts. Depending on their importance and their perceived impact on access to justice in the State, the respondents ranked the factors such as procedural technicalities, low ratio of judges to the population, large expenditure, geographical location of the courts and the lack of physical infrastructure, among others.[33]

Table 5.3. below outlines the factors that hinder access to justice from courts in Goa.

Table 5.3

Q. 3 Main Factors hindering access to justice	**Most Important**	**Rank**
Low Ratio of Judges	82	2nd Rank
Lack of Physical Infrastructure	26	5th Rank
Geographical Location	40	4th Rank
Procedural Technicalities	192	1st Rank
Expensive	42	3rd Rank
Other	18	6th Rank
Total	400	

Source: Primary Data[34]

[32] See *supra* , 5.1.2.
[33] See Fig.5(iii)
[34] See Question 3 in Questionnaire Annexure A.

To the question as to which of the difficulties listed obstructed a litigant from obtaining justice, 82 stated that it was the low ratio of judges to population. 26 mentioned lack of physical infrastructure as the main difficulty in obtaining justice, 40 said it was that geographical location of the courts . 192 respondents on the other hand stated that procedural technicalities were responsible for difficulties in obtaining justice. 42 respondents mentioned that expense involved in litigation was the main reason while 18 felt that 'other' reasons were so responsible.

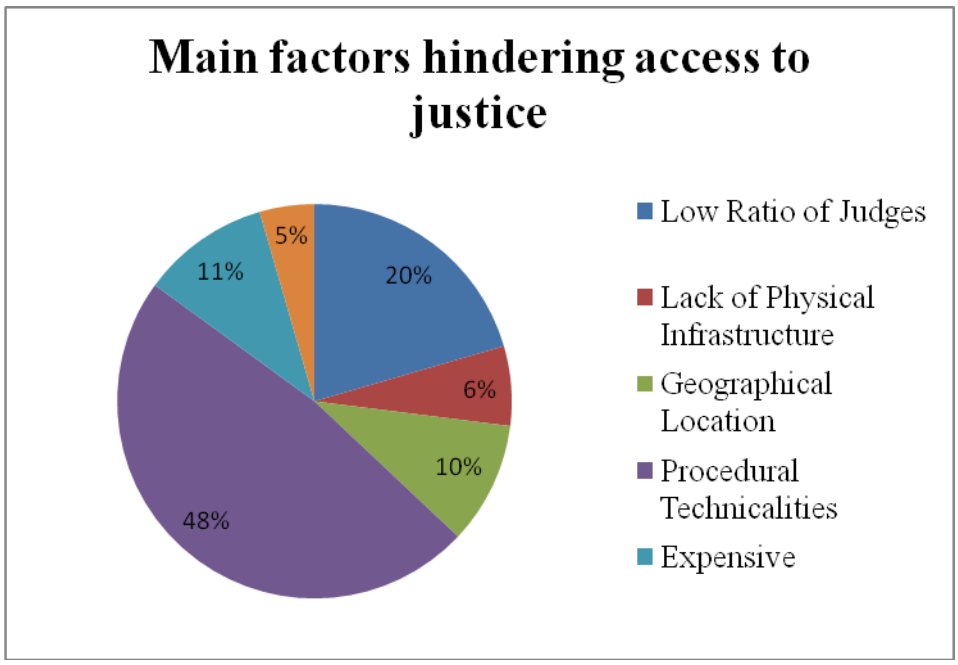


Fig.5(iii)

The Figure depicts that 48% believed that the foremost reason for litigants facing difficulties in accessing justice was on account of complex procedural technicalities. 20% of the respondents cited a low ratio of judges per

population[35] as the main reason for difficulty in accessing justice from the courts. 11% opined that high –priced litigation was the primary reason for litigants facing difficulties in accessing justice. 10% of the respondents saw the geographical location of the courts as an impediment to access to justice. Only 6% considered lack of physical infrastructure as a reason for difficulty in obtaining justice. Finally 5% listed other factors such as the lack of competency of judges and corruption in the justice system as the primary reason for difficulty in obtaining justice.

The analysis shows that there are several impediments inherent in the formal justice system that makes it difficult and impractical for justice seekers to approach the courts in Goa.

5.2.4. Courts as Preferred Mode of Dispute –Resolution

Besides the courts, Lok Adalats are available for dispute resolution in the State . Each of these have their own distinctive characteristics and features as a dispute resolution mechanism.

In order to ascertain litigants' preferred choice of forum for dispute resolution, the responses were tabulated as below(See Table 5.4)

[35] In India, at present the judge's ratio is less than 13 per 10lakhs population available at slsagoa.nic.in/newsletstter/goanya_is%201%20vol%20III_jm-04.doc last viewed on 1/8/2013.

Table 5.4

Q. 4 Litigants' preference for courts	Number of Respondents
Strongly Agree	96
Agree	184
Disagree	108
Strongly Disagree	12
Total	400

Source: Primary Data[36]

From the Table above it is found that 96 respondents strongly felt that litigants prefer courts to Lok Adalats to resolve their disputes. 184 felt that by and large litigants preferred the courts .108 respondents felt that Lok Adalats were preferred by litigants to courts and 12 respondents strongly felt the same.

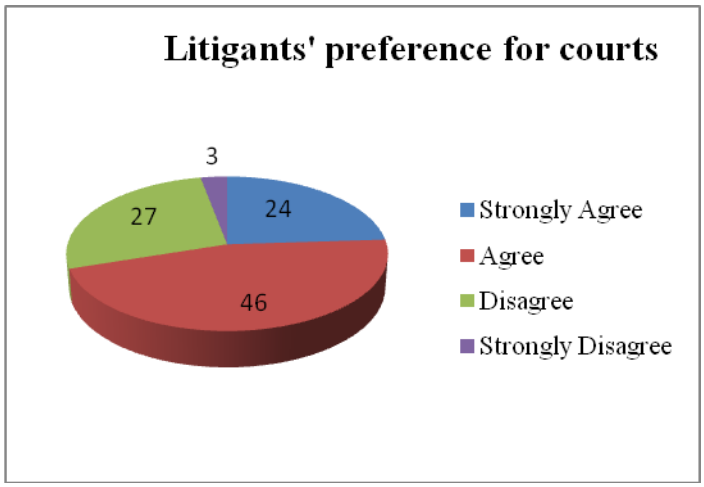


Fig. 5(iv)

[36] See Question 4 in Questionnaire Annexure A.

From Fig. 5(iv) it is amply clear that 70% of the respondents in all were of the firm opinion that litigants preferred courts as the main mechanism for the resolution of their disputes. On the other hand, 30% were in disagreement about it.

The data indicates that litigants do show a preference to approach courts rather than Lok Adalats for resolving disputes. The probable explanation for preference for courts is that litigants have placed their hopes in the courts for even-handed justice according to the law. It also appears that litigants prefer to approach courts mostly on the advice of their lawyer and also out of their own personal choice.

5.2.5 Preferred Alternative for Dispute -Resolution

Besides courts, there are a number of other modes that are available for resolving disputes. To ascertain the preferred mode of dispute resolution besides courts the following responses were obtained as shown in Table 5.5.

Table 5.5

Q. 5 Preferred alternatives for dispute resolution	**Number of Respondents**	**Rank**
Tribunals	56	3rd Rank
Commissions	46	4th Rank
Lok Adalats	188	1st Rank
ADR Boards	110	2nd Rank
Others	0	5th Rank
Total	400	

Source: Primary Data[37]

56 respondents declared tribunals to be their preferred option for dispute resolution after courts. 46 respondents saw Commissions as their preferred option. 188 respondents expressed their preference for Lok Adalats while 110 respondents mentioned ADR Boards offering alternatives dispute resolution methods as their preferred option for resolving their disputes after courts.

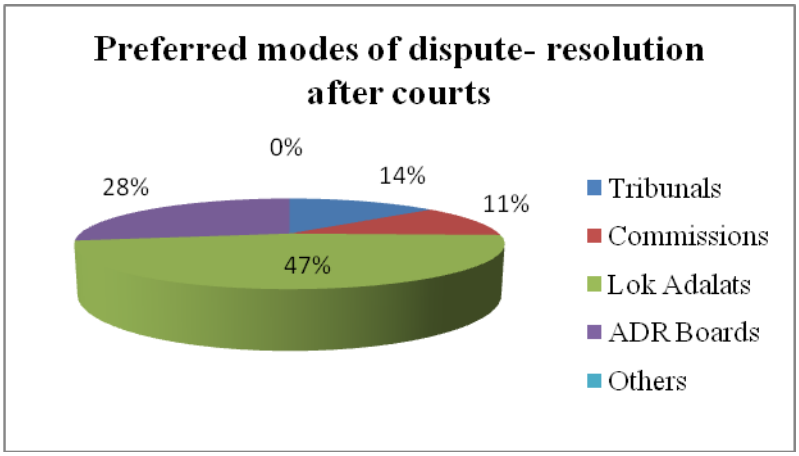


Fig. 5.(v)

[37] See Question 5 in Questionnaire Annexure A.

Figure 5.(v) demonstrates that besides courts, 47% of the respondents preferred Lok Adalats as an additional mode of dispute resolution. The other forms of alternative dispute resolution such as ADR Boards ranked as the second choice. Tribunals and commissions were ranked in the third and fourth places respectively.

It is clear from the above data,that Lok Adalats are the preferred mode of dispute resolution next to courts. There is also a clear indication from the responses given that there is a tacit acceptance and acknowledgment of the suitability of non -adversarial modes such as the Lok Adalats to fulfill the demands of justice.

A careful analysis of the entire data obtained on the courts[38] and from the responses to the questionnaire and through interviews conducted,[39] reveals that while courts are found to be dispensing justice, inadequacies in the formal adversarial justice system are impeding the effective redress of legal needs of justice seekers in the State. There are mainly operational[40] , structural[41] and legal obstacles[42] to access justice in the State.

[38]Available at southgoacourts.nic.in/pendency.pdf and northgoacourts.nic.in last viewed on 15/11/2013.
[39] See Annexures A and B
[40]*supra* ,Chapter I.
[41]*Ibid.*
[42] Legal obstacles refer to complexities of the law and legal procedure .available at http://www.gsdrc.org/go/display&type=Document&id=195 last viewed on 13/7/2013 .

It therefore could be safely concluded that there is only limited access to justice from courts in Goa.

5.3. Review of Effectiveness of Lok Adalats as an Instrument of Access to Justice

This part of the Chapter examines the role ,impact and effectiveness of Lok Adalats in dispensing justice in the State of Goa from 2005 to 2012.

The effectiveness of Lok Adalats as a dispute resolution mechanism was measured in terms of its availability , the frequency of organization, the number of cases brought before it , the number of disputes settled, the categories of disputes settled ,its expeditiousness, flexibility, the relief provided, cost –effectiveness and the quality of justice delivered by the Lok Adalats.

5.3.1 Organization of Lok Adalats

The responsibility of organizing and conducting Lok Adalats in accordance with the law is entrusted to the Goa State Legal Services Authority.[43]As

[43]*Supra*, See Chapter IV.

discussed, Lok Adalats are conducted on the date, time and place[44] notified in advance, in accordance with the schedule.[45]

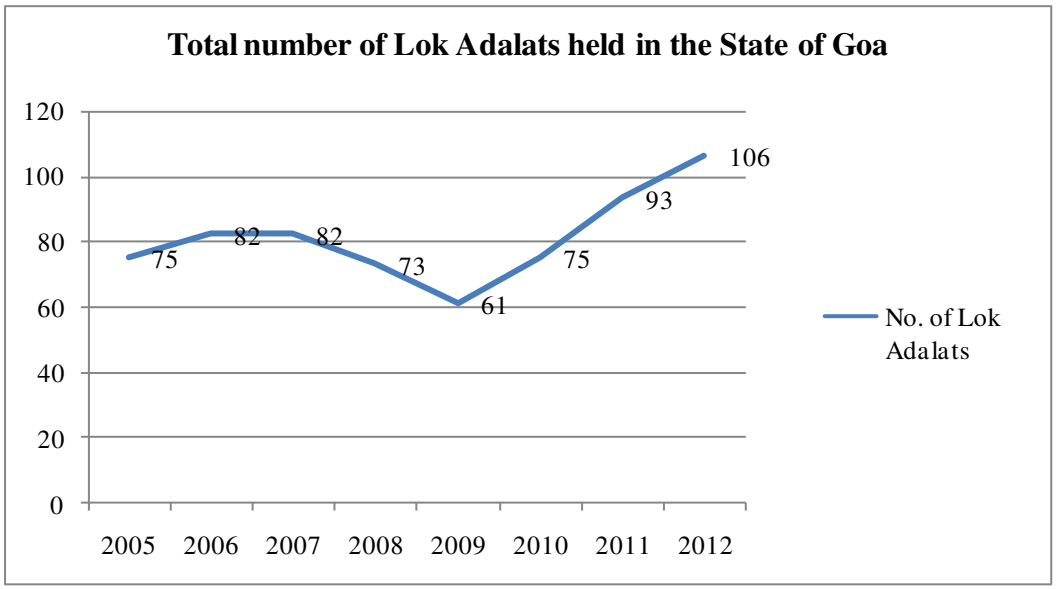
Besides verifying the number of Lok Adalats organized in the State , the researcher has highlighted and examined various incidental aspects regarding the organization of Lok Adalats such as the need for its organization at the village level, increase in frequency of organization ,provision for better and separate infrastructure and creation of awareness ,all of which have a bearing on effective access to justice .

5.3.1(i)Number of Lok Adalats organized in the State of Goa from 2005 to 2012

In Goa, Lok Adalats are generally held on the week- ends and whenever necessary, even on week days, unlike the rest of the country, where Lok Adalats sittings are frequent[46]. In order to verify the actual position in the State regarding the organization of Lok Adalats, statistical data relating to their organization was obtained, analyzed and interpreted.

The graph below depicts the organization of Lok Adalats in the State of Goa from 2005 to 2012 :

[44]Besides the Regular Lok Adalats , two Permanent and Continuous Lok Adalats are established, one at North Goa district and the other at the South Goa district . Likewise, in pre-litigation cases relating to the banks and other public utility services, Permanent Lok Adalats are convened from time to time.
[45]*Supra,* Chapter IV.
[46] See Rule 8 of the Goa Lok Adalat Scheme



Source: Records of District and State Legal Services Authorities

Fig. 5.(vi)

Fig. 5.(vi) shows that until 2009, a fairly constant number of Lok Adalats were held in the State each year. A gradual though slight increase is noticed thereafter up till 2012.

The data includes Lok Adalats organized at the taluka level,the district and the High Court level in accordance with the Legal Services Authorities Act,1987 and the rules and regulations there under.

It is found that from an average of about six Lok Adalats organized per month, there is a gradual increase to nine Lok Adalats being conducted on an average per month in the State of Goa.

If the number of Lok Adalats held is consistently increased each year , it would have ensured better opportunities for access to justice in the State.

5.3.1. (ii) Organization at the village level

In keeping with its mission to provide access to justice to all, Lok Adalats are being periodically conducted at the level of the High Court , at the district and taluka levels. As no Lok Adalats are organized at the village level till date, the researcher sought to ascertain from the respondents whether it was necessary to conduct Lok Adalats at the village level as well.

Table 5.6. highlights the views from the respondents regarding the need for more frequent organization and better infrastructural facilities etc. to be provided on a priority scale while organizing Lok Adalats.

Table 5.6.

Q.17 Priority areas for improvement in Lok Adalats	**Number of Respondents**	**Rank**
a. Organization at the village level	82	1st Rank
b. Frequency of sittings	80	2nd Rank
c. Panel Composition	66	4th Rank
d.Training of members	44	5th Rank
e.Infrastructure	34	6th Rank
f.Sufficient time	68	3rd Rank
g. Professional approach	26	7th Rank
Total	400	

Source: Primary Data[47]

[47] See Question No.17 in Questionnaire Annexure A

Table 5.6 . above shows that 82 respondents were of the opinion that the effectiveness of Lok Adalats could be enhanced if Lok Adalats were also organized at the village level.

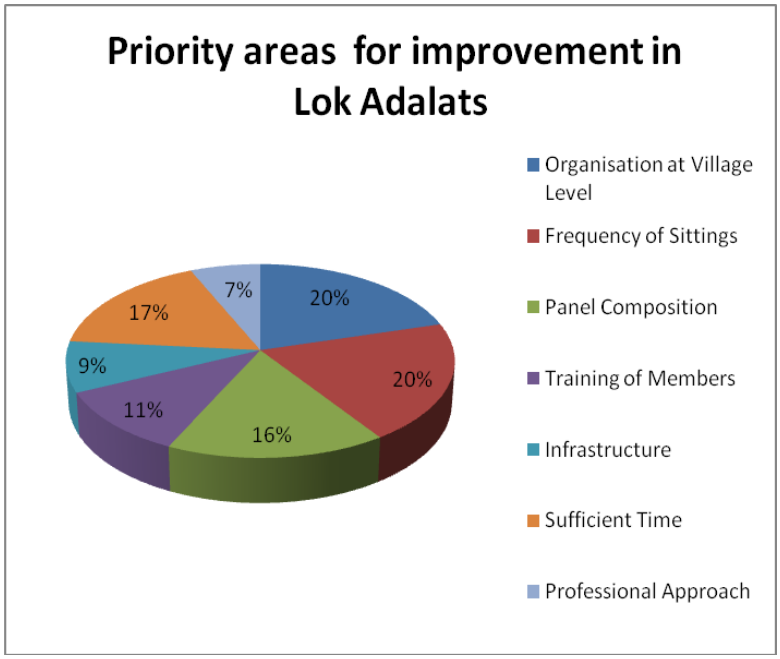


Fig. 5.(vii)

From Fig. 5(vii),it is evident that 20% of the respondents believed that the organization of Lok Adalats at the village level was a top priority.

5.3.1(iii)Frequency of Organization

in view of the mandate of the Legal Services Authorities Act,1987, As regards the frequency of organization Table 5 .6. reveals that 80 respondents were of the view that the most important aspect needing improvement to enhance the effectiveness of LokAdalats is to increase the frequency of holding Lok Adalat sittings.

As per Fig.5.(vii) 20% of the respondents were of the view that Lok Adalats should be conducted more frequently so as to make their impact on justice delivery.

5.3.1(iv) No provision for separate infrastructure

The Legal Services Authorities Act 1987, along with the rules and regulations mandate that Lok Adalats may be organized at such time and place as the concerned Authority may deem appropriate.[48] No provision for separate infrastructure for courts and Lok Adalats has been envisaged under the Act.

The researcher has observed that Lok Adalats are held in the regular court premises when the regular courts are not in session .

In view of the above, it was ascertained from the interviews conducted whether a lack of separate infrastructure affected the organization of Lok Adalats. The fact that LokAdalats are organized in the premises of the court itself has been hailed as a step in the right direction as it increases the credibility of the Lok Adalat institution.[49]

Table 5.6. depicts the views of the respondents regarding the adequacy of infrastructural facilities in which LokAdalats are held. It was found that 34 respondents were of the opinion that the infrastructural facilities for holding Lok Adalats needed improvement.

[48] Rule 8 of Goa LokAdalat Scheme
[49]See Interview Schedule in Annexure B

Fig.5 (vii) shows that only about 9% of the respondents felt that better and separate infrastructure to organize LokAdalats was required.[50]

5.3.1(v)Lack of awareness

As per the Legal Services Authorities Act and the rules and regulations there under, awareness about the institution of Lok Adalats has to be created for the information of the public.[51]

It was found from interviews conducted that the knowledge of LokAdalats was not widespread. Some of the senior members of the legal profession opined that many litigants were not aware about the existence of Lok Adalats and had absolutely no knowledge of them as a dispute –resolution system.[52] Other respondents were of the view that litigants had a fair idea of Lok Adalats from the newspapers and from the pamphlets that were pasted on the court premises, intimating about the holding of Lok Adalats.[53]

The overall analysis reveals dissatisfaction with the organization of Lok Adalats in as much as they are not held at the village level and not held frequently. Although one of the objects behind the establishment of the Lok Adalat was to provide litigants with justice at their door steps, in Goa, Lok Adalats are held at the taluka level and district headquarters and at the level of

[50] *Supra* ,See Fig.5(vii)
[51]Section 7 (2) of Legal Services Authorities Act,1987.
[52] See Interview Schedule in Annexure B.
[53]*Ibid*.

the High Court as a result of which it continues to be too distant for people inhabiting the villages.

It is further noticed that Lok Adalats are convened as and when the concerned Legal Services Committee or authority deems appropriate as per the schedule prepared by them.[54]

One could conclude that only a limited number of Lok Adalats have been held in the State of Goa from 2005 to 2012.However, whether it is adequate or not towards providing access to justice to satisfy the needs of people ,remains inconclusive. [55]

It is also clear that there is a lack of awareness about the existence of Lok Adalats as an alternative form of dispute- resolution. The lack of adequate awareness has by and large ,contributed to a relatively small number of litigants approaching Lok Adalats.[56]

Secondly, many litigants prefer to approach courts for justice rather than settling the matter with their opponents, for egoistic and personal reasons.[57] The partial response of litigants in approaching Lok Adalats for dispute

[54] *Supra* ,See Rule 2 of Goa LokAdalat scheme
[55] *Supra*,Fig. 5.(iv)
[56]See Interview Schedule in Annexure B
[57] *Ibid.*

settlement may have resulted in less number of Lok Adalats being conducted by the Legal Services Authorities.

If Lok Adalats are to fulfill the mandate of equal justice for all, there has to be substantial increase in their organization at the district and taluka levels. Above all else, Lok Adalats have to be also conducted at the village level in Goa, if they are to create an impact on litigants and reduce the pendency of cases in courts, thus providing better access to justice.

It is further noticed that there is no uniformity followed by the various talukas and districts while conducting Lok Adalats . Such a situation could have been avoided if the Legal Services Authorities Act had clearly laid down a specific time- frame for the organization of Lok Adalats[58], rather than leaving it to the discretion of the authorities.

Needless to say that Lok Adalats have to be more frequent so as to benefit the large rural population in Goa which would then willingly approach the LokAdalats.

Concerted efforts by the Legal Services Authorities involving both the Law Colleges, the Bench, the Bar would ensure more meaningful access to justice .

[58]Section 19 Legal Services Authorities Act, 1987.

5.3.2 Cases taken up by Lok Adalats

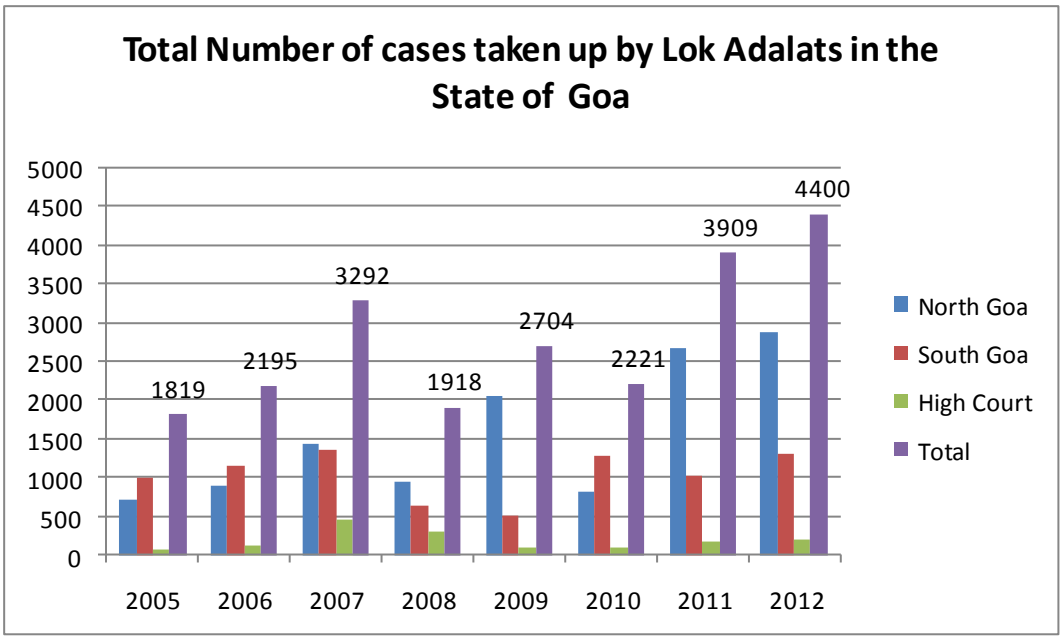
As per the Legal Services Authorities Act, 1987, parties may bring their disputes before Lok Adalats directly by approaching the concerned committee or the authority organizing the Lok Adalats, or, the dispute may have been referred to it by the court for settlement.[59]

In order to determine the impact of Lok Adalats as a mode of dispute resolution ,the researcher collected, analysed and interpreted the data regarding the number of cases heard by Lok Adalats ,the volume of cases placed at each sitting , the adequacy of time taken for each case ,as well as the role of the parties, the advocates and the courts in referring disputes to Lok Adalats for their resolution.

5.3.2(i)Number of cases taken up by Lok Adalats from 2005 to 2012

The Graph below shows the number of cases taken up by the Lok Adalats in the State of Goa from 2005 to 2012.

[59] Section 19(5)Legal Services Authorities Act,1987.



Source :Records of District and State Legal Services Authorities

Fig. 5.(viii)

It could be seen that the number nearly doubled in a span of seven years. Its monthly average is about one hundred and fifty one cases in the year 2005,in contrast to a monthly average of more than three hundred cases in the year 2012.

The data thus depicts the extent to which litigants have approached the Lok Adalats . It also highlights the potential attraction and allure that the LokAdalats system holds for litigants and the public in general. It is increasingly clear that only a small section of the public has been drawn to Lok Adalats, because of the simplicity, inexpensiveness and expeditiousness of Lok Adalats as a dispute resolution system.

The luke -warm response from the public demonstrates that there is lack of awareness among the public regarding the advantages of Lok Adalats as a forum for dispute settlement.

The fact that 70% of the respondents opined that in Goa, litigants prefer courts to Lok Adalats for the settlement of their disputes makes it amply clear that litigants are only partly responsive to Lok Adalats . There is no consistency in the number of litigants approaching the Lok Adalat. In fact there appears to be only a marginal impact of Lok Adalats as an alternative form of dispute-resolution in the State of Goa.[60]

Another significant reason for the luke -warm response to Lok Adalats as a forum for dispute settlement in Goa is that neither the institution nor its philosophy has pervaded the psyche, either of the judges, the lawyers or of the litigants in the State .

5.3.2(ii) Volume of cases placed at each sitting

Lok Adalats are convened on a particular day, time and place as per the Goa Lok Adalat Scheme. On the scheduled date, cases are taken up by the Lok Adalats bench for settlement, irrespective of the number but subject to a minimum of thirty cases referred to it.[61]However, the number of cases taken up

[60] *Supra*, See Fig. 5.(viii) for the total number of cases taken up by Lok Adalats in the State of Goa.
[61] See Interview Schedule in Annexure B. See also Rule 2(1)of Goa LokAdalat Scheme.

could vary depending on the number of cases referred to Lok Adalats by the Courts for settlement.[62]

At the interview, the panel members of the LokAdalat stated that placing too many cases on the board hampered effective settlements .They contended that less cases placed before them ensured a better chance of success in settlements. The panel members were of the firm opinion that advance preparation and pre- sittings would greatly contribute to more effective settlements.

5.3.2(iii) Adequacy of time spent on each case

Lok Adalats are required to act with utmost expedition in the settlement of cases.[63]In order to determine whether adequate time was being spent for each case placed before the Lok Adalat Bench, 68 respondents were of the view that more time was required to be given to each case for settlement.[64]

Graphical representation of the responses shows that 17% of the respondents considered it a topmost priority that the Lok Adalat bench needed to spend adequate time to hear the parties so as to bring about effective settlements.[65]

[62]See Interview Schedule in Annexure B.
[63]Section 20(4) Legal Services Authorities Act ,1987.
[64] *Supra*, Table 5.6.
[65] *Supra*, Fig.5.(vii).

They contended that too many cases resulted in less time for each case , thus affecting the effectiveness in arriving at successful settlements .[66]

5.3.2(iv)Parties' willingness to approach Lok Adalat with cases

In order to ascertain the willingness of the parties to approach the LokAdalats, it was found out that many of the respondents mentioned that as litigants they were reluctant to approach the Lok Adalat for settlement. They mentioned that they preferred their rights to be determined by the *'juiz'*(judge) of the court,[67]in accordance with the law. The view expressed substantiates and corresponds to the view, discussed earlier.[68]

5.3.2.(v) Professional leanings towards Lok Adalats

The motivation and the role of the advocates in advising their parties to approach Lok Adalats with their case was also ascertained.

Table 5.7. reveals the leanings of the members of the legal profession towards Lok Adalats.

[66] Interview Schedule in Annexure B
[67] Juiz in the local Konkani language refers to the Judge.
[68] *Supra* ,See Table 5.4 where 70% of the respondents opined that litigants preferred courts to Lok Adalats for the settlement of their disputes in Goa.

Table 5.7.

Q. 19 Professional leanings towards Lok Adalats	**Number of Respondents.**
Strongly Agree	58
Agree	194
Disagree	130
Strongly Disagree	18
Total	400

Source: Primary Data[69]

It is seen that 58 respondents strongly favoured dispute resolution through Lok Adalats whereas 194 viewed it favourably. On the other hand, dispute-resolution through Lok Adalats did not find favour with 130 respondents, while 18 strongly disapproved dispute resolution through them.

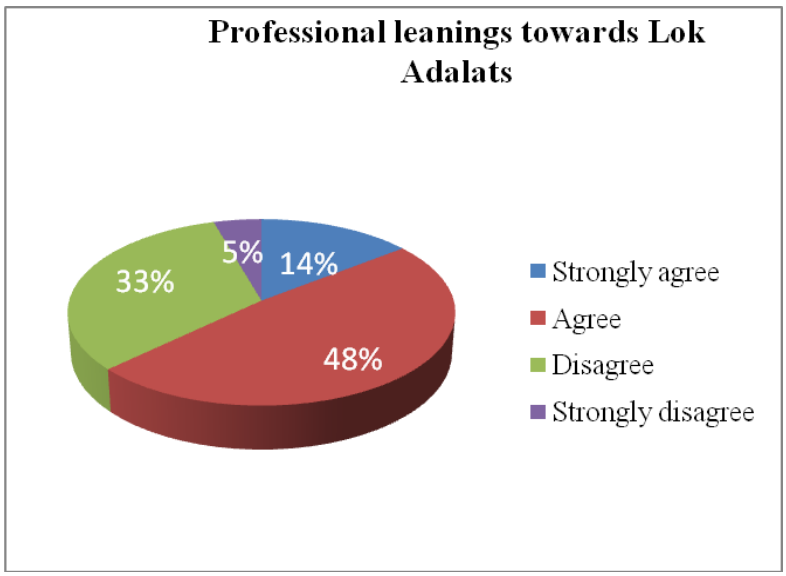


Fig. 5.(ix)

[69] See Question No.19 in Questionnaire Annexure A.

It is further seen that 62% of the respondents replied that they were in favour, while 38% were not. It should be noted that this view corresponds to the views obtained from the officials of the Legal Services Authorities that the advocates did not advise litigants about approaching the Lok Adalats for resolving their disputes.[70]

5.3.2 (vi) Court referrals of cases to Lok Adalats

As mentioned earlier, cases are brought before the Lok Adalats either by the parties directly or on reference by the court, where it appears to the court that there is a likelihood of settlement .[71]Although the law enjoins such referrals also to the Lok Adalats ,it appears that the section is not actively pursued and practiced in letter and spirit. This view finds support in the opinion of the distinguished Judges of the High Court of Bombay at Goa who in their interview have urged the courts to make greater and more effective use of section 89 of the Code of Civil Procedure, 1908.[72]

Table 5.8 highlights the views of the respondents regarding the role of the courts in referring cases to Lok Adalats.

[70]See Annexure B.
[71] Section 89 Code of Civil Procedure,1908
[72] See Interview Schedule in Annexure B.

Table 5.8.

Q. 6 Court compulsion impacting parties' choice of Lok Adalats	Number of Respondents
Strongly Agree	50
Agree	160
Disagree	156
Strongly Disagree	34
Total	400

Source: Primary Data[73]

50 respondents strongly agreed and 160 respondents subscribed to the view that parties came to Lok Adalats feeling compelled by the court to do so while 156 respondents disagreed that litigants were not so compelled and 34 strongly felt that the courts did not compel the litigants to go to the Lok Adalats.

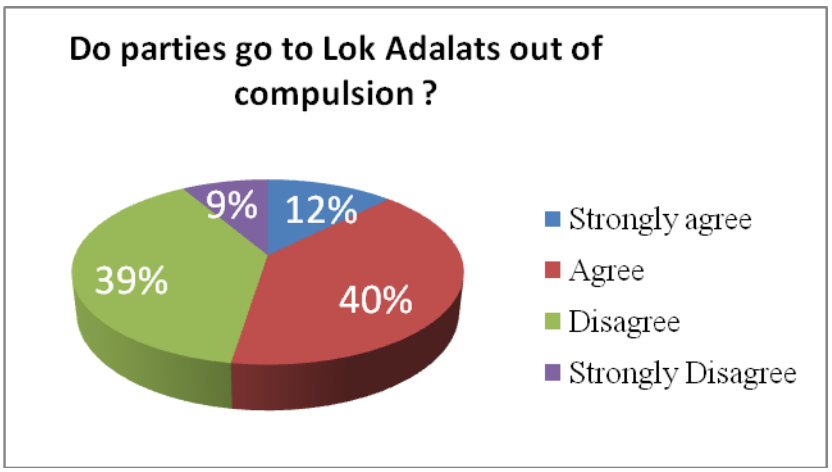


Fig.5.(x)

[73] See Question No.6 of Questionnaire Annexure A

It was clear that 52% of the respondent advocates in all were of the firm view that parties went to Lok Adalats out of a sense of obligation to the judge before whom the matter was placed and who recommended the reference .48% of the respondents however did not agree on this point.

It is clear that a reasonable number of cases are taken up by Lok Adalats at the taluka, district and at the level of the High Court each year. A consistent growth in the number of cases heard by Lok Adalats has occurred since 2010.Parties are hesitant to approach Lok Adalats without the backing of their advocates. Majority of advocates are in favour of dispute- resolution by Lok Adalats provided the case is suitable for such settlement. It appears that generally the parties do not favour reference by courts to Lok Adalats.

5.3.3 Nature of cases settled by Lok Adalats

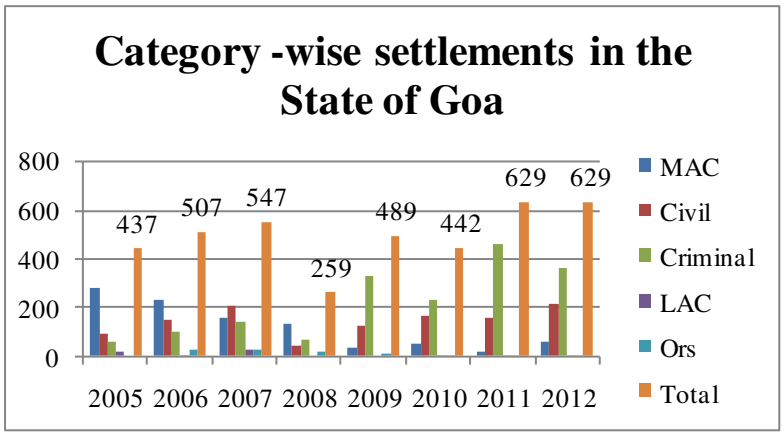
Lok Adalats are empowered by law to settle any kind of dispute, varying from civil cases, compoundable criminal cases, matrimonial cases, motor accident claims cases, land acquisition cases, and others.[74] They have the competency to entertain all types of cases[75], nonetheless, the public has responded by taking only certain types of cases before them for settlement.

[74] Section 20(5)Legal Services Authorities Act 1987
[75] Section 19(5) Legal Services Authorities Act 1987 and Regulation 17(7) NALSA (Lok Adalats) Regulations, 2009.

In order to ascertain the performance of Lok Adalats in dispute settlement in the State , the researcher has examined the categories of cases settled by Lok Adalats and the suitability of Lok Adalats to settle all types of disputes.

5.3.3(i) Category –wise settlement of cases by Lok Adalats from 2005 to 2012

The graph in Fig. 5 (xi) depicts the types of cases settled by Lok Adalats in Goa.



Source : Records of District and State Legal Services Authorities

Fig. 5.(xi)

It is clear that Lok Adalats in Goa generally have been settling civil cases, motor accident claims, land acquisition cases and compoundable criminal cases only. However the blue column denoting 'others' refers to matrimonial matters and inventory proceedings that have been settled by the LokAdalats held by the Hon'ble High court.

Settlement of matters other than civil, criminal and motor accident claims, clearly demonstrates that Lok Adalats have the potential of bringing about

settlements even in those kinds of matters. [76] All that is required is for parties to be willing to approach them with their cases. An attitude that could be essentially inculcated by an intensive awareness programme.

Secondly, it is also clear that cases before the revenue courts such as those before the Mamlatdars of the concerned district, are not referred to Lok Adalats for settlement. It would do well for tenancy, Mundkar and other such cases before the revenue courts to be referred to LokAdalats, particularly in view of the large pendency of cases before these courts.[77]

Although a reasonable number of motor accident claim settlements were arrived at in 2005 and 2006, a worrisome trend is observable with the motor accident claims settlements having consistently been on the decline thereafter.

It is of course true that Motor Accident Cases are more suitable for settlement in Lok Adalats as they relate to monetary compensation, there was a significant decline of settlement of these claims by the Lok Adalats. The principal reason for this occurrence it was found is on account of higher expectations by the claimants and the inability of the local officers of the Insurance Companies to

[77]http://www.goacom.com/goa-news-highlights/14191In all, 2,161 mundkar cases and 2,710 tenancy cases are pending in the courts across the state for the last five years.

settle claims beyond certain limits without the permission of their respective Head Offices.[78]

5.3.3(ii) Suitability to settle all kinds of disputes

Although Lok Adalats are by law empowered to settle all kinds of disputes in an amicable manner, nevertheless only certain types of disputes are brought before it.[79]

Table 5.9. below indicates the responses obtained to the question regarding the suitability of the LokAdalat as a forum to settle all kinds of disputes.

Table 5.9.

Q.8 Suitability of Lok Adalats for all kinds of disputes	**Number of Respondents.**
Strongly Agree	66
Agree	98
Disagree	210
Strongly Disagree	26
	400

Source: Primary Data[80]

To the question whether LokAdalats are suitable to settle all types of disputes, 66 respondents strongly felt that they are suitable and 98 respondents felt that

[78] Interview Schedule in Annexure B
[79] See 5.3.3.
[80] See Question No.8 in Questionnaire Annexure A

they are suitable for all types of dispute settlement.210 disagreed and 26 strongly disagreed about their suitability .

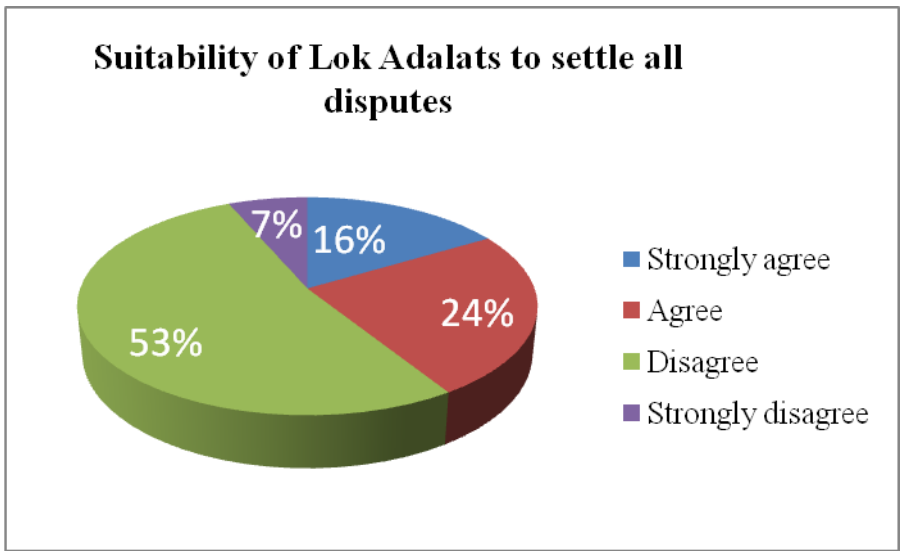


Fig. 5.(xii)

It was found that though 16% of the advocate respondents strongly believed that LokAdalats were suitable to settle all types of disputes,24% had faith in their ability to do so. Thus while 40% of the respondents were positive about the suitability of Lok Adalats to settle all kinds of disputes, 60% of the respondents in all, held an opinion to the contrary.[81]

Some of the members of the legal profession who were interviewed were of the opinion that LokAdalats were extremely useful to settle matters under the Negotiable Instruments Act, Motor Accident claims cases and the recovery of

[81] Interview with distinguished retired judge of the High Court of Bombay at Goa who expressed absolute confidence in the suitability of Lok Adalats to settle all kinds of disputes. He explained that in his opinion there was no dispute which could not be settled amicably.

money cases, where the amount of money could be negotiated.[82] On the other hand, others felt that in Lok Adalats parties have to settle for less than what they are legally entitled to. [83]

As regards the suitability of Lok Adalats to settle revenue, tenancy and mundkar cases, it was opined that the panel composition was not suitable to settle such matters as the former belonging to the Bench and the Bar, strictly applied a judicial mind in settling revenue matters which hampered their effective settlement.[84]

5.3. 4. Success in Settlements by Lok Adalats

Unlike courts which are required to adjudicate the matter before them, Lok Adalats through conciliatory efforts attempt to bring about a settlement between the disputing parties which results in the termination of the dispute.[85]

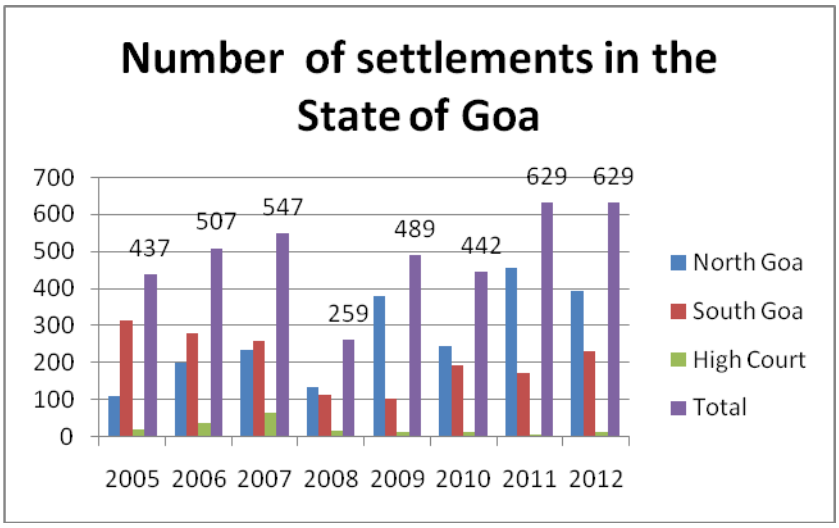
In order to verify the success of Lok Adalats in settling disputes in the State, the researcher collected ,analyzed and interpreted data regarding the number of settlements effectively carried out by the Lok Adalats and also evaluated the responses obtained from the questionnaire regarding the role played by the parties in consenting to the settlement, the efficacy of the panel, its

[82] Interview Schedule in Annexure B.
[83] Interview with senior lawyer in Annexure B.
[84] Interview Member Secretary, North Goa District Legal Services Authority.
[85] Rule 7(3) Goa Lok Adalats Scheme.

composition, the impact of the presence of advocates and the limitations imposed by law.

5.3.4(i) Settlements by Lok Adalats in the State of Goa from 2005 to 2012

The total number of settlements reached by Lok Adalats at the taluka ,district and High Court levels have been graphically represented below.



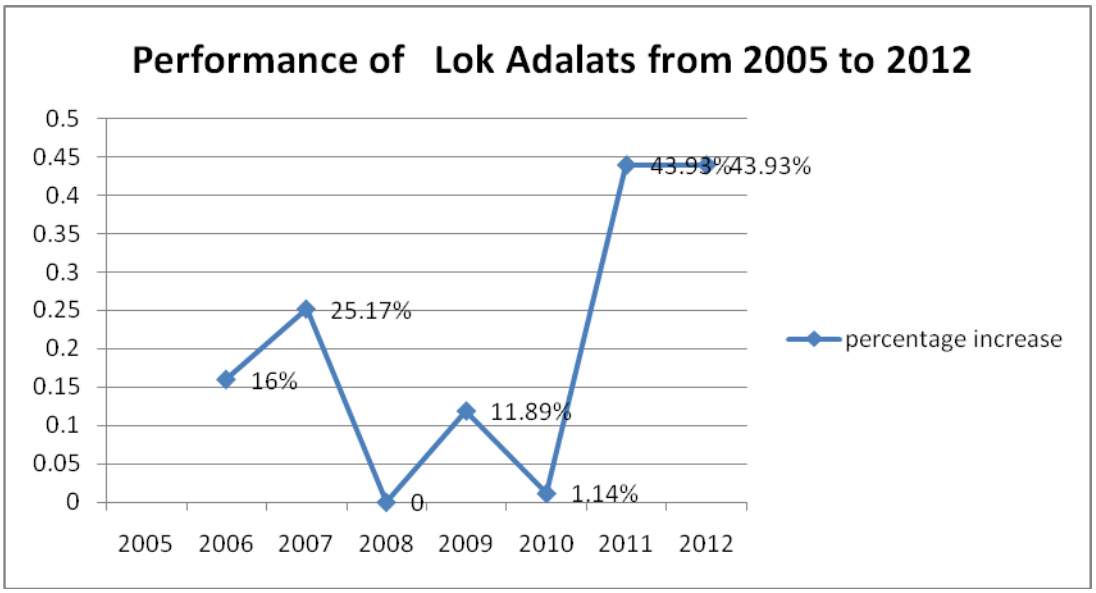
Source: Records of the District and State Legal Services Authorities

Fig.5.(xiii)

From Fig. 5(xiii) it is found that the number of settlements arrived at by the Lok Adalats at various levels in the State increased marginally in 2006 but showed a decrease in the next four consecutive years. [86] From 2011thereafter, there was a consistent, though, slight increase in the number of settlements brought about by the Lok Adalats until 2012.

[86]Taluka, District and at the Level of the High Court

Fig.5.(xiv)below depicts the performance of the Lok Adalats in terms of percentage increase in the State of Goa from 2005 to 2012.



Source: Records of the District and State Legal Services Authorities

Fig.5.(xiv)

It is evident that there is a fluctuating trend in the percentage increase of settlements by Lok Adalats in Goa. In 2006,while the percentage of cases settled increased by 16%, it rose further upward by 25.17% in 2007. In 2008, while the percentage increase of cases settled by the Lok Adalats decreased by 40.73%, it grew by 11.89% in 2009. In 2010, the percentage of cases settled increased only by 1.14%, but further increased by 43.93% in the following year 2011,remaining constant at 43.93% in the year 2012.

The growth rate in settlements was insignificant up to 2007 and sharply declined in 2008. Thereafter, in 2009 there was an increase in its growth which stabilized in the succeeding years.

5.3.4(ii) Parties' Consent for Settlement

One of the key factors playing a vital role in dispute settlement by Lok Adalat is the consent of the parties. In disputes where parties were willing and had no hesitation to settle their dispute, the settlement was almost certain.[87] However where parties were adamant, or where a matter which is pending in the court , is then referred to the Lok Adalat, more efforts at settlement would be required .[88]

As far as the issue of obtaining consent was concerned, it was opined by a distinguished former judge of the High Court of Bombay at Goa, that Lok Adalats did not make use of coercion, threat or undue influence, allurement or misrepresentation to obtain the consent of the parties for a conciliatory settlement[89].In effect they brought the parties together who freely and voluntarily worked out a settlement to their mutual satisfaction.

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[87]Interview Schedule in Annexure B

[88] The scope for conciliated settlement is greater in case of disputes which have not yet reached the court. See Madhava Menon N.R., "*Lok Adalat in Delhi: A Report from a Legal Education Perspective*" 1985 IBR (12)4 p.418.

[89] Interview Schedule in Annexure B.

5.3.4(iii)Composition and efficacy of panel in settlement

The composition of the Lok Adalats Bench in the State of Goa has always been in accordance with the provisions of the Legal Services Authorities Act,the rules and regulations there under. [90] However it was found that 66 respondents were of the view that the existing panel composition had to be improved.[91]

In order to determine whether the composition of the Bench had an effect on the success of settlement by Lok Adalats.16% of the respondents opined that the composition of the Lok Adalats Bench required change as the highest priority.[92] This view necessarily implied that the existing panel composition had much to do with the successful performance of the Lok Adalats.

The Hon'ble Judges of the High Court of Bombay at Goa were of the opinion that the members comprising the Lok Adalats Benches were selected appropriately.

It was also mentioned that with a combination of legal and practical expertise, a pragmatic approach to the disputes at hand could be taken. However it was also opined that with training imparted to the Bench members, there was scope for more effective interaction between the Bench and the parties to the dispute

[90] See Section 19 (2)LSA and Rule 5 of GoaLokAdalats Scheme
[91] See Table 5.6.
[92]See Fig.5.(vii).

which would ultimately facilitate a settlement. [93] The same view was also held by some of the members of the legal profession. [94]

The Lok Adalat Bench members at the district level opined that they offered whole-hearted cooperation to ensure that a successful settlement was arrived at between the parties. The interaction made it clear that the Bench makes all out efforts to bring a settlement between the parties, in keeping with the spirit of the law.[95]

5.3.4(iv) Presence of Advocates

Where lawyers represent the parties in proceedings before the Lok Adalat, the members of the District Legal Services Authorities stated that parties were generally satisfied and comfortable if they were accompanied by their advocate .

However the members opined that on certain occasions even where parties were willing to settle the matter with each other, the advocates did not recommend the settlement to the party represented by him.[96]

5.3.4(v) Limitations imposed by the law

There are certain inherent and legal limitations within which the Lok Adalats are required to operate. As far as the inherent limitations of Lok Adalats are

[93] Interview in Annexure B
[94] See Fig.5(vii) where 11% of the respondents cited training of panel members as an area or sphere in which Lok Adalats needed improvement. 7% of the advocate respondents felt that a more professional approach of the Bench was required urgently ,to ensure greater professionalism at work[94].
[95] Rule7(3)Goa Lok Adalats Scheme
[96]See Interview Schedule in Annexure B

concerned, they work on principles of compromise which in addition to the consent of the parties to the dispute, require a great deal of persuasion.

It should be noted that where parties do not consent, the settlement is not reached, despite persuasive efforts of the Lok Adalats bench . Unlike the Permanent Lok Adalats, the regular Lok Adalats are not empowered by the law to determine the dispute.[97]This limitation acts as a hindrance to effective settlements.

Table 5.10.depicts the views of the respondents regarding the need for the Lok Adalat panel to decide the case in the event of failure of compromise.

Table 5.10

Q. 16 Need for dispute decision by panel on failure of compromise	**Number of Respondents**
Strongly Agree	24
Agree	108
Disagree	184
Strongly Disagree	84
Total	400

Source: Primary Data[98]

24 respondents strongly agreed that the Lok Adalat should determine the dispute in case of non settlement and 108 respondents were also in agreement

[97] Section 20(5) and (6) LSA
[98] See Question No.16 in Questionnaire Annexure A

about the same. However, 184 respondents disagreed and 84 strongly disagreed.

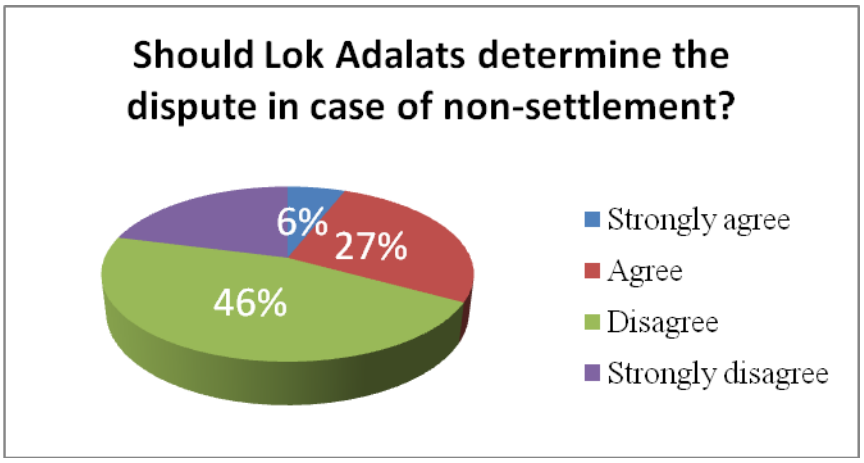

Fig.5.(xv)

From the pie- chart at Fig. 5(xv) it is clear while 6% strongly agreed that Lok Adalats should determine the dispute in the event of non settlement, 27% also expressed their approval on the matter. However, while 46% disagreed 21% of the respondents strongly disagreed about the matter.

In the interview, some members of the legal profession vehemently opposed the idea that Lok Adalats should determine the matter, on the ground that it would defeat the very essence and purpose for which the Lok Adalats were created.[99]

[99] Interview Schedule in Annexure B.

5.3.5. Effectiveness of the Award of the Lok Adalats

The award of the Lok Adalat as mentioned earlier is drawn on the consent of the parties to the dispute. Once the award is made, it signifies that the dispute between the parties has been brought to a conclusive end.

In order to determine the effectiveness of the award passed by the Lok Adalats, view-points regarding the effectiveness of the awards passed were ascertained.

5.3.5(i) Award reflecting decision of parties

Under the Legal Services Authorities Act, 1987,the award is required to reflect the decision of the parties to the dispute.

In order to ascertain the views of the respondents as to whether in reality the award reflected the decision of the parties, the researcher analyzed the views so obtained in Table 5.11.

Table 5.11

Q. 11 Award representing will of the parties	Number of Respondents
Strongly Agree	46
Agree	222
Disagree	128
Strongly Disagree	04
Total	400

Source : Primary Data[100]

46 respondents strongly felt that the award reflected the decision of the parties and 222 of the respondents also agreed that the award was what the parties wanted. However, 128 respondents disagreed and 04 strongly disagreed that the award was the decision of the disputing parties.

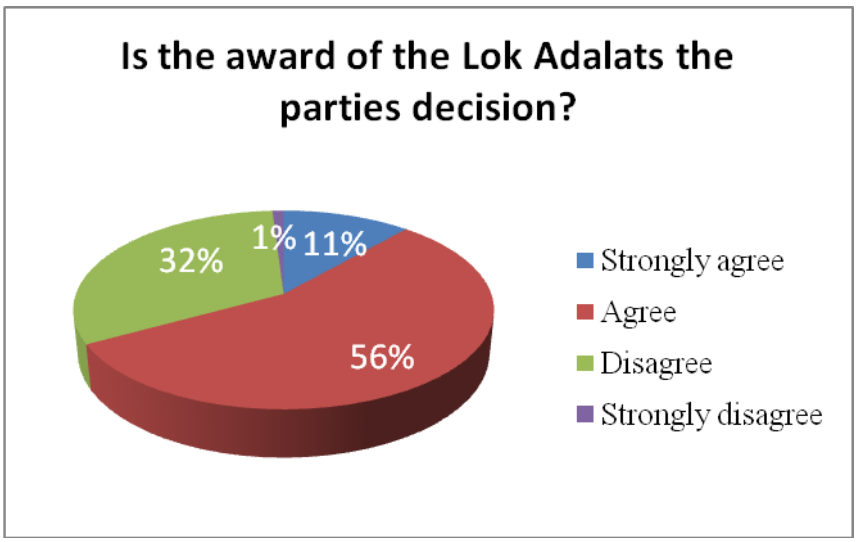

Fig. 5.(xvi)

[100] See Question No. 11 in Questionnaire Annexure A

From Fig. 5.(xvi) it is clear that 67% of the respondent advocates in all agreed that the award represented the decision of the parties, while 33% were convinced it did not.

Those respondents who disagreed contended that despite the exhortation by the law for sincere efforts to reconcile the disputing parties, the Bench would coerce the parties to enter into a settlement thereby defeating the very spirit and purpose of the Lok Adalat. [101]

However, this view was not readily accepted by the Bench members who contended that they merely persuaded the parties that it was in their interest to settle the matter and that LokAdalats being a form of Alternative Dispute Resolution , there was no room for coercion.[102] In their opinion ,the bench was required to facilitate a settlement between the disputing parties through the use of conciliatory methods which was finally drawn up into an award.[103]

5.3.5(ii)Non -appealability of award

The awards passed by the Lok Adalat are final and no appeal lies there from.[104]In order to ascertain whether the Legal Services Authorities Act,1987, required to be amended to allow provision to be made for appeal, the researcher obtained the views of the respondents in this regard.

[101] See Annexure B
[102] *Ibid.*
[103] Rule 7(3) GoaLokAdalats scheme
[104] Section 21(2)

Table 5.12 depicts the views of the respondents as to whether a provision for appeal from award of the Lok Adalat was required to be made.

Table 5.12

Q.15 Need for appeal provision from award of the Lok Adalat	Number of Respondents
Strongly Agree	12
Agree	126
Disagree	210
Strongly Disagree	52
Total	400

Source: Primary Data[105]

As per the Table 5.12, 12 respondents strongly recommended appeal.126 respondents felt appeal was necessary.210 disagreed while 52 strongly disagreed that Lok Adalat awards should be made appealable.

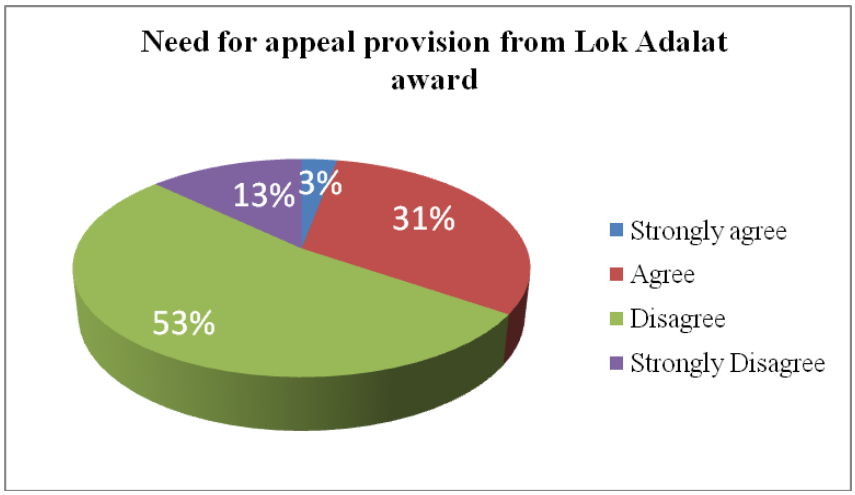

Fig. 5. (xvii)

[105] See Question No.15 in Questionnaire Annexure A

As far as the aspect of non-appealability of the LokAdalat award was concerned, 34% of the respondents in all believed that the awards should be made appealable while 66% of the respondents in all believed that the award of the Lok Adalats should not be made appealable.

Views regarding the appropriateness of making the award of the Lok Adalat non appealable were obtained from the respondents . The respondents affirmed that the award being drawn on the consent of the parties ,there was no question of appeal being provided. In fact the question of being dissatisfied with the award itself did not arise as the award was reached on the satisfaction of both the parties to the dispute.[106] Some of the other respondents who were also interviewed argued that appeal had to be provided in the interests of justice.[107]

According to one of the distinguished judges of the High Court of Bombay at Goa, once the award is drawn up in terms of the consent terms, signed and filed by the parties and accepted by the Bench , the award is equivalent to a decree passed by the court of law and possesses its sanctity.[108] The question of appealability from the award of the Lok Adalat therefore did not arise.

[106] Interview Schedule in Annexure B
[107] *Ibid.*
[108] Interview Schedule Annexure B

5.3.5(iii) Easy Enforceability of Award

Lok Adalat awards are equivalent to the decree of the civil court and the parties are entitled to all the rights and obligations there under, as though the award was pronounced by the court itself.

The Panel members who were interviewed mentioned that no difficulty existed as far as the enforceability of the Lok Adalat award was concerned. They opined that parties were generally satisfied as the execution of the award did not raise any kind of problems or difficulties.

However, senior members of the legal profession when interviewed stated in reference to claims cases, that in certain situations, although parties undertook to make payment in accordance with the award, they subsequently refused to comply with its terms, and with case proceedings before the Lok Adalat closed, parties were left with no other remedy under the law.[109]

5.3.6 Expeditious Justice by Lok Adalats

One significant aspect of Lok Adalats is their ability to deliver justice expeditiously. For the purpose of ascertaining whether Lok Adalats as a dispute- resolution mechanism delivered justice swiftly , the study focused on the aspect of expeditiousness of Lok Adalats.

[109] Interview Schedule in Annexure B

5.3.6.(i) Quick disposals

Lok Adalats are by law mandated to deliver justice with utmost expedition.[110]To the question as to whether LokAdalats in the State in fact delivered justice expeditiously ,the researcher obtained the responses which are depicted in the Table 5.13.

Table 5.13

Q. 7 Expeditious justice delivery by Lok Adalats	**Number of Respondents**
Strongly Agree	112
Agree	190
Disagree	98
Strongly Disagree	0
Total	400

Source : Primary Data[111]

It is found that 112 strongly felt the disposals by the Lok Adalats were expeditious. 190 also agreed about Lok Adalat expeditiousness. 98 however felt that they were not sufficiently expeditious. There were none however who strongly disagreed about the expeditiousness of Lok Adalats.

[110] Section 20(4)of Legal Services Authorities Act,1987
[111] See Question No.7 in Questionnaire Annexure A

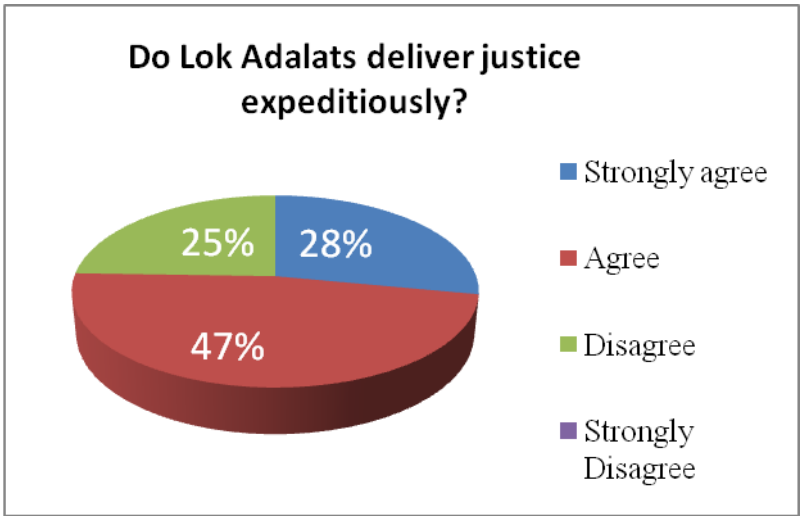

Fig.5.(xviii)

The pie –chart at Fig. 5.(xviii) indicates that 28% of the respondents strongly agreed thatLokAdalats were expeditious and 47% also seconded that view. However, 25 % of the respondents were in disagreement about the expeditiousness of Lok Adalats.

It is clear from the above that a majority of 75% of the respondents endorsed the view that Lok Adalats disposed matters expeditiously.[112]

The panel members in their interview with the researcher explained that cases were generally disposed off quickly at the Lok Adalat session but where one of the parties remained absent on the date of hearing, no settlement could be arrived at, requiring postponement of the matter.[113]The Panel members also asserted that in cases where the parties have conceded to settle their dispute,

[112] See *infra*, Fig.5.(xx) where 27% of the respondents described expeditiousness of LokAdalats as its most important merit.
[113] Interview with Member, High Court Legal Services Committee .

hardly any time was required to be spent by the panel on persuasion for settlement and the matter is disposed off without any wastage of time.

In this regard it may be mentioned that if care is taken to place an adequate number of cases on the board at the Lok Adalat proceeding and if the parties are willing to settle the matter ,cases can be disposed off promptly.

One significant suggestion made in this regard was that pre –sittings by the Lok Adalat prior to the date scheduled would enable faster disposals.

5.3.6(ii) Flexibility of Procedure

LokAdalats pursue a flexible approach while attempting to bring a settlement between the parties. Depending on the parties before them,the Lok Adalat Bench interacts with the litigants in an informal manner, in the language they understand, and explains to them which of their claims would be granted by the court and which would not be granted, even after the full trial of the suit in a regular court. Such a pragmatic approach by the Lok Adalats bench facilitates a speedy disposal of the case .

5.3.7 Impact of Lok Adalats on pendency of cases

Lok Adalats were created with the avowed objectives of providing justice to all and also for the purpose of reducing the pendency of cases.[114]

[114]As stipulated in the Statement of Objects and Reasons of the Legal Services Authorities Act,1987.

5.3.7(i)Reduction of pendency before courts

As to the contribution of Lok Adalats in reducing the pendency of cases the views of the respondents are depicted in Table 5.14

Table 5.14

Q. 12 Impact of Lok Adalats on reducing the Pendency of cases	**Number of Respondents**
Strongly Agree	76
Agree	274
Disagree	50
Strongly Disagree	0
Total	400

Source : Primary Data[115]

76 respondents strongly felt that Lok Adalats had helped in reducing the pendency of cases.274 were of the view that Lok Adalats were responsible for reducing the pendency of cases before courts. 50 disagreed that Lok Adalats had any impact on reducing the pendency of cases before the courts.

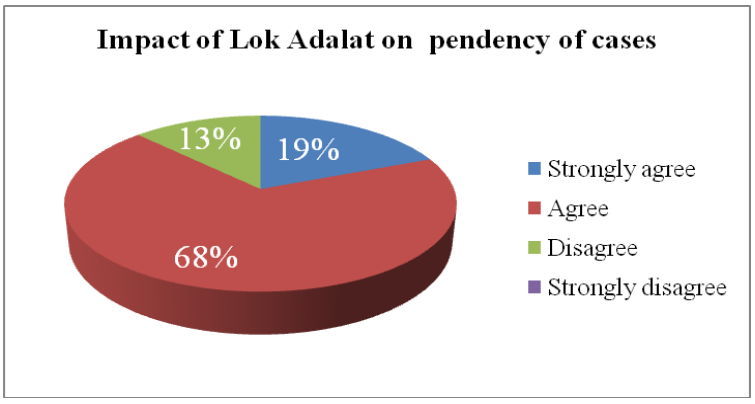

Fig.5.(xix)

[115] See Question No. 12 in Questionnaire Annexure A

The claim made above was also substantiated by an overwhelming majority of 87% of the respondent advocates who were of the firm view that the Lok Adalats have reduced the pendency of cases before the courts, which is clear from Fig.5(xix), the pie-chart.

However, 13% of the respondents believed that Lok Adalats have done little to reduce the pendency of cases before the courts and that Lok Adalats hardly have had an impact on the pendency of cases.

It is therefore inferred that through settlements made by the LokAdalats, the pendency before the courts in Goa has been reduced, which allows the courts to devote more time to more complex questions of law which need their attention.

It is also pertinent to note that despite the periodic functioning of Lok Adalats and its disposal of a number of cases , litigation has continued to increase. It is probably for this reason that some of the respondents failed to notice the substantial impact on the pendency of cases.

5.3.8. Cost Efficacy of Lok Adalats

Access to Justice requires that justice be delivered promptly and inexpensively.[116]The researcher ascertained whether Lok Adalats involved

[116]*Supra*, Chapter I.

financial implications for disputants who approached the Lok Adalats the pre-litigative stage or litigative stages of the dispute, as the case may be. The researcher also assessed the impact of the Lok Adalats on the State exchequer.

5.3.8 (i) No payment of court -fee for pre-litigation cases

As far as pre- litigation disputes are concerned, there are no court-fees payable at the time the parties approach the Lok Adalats with their dispute.Pre-litigation disputes being settled by the Permanent and Continuous Lok Adalats, expense-free justice is ensured to the disputing parties. Thus by 'nipping the dispute in the bud,' through the conciliatory efforts of the Lok Adalats, parties do not have to bear litigation expenses.[117]

5.3.8(ii)Refund of court fee in case of court-referred matters

In case of a reference of a dispute pending before the court to the Lok Adalats for settlement, the court fees are refunded in the event of a Lok Adalat settlement between the parties.[118] However where parties are represented by lawyers, the parties would have to bear the fees of the lawyer.[119]

[117]Interview with members of LokAdalats bench .See Interview Schedule in Annexure B
[118] Section 21(1)Legal Services Authorities Act 1987.
[119]Rule 18(1) and (2)Goa Lok Adalats Scheme.

5.3.8(iii) Financial implications on the State

In Goa, Lok Adalats are held at the premises of the regular courts. Convened on week -ends and days when courts are non- functional,the regular court staff is involved in the organization and conduct of the Lok Adalats.[120]

As far as remuneration to the Lok Adalats Bench or Panel is concerned, by an amendment to Rule 13 of the Goa Lok Adalats Scheme, the remuneration for the officers and staff[121] of the Lok Adalats is now prescribed.[122]

Thus the problems of logistics involved in the organization and conduct of Lok Adalats is managed efficiently by the same personnel of the court.[123] The concerned staff is also paid in accordance with the provisions of the law. There is thus minimal expenditure involved in the functioning of Lok Adalats in the State and as far as the disputants are concerned.

Thus it could be stated that Lok Adalats are cost-effective for the State and for the disputants.

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[120] Interview Schedule in Annexure B.

[121] Rule 13 of Goa LokAdalat Scheme regarding remuneration to Officers and Staff of the Lok Adalats. (1) The Presiding Officer of the LokAdalats held at Taluka and District levels shall be entitled to honorarium at flat rate of Rs. 500/- per day, irrespective of decided cases.(2) The Presiding Officer for the Lok Adalats held at High Court level shall also be entitled to honorarium at flat rate of Rs. 750/- per day, irrespective of decided cases. (3) Every member of panel of Lok Adalats held at Taluka, District and High Court levels shall also be entitled to honorarium at flat rate of Rs. 500/- per sitting, irrespective of decided cases. (4) Every member of permanent LokAdalats established at District level shall also be entitled to honorarium at flat rate of Rs. 400/- per sitting, irrespective of decided cases.

[122] GOA/GSLSA/Notification-1/2007 dated 31st January 2007

[123] Interview Schedule in Annexure B

5.3.9 Accessibility of Lok Adalats

One of the essential facets of a dispute resolution system is its ability to be accessible to those seeking the redressal of their grievances. Accessibility denotes the quality of being available when needed. Affordability, expeditiousness, flexibility, transparency, fairness, independence, comprehensibility, and inclusiveness, are also some of the relevant criteria that determine the accessibility of an institution or system for the efficient resolution of disputes.

The researcher has analyzed and interpreted the data under various heads in order to ascertain the views of the respondents regarding the accessibility of Lok Adalats. It is observed that in accordance with the provisions of the Legal Services Authorities Act, 1987, Lok Adalats are not only affordable[124]and expeditious[125] but they are also available to justice-seekers as they are convened on regular intervals.[126]

They are flexible in their procedure in as much as they do not adhere strictly to the procedural laws while assessing the merits of cases before them. Furthermore, there is transparency and openness in the proceedings which are public.

[124] See 5.3.8.
[125] See 5.3.6.
[126] See 5.3.1.

While the attribute of fairness is ensured as the award is drawn on the consent of both the parties, its independence is maintained through a qualified and experienced panel selected carefully . Last but not the least, its simplicity, informal atmosphere and its ability to preserve cordial relations between the parties, make it an accessible and suitable option for dispute resolution.

5.3.9 (1) Added Merits of the Lok Adalats

As an alternative dispute resolution mechanism, Lok Adalats have a number of merits which are advantageous to the litigant.

Table 5.15 highlights the views of the respondents regarding the various merits of the Lok Adalats.

Table 5.15

Q.18 Most important merit of Lok Adalats	**Number of Respondents**	**Rank**
a. Expeditious	110	2nd Rank
b.Inexpensive	126	1st Rank
c.Informal	48	4th Rank
d.Flexible	12	7th Rank
e.Cordial relations	34	5th Rank
f.Accessible	52	3rd Rank
g.Other	18	6th Rank
Total	400	

Source: Primary Data[127]

[127] See Question No.18 in Questionnaire Annexure A

It is observed that 110 of the respondents stated that the most important merit of Lok Adalats was their expeditiousness.126 felt that the inexpensiveness of Lok Adalats was its highest merit, for 48 it was its informal nature while for 12 its flexibility was important. Whereas 34 mentioned that it was the cordial relations and 52 felt it was their accessibility and 18 mentioned it possessed other merits such as instant disposals.

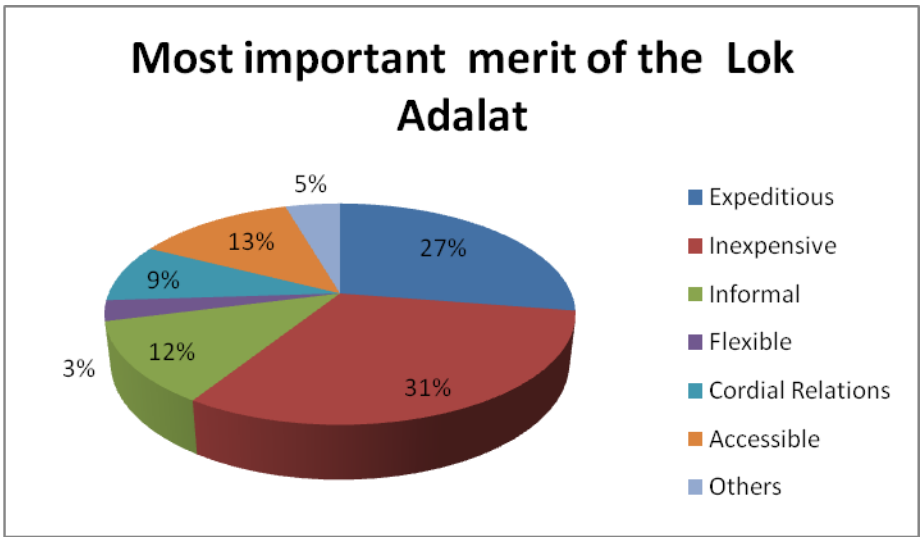

Fig.5.(xx)

From Fig.5.(xx), it is clear that the respondents attached importance to different aspects of the Lok Adalats as its merit. 31% of the respondents marked the economical aspect of Lok Adalats as the most important merit of the institution. 27% found the expeditiousness of Lok Adalats to be their asset. 13% affirmed that the quality of accessibility found in Lok Adalats as the most appreciable. 12%of the respondents expressed its informality to be its merit while its ability to maintain cordial relations was highlighted as the most

important merit by 9% of the respondents .3% of the respondents believed in its flexibility while 5% did not indicate any of the enumerated qualities as their response.

5.3.10 Quality of justice at the Lok Adalats

An effective realization of rights is one of the principal aims of justice-delivery. Lok Adalats ensure the effective realization of rights in a quick, simple, inexpensive and amicably to the satisfaction of both the parties.

Table 5.16 shows views regarding the quality of justice delivered by Lok Adalats .

Table 5.16

Q. 9 Parity of justice by Lok Adalats vis a vis the courts	**Number of Respondents**
Strongly Agree	46
Agree	166
Disagree	146
Strongly Disagree	42
Total	400

Source: Primary Data[128]

[128] See Question No.9 in Questionnaire Annexure A.

46 respondents strongly felt that the quality of justice by Lok Adalats was the same as that of courts. 166 also agreed that it was of the same quality as that of courts. While146 respondents disagreed, 42 strongly disagreed.

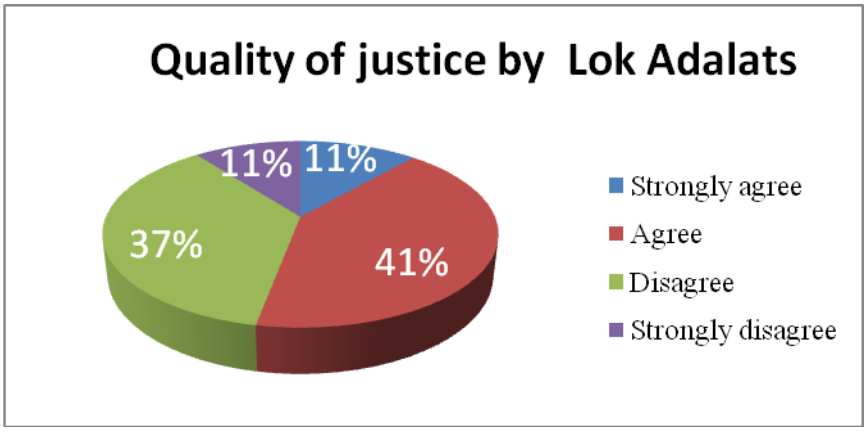

Fig. 5.(xxi)

The Fig.5.(xxi) pie-chart shows that 52% of the respondent advocates in all were of the view that the quality of justice delivered by the Lok Adalats is comparable to that delivered by the courts of law. However, 48% of the respondents held an opinion to the contrary and stated that justice delivered by the Lok Adalats does not match the justice delivered by the courts.

However, in their interview with the researcher the distinguished judges of the High Court of Bombay at Goa strongly maintained that there was no difference between the quality of justice delivered by the courts and the LokAdalats. The Hon'ble Judges of the High Court of Bombay at Goa were of the view that the difference in the quality of justice ,if any, was that in case of the Lok Adalats, the justice given was the parties' own decision.[129]They

[129]See Interview Schedule in Annexure B

strongly affirmed that justice delivered by the Lok Adalats is at par with the justice delivered by the courts, although there are some differences in their processes and structures.

5.3.11 Lok Adalats as Complementing Courts

Lok Adalats were created for the purpose of facilitating the inexpensive and expeditious disposal of cases.[130] Lok Adalats have done away with the barriers of cost, delay and procedure which generally confront litigants in courts. With a reasonable number of settlements reached, Lok Adalats have assisted the courts in the resolution of disputes at a faster pace thus reducing the pendency of cases. [131]

In order to determine whether Lok Adalats effectively complement the courts, the responses are depicted in Table 5.17

Table 5.17

Q. 13. Lok Adalats effectively complement courts	**Number of Respondents**
Strongly Agree	28
Agree	226
Disagree	126
Strongly Disagree	20
Total	400

Source: Primary Data[132]

[130] Chapter IV
[131] See 5.3.4 and 5.3.7.
[132] See Question No.13 in Questionnaire Annexure A.

Table 5.17 shows that 28 of the respondents strongly agreed that Lok Adalats complement courts.226 agreed about Lok Adalats complementing courts. While 126 disagreed, 20 strongly disagreed that they effectively complement each other.

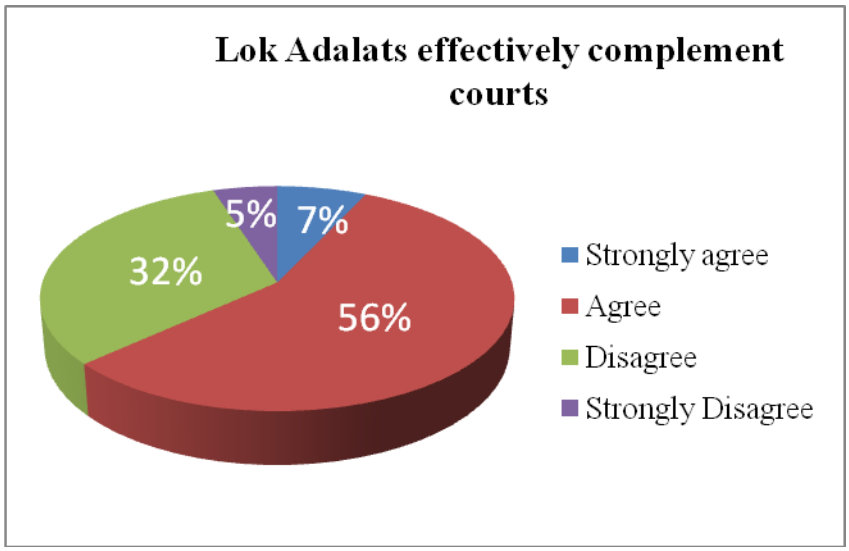

Fig. 5.(xxii)

Fig. 5.(xxii) the pie –chart shows that while 7% of the respondents strongly agreed that Lok Adalats complemented the courts, 56% of the respondents also concurred in that view, taking the total number of respondents to 63%.On the other hand while 32% disagreed that Lok Adalats complement courts, 5% emphatically disagreed.

Thus a majority of the respondents perceived that Lok Adalats complement the courts by offering litigants an alternative or additional forum for the

resolution of their disputes. Lok Adalats have succeeded in bringing the promise of justice "not merely to the ordinary and the disempowered" but to all.[133]

Lok Adalats are thus promising an additional avenue of access to justice.

5.4. An Epigrammatic Appraisal of Lok Adalats in Maharashtra and Karnataka

The theme of the study was to evaluate the performance of Lok Adalats in Goa on the scale of access to justice, in order to suggest viable alternatives. However, the researcher chanced upon some authentic information regarding LokAdalats in the neighboring states of Maharashtra and Karnataka. Though the information so gathered is not comprehensive nor is it uniform for both the States, it was thought worthwhile to mention and analyze the information for the purpose of better comparison and appreciation of Goa's efforts towards access to justice.

Any comparison in terms of Lok Adalats have necessarily to be vetted with the extent of population and the geographical outlay of the neighbouring States of Maharashtra and Karnataka.[134]

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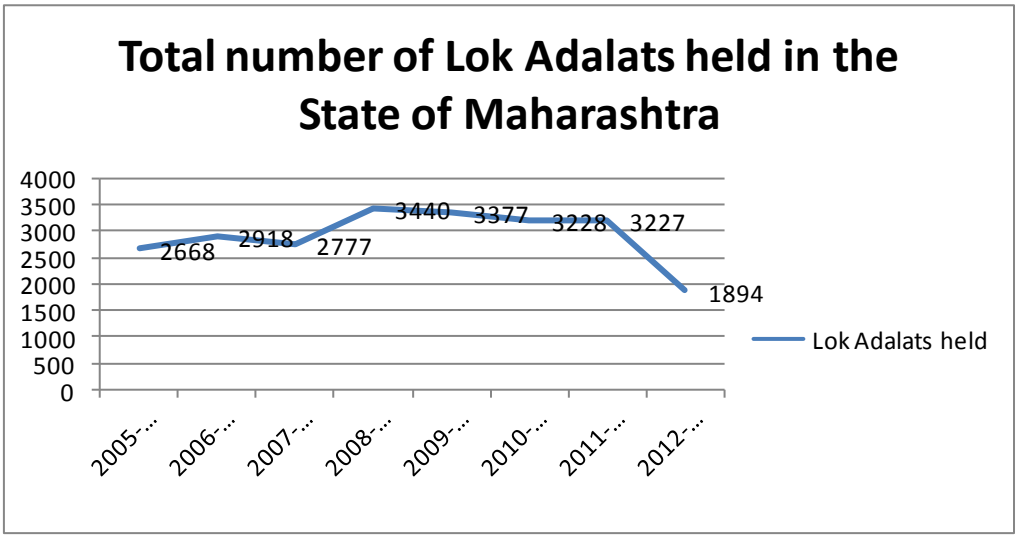
[133] 5 NUJS L.Rev.171(2012).

[134] Population of Goa -1,457,723 available at http://pib.nic.in/prs/2011/latest 31mar.pdf, Area of Goa – 3,702 sq.km available at http://geography.about.com; Population of Maharashtra- 112,372,972 available at http://pib.nic.in/prs/2011/latest 31mar.pdf; Area of Maharashtra – 307,713 sq.km available at http://geography.about.com;Population of Karnataka – 61,130,704 available at http://pib.nic.in/prs/2011/latest 31mar.pdfArea of Karnataka – 191,791 sq.km available at http://geography.about.com last viewed on 29/12/2013.

5.4.1 Organization of Lok Adalats in the State of Maharashtra from 2005 to 2012-2013.

Lok Adalats are held in almost all states of India. The graph below depicts the total number of Lok Adalats organized in the State of Maharashtra from the period 2005 to 2012.



Source: Maharashtra Legal Services Authority website

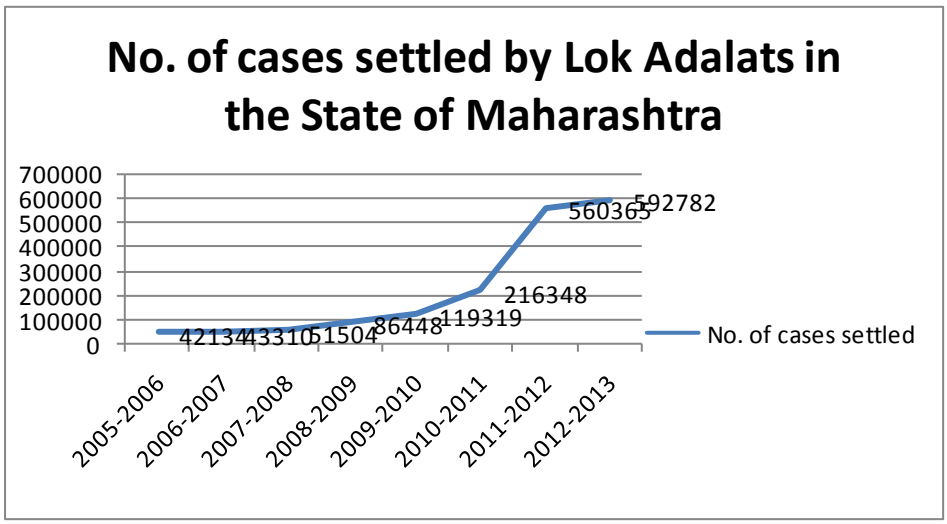
Fig. 5. (xxiii)

From the above graph, it is clear that LokAdalats by and large have been active in Maharashtra as well. It can be evidenced from the graph, that during the initial years i.e. from 2005 to 2012, there is a steady increase, showing an initial euphoria and expectation, thereafter, there is a slight decrease and this is noticeable especially during the period of 2012-13.

Maybe there is rethinking on the effectiveness of LokAdalats. This could often happen due to change of concerned officials and their individual attitudes

towards Lok Adalats. However, it should be noted that a eight year period is much short a time to draw definite conclusions regarding the functioning of LokAdalats in any State.

5.4.2 Performance of Lok Adalats in the State of Maharashtra from 2005 to 2012-2013.



Source: Maharashtra Legal Services Authority [135]

Fig.5. (xxiv)

The graph shows that there is a dramatic increase during the period from 2011to 2013. The sharp rise from 2011 to 2012 resulting in leveling of cases by 2013 is an indication of system maturity wherein though the number of cases before the LokAdalats seems to be on the increase, the cases settled have increased. Once again this throws light on the individual official manning the Lok Adalats and their outlook towards the purpose of Lok Adalats which is of course to settle disputes speedily.

[135] Available at http://legalservices.mah.gov.in/last viewed on 29/6/2013.

From the above two graphs one can safely conclude that Lok Adalats are not only functional in Maharashtra but are effectively settling disputes, thus once again endorsing the theme of this research that Lok Adalats can act as an effective means of access to justice.

5.4.3 Performance of Lok Adalats in the State of Karnataka

As regards Karnataka, one could of course, draw the conclusion that Lok Adalats have been functioning effectively. The total number of cases disposed off for the last decade and a half, is indeed impressive which is at 9,15,901 averaging around seventy thousand cases per year. See Table 5.18 .

Table 5. 18

Consolidated Statement showing particulars of Lok Adalats organized through District Legal Service Authorities & Taluka Legal Service Committees during the period April 1997 to June 2013 in Karnataka.

No. of LokAdalats organized	No. of Cases Disposed of		Compens-ation paid in MV[136] Cases Rs.	Compensation paid in Land Acquisition Cases Rs	Total Compensation paid in MVC & LAC[137] Cases Rs
	Civil	Criminal			
95,645	3,65,607	5,50,294	5,94,20,53,538	1,40,84,46,851/-	7,35,05,00,389/-

Source: Karnataka State Legal Services Authority[138]

[136] MV cases refer to Motor Vehicle accident claims cases
[137] LAC refers to Land Acquisition cases
[138] Available at http://www.kslsa.kar.nic.in/monthlyProgressReport.pdf last viewed on 15/10/2013.

What is noticeable is that in Karnataka, most of the cases are relating to motor vehicles and land acquisition cases only. The reason could be that these are the cases which involve the payment of compensation and are therefore much easier to settle in terms of nature of dispute. Though the success rate in Karnataka seems to be high, one needs to garnish the thinking in terms of the nature of the cases as the above two categories of cases do not run into complete rights issues determination or other historical circumstances of the case.

The study of Lok Adalats therefore in terms of Maharashtra and Karnataka reveal that Lok Adalats are effective and have come to stay. It also reveals that the efficacy of Lok Adalats as an instrumentality for access to justice would depend on the views and attitudes of officials entrusted with conduct of such LokAdalats. These findings are of course valuable in drawing appropriate conclusions regarding Goa as well.

5.5. Overall Analysis of the Data

Analysis of data collected in terms of the hypothesis shows certain pertinent observations which has indeed influenced and at the same time undermined the idea of access to justice in the State of Goa.

(i) It is a well known fact that the contemporary adversarial system of dispensation of justice is not only time consuming and cumbersome, but

it does affect the faith of the litigants. This is mainly because of certain inherent limitations in the adversarial system by itself. This situation has of course prompted the search for alternative dispute resolution methods.

(ii) The questions of efficiency and effectiveness of the adversarial system have always affected the credibility of justice -delivery though in the existing situation it is considered as a preferred mode of settlement of disputes. This does not prevent or prohibit alternative or additional modes of dispute resolution to enhance and supplement easy access to justice. Lok Adalats happens to be the only available alternative in the existing socio -legal milieu. This emerging trend is apparent at the enthusiasm at which the judiciary has accepted and promoted the system of Lok Adalats. Thus supplementing and at the same time complementing their responsibility of dispensation of justice.

(iii) Goa may be one such state in India where in Lok Adalats are conducted periodically in accordance with a pre defined schedule approved by the Goa State Legal Services Authority. It is gratifying to note that the judiciary in Goa has taken the initiative to organize Lok Adalats not only at the High Court and district court level but at the taluka level also.

But this does not absolve them completely in fulfilling their responsibility as guardians of justice, since village level Lok Adalats are not organized especially Lok Adalats in the remote and rural areas of the State.

This calls for a greater concern, more proactive and challenging action from the judiciary and also the Legal Services Authority. Of course the idea of the Mobile Lok Adalat may to some extent fulfill this requirement but the term itself gives its own limitations and rigidity, that one needs to focus on the aspiration and needs of the poor –'the other people' of India.

The study has also revealed that Lok Adalats do function effectively in the neighboring States of Maharashtra and Karnataka as well. One may not be faulted for thus drawing the conclusion that Lok Adalats as such are functional throughout India though their intensity and affectivity may to a certain extent vary from State to State.

(iv) In terms of settlement of disputes, it is true that Lok Adalats in Goa have done a commendable job. This by itself did not prevent the researcher in x-raying and scrutinizing the outcomes of these Lok Adalats. It is to be noted that though the cases to Lok Adalats are referred by the court or by the parties ,there is a disparity in the time taken for settlement of

those disputes. It is to be noted that the number of cases wherein the parties approach the Lok Adalats are less as compared to those referred by the court, giving way to the presumption that the concept of Lok Adalats has not been popular and acceptable to the common masses, a responsibility the Legal Services Authority is bound to fulfill.[139] It is also disturbing to note that there are some persons within the profession who, at times, unethically seem to use the idea of Lok Adalats merely to gain time and thus prolong the litigation. A strategy which constitutes denial of access to justice. This counter -productivity of the concept of Lok Adalats needs to be taken stock of by the Legal Services Authorities.

(v) It is to be further noted that though there is no restriction as to the nature of cases that may be taken up by Lok Adalats, unwittingly or as a matter of convenience ,for a system of practice, it is often that only some kind of cases get referred to Lok Adalats. These are normally in the nature of civil cases, compoundable criminal cases, motor accident cases, land acquisition cases, while matrimonial disputes and inventory proceedings are more uncommon. In this regard once again, most of the Lok Adalats in the State of Karnataka cases are regarding motor accident and land acquisition cases only .

[139] Section 4 Legal Services Authorities Act,1987

(vi) It may not be out of place to notice that these categories of cases further get narrowed down to dishonor of cheques cases under the Negotiable Instruments Act, claim petitions, and petty offences under the Motor Vehicles Act. When one looks at the data in terms of the success rate, these kinds of limited choice of cases ,gives a skewed idea about the effectively, though as per records, nearly five hundred cases have been settled during 2005 to 2012.

Further analysis of the same process of settlement gives one the idea that cases settled are normally promoted on fundamentally two aspects (i) the efficacy of the panel and (ii) the proactive role of the lawyer. Bringing into focus the earlier stated idea that for a system of Lok Adalats to flourish there is need for professional support and encouragement. There is also an 'element of psychology' noted by the researcher that the mindset of the litigants in terms of their willingness to go for settlement, plays a much greater part.

It is further observed by the researcher that the present system of composition of the panel which comprises a sitting or retired judicial officer ,member of the legal profession and a social worker, is not necessarily the reason for the success rate. Thus giving way to the idea that apart from the judicial members, Lok Adalats can effectively use

the services of the non judicial members maybe lawyers, social activist, psychologist and others.

(vii) Coming to the awards of the Lok Adalats, the Legal Services Authorities Act requires the compliance of the parties . Thus awards reflect not only parties' capacity to come to a settlement effectively, counter to what is provided by Roscoe Pound[140], the litigants themselves can play an effective role in the settlement of disputes, an idea primordial in nature but which needs to be explored in the context of effective access to justice. The system of award which does not provide for an appeal calls for a greater concern of the involvement of the parties in the award - making process.

(viii) One does not fail to notice despite these precautionary measures, there are instances where, in the name of speedy justice, the parties' consent is often forced, upon the plea of constraints of time. There are also cases where the awards have got delayed for the very reason of failure to obtain parties' consent. This argument may even hold good for the State of Maharashtra wherein one notices a sudden increase in cases for a particular duration i.e. 2005 – 2012 but seems to be static towards the year 2013-2014.

[140] See *infra* ,Chapter VI

(ix) From the overall analysis one cannot fail but agree that the Lok Adalats in Goa have succeeded in the reasonable reduction of pendency of cases. The enthusiasm and the concern of the Legal Services Authorities and of course the cooperation of the judiciary need to be considered when one speaks of success in terms of numbers.

(x) Another aspect that might have encouraged, is in terms of financial burden. The waiver or refund of court fees as the case may be, when the matter is before the Lok Adalats, , has encouraged some of the litigants to willingly agree to their cases being referred to Lok Adalats. Though the impact may be minimal, however, in the overall economic sense, there is reduction in expenditure not only for parties but also for the administration.

In the context of the above two, one cannot but conclude that Lok Adalats are expeditious and informal, thus providing access to justice. In terms of justice, one could confidently assert that justice delivery by Lok Adalats is in no way inferior to that of the conventional courts, though each system has its own distinctive characteristics.

In the present day system, one tends to classify Lok Adalats as supplementing courts. This does not prevent the Lok Adalats, considering its distinctive features and advantages, from developing into a main and much sought after

system of dispute resolution. The access to litigants in terms of financial, procedural and geographical factors , will enable Lok Adalats of the future to attain the hallowed position as the main instrumentality of access to justice.

The researcher at the conclusion of this research reverts to the hypotheses proposed in the first chapter. The study has shown that though efforts are made for the effective functioning of Lok Adalats in Goa, in terms of the concept of access to justice as a human right, there is much to be desired be it the percentage of cases that come up before Lok Adalats or the performance of dispute settlement. The reason for the study is because of an overwhelming conviction of the constitutional mandate that one needs to go beyond the formal adjudicatory system and therefore, keeping the Constitutional mandate as the baseline, one can confidently assert that the formal adjudicatory system as it exists today has failed to fulfill the mandate of equal justice.

The study also reveals that there is a commendable attempt on part of the Legal Services Authorities in the State of Goa to implement the idea of Lok Adalats. Though they may be wanting on many fronts one cannot fail to give credit to the efforts that the legal Services Authorities has made. Even in terms of numbers, the settlement of about five hundred cases during a period 2005 to 2012, is commendable. The fact that there are substantial number of cases which are taken up by Lok Adalats in Goa is an evidence of the need to have such alternative dispute resolution mechanisms on a regular basis. Thus Lok

Adalats as dispute resolution mechanism do fulfill the requirement of access to justice, to some extent.

The method of functioning of Lok Adalats in Goa shows the uniqueness of the system in the sense of involvement of parties and the speedy disposal of cases.

The economic feasibility and reduced expenditure to parties are factors that do promote Lok Adalats and their need in the State of Goa. Lok Adalats in Goa have not only come to stay but have established their permanent role or position as an effective means of access to justice. The hypotheses of the researcher, has thus been proved. The study has resulted in the evolution of new thinking and new ideas which are presented in the final chapter of the thesis.

Chapter VI

Conclusions and Recommendations ‘Access to Justice: A Dream to Come True: Means and Ends’

6. Conclusions and Recommendations

Access to Justice –A Dream To Come True : Means and Ends

" The first step to achieving justice is to make injustice visible. [1] "

Law in the modern society has multiple roles and implications regarding its origin and purpose. The idea of justice as ideology and achievable objective has much wider and deeper implications than law itself. Justice is ingrained within human nature and therefore achieving justice in its deepest meaning and fullest extend is the aspiration of any human society.

The idea of justice is not limited to dispute settlement, though dispute settlement does form the visible face of justice. Where disputes remain unresolved they often lead to the "cascading effect" [2], breeding unrest and violence in the society.

Justice or *dharma*[3], 'the virtue of virtues,' is the weapon to defend or oppose laws, public policies, administrative decisions and actions of governments. Most of all, it is one's protective armor against injustice. "Injustice," on the other hand, "is like cancer. If it is not treated, it kills the human spirit."[4] Injustice therefore, must be mowed down by justice, in obedience to the moral imperative and the mandate of the law.

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[1]Quote by Mahatma Gandhi, famous Indian national leader and freedom fighter.

[2]Cascading effect is an unforeseen chain of events due to an act affecting a system, available at enwikipedia.org/wiki last viewed on 4/12/2013.

[3] *Dharma* is a Sanskrit expression of the widest import. It is used to mean *nyaya*(justice) or what is right in a given circumstance ,moral values of life, righteous conduct ,duty and law available at http//: veda.wikidot.com last viewed on 12/11/2013.

[4]Available at www.../Pathways-to-Justice-0212.ppt last viewed on 12/11/2013.

The law of access to justice centers on the provision of equal and effective mechanisms for dispute-resolution, as its nucleus. It is an internationally acceptable principle recognized under the international human rights legal regime, that the term 'access to justice,' is not limited to dispute -resolution by a State -sponsored authority, but goes much beyond to encompass the idea of right to equality appropriate legal representation, speedy trial and free legal aid to needy litigants. The right to fair and public hearing is, of course, part of the same.

In tune with the international human right concept of access to justice, the Constitution of India eulogizes the idea of justice, liberty, equality and fraternity, as an indispensable part of the justice-delivery system, such that "the least concern of the least person, is of the highest consideration."[5] Centre-staging social justice, the Supreme Court of India, the highest court of the land, by a value- based and creative interpretation of the provisions of the Constitution[6], has expanded the justice canvas, further elevating the jurisprudence of equal access to new heights. These legal developments directed towards an equitable, fair and just society, have had their impact on national legislations and policies in the sphere of access to justice.

[5] Krishna Iyer V.R., *Justice and Beyond* (Deep and Deep Publications, New Delhi, 1980) p.53.
[6] Preamble, Part III and Part IV of the Constitution.

A Constitutional mandate[7] brought about the Legal Services Authorities Act, 1987, to ensure access to justice for all and provide, in addition, free legal aid to the weaker sections of society.

Theoretically speaking, the Legal Services Authorities Act, 1987, has laid a solid foundation for the edifice of effective access to justice in India. It envisages a simple yet comprehensive approach to dispute resolution through the process of conciliation. The Act seeks to ensure fairness and justice through its various provisions and makes available just and equitable outcomes in an expeditious and inexpensive manner.

Circumventing high costs, delay, distance and legal complexities, the system of Lok Adalats addresses access to justice issues in synchronization with the needs and interests of justice –seekers, consistent with Indian conditions.

While providing a final, speedy and inexpensive legal remedy with legal status through the Lok Adalat, the Act contemplates bringing the disputing parties together to a compromise drawn to the satisfaction of both the parties.

The study has revealed the effectiveness of Lok Adalats as a viable alternative for dispute resolution that meets the needs of the consumers of justice. It is encouraging to find the option of dispute resolution by Lok

[7] Article 39-A of the Constitution.

Adalats being explored in the State and a growing trend in the settlement of disputes by them. It is hardly surprising that the performance of Lok Adalats would be significantly strengthened, with greater participation from lawyers and litigants.

The system of Lok Adalats, operates on the philosophy of settlement, which brings the dispute to a conclusive end. Settlement is an alternative to pursuing litigation through trial. Besides bringing the dispute to an end, it does away with time-consuming and costly litigation and its possible protraction. Moreover, parties are generally satisfied with the outcome of the dispute as it is reflective of their decision. It is submitted that there is need to equip the legal system with Lok Adalat systems on a permanent basis for effective and adequate access to justice.

One of the objectives behind the establishment of the Lok Adalats besides reduction in the pendency of cases, is to provide speedy justice to litigants. The research has established that Lok Adalats are helpless if parties do not wish to settle their matters. In case of non settlement, Lok Adalats are proscribed by law from determining the matter, which reverts back to the court for adjudication. Implementation of the law in letter but not in spirit, has led to its objectives being partly fulfilled.

Despite its vast potential, the practice of settlement followed by Lok Adalats has not entered the psyche of litigants and lawyers, some of whom perceive it

as “the bartering away of their rights.” It is disappointing to find a hard stand on the concept of compromise, both among litigants and lawyers who seem unaware of the truism that a ‘bad’ compromise is (still) better than a good lawsuit.[8]

A related aspect brought out by the study is that Lok Adalats continue to be over shadowed, as courts of law are perceived as the panacea for all evils. In the absence of adequate knowledge and information about the attributes of Lok Adalats, the healthy growth and development of Lok Adalats as an alternative dispute resolution system in the State, is likely to be adversely affected.

It is brought to light from the study that disputes referred to Lok Adalats, include civil and criminal cases, motor accident claims, compoundable criminal cases, land acquisition cases and others. There seems to be no special reason for only certain types of cases being referred to Lok Adalats other than the motivation of the Presiding Judges of the courts and the persuasion of advocates.

Absence of the parties or of their advocates, leaves little scope for the Lok Adalat bench to take any action in resolving the dispute .This situation unwittingly, affects the fulfillment of the objectives of the law and the image of Lok Adalats as a dispute resolution system.

[8] Available at http://www.inspirationalstories.com/proverbs/french last viewed on 12/11/2013.

Although bringing down the burden of arrears of work in courts is only one of the ancillary objectives behind the establishment of Lok Adalats, in reality, its prime objective is to provide speedier and less expensive justice. Nonetheless, there is an impression in the mind of the public that referrals by the courts are more for the purpose of "load shedding"[9] ,which view has sullied and dented the true image of Lok Adalats as an independent and effective dispute resolution system.

Although the statute has facilitated access to justice, on the negative side, however, Lok Adalats need to gain more acceptance both among the general public and the lawyers. A change of mindset and attitude is very relevant for the success of Lok Adalats as an alternative form of dispute resolution. The efforts of the Legal Services Authorities, though laudable, reflect an emphasis on the periodical organization of Lok Adalats over the creation of public awareness regarding the advantages of the system.

As laws are made for the people, their successful implementation largely depends on their acceptance by them and on their psychology and personality. Despite their familiarity with justice by the *Communidades* or *Gaunkaria* [i] since ancient times, it is conventional to find people in Goa seeking justice more in the courts. The application of Anglo –Saxon jurisprudence after Goa's liberation, led to the emergence of a pattern of

[9]See Jensen Erik, and Heller Thomas (eds.), *Beyond Common Knowledge: Empirical Approaches to the Rule of Law* (Stanford University Press, California,2003) p.126.

formal system of justice dispensation which further got institutionalized with the enactment of the Indian Constitution.

The research has pointed out the truth that no system can be permanently relevant for all situation times and at all times. If laws need to keep abreast of changing times, justice -dispensation mechanisms also need to be streamlined and wherever required an overhaul.

The present era has opened the doors to alternative modes of dispute resolution in which the thrust is on problem- solving rather than on the determination of rights in litigation. In this changing scenario, the system of Lok Adalats with its different norms, procedure and practice has a decisive role to play in the amicable settlement of disputes, particularly in situations where delay, procedural complexity, pendency and costs, exacerbate the legal problem, when formally adjudicated.

The study of Lok Adalats in Goa, has to a greater extent brought to light the need to have an expansive thinking on the whole system of dispute settlement mirrored to the lens of access to justice. A concept like this would override a narrowed outlook of merely looking at litigants per se, while assessing the efficacy of the justice delivery systems. An effective well meaning, concerned system of access to justice needs to take into consideration, not just the present

litigants but even the future litigants and also the impact on the general population.

It is admitted that Lok Adalats by no means are the only effective instruments of justice and that there are other possible methods of dispute settlement. But treating Lok Adalats merely as a supplemental system of dispute settlement will inhibit their growth, thus depriving an effective access to justice system for the State.

The study focused not just on the functioning of Lok Adalats but with an underlying idea and overall motive to a) make Lok Adalats an effective system and b) continue the search for other alternative dispute settlement systems. Lok Adalat may be an initial step towards the vast expanse of alternative dispute resolution systems but it is a harbinger of a new idea and therefore needs to be better stabilized and effectively implemented.

Recommendations

The researcher would at the outset call for a permanent system of Lok Adalat which should function like normal courts, and if necessary, on all the days of the week to ensure prompt and quick justice.

The researcher is also of the opinion that an insistence on effective compliance with section 89 of the Civil Procedure Code, 1908[10],mandating alternative dispute resolution processes in cases that seem suitable for settlement, is imperative as it is appropriate. While fostering an environment of alternative dispute resolution, it would also narrow down the gulf between the law in books and the law in action.

To conform to the 'new' image of lawyers in the emerging global scenario that believes in the potential of alternative dispute resolution, members of the legal profession should perceive their role as not being limited to arguing and winning the case for their clients, but as social engineers of a society which ought to be their concern.

It is said 'the character of the Bar reveals the character of the law school.'[11] The latter must take up the challenge of moulding and preparing its students for their role as peace -makers, especially in respect of those for whom justice is a mere dream.

Law students would be a great asset in arranging and participating at the pre-sitting meetings which will not only enhance the rate and quality of settlement

[10] Section 89 of Code of Civil Procedure 1908 was inserted by CPC (Amendment) Act, 1999 ,which came into force on 1st July 2002.
[11] Prof. Dr. Singh Ranbir, *"Sensitizing Law Students to the Needs of Society*," Nyaya Deep April –June 2000 ,Vol.III (2), p.41.

but would be a great and unique learning experience for the law students themselves.

To usher a better and more concrete access to justice initiative ,the Legal Service Authorities could certainly consider the human resources available at the two law colleges in Goa and involve them to achieve two specific ends one in creating awareness to the litigant public regarding the Lok Adalat and the system so that the concerned individuals could make an informed choice about the manner of dispute settlement they need to pursue.

When one thinks of a redressal system, in the administrative set up, what comes to mind is the physical structure and man power required to accomplish such a task. This calls for ingenuity and innovation and of course a new outlook, in a country like India, where the health indices have improved by leaps and bounds, the average life span is about seventy to seventy five years. This would mean that after normal tenure of service, an official of the court system will have ten to fifteen years of life left out. If the same could be gainfully utilized to the mental and physical satisfaction of the person and to the advantage of the litigants, as well as of the State, it is a vast experienced and expert human resource, which is available to be utilized. In terms of infrastructure, it is a well known fact that the existing infrastructures are not even used one third of the time of their existence. To clarify further, out of twenty four hours of a day, these infrastructures are not used for more than

eight hours a day in addition to the week -ends. Once again an administrative willingness could effectively form a policy for the use of these infrastructures. The simple argument in favour of this is, even if a structure is used only for eight hours a day for two forty days, at the end of the year, it is classified as one year old even though the use is less than 30%. There is need to reinvent these concepts and ideas and use them to the advantage of the people and the nation.

Having conducted an intensive study into the system of Lok Adalats, its legislative framework and the operational functioning at the ground level, the overwhelming concern for access to justice would make one to promote the idea, "do not stop here."There are vast populations as mentioned earlier in the rural and remote regions of the State and nation whose disputes often remain invisible not only to the State but even to themselves. A legislation with a proactive instrument at the grass root level to educate on access to justice and provide suitable local, affordable machinery for settlement of their little disputes will go a great way in promoting access to justice.

The time has come when one should cease to look at dispute settlement in the eyes of Roscoe Pound[12] by merely classifying the process of dispute resolution as "a sporting theory of justice."[13] Today one needs to look at dispute

[12] American legal scholar and educator who was Dean of Harvard Law School from 1916 to 1936.
[13] The sporting theory of justice is the view that essentially the legal process is two modern gladiators in a pitted war, with the role of the judge to be simply a referee for the combat available at hennepin.timberlakepublishing.com/article.asp?article=780&paper

resolution as an inseparable part of one's very own existence and that of the society in where he or she lives. Therefore a larger concern of the society towards settlement of disputes becomes an essential component of a progressive and 'happy society'. A system like that should be structureless but at the same time flexible to meet the individual needs.

Training of dispute settlers on the correct perspective of dispute settlement be it the village level officials or the local youth including law students, the concern for dispute settlement and its importance should seep into every one's psyche .Then the State will be an ideal State in the Aristotelian conception.

The researcher at the end of the day would be more than happy if the idea of Alternative Dispute Resolution percolates into all aspects of human society so that dispute resolution does not remain the privileged domain of a selected few but that of a common man's concern towards access to justice.

[i] Local autonomous bodies known as *Gaunkaria* , which evolved from customary law, functioned in the village communities of Goa. These bodies exercised among other functions, judicial functions to settle disputes between the locals at the village level. On Goa's colonization by the Portuguese, the system of *Gaunkaria* came to be known as Communidades. D'Souza Carmo, *Legal System in Goa, Judicial Institutions (1510-1982)*,Vol.1 (New Age Printers, 1994) p. 24.

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ANNEXURE A

QUESTIONNAIRE

Name: **No. of years of practice:**

(Above information is optional)

Instructions: Please √ the most appropriate option

Please rank the options where ever is necessary

PART A

1. In your opinion, does the present court system provide justice to the people of Goa ?

   Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

2. In your opinion, is it difficult to approach the courts for resolution of disputes?

   Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

3. What are the reasons for denial of effective justice to litigants, by the courts? (Rank this between 1 to 5, 1 being the most important reason and 5 being the least)

a.	Low ratio of judges per population	
b.	Lack of physical infrastructure	
c.	Geographical location of courts	
d.	Procedural Technicalities	
e.	Expensive	
f.	Any other : (Please specify)	

4. Do litigants in Goa mostly prefer courts over Lok Adalats for resolution of disputes?

Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

5. In your opinion, in addition to the courts, is it necessary to provide more options for dispute-resolution?

   Yes ☐ No ☐

If 'Yes', which is the most preferable?(Rank this between 1 to 4, 1 being the most important reason and 4 being the least)

a) Tribunals ☐
b) Commissions/Forums ☐
c) Lok Adalats ☐
d) ADR Boards ☐
e) Others: _____

PART B

6. Do the parties come to the Lok Adalat merely because the Court compels them?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

7.. Do Lok Adalats deliver justice expeditiously?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

8. Are Lok Adalats suitable to settle all kinds of legal disputes?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

9. Do you agree that justice delivered by the Lok Adalats is of the same quality as that of courts?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

10. Do you agree that settlement of disputes through the Lok Adalat improves the relationship between the parties?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

11. Is the award of the Lok Adalat always the decision of the disputing parties?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

12. Have the Lok Adalats assisted the courts in reducing the pendency of cases ?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

13. Do the courts and the Lok Adalats effectively complement each other by plugging their respective deficiencies?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

PART C

14. Should Lok Adalats proceedings be mandatory before parties approach the court?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

15. Should provision for appeal be made available against the awards of Lok Adalats?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

16. Should the Lok Adalats determine the dispute in case the parties fail to reach a settlement?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

17. According to you, in which areas/spheres do Lok Adalats need improvement? (Rank this between 1 to 7, 1 being the most important reason and 7 being the least)

a.	Organization of Lok Adalats at the village level	
b.	Frequency of sittings	
c.	Composition of the panel	
d.	Training of the panel members	
e.	Infrastructure	
f.	Sufficient time for the parties to be heard	
g.	More professional in approach	

18. What according to you are the merits of Lok Adalats?

(Rank the merits between 1 to 6, 1 being the most important and 6 being the least.)

a.	Expeditious	
b.	Inexpensive	
c.	Informal	
d.	Flexible	
e.	Cordial relations	
f.	Accessible	
g.	Any other : (Please Specify)	

19. Are advocates in Goa in favour of dispute resolution through the Lok Adalats?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

20. Is the State doing enough to promote dispute resolution through Lok Adalats ?
Strongly Agree ☐ Agree ☐ Disagree ☐ Strongly Disagree ☐

ANNEXURE B

Interview Schedule

Enhancing Access to Justice in Goa through Lok Adalats

1. Functioning of Lok Adalats (holding, organization , working aspects, difficulties faced).

2. Suitability to settle all types of disputes (whether suitable for all or certain categories of disputes).

3. Effectiveness in settlement (Panel composition, approach followed, time etc.).

4. Award (effectiveness, enforceability, practical difficulties etc.)

5. Quality of Justice delivered (comparable to courts?)

6. Lok Adalats' potential to draw disputants for dispute –resolution to it.

7. Role of Judges in promoting dispute resolution through Lok Adalats.

8.Role of lawyers in promoting dispute resolution through Lok Adalats.

9. Litigants'/disputants' perceptions of Lok Adalats.

10. Role of the State in promoting dispute resolution through Lok Adalats.

ANNEXURE C

Consolidated Report of the Activities Performed in Maharashtra

LokAdalats held & matters disposed of

Financial year	**LokAdalats held in all categories**	**Total settled cases**	**No. of beneficiaries**
2005-2006	2668	42134	107311
2006-2007	2918	43310	96515
2007-2008	2777	51504	104112
2008-2009	3440	86448	152586
2009-2010	3377	119319	204193
2010-2011	3228	216348	415035
2011-2012	3227	560365	962344
2012-2013 (Apr-Nov 2012)	1894	323016	592782

ANNEXURE D

KARNATAKA STATE LEGAL SERVICES AUTHORITY, BANGALORE

Consolidated Statement of Legal Literacy Camps organized through DLSAs & TLSCs during the period

April 1997 to June 2013.

1 1A)	No. of Persons to whom Legal Aid is given No. of UTP's to whom Legal Aid was given from April 2010.	**22,897** **1,665**
2	No. of Legal Aid Camps/Legal Literacy Programmes organized. (1) No. of Lectures given (2) Total No. of Beneficiaries	**43,466** **96,269** **97,35,522**
3	No. of Publications	**20**
4	No. of Programmes through All India Radio	**50**
5	No. of Programmes through Doordarshan	**492**
6	No. of Programmes through Private Channels.	**1**
7	No. of Persons to whom Legal Advice was given	**1,27,431**

8.No. of Lok Adalats Organised and Cases disposed of:

No. of Lok Adalats organized	No. of Cases Disposed of			Compensation paid in MVC Cases Rs.	Compensation paid in LAC Cases Rs	Total Compensation paid in MVC & LAC Cases Rs
	Civil	Crimi-nal	Total			
95,645	**3,65,607**	**5,50,294**	**9,16,301**	**5,94,20,53,538/-**	**1,40,84,46,851/-**	**7,35,05,00,389/-**

9. Pre - Litigation Cases:

Civil	Criminal	Others	Total
33,889	**-**	**-**	**33,889**

10. Consolidated Statement of Permanent Lok Adalat U/s 22 B of the Karnataka State Legal Services Authority for the period **Dec. 07 to June 2013**

Total No. of sittings held	Trans-port Service	Postal, telegraph or Telephone service	Supply of power, light or water	Public Conservancy or sanitation	Service in hospital or dispensary	Bank	Insurance Service	Total no. of Cases settled	Amount Spent (Rs.)
5,592	**45**	**1,55,729**	**158**	**18**	**46**	**4,377**	**3,749**	**1,64,122**	**1,34,14,836/**

11. **April 2008 to June 2013**

Total no. of cases referred	Total no. of cases settled
13,945	**2,145**

Date: 24-07-2013.
Place: Bangalore

(Ashok.G.Nijagannavar)
Member Secretary

THE LEGAL SERVICES AUTHORITIES ACT, 1987 (39 of 1987)

as amended by

The Legal Services Authorities (Amendment)Act, 1994

(59 of 1994)

and

The Legal Services Authorities (Amendment) Act, 2002

(37 of 2002)

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 Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

Be it enacted by Parliament in the thirty-eighth year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Legal Services Authorities Act, 1987.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such dates as the Central Government may,by notification appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State.

2. Definitions

(1) In this Act, unless the context otherwise requires,

[2][(a) "case" includes a suit or any proceeding before a court;

(aa) "Central Authority" means the National Legal Services Authority constituted under Section 3;

(aaa) "court" means a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions;]

(b) "District Authority" means a District Legal Services Authority constituted under Section 9;

[1][(bb) "High Court Legal Services Committee" means a High Court Legal Services Committee constituted under Section 8A;]

(a) "legal service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter;

(b) “Lok Adalat” means a Lok Adalat organized under Chapter VI;

(c) “notification” means a notification published in the Official Gazette;

(d) “prescribed” means prescribed by rules made under this Act;

[2](ff) “regulations” means regulations made under this Act;

(e) “scheme” means any scheme framed by the Central Authority, a State Authority or a District Authority for the purpose of giving effect to any of the provisions of this Act;

(f) “State Authority” means a State Legal Services Authority constituted under Section 6;

(g) “State Government” includes the administrator of a Union territory appointed by the President under article 239 of the Constitution;

(h) “Supreme Court Legal Services Committee” means the Supreme Court Legal Services Committee constituted under Section 3A;

(i) “Taluk Legal Services Committee” means a Taluk Legal Services Committee constituted under Section 11A.

(2) Any reference in this Act to any other enactment or any provision thereof shall, in relation to an area in which such enactment or provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

THE NATIONAL LEGAL SERVICES AUTHORITY

[3. Constitution of the National Legal Services Authority

(1) The Central Government shall constitute a body to be called the National Legal Services Authority to exercise the powers and perform the functions conferred on, or assigned to, the Central Authority under this Act.

(2) The Central Authority shall consist of

(a) the Chief Justice of India who shall be the Patron-in-Chief;

(b) a serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and

(c) such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India.

(3) The Central Government shall, in consultation with the Chief Justice of India, appoint a person to be the Member Secretary of the Central Authority, possessing such experience and qualification as may be prescribed by that Government, to exercise such powers and perform such duties under the Executive Chairman of the Central Authority as may be prescribed by that

Government or as may be assigned to him by the Executive Chairman of that Authority.

(4) The terms of office and other conditions relating thereto, of members and the Member Secretary of the Central Authority shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(5) The Central Authority may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions under this Act.

(6) The Officers and other employees of the Central Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(7) The administrative expenses of the Central Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the Central Authority, shall be defrayed out of the Consolidated Fund of India.

(8) All orders and decisions of the Central Authority shall be, authenticated by the Member-Secretary or any other officer of the Central Authority duly authorized by the Executive Chairman of that Authority.

(9) No act or proceeding of the Central Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the Central Authority. Committee for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the Central Authority.

(2) The Committee shall consist of –

(a) a sitting Judge of the Supreme Court who shall be the Chairman; and

(b) such number of other members possessing such experience and qualifications as may be prescribed by the Central Government, to be nominated by the Chief Justice of India.

(3) The Chief Justice of India shall appoint a person to be the Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the Central Government.

(4) The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the Central Authority.

(5) The Committee may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions.

(6) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.

4. Functions of the Central Authority -The Central Authority shall [1][***] perform all or any of the following functions, namely:

(a) lay down policies and principles for making legal services available under the provisions of the Act;

(b) frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;

(c) utilize the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;

(d) take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;

(e) organize legal aid camps, especially in rural area, slums or labour colonies with the dual propose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats.

(f) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;

(g) undertake and promote research in the field of legal services with special reference to the need for such services among the poor;

(h) to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;

(i) monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;

[1][(j) provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out of the amounts placed at its disposal for the implementation of legal services schemes under the provisions of this Act;]

(k) develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions;

(l) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;

(m) make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and

(n) coordinate and monitor the functioning of [2][State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluka Legal Services Committees and voluntary social services institutions and other legal services organizations and give general directions for the proper implementation of the legal services programmes.

5. Central Authority to work in Coordination with other agencies

-In the discharge of its functions under this Act, the Central Authority shall, wherever appropriate, act in coordination with other governmental and non-governmental agencies, universities and others engaged in the work of promoting the cause of legal services to the poor.

CHAPTER III

STATE LEGAL SERVICES AUTHORITY

6. Constitution of State Legal Services Authority

(1) Every State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under this Act.

(2) A State Authority shall consist of

(a) the Chief Justice of the High Court who shall be the Patron-in-Chief;

(b) a serving or retired Judge of the High Court to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and

(c) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority;

Provided that a person functioning as Secretary of a State Legal Aid and Advice Board immediately before the date of constitution of the State Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this sub-section, for a period not exceeding five years.

(4) The terms of office and other conditions relating thereto, of members and the Member-Secretary of the State Authority shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) The State Authority may appoint such number of officers and other Chief Justice of the High Court, for the efficient discharge of its functions under this Act.

(6) The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(7) The administrative expenses of the State Authority, including the salaries, allowances and pensions payable to the Member-Secretary officers and other employees of the State Authority shall be defrayed out of the consolidated fund of the State.

(8) All orders and decisions of the State Authority shall be authenticated by the Member Secretary or any other officer of the State Authority duly authorized by the Executive Chairman of the State Authority.

(9) No act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the State Authority.

7. Functions of the State Authority

(1) It shall be the duty of the State Authority to give effect to the policy and directions of the Central Authority.

(2) Without prejudice to the generality of the functions referred to in subsection (1), the State Authority shall perform all or any of the following functions, namely:

(a) give legal service to persons who satisfy the criteria laid down under this Act;

(b) conduct [1][Lok Adalats, including Lok Adalats for High Court cases];

(c) undertake preventive and strategic legal aid programmes; and

(d) perform such other functions as the State Authority may, in consultation with the [2][Central Authority,] fix by regulations.

8. State Authority to act in coordination with other agencies, etc., and be subject to directions given by Central Authority

In the discharge of its functions the State Authority shall appropriately act in coordination with other governmental agencies, non-governmental voluntary social service institutions, universities and other bodies engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority may give to it in writing.

8A. High Court Legal Services Committee

(1) The State Authority shall constitute a committee to be called the High Court Legal Services Committee for every High Court, for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the State Authority.

(2) The Committee shall consists of

(a) a sitting Judge of the High Court who shall be the Chairman; and
(b) such number of other members possessing such experience and qualifications as may be determined by regulations made by the State Authority, to be nominated by the Chief Justice of the High Court.

(3) The Chief Justice of the High Court shall appoint a Secretary to the Committee possessing such experience and qualifications as may be prescribed by the State Government.

(4) The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the State Authority.

(5) The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(6) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service

as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

9. District Legal Services Authorities -(1) The State Government shall, in consultation with the Chief Justice of the High Court, constitute a body to be called the District Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on, or assigned to, the District Authority under this Act.

(2) A District Authority shall consist of:

(a) the District Judge who shall be its Chairman; and

(b) such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman.

(4) The terms of office and other conditions relating thereto, of members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation with the Chief Justice of the High Court.

(5) The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(6) The officers and other employees of the District Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(7) The administrative expenses of every District Authority, including the salaries, allowances and pensions payable to the Secretary, officers and other employees of the District Authority shall be defrayed out of the Consolidated Fund of the State.

(8) All orders and decisions of the District Authority shall be authenticated by the Secretary or by any other officer of the District Authority duly authorized by the Chairman of that Authority.

(9) No act or proceeding of a District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the District Authority.]

10. Functions of District Authority -(1) It shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority.

(2) Without prejudice to the generality of the functions referred to in subsection (1), the District Authority may perform all or any of the following functions, namely:

[1][(a) coordinate the activities of the Taluk Legal Services Committee and other legal services in the District;]

(b) organize Lok Adalats within the District; and

(c) perform such other functions as the State Authority may [2][***] fix by regulations.

11. District Authority to act in coordination with other agencies and be subject to directions given by the Central Authority, etc.

In the discharge of its functions under this act, the District Authority shall, wherever appropriate, act in coordination with other governmental and non-governmental institutions, universities and others engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority or the State Authority may give to it in writing.

[11A. Taluka Legal Services Committee

(1) The State Authority may constitute a Committee, to be called the Taluk Legal Services Committee, for each taluk or mandal or for group of taluks or mandals.

(2) The Committee shall consist of --

(a) the [2][Senior Most Judicial Officer] operating within the jurisdiction of the Committee who shall be the ex-officio Chairman; and

(b) such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(4) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with Chief Justice of the High Court,

(5) The administrative expenses of the Committee shall be defrayed out of the District Legal Aid Fund by the District Authority.

11B. Functions of Taluka Legal Services Committee -The Taluk Legal Services Committee may perform all or any of the following functions, namely:

(a) coordinate the activities of legal services in the taluk;

(b) organize Lok Adalats within the taluk; and

(c) perform such other functions as the District Authority may assign to it.]

CHAPTER IV

ENTITLEMENT TO LEGAL SERVICES

12. Criteria for giving legal services -Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is-

(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) a victim of trafficking in human beings or beggar as referred in article 23 of the Constitution;

(c) a woman or a child;

[(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.]

13. Entitlement to legal services

(1) Persons who satisfy or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima-facie case to prosecute or to defend.

(2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

14. Grants by the Central Government

The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Central Authority, by way of grants, such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.

15. National Legal Aid Fund

(1) The Central Authority shall establish a fund to be called the National Legal Aid fund and there shall be credited thereto

(a) all sums of money given as grants by the Central Government under section 14;

(b) any grants or donations that may be made to the Central Authority by any other person for the purposes of this Act;

(c) any amount received by the Central Authority under the orders of any court or from any other source.

(2) The National Legal Aid Fund shall be applied for meeting-

(a) the cost of legal services provided under this Act including grants made to State Authorities;

[1][(b) the cost of legal services provided by the Supreme Court Legal Services Committee;

(c) any other expenses which are required to be met by the Central Authority.]

16. State Legal Aid Fund

(1) A State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto

(a) all sums of money paid to it or any grants made by the Central Authority for the purposes of this Act;
(b) any grants or donations that may be made to the State Authority by the State Government or by any person for the purposes of this Act;
(c) any other amount received by the State Authority under the orders of any court or from any other source.

(2) A State Legal Aid Fund shall be applied for meeting-

(a) the cost of functions referred to in section 7;
[1][(b) the cost of legal services provided by the High Court Legal Services Committees;
(c) any other expenses which are required to be met by the State Authority.]

17. District Legal Aid Fund

(1) Every District Authority shall establish a fund to be called the District Legal Aid Fund and there shall be credited thereto—

(a) all sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act;

[2][(b) any grants or donations that may be made to the District Authority by any person, with the prior approval of the State Authority, for the purposes of this Act;

(d) any other amount received by the District Authority under the orders

of any court or from any other source.]

(2) A District Legal Aid Fund shall be applied for meeting-

(a) the cost of functions referred to in section 10[3] [and 11B];

(b) any other expenses which are required to be met by the District Authority.

18. Accounts and Audit

(1) The Central Authority, State Authority or the District Authority (hereinafter referred to in this section as 'the Authority'), as the case may be, shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure account and the balance-sheet in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.

(2) The accounts of the Authorities shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority concerned to the Comptroller and Auditor General of India.

(3) The Comptroller and Auditor General of India and any other person appointed by him in connection with the auditing of the accounts of an Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General of India

has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authorities under this Act.

(4) The accounts of the Authorities, as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually by the Authorities to the Central Government or the State Governments, as the case may be.

[1][(5) The Central Government shall cause the accounts and the audit report received by it under sub-section (4) to be laid, as soon as may be after they are received, before each house of Parliament.

(6) The State Government shall cause the accounts and the audit report received by it under sub-section (4) to be laid, as soon as may be after they are received, before the State Legislature.]

CHAPTER VI

LOK ADALATS

19. Organization of Lok Adalats

(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organized for an area shall consist of such number of

(a) serving or retired judicial officers; and

(b) other persons,

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee or, as the case may be, the Taluk Legal Services Committee, organizing such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organized by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b)

of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of-

(j) any case pending before; or
(ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized:
Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.]

20. Cognizance of cases by Lok Adalats

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19 :

(i) (a) the parties thereof agree; or
(b) one of the parties thereof makes an application to the court for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or
(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat,

the court shall refer the case to the Lok Adalat :

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in

force, the Authority or Committee organizing the Lok Adalat under subsection (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter

referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).]

21. Award of Lok Adalat :

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

22. Powers of Lok Adalat or Permanent Lok Adalat –

(1) The Lok Adalat "or Permanent Lok Adalat" shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit in respect of the following matters, namely:

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record or document or copy of such record or document from any court or office; and

(e) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every [3][Lok Adalat or Permanent Lok Adalat] shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before a Lok Adalat "or Permanent Lok Adalat" shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every [2][Lok Adalat or Permanent Lok Adalat] shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

CHAPTER VI

PRE-LITIGATION CONCILIATION AND SETTLEMENT

22A. Definitions -In this Chapter and for the purpose of sections 22 and 23, unless the context otherwise requires;

(a) "Permanent Lok Adalat" means a Permanent Lok Adalat established

under sub-section (1) of section 22B;

(b) "public utility service" means any

(i) transport service for the carriage of passengers or goods by air, road or water; or

(ii) postal, telegraph or telephone service; or

(iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi) insurance service.

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this chapter.

22B. Establishment of Permanent Lok Adalats

(1) Notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

(2) Every Permanent Lok Adalat established for an area notified under sub-section (1) shall consist of -

(a) a person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district

judge, shall be the Chairman of the Permanent Lok Adalat; and

(b) two other persons having adequate experience in public utility service to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority,

appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (b) shall be such as may be prescribed by the Central Government.

22C. Cognizance of cases by Permanent Lok Adalat

(1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government, may, by notification,

increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under subsection (1), it-

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

22D. Procedure of Permanent Lok Adalat

The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908(5 of 1908) and the Indian Evidence Act, 1872(1 of 1872).

22E. Award of Permanent Lok Adalat to be final

(1) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

(2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.

(3) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or

execution proceeding.

(5) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

CHAPTER VII

MISCELLANEOUS

23. Members and staff of Authorities, Committees and Lok Adalats to be public servants.

The members including Member-Secretary or, as the case may be, Secretary of the Central Authority, the State Authorities, the District Authorities, the Supreme Court Legal Services Committee, High Court Legal Services Committee, Taluk Legal Services Committees and officers and other employees of such Authorities, Committees and the [1][Members of the Lok Adalats or the persons Constituting Permanent Lok Adalats] shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

24. Protection of action taken in good faith. -No suit, prosecution or other legal proceedings shall lie against-

(a) the Central Government or the State Government;

(b) the Patron-in-Chief, Executive Chairman, Members or Member Secretary or officers or other employees of the Central Authority;

(c) Patron-in-Chief, Executive Chairman, Member, Member Secretary or officers or other employees of the State Authority;

(d) Chairman, Secretary, Members or officers or other employees of the Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees or the District Authority; or

(e) Any other person authorized by any of the Patron-in-Chief, Executive Chairman, Chairman, Members, Member Secretary referred to in sub-clauses (b) to (d),

for anything which is in good faith done or intended to be done under the provisions of this Act or any rule or regulation made there under.

25. Act to have over-riding effect.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

26. Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which this Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

27. Power of Central Government to make rules.

(1) The Central Government, in consultation with the Chief Justice of India may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely:

(a) the number, experience and qualifications of other members of the Central Authority under clause (c) of sub-section (2) of section 3;

(b) the experience and qualifications of the Member Secretary of the Central Authority and his powers and functions under sub-section (3) of section 3;

(c) the terms of office and other conditions relating thereto, of Members and Member Secretary of the Central Authority under sub-section (4) of section 3;

(d) the number of officers and other employees of the Central Authority under sub-section (5) of section 3;

(e) the conditions of service and the salary and allowances of officers and other employees of the Central Authority under sub-section (6) of section 3;

(f) the number, experience and qualifications of Members of the Supreme Court Legal Services Committee under clause (b) of sub-section (2) of section 3A;

(g) the experience and qualifications of Secretary of the Supreme Court Legal Services Committee under sub-section (3) of section 3A;

(h) the number of officers and other employees of the Supreme Court Legal Services Committee under sub-section (5) of section 3A and the conditions of service and the salary and allowances payable to them under sub-section (6) of that section;

(i) the upper limit of annual income of a person entitling him to legal services under clause (h) of section 12, if the case is before the Supreme Court;

(j) the manner in which the accounts of the Central Authority, the State Authority or the District Authority shall be maintained under section 18;

(k) the experience and qualifications of other persons of the Lok Adalats organized by the Supreme Court Legal Services Committee specified in sub-section (3) of section 19;

(l) other matters under clause (e) of sub-section (l) of section 22;

[1](la) the other terms and conditions of appointment of the Chairman and other persons under sub-section (2) of section 22B,

(m) any other matter which is to be, or may be, prescribed.

28. Power of State Government to make rules

(1) The State Government in consultation with the Chief Justice of the High Court may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the number, experience and qualifications of other Members of the State Authority under clause (c) of sub-section (2) of section 6;

(b) the powers and functions of the Member Secretary of the State Authority under sub-section (3) of section 6.

(c) the terms of office and other conditions relating thereto, of Members and Member Secretary of the State Authority under sub-section (4) of section 6;

(d) the number of officers and other employees of the State Authority under sub-section (5) of section 6;

(e) the conditions of service and the salary and allowances of officers and other employees of the State Authority under sub-section (6) of section 6;

(f) the experience and qualifications of Secretary of the High Court Legal Services Committee under sub-section (3) of section 8A;

(g) the number of officers and other employees of the High Court Legal Services Committee under sub-section (5) of section 8A and the conditions of service and the salary and allowances payable to them under sub-section (6) of that section;

(h) the number, experience and qualifications of Members of the District Authority under clause (b) of sub-section (2) of section 9;

(i) the number of officers and other employees of the District Authority under sub-section (5) of section 9;

(j) the conditions of service and the salary and allowances of officers and other employees of the District Authority under sub-section (6) of section 9;

(k) the number, experience and qualifications of Members of the Taluk Legal Services Committee under clause (b) of sub-section (2) of section 11A;

(l) the number of officers and other employees of Taluk Legal Services Committee under sub-section (3) of section 11A;

(m) the conditions of service and the salary and allowances of officers and other employees of the Taluk Legal Services Committee under subsection(4) of section 11A;

(n) the upper limit of annual income of a person entitling him to legal services under clause (h) of section 12, if the case is before a court, other than the Supreme Court;

(o) the experience and qualifications of other persons of the Lok Adalats other than referred to in sub-section (4) of section 19;

(p) any other matter which is to be, or may be, prescribed.

29. Power of Central Authority to make regulations

(1) The central Authority may, by notification, make regulations not inconsistent with the provisions of this Act and the rules made there under, to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the powers and functions of the Supreme Court Legal Services Committee under sub-section (1) of section 3A;

(b) the terms of office and other conditions relating thereto, of the members and Secretary of the Supreme Court Legal Services Committee under sub-section (4) of section 3A.

29A. Power of State Authority to make regulations

(1) The State Authority may, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the forgoing power, such regulations may provide for all or any of the following matters namely:-

(a) the other functions to be performed by the State Authority under clause

(d) of sub-section (2) of section 7;

(b) the powers and functions of the High Court Legal Services Committee under sub-section (1) of section 8A;

(c) the number, experience and qualifications of Members of the High Court Legal Services Committee under clause (b) of sub-section (2) of section 8A;

(d) the terms of office and other conditions relating thereto, of the Members and Secretary of the High Court Legal Services Committee under sub-section (4) of section 8A.;

(e) the terms of office and other conditions relating thereto, of the

(f) the number, experience and qualifications of Members of the High Court Legal Services Committee under clause (b) of sub-section (2) of section 8A;

(g) the other functions to be performed by the District Authority under clause (c) of sub-section (2) of section 10;

(h) the terms of office and other conditions relating thereto, of the Members and Secretary of the Taluk Legal Services Committee under sub-section (3) of section 11A;

30. Laying of rules and regulations

1) Every rule made under this Act by the Central Government and every regulation made by the Central Authority there under shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(2) Every rule made under this Act by a State Government and every regulation made by a State Authority there under shall be laid, as soon as may be after it is made, before the State Legislature.

THE NATIONAL LEGAL SERVICES AUTHORITY RULES, 1995

NOTIFICATION

New Delhi, the 27th, November 1995

G.S.R. 762(E)—In exercise of the powers conferred by section 27 of the Legal Services Authorities act, 1987 (No. 39 of 1987), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.

(1) These rules may be called the National Legal Services Authority Rules, 1995.

(2) They shall come into force on the date of their publication in the Gazette of India.

2. Definitions.

In these rules unless the context otherwise requires

(a) "Act" means the Legal Services Authorities Act. 1987;

(b) "Central Authority" means the National Legal Services Authority constituted under section 3 of the Act:

(c) "Member" means the members of the Central Authority nominated under clause (c) of sub –section (2) of section 3 of the Act;

(d) "Member-Secretary" means the member-Secretary of the Central Authority appointed under sub-section (3) of the Act;

(e) all other words and expressions used in these rules but not defined shall have the same meaning assigned to them in the Act.

3. The number, experience and qualifications of other members of the Central Authority

(1) The Central Authority shall consist of not more than twelve members.

(2) The following shall be the ex-officio Members of the Central Authority, namely:

(i) Secretary,
Department of Legal Affairs,
Ministry of Law, Justice and Company Affairs,
Government of India or any of his nominee;

ii) Secretary,
Department of Expenditure, in the Ministry of Finance,
Government of India or any of his nominee; and

(iii) two Chairman of the State Legal Services Authorities as may be nominated by the Central Government in consultation with the Chief Justice of India:

Provided that the Patron-in-Chief of the Central Authority may nominate until the constitution of State Authorities under the Act, Chairman of any two of the State Legal Aid and Advice Boards or Committees, by whatever name called, existing prior to such constitution.

(3) The Central Government may nominate, in consultation with the Chief Justice of India, other Members from amongst those possessing the experience and qualifications prescribed in sub-rule (4) of this rule.

(4) A person shall not be qualified for nomination as a Member of the Central Authority unless he is-

(a) an eminent person in the field of law; or

(b) a person of repute who is specially interested in the implementation of the Legal Services Schemes; or

(c) an eminent social worker who is engaged in the upliftment of the weaker sections of the people, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour.

4. Appointment of Member-Secretary.

The Central Government shall in consultation with the Chief Justice of India, appoint a person to be the Member-Secretary of the Central Authority, possessing experience and qualifications as prescribed in rule 5.

5. The experience and qualifications of the Member-Secretary of the Central Authority and his powers and functions:

A person shall not be qualified for appointment as Member-Secretary unless he is

(a) an officer of the Indian Legal Services who has held a post not below the rank of Additional Secretary to the Government of India ; or

(b) a Member of the State Higher Judicial Service who has held the post of District Judge at least for three years; or

(c) an officer of other organized Central Service who has held a post of Joint Secretary to the Government of India or equivalent for a minimum period of three years; or

(d) an officer of the organized State Services who has held a post equivalent to the Joint Secretary to the Government of India for a minimum period of five years.

Preference will be given to persons possessing administrative, financial and legal aid experience.

6. Powers and Functions of the Member-Secretary.

The powers and functions of the Member-Secretary, *inter alia*, shall be-

(a) to work out modalities of the Legal Services Schemes and Programmes approved by the Central Authority and ensure their effective monitoring and implementation throughout the country;

(b) to exercise the powers in respect of administrative, finance and budget matters as that of the Head of the Department in a Central Government ;

(c) to manage the properties, records and funds of the Central Authority;

(d) to maintain true and proper accounts of the Central Authority including checking and auditing in respect thereof periodically ;

(e) to prepare Annual Income and Expenditure Accounts and Balance Sheet of the Central Authority ;

(f) to liaise with the social action groups and the State Legal Services Authorities;

(f) to maintain up-to-date and complete statistical information, including progress made in the implementation of various Legal Services Programmes from time to time;

(h) to process project proposals for financial assistance and issue Utilization Certificates thereof;

(i) to convene Meetings/Seminars and Workshops connected with Legal Services Programmes and preparation of Reports and follow-up action thereon;

(j) to produce video/documentary films, publicity material, literature and publications to inform general public about the various aspects of the Legal Services Programmes; and

(k) to perform such other functions as may be expedient for efficient functioning of the Central Authority.

7. The terms of office and other conditions relating thereto, of Members and Member-Secretary of the Central Authority

(1) The members of the Central Authority nominated by the Central Government under sub-rule (3) of rule 3, shall hold office for a term of two years and a retiring member shall be eligible for renomination for not more than one term.

(2) A member of the Central Authority nominated by the Central Government under sub-rule (3) of rule 3, may be removed by the Central Government if in the opinion of the Central Government, it is not desirable to continue him as a Member.

(3) If any member nominated under sub-rule (3) of rule 3 ceases to be a member of the Central Authority, for any reason such as resignation or death, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be a Member for the remaining term of the member in whose place he is nominated.

(4) All members nominated under sub-rule(3) of rule 3 shall be entitled to payment of traveling allowances and daily allowance in respect of journeys

performed in connection with the work of the Central Authority and shall be paid by the Central Authority in accordance with the rules as are applicable to Grade 'A' officers, as amended from time to time.

(5) If a nominated member is a government employee, he shall be entitled to only one set of traveling allowance and daily allowance either from his parent department, or, as the case may be, from the Central Authority.

(6) The Member-Secretary shall hold office for a term not exceeding five years or till the age of 62 years, whichever is earlier.

(7) In all matters like pay, allowances benefits and entitlements, the Member-Secretary shall be governed by rules as are applicable to the persons holding equivalent posts in the Central Government.

(8) If an officer of the State Higher Judicial Service or, as the case may be, of other organized Central/State Services, is appointed as Member-Secretary he shall be governed by the service conditions of his parent cadre, in so far as disciplinary matters are concerned.

(9) The appointment of Member-Secretary may be on deputation basis.

8. The number of officers and other employees of the Central Authority:

The Central Authority shall have such number of officers and other employees for rendering secretarial assistance and for its day-to-day functions as are set out in Schedule to these rules or as may be notified by the Central Government from time to time.

9. The conditions of service and the salary and allowances of officers and other employees of the Central Authority under sub-section (6) of Section 3(1).

The officers and other employees of the Central Authority shall be entitled to draw pay and allowances in the scale of pay indicated against each post in the schedule to these rules or at par with the Central Government employees holding equivalent posts.

2. In all matters like age of retirement, pay and allowances, benefits and entitlements and disciplinary matters, the officers and other employees of the Central Authority shall be governed by the Central Government as are applicable to persons holding equivalent posts.

(3) The officers and other employees of the Central Authority shall be entitled to such other facilities and benefits as may be notified by the Central Government from time to time.

10. The number, experience and qualifications of members of Supreme Court Legal Services Committee under clause (b) of sub-section (2) of section 3A

(1). The Supreme Court Legal Services Committee shall consist of not more than nine members.

(2) The following shall be the ex-officio members of the Supreme Court Legal Service Committee:-

(i) Attorney General of India;

(ii) Additional Secretary in the Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, Government of India or his nominees;

(iii) Additional Secretary in the Department of Expenditure of the Ministry of Finance, Government of India or his nominee; and

(iv) Registrar General of the Supreme Court of India,

(3) The Central Government may nominate, in consultation with the Chief Justice of India, other members from amongst those possessing the qualification and experience prescribed in sub-rule (4) of this rule.

(4) A person shall not be qualified for nomination as a Member unless he is-

(a) an eminent person in the field of law; or

(b) a person of repute who is specially interested in the implementation of the Legal Services Schemes; or

(c) an eminent social worker who is engaged in the upliftment of the weaker sections of the people including Scheduled Castes, Scheduled Tribes, women, children rural and urban labour.

11. The experience and qualifications of Secretary of the Supreme Court Legal Services Committee under clause (b) of sub-section (2) of section 3A.

A person shall not be qualified for appointment as Secretary unless he is:-

(a) an officer of the Supreme Court Registry not below the rank of Joint Registrar, or

(b) officer of the rank of Director from the Central Government, possessing a degree of Law.

12. The upper limit of annual income of a person entitling him to legal services under clause (h) of section 12, if the case is before the Supreme Court:

Any citizen of India whose annual income from all sources does not exceed Rs.18,000 (Rupees eighteen thousand) shall be entitled to legal services under clause (h) of section 12 of the Act.

13. The experience and qualifications of other persons of the Lok Adalats organized by the Supreme Court Legal Service Committee specified in sub-section (3) of section 19.

A person shall not be qualified to be included in the Lok Adalat unless he is,-

(a) a member of the legal profession; or

(b) a person of repute who is specially interested in the implementation of the Legal Service Schemes and Programmes; or

(c) an eminent Social Worker who is engaged in the upliftment of the weaker sections of the people, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour.

PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY PART III SECTION 4

MINISTRY OF LAW & JUSTICE

(Department of Legal Affairs)

NATIONAL LEGAL SERVICES AUTHORITY

NOTIFICATION

New Delhi, 10th July, 2009

S.O. (E).- In exercise of the powers conferred by Section 29 of the Legal Services Authorities Act, 1987, the Central Authority hereby makes the following regulations, namely: -

1. Short title and commencement.

(1) These regulations may be called National Legal Services Authority (Lok Adalats) Regulations, 2009.

(2) They shall come into force at once.*

2. Definitions.

In these Regulations, unless the context otherwise requires –

(a) 'Act' means the Legal Services Authorities Act, 1987 (39 of 1987).

(b) 'Central Authority' means the National Legal Services Authority constituted under Section 3 of the Act;

3. Procedure for organizing Lok Adalat

(1) Lok Adalats may be organized by State Authorities/District Authorities/ Supreme Court Legal Services Committee/ High Court Legal Services Committee/ Taluka Legal Services Committees. The Lok Adalats shall be organized for a definite geographical area the aforesaid Authorities/Committees think fit. Special Lok Adalats shall be organized for all Family Courts at regular intervals.

(b) The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluka Legal Services Committee, as the case may be, may associate the members of the legal profession, college students, social organizations, charitable and philanthropic institutions and other similar organizations for organizing the Lok Adalats.

4. Intimation to the State Authority

The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Taluka Legal Services Committee, as the case may be, shall inform the State Authority about the proposal to organize the Lok Adalat well before the date on which the Lok Adalat is proposed to be organized and furnish the following information to the State Authority, namely:

a. The place and the date on which the Lok Adalat is proposed to be organized.
b. Whether any of the organizations as referred to in Regulation 4(b) above have agreed to associate themselves with Lok Adalat.
c. Categories and nature of cases, viz. pending cases or pre-litigation disputes proposed to be placed before the Lok Adalat.
d. Number of cases proposed to be brought before the Lok Adalat in each category.
e. Any other information relevant to the convening and organizing of the Lok Adalat.

5. Notice to the parties concerned:

The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluka Legal Services Committee, as the case may be, organizing the Lok Adalat shall inform every party concerned whose case is referred to the Adalat, well in time so as to afford him an opportunity to prepare himself for the Lok Adalat. Provided that such notice may be dispensed with, if the court while referring the case to the Lok Adalat fixes/informs the date and time of the Lok Adalat in the presence of the parties / Advocates.

Provided further that if a party to the Lok Adalat is not willing to submit to its jurisdiction, the case may be considered on its merits by the court concerned.

6 Composition of the Lok Adalat:-

(a) **At the State Authority Level**

The Member Secretary organizing the Lok Adalat shall constitute Benches of the Lok Adalats, each Bench comprising of a sitting or retired Judge of the High Court or a serving or retired Judicial Officer and any one or both of the following:

i A member of the Legal Profession;

ii. A Social Worker of repute who is engaged in the upliftment of the Weaker Sections of the people, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour and interested in the implementation of Legal Services Schemes and Programmes.

(b) At the High Court Level

The Secretary of the High Court Legal Services Committee organizing the Lok Adalat shall constitute Benches of the Lok Adalats, each Bench comprising of a sitting or retired Judge of the High Court or a serving or retired Judicial Officer and any one or both of the following:

i. A member of the Legal Profession; and

ii. A Social Worker belonging to the category mentioned in Sub Para (a) above.

(c) **At District Level**

The Secretary of the District Authority organizing the Lok Adalats shall constitute Benches of the Lok Adalats, each Bench comprising of a sitting or retired Judicial Officer and any one or both of the following:

i. A member of the Legal Profession; and

ii. A Social Worker belonging to the category mentioned in Sub Para (a) above or a person engaged in para-legal activities of the area, preferably a woman.

(d) **At Taluka Level**

The Chairman of the Taluka Legal Services Committee organizing the Adalat shall constitute Benches of the Lok Adalat, each Bench comprising of a sitting or retired Judicial Officer and any one or both of the following:

i. A Member of the Legal Profession; and

ii. A Social Worker belonging to the category mentioned in Sub Para (a) above or a person engaged in para- legal activities of the area, preferably a woman.

7. Allotment of cases to Lok Adalat:

(a) The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluka Legal Services Committee, as the case may be, shall assign specific cases to each Bench of the Lok Adalat.

(b) The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluka Legal Services Committee, as the case may be, may prepare a 'cause list' for each Bench of the Lok Adalat and intimate the same to all concerned at least two days before the date of the Lok Adalat.

(c) Every Bench of the Lok Adalat shall make sincere efforts to bring about a conciliated settlement in every case put before it without bringing about any kind of coercion, threat, undue influence, allurement or misrepresentation.

8. Holding of Lok Adalat:

Lok Adalat may be organized at such time and place and on such days, including holidays as State Authority, High Court Legal Services Committee, District Authority, Taluka Legal Services Committee, as the case may be, organizing the Lok Adalat deems appropriate.

9. Jurisdiction of Lok Adalats

Lok Adalat shall have powers only for helping parties to arrive at a compromise or settlement between the parties to a dispute. Lok Adalat shall have no power whatsoever to issue a 'direction' or 'order' in respect of the dispute between the parties.

10. Reference of cases and matters

1. Lok Adalat shall get jurisdiction to deal with a case only when a court of competent jurisdiction orders the case to be referred in the manner prescribed in Section 20 Legal Services Authorities Act, 1987, or under Section 89 of the Code of Civil Procedure, 1908.

2. A mechanical reference of pending cases to Lok Adalat should be avoided. The referring court should be *prima facie* satisfied that there are chances of settlement of the case through Lok Adalat and the case is appropriate to be referred to Lok Adalat. Matters relating to divorce and criminal cases which are not compoundable under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) shall not be referred to Lok Adalat.

3. In a pending case where only one of the parties had made application to the court for referring the case to Lok Adalat, or where the court *suo motu* is satisfied that the case is appropriate to be taken cognizance of by Lok Adalat,

the case shall not be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the parties.

11. Summoning of Records and the Responsibility for its safe custody:-

(a) Member Secretary, Secretary of the High Court Legal Services Committee, District Authority, Chairman of the Taluka Legal Services Committee, as the case may be, may call for the judicial records of those pending cases which are referred to the Lok Adalat under Section 20 of the Act from the courts concerned.

(b) The Officer duly authorized by the Member Secretary, Secretary of the High Court Legal Services Committee, District Authority, Chairman of the Taluka Legal Services Committee, as the case may be, shall be responsible for the safe custody of the records from the time he receives the same from the court till they are returned.

(c) The Judicial records shall be returned within **ten days** of the Lok Adalat irrespective of whether or not the case is settled by the Lok Adalat with an endorsement about the result of proceedings.

In appropriate cases, the court concerned may permit the records to be retained beyond 10 days.

(d) Every judicial authority is expected to co-operate in transmission of the Court records.

12. Pre-Litigation matters

1. In a Pre-litigation matter it may be ensured that the court for which a Lok Adalat is organized has territorial jurisdiction to adjudicate in the matter.

2. Before referring a Pre-litigation matter to Lok Adalat the Authority/Committee shall give a reasonable hearing to the parties concerned.

3. An award based on settlement between the parties can be challenged only on violation of procedure prescribed in section 20 of the Act only by filing a petition under Articles 226 and 227 of the Constitution of India.

13. Procedure in the Lok Adalats

1. Members of the Lok Adalat have the role of statutory conciliators only and have no judicial role. They, *mutatis mutandis,* may follow the procedure laid down in Sections 67 to 76 of the Arbitration and Conciliation Act, 1996.

2. Members of the Lok Adalat shall not pressurize or coerce any of the parties to compromise/settle cases or matters either directly or indirectly.

3. In a Lok Adalat the members shall discuss the subject matter with the parties for arriving at a just settlement or compromise. Members of the Lok Adalat shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute. If necessary the assistance of an independent person or a trained mediator also may be availed of by Lok Adalat.

4. The Members of the Lok Adalat shall be guided by principles of justice, equity, fairplay, objectivity, giving consideration to, among other things, the rights and obligations of the parties, custom and usages and the circumstances surrounding the dispute.

5. The Lok Adalat may conduct the proceedings in such a manner as it considers appropriate taking into account the circumstances of the case, the

wishes the parties may express, including any request by a party to the Lok Adalat to hear oral statements, and the need for a speedy settlement of the dispute.

6. The Lok Adalat shall not determine a reference, at its own instance, but shall determine only on the basis of a compromise or settlement between the parties by making an Award in terms of the compromise or settlement arrived at.

It is made clear that no Lok Adalat has the power to "Hear" parties to adjudicate the dispute as a court does.

The award of the Lok Adalat is not an independent verdict or opinion arrived at by any decision making process.

14. Administrative assistance

Administrative assistance for facilitating Lok Adalat proceedings may be arranged by suitable institutions or persons.

15. Formulating compromise/settlements

The Lok Adalat may, at any stage of the proceedings, make proposal for a settlement of the dispute. Such proposal need not be accompanied by a statement of the reasons therefor.

16. Communication between Lok Adalat and parties

1. A Lok Adalat may invite the parties to meet it or may communicate with it orally or in writing. The Lok Adalat may meet or communicate with the parties together or with each of them separately. The factual information concerning the dispute received from a party may be disclosed to the other party in order that the other party may have the opportunity to present any explanation. If such information is desired by the party to be kept confidential, the Lok Adalat shall not disclose such information to the other party.

2. Each party may on his own initiative or at the invitation of the Lok Adalat, submit suggestions for settlement of the dispute.

3. When it appears to the Lok Adalat that there exists elements of a settlement which may be acceptable to the parties, the terms of a possible settlement may be formulated by the Lok Adalat and given to the parties for their observations. Modifications, if any, suggested by the parties can be taken into consideration and terms of a possible settlement may be reformulated by the Lok Adalat.

4.. If the parties reach a compromise or settlement of the dispute the terms of such compromise or agreement may be drawn up. The Lok Adalat may draw up or assist the parties in drawing up the compromise or settlement.

17. Award

1. Drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed by parties under the guidance and assistance from Lok Adalat.

2. When both parties sign/affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an Award. (See a Model Award in Appendix-I) Every Award of the Lok Adalat shall be categorical and lucid and shall be written in regional language used in the local courts or in English. It shall also contain particulars of the case (case no, name of court and names of parties), date of receipt, Register Number assigned to the case in the permanent Register (maintained as per Regulation– 44 below) and date of settlement. Wherever the parties are represented by counsel, they should also be required to sign the settlement / award before the members of the Lok Adalat affix their signature.

3. In cases referred to Lok Adalat from a court, it shall be mentioned in the Award that the plaintiff / petitioner is entitled to refund of the court fees remitted.

4. Where the parties are not accompanied/represented by counsel, the members of the Lok Adalat should also verify the identity of parties, before recording the settlement.

5. Member of the Lok Adalat shall ensure that the parties affix their signatures only after fully understanding the terms of settlement arrived at and recorded. The members of the Lok Adalat shall also satisfy themselves about the following before affixing their signatures:

(a) That the terms of settlement are not *ex-facie* unreasonable for unconscionable or illegal or one-sided.

(b) That the parties have entered into the settlement voluntarily and not on account of any threat, coercion or undue influence.

6. Members of the Lok Adalat should affix their signatures only in settlement reached before them. They should avoid affixing signatures to settlement reached by the parties outside the Lok Adalat with the assistance of some third parties, to ensure that the Lok Adalats are not used by unscrupulous parties to commit fraud, forgery etc.

7. Lok Adalat shall not grant any bail or a divorce by mutual consent.

8. The original Award shall form part of the judicial records (in pre-litigation matter, the original Award may be kept with the Legal Services Authority / Committee concerned) and a copy of the Award shall be given to each of the parties [duly certifying them to be true by the officer designated by the Member Secretary, Secretary of the High Court Legal Services Committee or District Legal Services Authority, Chairman of Taluka Legal Services Committees, as the case may be, **free of charge**. The official seal of the Authority/Committee shall be affixed on all Awards.

18. Confidentiality

1. The Members of the Lok Adalat and the parties shall keep confidential all matters relating to the proceedings in the Lok Adalat. The members of the Lok Adalat shall not be compelled to disclose the matters which took place in the Lok Adalat proceedings before any Court of Law, except where such disclosure is necessary for purposes of implementation and enforcement of the Award.

2. The views expressed and discussions made by parties during the proceedings of the Lok Adalat in respect of the possible settlement of a dispute shall not be brought in evidence in any other arbitral or judicial proceedings. The proposals made by the members of the Lok Adalat or admission made by

any party or the conduct of the parties in the course of the Lok Adalat proceedings shall not be made use of in other court or arbitral proceedings.

3. Members of the Lok Adalat shall not record the statement of any of the parties or record any conduct of the parties in such a manner as it would prejudice such party in any other proceedings before a court or arbitrator. The Members shall not express any opinion which may be prejudicial to any party.

4. If any Member of the Lok Adalat violates the confidentiality and the ethical concerns which are akin to any other judicial proceedings, such member shall be removed from the panel of Lok Adalat Members.

19. Failure of Lok Adalat Proceedings

If a Pre-Litigation matter is not settled in the Lok Adalat, the parties may be advised to resort to other Alternative Dispute Resolution (ADR) techniques or to approach a court of law. In appropriate cases they may be advised about the availability of legal aid.

20. Compilation of results

At the conclusion of session of the Lok Adalat, the Officer designated by the Member Secretary, Secretary of the High Court Legal Services Committee or

District Authority, Chairman of the Taluka Legal Services Committee, as case may be, shall compile the results for submission to the State Authority in the proforma given in Appendix-II.

21. Maintenance of Panel of names of Lok Adalat Members

The Member Secretary, Secretary of the High Court Legal Services Committee or District Authority, Chairman of the Taluka Legal Services Committee, as the case may be, shall maintain a panel of names of retired Judicial Officers, Advocates and Social Workers to work in Lok Adalats.

22. Procedure for maintaining record of cases referred under Section 20 of the Act or otherwise:-

1. The Officer designated by the Member Secretary, Secretary of the High Court Legal Services committee or District Authority, Chairman of the Taluka Legal Services Committee, as the case may be, shall maintain a **Permanent Register** wherein all the cases and Pre-litigation matters received by him by way of reference to the Lok Adalat shall be entered giving particulars of the:-

i. date of receipt;

ii. nature of the case/ pre-litigation matter;

iii. such other particulars as may be deemed necessary;

iv. date of compromise / settlement and the manner in which the case /matter was finally disposed of and;

v. date of return of the case file.

b. A copy of the Award, if passed, duly certified in the manner stated in Regulation 33 shall be kept in the office of the Authority/ Committee as a permanent record.

c. Records other than the original of the Awards of pre-litigation Lok Adalats may be destroyed after a period of three years from the date of disposal of the matter by Lok Adalat.

23. Appearance of Lawyers and the Procedure to be followed in the cases before Lok Adalats:

The appearance of lawyers on behalf of the parties at the Lok Adalat is not barred. The lawyers may be advised to avoid wearing their robes and bands while before the Lok Adalat. But an effort should be made to encourage parties to be present personally.

24. Application of regulations

The above guidelines *mutatis mutandis* shall be applicable to the Lok Adalats organized by the National Legal Services Authority and Supreme Court Legal Services Committee also.

SCHEDULE C

GOA STATE LEGAL SERVICES AUTHORITY RULES. 1996

NOTIFN. NO. 6/28/92/LD (MISC. 1). 18TH NOVEMBER, 1996'— In exercise of the powers conferred by Sec. 28 of the Legal Services Authorities Act. 1987 (Central Act No. 39 of 1987), in consultation with the High Court, the Government of Goa, hereby makes the following rules, namely:—

1. SHORT TITLE AND COMMENCEMENT

(1) These rules may be called the Goa State Legal Services Authority Rules, 1996.

(2) They shall come Into force at once.

2. DEFINITIONS.

In these rules, unless the context otherwise requires,

[2][(a) "Act" means the Legal Services Authorities Act, 1987 [Act 39 of 1987), as amended by the Legal Services Authorities (Amendment) Act, 1994 (Act 59 of 1994);]

(b) "Chairman" means the Chairman of the State Authority or, as the case may be, the Chairman of the District Authority, or, as the case may be, the Chairman of the Talukaa Legal Services Committee:

(c) "District Authority" means the District Legal Services Authority constituted under Sec. 9 of the Act;

(d) "High Court Legal Services Committee" means a High Court Legal Services Committee constituted under Sec. 8-A of the Act;

(e) "Member" means the Member of the State Authority nominated under Cl. (b) of sub-section (2) of Sec. 6 of the Act or as the case may be of the District Authority nominated under Cl. (b) of sub-section (2) of Sec. 9 of the Act; or as the case may be a Member of Talukaa Legal Services Committee nominated under Cl. (b) of sub-section(2)of Sec ll-A of the Act;

(f) "Secretary" means the Member-Secretary of the State Legal Services Authority constituted under Sec. 6 of the Act, or, as the case may be, the Secretary of the High Court Legal Services Committee constituted under Sec. 8-A of the Act, or as the case may be, the Secretary of the District Legal Services Authority constituted under Sec. 9 of the Act;

(g) "State Authority" means the State Legal Services Authority constituted under Sec. 6 of the Act;

1. Published in the Official Gazette, Government of Goa, Extraordinary dated 26TH November, 1996.

2. SUBS. BY NOTIFN. NO. 6/28/92/LD (MISC. l), DATED 7TH AUGUST, 1997 (W.E.F. 7TH AUGUST, 1997).

(h) 'Talukaa Legal Services Committee" means a Talukaa Legal Services Committee constituted under Sec. 11-A of the Act:

(i) All other words and expressions used in these rules but not defined shall have the same meaning as assigned to them in the Act.

3. THE NUMBER, EXPERIENCE AND QUALIFICATIONS OF OTHER MEMBERS OF•STATE AUTHORITY.

(1) The State Authority shall have not more than fifteen members.

(2) The following shall be ex-officio Members of the State Authority:

(i) Advocate General of the State:

(ii) The Secretary in the Department of Finance:

(iii] The Secretary in the Government of Law:

(iv) The Inspector General of Police of the State:

'[(v) Chairman, Goa State Commission for Backward Classes:]

(vi) Two Chairman of the District Authority, as may be nominated by the State Government, in consultation with the Chief Justice of the High Court.

(3) The State Government may nominate, in consultation with the Chief Justice of the High Court at Bombay, other members from amongst those possessing such experience and qualifications specified in sub-rule (4) of this rule.

(4) A person shall not be qualified for nomination as a member of the State Authority unless he is—

(a) an eminent Social Worker who is engaged in the Up liftment of the weaker sections of the people, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour: or

(b) an eminent person in the field of Law; or

(c) a person of repute who is specially interested in the implementation of the Legal Services Schemes.

4. THE POWERS AND DUTIES OF THE MEMBER-SECRETARY OF THE STATE AUTHORITY,

The powers and duties of the Member-Secretary of the State Authority *inter alia*, shall be

(a) to give free legal services to the eligible and weaker sections;

1. SUBS. BY NOTIFN. NO. 6/28/92/LD (MISC. 1), DATED 8TH JANUARY, 1998 (W.E.F. 8TH JANUARY, 1998).

(b) to work out modalities of the Legal Services Schemes and Programmes approved by the State Authority and ensure their effective monitoring and implementation;

(c) to exercise the powers in respect of administration; house-keeping, finance and budget matters as Head of the Department in the State Government;

(d) to manage the properties, records and funds of the State Authority:

(e) to maintain true and proper accounts of the State Authority including checking and auditing in respect thereof periodically;

(f) to prepare Annual Income and Expenditure Account and Balance Sheet of the State Authority;

(g) to liaise with the Social Action Groups and Districts and Talukaa Legal Services Authorities:

(h) to maintain up-to-date and complete statistical information including progress made In the implementation of various Legal Services Programmes from time to time;

(i) to process proposals for financial assistance and issue Utilisation Certificate thereof:

(j) to organise various Legal Services Programmes as approved by the State Authority and convene meetings/seminars and workshops connected with Legal Services Programmes and preparation of Reports and following action therein:

(k) to produce video/documentary films, publicity material, literature and publication to inform general public about the various aspects of the Legal Services Programmes:

(l) to lay stress on the resolution of rural disputes and to take extra measures to draw schemes for effective and meaningful legal services for setting rural disputes at the door-steps of the rural people:

(m) to perform such of the functions as may be assigned to him under the Schemes formulated under Sec. 4 (b) of the Act; and

(n) to perform such other functions as may be expedient for efficient functioning of the State Authority.

5. THE TERMS OF OFFICE AND OTHER CONDITIONS RELATING THERETO OF MEMBERS AND MEMBER-SECRETARY OF THE STATE AUTHORITY.

(1) The term of the members of the State Authority nominated by the State Government under sub-rule (3) of rule 3 shall be for a period of two years and they shall be eligible for re-nomination.

(2) A member of the State Authority nominated under sub-rue (3) of rule 3 may be removed by the State Government if in the opinion of the State Government and for reasons to be recorded in writing it is not advisable that he should continue as a member.

(3) If any member nominated under sub-rule (3) of rule 3 ceases to be a member of the State Authority for any reason, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be a member for the remaining term of the member in whose place he is nominated.

(4) members nominated under sub-rule [3) of rule 3 shall be entitled to payment of travelling allowance and daily allowance in respect of journeys performed in connection with the work of the State Authority and shall be paid

by the State Authority in accordance with the rules as are applicable to the Grade "A" Officers, as amended from time to time.

(5) If the nominated member is a Government employee he shall be entitled to only one set of travelling allowances and daily allowances either from his parent department, or, as the case maybe from the State Authority.

(6) The Member-Secretary of the State Authority shall be the whole-time employee and shall hold office for a term not exceeding five years.

(7) In all matters like age of retirement pay and allowances; benefits and entitlements; and disciplinary matters, the Member-Secretary shall be governed by the State Government Rules and he shall be on deputation to the State Authority.

6. THE NUMBER OF OFFICERS AND OTHER EMPLOYEES OF THE STATE AUTHORITY

The State Authority shall have such number of officers and other employees for rendering secretarial assistance and for its day-to-day functions as may be notified by the State Government from time to time.

7. THE CONDITIONS OF SERVICE AND THE SALARY AND ALLOWANCES OF OFFICERS AND OTHER EMPLOYEES OF THE STATE AUTHORITY

(1) The officers and other employees of the State Authority shall be entitled to draw pay and allowances in the scale of pay indicated against each post in the Schedule to these rules or at par with the State Government employees holding equivalent posts.

(2) In all matters like age of retirement, pay and allowances benefits and entitlements and disciplinary matters, the officers and other employees of the State Authority shall be governed by the State Government Rules as are applicable to persons holding equivalent posts.

(3) The officers and other employees of the State Authority shall be entitled to such other facilities, allowances and benefits as may be notified by the State Government from time to time.

8. THE EXPERIENCE AND QUALIFICATIONS OF SECRETARY OF THE HIGH COURT LEGAL SERVICES COMMTTTEE

A person shall not be qualified for appointment as Secretary of the High Court Legal Services Committee unless he is an officer of the High Court not below the rank of Joint Registrar.

9. THE NUMBER OF OFFICERS AND OTHER EMPLOYEES OF THE HIGH COURT LEGAL SERVICES COMMITTEE AND THE CONDITIONS OF SERVICE, SALARY AND ALLOWANCES PAYABLE TO THEM

(1) The High Court Legal Services Committee shall have such number of officers and other employees for rendering secretarial assistance and for its day-to-day functions as may be notified by the State Government from time to time.

(2) The officers and other employees of the High Court Legal Services Committee shall be entitled to draw pay and allowances in the scale of pay at par with the State Government Employees holding equivalent posts.

(3) In all matters like age of retirement, pay and allowances, benefits and entitlements and disciplinary matters, and officers and other employees of the High Court Legal Services Committee shall be governed by the State Government Rules as are applicable to persons holding equivalent posts.

(4) The officers and other employees of the High Court Legal Services Committee shall be entitled to such other facilities, allowances and benefits as may be notified by the State Government from time to time.

10. THE NUMBER, EXPERIENCE AND QUALIFICATIONS OF MEMBERS OF THE DISTRICT AUTHORITY

(1) The District Authority shall have not more than eight members.

(2) The following shall be ex-officio members of the District Authority:

(i) District Magistrate;

(ii) Superintendent of Police;

(iii) Chief Judicial Magistrate; and

(iv) Government Advocate.

(3) The State Government may nominate, in consultation with the Chief Justice of the High Court, other members from amongst those possessing the qualifications and experience specified under sub-rule [4) of this rule.

(4) A person shall not be qualified for nomination as a member of the District Authority unless he is

(a) an eminent Social Worker who is engaged in the up liftment of the weaker sections of the people, including Scheduled Castes, Scheduled Tribes, women, children and rural labour;

(b) an eminent person in the field of Law: or

(c) a person of repute who is specially interested in the implementation of the Legal Services Schemes.

11. THE NUMBER OF OFFICERS AND OTHER EMPLOYEES OF THE DISTRICT AUTHORITY

The District Authority shall have such number of officers and other employees for rendering secretarial assistance and for its day-to day functions as may be notified by the State Government from time to time.

12. THE CONDITIONS OF SERVICE AND THE SALARY AND ALLOWANCES OF THE OFFICERS AND OTHER EMPLOYEES OF THE DISTRICT AUTHORITY

(1) The officers and other employees of the District Authority shall be entitled to draw pay and allowances in the scale of pay at par with the State Government employees holding equivalent posts.

(2) In all matters like age of retirement, pay and allowances, benefits and entitlements and disciplinary matters, the officers and other employees of the District Authority shall be governed by the State Government Rules as are applicable to persons holding equivalent posts.

(3) The officers and other employees of the District Authority shall be entitled to such other facilities, allowances and benefits as may be notified by the State Government from time to time.

13. THE NUMBER. EXPERIENCE AND QUALIFICATIONS OF MEMBERS OF THE TALUKAA LEGAL SERVICES COMMITTEE

(1) The Talukaa Legal Services Committee shall have not more than five members.

(2) The following shall be ex-officio members of the Talukaa Legal Services Committee:--

(i)) Sub-Divisional Officer:

(ii) Sub-Divisional Police Officer having jurisdiction.

(3) The State Government may nominate, in consultation with the Chief Justice of the High Court, other members from amongst those possessing the qualifications and experience as specified under sub-rule (4) of this rule.

(4) A person shall not be qualified for nomination as a member of the Talukaaa Services Committee unless he is -

(a) an eminent Social Worker who is engaged in the upliftment of the weaker sections of the people, including Scheduled Castes, Scheduled Tribes, women, children and rural labour; or

(b) an eminent person in the field of Law; or

(c) a person of repute who is specially interested in the implementation of the Legal Services Schemes.

14. THE NUMBER OF OFFICERS AND OTHER EMPLOYEES OF THE TALUKAA LEGAL SERVICES COMMITTEE

The Talukaaa Legal Services Committee shall have such number of officers and other employees for rendering secretarial assistance and for its day-to-day functions as may be notified by the State Government from time to time.

15. THE CONDITIONS OF SERVICE AND THE SALARY AND ALLOWANCES OF OFFICERS AND OTHER EMPLOYEES OF THE TALUKAA LEGAL SERVICES COMMITTEE

(1) The officers and other employees of the Talukaaa Legal Services Committee shall be entitled to draw pay and allowances in the scale of pay indicated against each post at par with the State Government employees holding equivalent posts.

(2) In all matters like age of retirement, pay and allowances, benefits and entitlements and disciplinary matters, the officers and other employees of the Talukaaa Legal Services Committee shall be governed by the State Government Rules as are applicable to persons holding equivalent posts.

(3) The officers and other employees of the Talukaaa Legal Services Committee shall be entitled to such other facilities, allowances and benefits as may be notified by the State Government from time to time.

16. THE UPPER LIMIT OF ANNUAL INCOME OF A PERSON ENTITLED TO LEGAL SERVICES UNDER CL. (H) OF SEC. 12. IF THE CASE IS BEFORE A COURT, OTHER THAN THE SUPREME COURT

Any citizen of India whose annual income from all sources does not exceed Rs.50,000/- [1](Rupees Fifty thousand only) or such higher amount as may be notified by the State Government from time to time, shall be entitled to legal services, .under Cl. (h) of Sec. 12 of the Act, if the case is before a Court other than the Supreme Court.

17. THE EXPERIENCE AND QUALIFICATIONS OF OTHER PERSONS OF THE LOK ADALATS REFERRED TO IN CL. (B) OF SUB-SECTION (2) OF SEC. 19 OTHER THAN REFERRED TO IN SUB-SECTION (3) OF SEC. 19

A person shall not be qualified to be included in the Bench of Lok Adalat unless he is:

(a) an eminent Social Worker who is engaged in the upliftment of the weaker sections of the people; including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour; or

[1] Govt. of Goa, L & J, Dept.(Esttb), Notification No.6/28/92/LD(Misc-I)Part, dated 15-06-2004.

(b) a lawyer of standing; or

(c) a person of repute who is specially interested in the implementation of the Legal Services Schemes and Programmes.

THE GOA STATE LEGAL SERVICES AUTHORITY REGULATIONS, 1998

In exercise of the powers conferred under the provisions of Section 29-A of the Legal Services Authorities Act, 1987 and in consultation with the Hon'ble. The Chief Justice of Bombay High Court, the State Legal Services Authority hereby makes the following Regulations.

CHAPTER I

PRELIMINARY

l. SHORT TITLE AND COMMENCEMENT

These Regulations may be called Goa State Legal Services Authority Regulations and they shall come into force from the date of publication in the Goa Government Gazette.

2. DEFINITIONS

In these Regulations, unless the context otherwise requires;

(a) "Act" means, the Legal Services Authorities Act, 1987 (No. 39 of 1987):

(b) "Chairman" means the Executive Chairman of the State Authority, or the Chairman of the High Court Legal Services Committee, or the Chairman of the District Legal Services Authority, or the Chairman of Talukaaa Committees, as the case may be;

(c) "District Authority" means the District Legal Services Authority constituted under Section 9 of the Act.

(d) "High Court Committee" means the High Court Legal Services Committee for Goa State constituted under Section 8-A of the Act;

(e) "Legal Practitioner" shall have the meaning assigned to that expression in the Advocates Act. 1961 (Act No. 25 of 1961):

(f) "Member" means a member of the State Authority or High Court Committee or District Authority or the Talukaaa Committee, as the case may be:

(g) "Nominated Member" means a member nominated to the State Authority or High Court Committee or the District Authority or the Talukaaa Committee, as the case may be;

(h) "Patron-in-Chlef ' means the Chief Justice of the High Court of Bombay:

(i) "Rules" means the Goa State Legal Services Authority Rules. 1996:

(j)) "Secretary" means the Member-Secretary of the State Legal Services Authority or the Secretary of the High Court Legal Services Committee, or the Secretary of the District Legal Services Authority, as the case may be;

(k) "State Authority" means the Goa State Legal Services Authority constituted under Section 6 of the Act:

(l) Talukaaa Committee" means the Talukaaa Legal Services Committee constituted under Section 11-A of the Act:

(m) All other words and expressions used in these Regulations but not defined shall have the meaning respectively assigned to them in the Act and the Rules framed there under.

CHAPTER II

3. VESTING OF THE EXECUTIVE AUTHORITY.

(1) The Executive Authority of the State Authority shall vest in the Executive Chairman and may be exercised by him through the Member-Secretary who shall act under the control of the Executive Chairman:

Provided that the Patron-in-Chief may in respect of any decision to be taken give such advice as is deemed necessary.

(2) The Executive Authority of the High Court Legal Services Committee shall vest in its Chairman and may be exercised by him through the Member-Secretary who shall act under the control of the Executive Chairman.

(3) The Executive Authority of the District Authority shall vest in its Chairman and may be exercised by him through its Secretary who shall act under the control of the Chairman.

(4) The Executive Authority of the Talukaaa Committee shall vest in its Chairman and may be exercised either by himself or through such other officer who is chosen for the purpose

CHAPTER III

STATE AUTHORITY

4. FUNCTIONS OF THE STATE AUTHORITY UNDER THE ACT

In addition to the functions to be performed by the State Authority under the Act, the State Authority may also perform the following additional functions:

(i) The State Authority may conduct legal literacy camps in different parts of the State with a view to transmitting knowledge about the legal aid schemes conducted in the State and with a view to spreading consciousness about the legal rights and duties of citizens with special reference to the tribal and rural populations, women, children, disabled, handicapped and the weaker sections of the Society.

(ii) The State Authority may finance public interest litigations before appropriate courts in the State if the State Authority is prima facie satisfied that such litigations are for the general benefit of a large body or class of persons who cannot by themselves take recourse of law due to penury, illiteracy or other similar reasons.

(iii) The State Authority may conduct legal aid clinics in different parts of the State collaboration with Law Colleges Universities and other social service organisations.

(iv) The State Authority may also establish or direct the District Authority to establish, standing conciliation Committees at various centres in the State, with a view to providing permanent or quasi-permanent infrastructures for resolving legal disputes between the parties, whether they may be pending in courts or may be in the offing. For conducting such committees it will be open to the State Authority to take active assistance/support of such social service organisations that have zeal for legal aid work.

(v) The State Authority may call for periodical reports returns and other information as it thinks fit from the High Court Legal Services Committee, District Authority and Talukaaa Committee.

CHAPTER IV

HIGH COURT LEGAL SERVICES COMMITTEE

Constitution of the High Court Legal Service Committee, its powers and functions, as per section 8-A (i) of the Act.

4. DUTIES AND FUNCTIONS OF THE HIGH COURT LEGAL SERVICES COMMITTEE.

The High Court Legal Services Committee shall perform all or any of the following functions, namely:

(i) Give free legal service to persons who may have to file or defend litigations pending in the High Court and who satisfy the eligibility criterial laid down for the purpose of receiving free legal aid under the Act.

(ii) Conduct, under the supervision of the State Authority Lok Adalats for settlement of cases pending in the High Court.

6. THE CONSTITUTION OF THE HIGH COURT LEGAL SERVICE COMMITTEE.

The State Authority shall constitute a Committee called the High Court Legal Services Committee consisting of a sitting Judge of the High Court who shall

be nominated by the Patron-in-Chief as Chairman and the following other members also to be nominated by the Patrol-in-Chief:-

(i) The President of the Goa High Court Bar Association;

(ii) One Member of the Goa High Court Bar Association having at least 10 years of landing at the Bar.

(iii) One serving or retired eminent Law teacher;

(iv) An eminent social worker engaged in welfare of the weaker sections of the people including Schedule Caste, Schedule Tribe or Member of Other Backward Classes;

(v) An eminent person in the field of Law;

(vi) A person of repute and standing who is interested in the implementation of the Legal Service Schemes.

7. TERMS OF OFFICE OF THE MEMBERS AND SECRETARY OF THE HIGH COURT LEGAL SERVICES COMMITTEE

(1) The term of the Office of the Secretary and the Members of the High Court Committee shall be of 2 years unless earlier, terminated by the Patron-in-Chief.

(2) All Members of the Committee except the Secretary shall function in the honorary capacity.

(3) If any member including the Chairman ceases to be the member of the High Court Committee for any reason, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be the member or the Chairman, as the case may be, for the

remaining term of the member or the Chairman in whose place he is nominated,

(4) A member of the High Court Legal Services Committee may resign his Office by writing under his hand addressed to the Patron-In-Chief through the Executive Chairman of the State Authority and forwarded by the Chairman of the High Court Committee.

CHAPTER V

DISTRICT AUTHORITY

8. TERM OF THE OFFICE OF THE MEMBERS OF THE DISTRICT AUTHORITY.

(1) The term of the Office of the members and the Secretary of the District Authority shall be for a period of 2 years.

(2) If any member of the District Authority ceases to be the member for any reason, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be the member for the remaining term of the member, in whose place he is nominated.

(3) A member of the District Authority may resign his Office by writing under his hand addressed to the State Government, through the Executive Chairman of the State Authority and forwarded through the Chairman of the District Authority. The resignation shall take effect from the date on which it is accepted.

9. REMOVAL OF THE MEMBER FROM THE OFFICE OF THE DISTRICT AUTHORITY

(1) The State Government may on the recommendation of the Patron-in-Chlef and in consultation with the Executive Chairman of the State Authority remove any nominated member from the District Authority.

(2) All members of the District Authority except its Secretary shall function in an honorary capacity.

10. THE ADDITIONAL FUNCTIONS OF THE DISTRICT AUTHORITY

In addition to the functions assigned by the provisions of the Act and the Rules, the District Authority shall perform the following functions subject to the general superintendence and control of the State Authority;

(i) Shall perform such other functions as the State Authority may fix by Regulations from time to time and shall also be guided by such directions as Central Authority or the State Authority may give to it in writing from time to time;

(ii) Conduct legal literacy camps in different areas of the District, especially in rural and tribal area with a view to transmitting knowledge about the legal aid schemes conducted in the State and also with a view to spreading consciousness about the legal rights and duties of the citizens with special

references to tribal and rural population and/or women/or children/or disabled/or handicapped and the weaker sections of the society;

(iii) Conduct legal aid clinics in different parts of the District in collaboration with Law Colleges, Universities and other social service organisations:

(iv) Supervise, direct and guide the working of the Talukaaa Committee in the District;

(v) Call for from the Talukaaa Committees in the District such periodical reports, returns and other information as it may think fit or as are required by the State Authority:

(vi) Prepare, consolidate and submit such report, returns and such information, in respect of District Authorities as the State Authority may call for;

(vii) Receive applications for Legal Services and ensure that every application is promptly processed and disposed of;

(viii) Consider the cases brought before it for Legal Service, including pre-litigation matters and decide as to what extent Legal Services can be made available to the applicant;

(ix) Persuade the parties to appear and make efforts to bring about a just settlement between them and if necessary also, refuse the legal services, if, in its opinion the conciliation has failed due to any fault on the part of the applicant;

(x) Encourage and promote conciliation and settlement in all legal proceedings, including pre-litigations:

(xi) Take proceedings for recovery of costs awarded to a person to whom legal services were rendered;

(xii) May, on an application made to it, review the cases where legal services are refused by the Taluka Committee.

CHAPTER VI

TALUKA COMMITTEE

11. TERM OF OFFICE AND OTHER CONDITIONS RELATING THERETO OF MEMBERS OF THE TALUKA COMMITTEE

(1) The term of Office of the members of the Taluka Committee shall be for a period of two years.

(2) If any member of the said Committee ceases to be such member for any reason, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be the member for the remaining term of the member in whose place he is nominated.

(3) A member of the said Committee may, resign his Office by writing under his hand addressed to the Executive Chairman of the State Authority and forwarded through the Chairman of the District Authority under intimation to the Chairman of the Taluka Committee. Such resignation shall take effect

from the date on which it is accepted by the Executive Chairman of the State Authority.

12. REMOVAL OF THE MEMBER FROM THE OFFICE

A nominated member of the Talukaaa Committee shall be removed by the State Government on the recommendation of the Executive Chairman of the State Authority.

CHAPTER VII

CONDUCT OF BUSINESS

13. MEETINGS

(1) The Member-Secretary of the State Authority, with the prior approval of the Executive Chairman, shall call meeting of the Authority at least once in a month and as and when the business may warrant.

(2) The Secretary of the High Court Committee, with prior approval of its Chairman, the Secretary of the District Authority, and the Chairman of the Taluka Committee, as the case may be, shall call meetings of the respective bodies at least once a month and as frequently as the business may warrant.

(3) In the absence of the Executive Chairman of the State Authority or of the Chairman of the High Court Committee, the District Authority or the Taluka Committee as the case may be, one of the member chosen by the Members present at the meeting shall preside over the meeting of the respective bodies.

14. MINUTES OF THE MEETING

(1) The Minutes of the proceedings of every meeting shall be prepared by the Member-Secretary.

(2) The Secretary of the State Authority, Secretary of the High Court Committee, Secretary of the District Authority, as the case may be, as soon as possible, after the meeting and after obtaining the approval of the respective Chairman, shall circulate the minutes to the members.

(3) The minutes shall be confirmed and signed by the respective Chairman unless any member who was present at the meeting to which the minute relates raises an objection, to the minutes, as having been incorrectly or incompletely recorded and has communicated his objection in writing to the Member-Secretary or the Secretary, as the case may be, within 7 days of the receipt of the minute by him or her. Any objection received shall be considered by the respective Chairman of the bodies who may make such modification in the

minutes, as thought proper and the modified minutes shall then be confirmed and signed by the respective Chairman.

(4) The State Authority may, on application made to it, review the cases where legal services are refused by the District Authority.

15. EXPENDITURE FOR THE MEETING

(a) The Member-Secretary of the State Authority is authorised to spend an amount not exceeding Rs.5000/- (Rupees Five Thousand only) for a meeting of the State Authority and an amount not exceeding Rs.3000/- (Rupees Three Thousand only) for a meeting of any Sub-Committee, from out of the Legal Aid Funds.

(b) The Member-Secretary may sanction an amount not exceeding Rs.3000/- (Rupees Three Thousand only) for each meeting of the High Court Committee on the requisition of the Secretary of the Committee.

(c) The Chairman of the District Authority may incur an expenditure not exceeding Rs.2000/- (Rupees Two Thousand only) for a meeting of the District Authority.

(d) The Chairman of the District Authority is authorised to sanction an eminent not exceeding Rs.1000/- (Rupees One Thousand only) from out of the District

Legal Aid Fund for each meeting of the Talukaaa Committee on the requisition of the Chairman of the Talukaaa Committee.

CHAPTER VIII

LEGAL AID

16 FILING OF APPLICATION FOR LEGAL SERVICES.

A person seeking legal services by the High Court Legal Services Committee, District Authority or the Talukaaa Committee, as the case may be, shall send an application under affidavit containing the brief facts of the case, and where the applicant is a person as in Section 12 (h) of the Act, not being one under any other classes of that Section, the Affidavit shall also state the details of the properties possessed by him and his annual income from all the sources.

17. SCRUTINY OF APPLICATIONS.

The applications shall be scrutinised and disposed of by the Secretary of the High Court Committee, by the Secretary of District Authority and by the Chairman of the Taluka Committee, as the case may be, giving such directions and following of such legal services as are thought necessary;

Provided that all orders passed by the Secretary of the High Court Committee or of the District Authority rejecting legal services shall be passed after obtaining order of the respective Chairman:

Provided further that all orders of grant of Legal Services by the Secretary of the High Court Committee of the District Authority shall be subject to control and modifications by the Chairman of the respective bodies.

18. DUTY OF LEGAL PRACTITIONER TO TAKE FURTHER ACTION, AFTER THE DECISION OF A CASE BY THE COURT.

The legal practitioner conducting a case or on behalf of a person receiving the services shall, as soon as the case is decided, apply for a copy of judgment and decree if any, and immediately on receipt of the copies shall submit them to the body appointing him together with his detailed comments. The Taluka Committee, the District Authority or the High Court Committee, as the case may be, shall take steps to recover the expenses of the services rendered from and out of the costs, if any awarded by the court to the person concerned and received by him. Such bodies may also consider, where necessary, the feasibility of filing any appeal, revision or a Writ Petition if—

(i) the case has been decided against the person;

(ii) the case is prima facie fit for taking such remedies:

(iii) the aided person has applied for legal services for taking recourse to such remedies:

Provided that it will not be necessary to make a fresh enquiry as to eligibility under Section 12(h) of the Act, wherever applicable, unless the Taluka Committee, the District Authority or the High Court Committee, as the case

may be, is of the opinion that a change of circumstances has taken place since the grant of the legal services.

19. THE FEES PAYABLE TO THE LEGAL PRACTITIONERS APPEARING IN THE HIGH COURT MATTERS.

The fees payable to the Legal Practitioners, representing the parties, in the matters to be filed, conducted assigned the High Court Legal Services Committee, shall be as per the Schedule I, appended to these Regulations: Provided that, for reasons to be recorded in writing, the Presiding Judge may award a higher fee.

20. THE FEES PAYABLE TO THE LEGAL PRACTITIONERS APPEARING IN THE DISTRICT COURT MATTERS

The fees payable to the Legal Practitioners, representing the parties, in the matters to be filed, conducted assigned by the District Legal Services Authority, shall be as per the Scheduled II, appended to these Regulations:
Provided that, for reasons to be recorded in writing, the Presiding Judge may award a higher fee,

21. THE FEES PAYABLE TO THE LEGAL PRACTITIONERS APPEARING IN THE TALUKAAA CIVIL AND CRIMINAL COURTS.

The fees payable to the Legal Practitioners, representing the parties, in the matters to be filed, conducted, assigned by the Taluka Legal Services

Committee shall be as per the Schedule III, appended to these Regulations Provided that, for reasons to be recorded in writing, the Presiding Judge may award a higher fee.

GOA LOK ADALAT SCHEME

In exercise of the powers conferred by Sec. 4 (b) of the Legal Services Authorities Act, 1987 (No. 39 of 1987), as amended, the Central Authority hereby makes this Scheme known as Lok Adalat Scheme.

1. DEFINITIONS.

In these Rules unless the context otherwise requires,

(a) "Act" means the Legal Services Authorities Act, 1987 (No.39 of 1987) as amended by Legal Services Authorities Act, 1994 (No. 59 of 1994):

(b) "Chairman" means the Executive Chairman of the State Authority, or, as the case may be, the Chairman of the District Authority, or, as the case may be, the Chairman of the Taluka Legal Services Committee;

(c) "District Authority" means the District Legal Services Authority constituted under Sec. 9 of the Act:

(d) "High Court Legal Services Committee" means a High Court Legal Services Committee constituted under Sec. 8-A of the Act;

(e) "State Authority" means the State Legal Services Authority constituted under Sec. 6 of the Act;

(f) Taluka Legal Services Committee" means a Taluka Legal Services Committee constituted under Sec. 11-A of the Act;

(g) All other words and expressions used in these rules but not defined shall have the meaning respectively assigned to them in the Act,

2. PROCEDURE FOR ORGANISING LOK ADALAT

(1) The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the TalukaaaLegal Services Committee as the case may be, shall convene and organise Lok Adalats at regular intervals: Provided that the Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Talukaa Legal Services Committee, as the case may be, shall convene a Lok Adalat as soon as about 30 cases referred to it under Sec. 20 of the Act or otherwise are available for being taken up.

(2) The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Taluka Legal Services Committee, as the

case may be, may associate the members of the legal professionals, college students, social organisations, charitable and philanthropic institutions and other similar organisations with the Lok Adalats.

3.INTIMATION TO THE STATE AUTHORITY

(1) The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Talukaa Legal Services Committee as the case may be, shall inform the State Authority about the proposal to organize the Lok Adalat well before the date on which the Lok Adalat is proposed to be organised and furnish the following information to the State Authority
(i) the place and the date at which the Lok Adalat is proposed to be organised;
(ii) whether some of the organisations as referred to in para.2 (2) of this Scheme have agreed to associate themselves with the Lok Adalat;
(iii) categories and nature of cases, viz. pending cases or pre-lltigation disputes, or both, proposed to be placed before the Lok Adalat:
(iv) number of cases proposed to be brought before the Lok Adalat;
(v) any other information relevant to the convening and organising of the Lok Adalat

4. NOTICE TO THE PARTIES CONCERNED

The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Talukaa Legal Services Committee, as the case may be, convening and organising the Lok Adalat shall inform every litigant whose case is referred to the Lok Adalat, well in time so as to afford him an opportunity to prepare himself for the Lok Adalat.

5. COMPOSITION OF THE LOK ADALAT.

(1) At High Court Level.—The Secretary of the High Court Legal Services Committee organizing the Lok Adalat shall constitute Benches of the Lok Adalats, each Bench comprising two or three of the following:—

(i) a sitting or retired Judge of the High Court:

(ii) a member of the legal profession; and

(iii) a social worker.

(2) At District Level—The Secretary of the District Authority organising the Lok Adalat shall constitute Benches of the Lok Adalat, each Bench comprising two or three of the following:—

(i) a sitting or retired judicial officer;

(ii) a member of the legal profession; and

(iii) a social worker or para-legal of the area.

(3) At Talukaa Leuel—The Chairman of the Talukaa Legal Services Committee organizing the Lok Adalat shall constitute Benches of the Lok Adalat, each Bench comprising two or three of the following:

(i) a sitting or retired judicial officer;

(ii) a member of the legal profession;

(iii) a social worker or para-legal of the area, preferably a woman.

6. SUMMONING OF RECORDS AND THE RESPONSIBILITY FOR ITS SAFE CUSTODY

(1) The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Taluka Legal Services Committee, as the case may be, may call for the judicial records of those pending cases which are referred to the Lok Adalat under Sec. 20 of the Act from the concerned Courts.

(2) If any case is referred to the Lok Adalat at the pre-litigation stage, the version of each party shall be obtained by the Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Taluka Legal Services Committee, as the case may be, to be placed before the Lok Adalat.

(3) The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Taluka Legal Services Committee, as the

case may be, shall be responsible for the safe custody of the records from the time he receives them from the Court till they are returned.

(4) Each judicial authority is expected to co-operate in transmission of the Court records.

(5) The judicial records shall be returned within ten days of the Lok Adalat irrespective of whether or not the case is settled by the Lok Adalat with an endorsement about the result of the proceedings.

7. FUNCTIONING OF THE LOK ADALAT

(1) The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Talukaa Legal Services Committee, as the case may be, shall assign specific cases to each Bench of the Lok Adalat.

(2) The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Taluka Legal Services Committee, as the case may be, may prepare a 'cause list' for each Bench of the Lok Adalat and intimate the same to all concerned atleast two days before the date of the Lok Adalat.

(3) Every Bench of the Lok Adalat shall make sincere efforts to bring about a

conciliatory settlement in every case put before it without bringing about any kind of coercion, threat or undue influence, allurement or misrepresentation.

8. HOLDING OF LOK ADALAT

A Lok Adalat may be organised at such time and place and on such days, including Saturdays, Sundays, and holidays as the State Authority, High Court Legal Services Committee, as the case may be, organising the Lok Adalat deems appropriate.

9. PROCEDURE FOR EFFECTING COMPROMISE OR SETTLEMENT AT LOK ADALAT

(1) Every Award of the Lok Adalat shall be signed by the Panel constituting the Lok Adalat.

(2) The original Award shall form part of the judicial records and a copy of the Award shall be given to each of the parties duly certified to be true by the panel constituting the Lok Adalat.

10. AWARD TO BE CATEGORICAL AND LUCID

Every Award of the Lok Adalat shall be categorical and lucid and shall be written in the language used in the local Courts. The Award may be drawn up

in English or in the regional language.

(2) The parties to the dispute shall be required to affix their signatures or as the case may be, thumb impression on the Award of the Lok Adalat.

11. COMPILATION OF RESULTS

At the conclusion of session of the Lok Adalat, the Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Talukaa Legal Services Committee, as the case may be, shall compile the results for submission to the State Authority.

12. MAINTENANCE OF PANEL OF LOK ADALAT JUDGES

The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Talukaa Legal Services Committee, as the case may be, shall maintain a panel of retired Judges, Advocates, Social Workers etc. possessing qualification and experience prescribed under Sec. 28 (o) of the Act, who may work in Lok Adalats.

13. REMUNERATION TO OFFICERS AND STAFF OF THE LOK ADALAT

(1) Every member of the Bench of Lok Adalat shall be entitled to conveyance allowance.

(2) The Presiding Officer of the Lok Adalats held at Talukaa and District Levels shall also be entitled to honorarium at such rates as may be determined by the Secretary of the District Authority or the Chairman of the Talukaa Legal Services Committee, as the case may be but, not exceeding Rs.50/- per case decided and subject to a maximum of Rs. 500/- per day.

(3) The Presiding Officer for the Lok Adalats held at High Court Level shall also be entitled to honorarium at such rates as may be determined by the Secretary of the High Court Legal Services Committee, but not exceeding Rs.75/- per case decided and subject to a maximum of Rs.75O/- per day.

14. PROCEDURE FOR MAINTAINING RECORD OF CASES REFERRED UNDER SEC. 20 OF THE ACT OR OTHERWISE,

(1) The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Talukaa Legal Services Committee, as the case may be, shall maintain a Register wherein all the cases received by him by

way of reference to the Lok Adalat shall be entered giving particulars of the—

(i) date of the receipt;

(ii) nature of the case;

(iii) such other particulars as may be deemed necessary; and

(iv) date of settlement and return of the case file.

(2) When the case is finally disposed of by the Lok Adalat, an appropriate entry will be made in the Register.

15. BUDGET

(1) The High Court Legal Services Committee and the District Authority shall submit the Budget proposals to the State Authority on financial year basis in respect of the Lok Adalat Scheme.

(2) The Talukaa Legal Services Committee shall submit the Budget proposals to the District Authority on financial year basis in respect of the Lok Adalat Scheme

(3) The expenditure for Lok Adalat Scheme shall constitute "Non-Plan" expenditure and may be met out of the grants received by the High Court Legal

Services Committee and the District Authority and the Talukaa Legal Services Committee, as the case may be.

16. MAINTENANCE OF ACCOUNTS

(1) The Chairman of the High Court Legal Services Committee or the District Authority or the Talukaa Legal Services Committee, as the case may be. shall exercise complete and full control over the expenditure to be incurred in the Lok Adalats.

(2) The Secretary of the High Court Legal Services Committee or the District Authority, as the case may be, shall render true and proper accounts to the State Authority every quarter,

(3) The Chairman of the Talukaa Legal Services Committee shall render true and proper accounts to the District Authority every month,

17. FUNDING.

On a request received from the High Court Legal Services Committee or the District Authority or the Talukaa Legal Services Committee, as the case may be the State Legal Services Authority may release special grants for convening and holding of Lok Adalats, if considered necessary.

18. MISCELLANEOUS

(1) The appearance of lawyers on behalf of the parties at the Lok Adalat shall not be refused.

(2) No fee shall be payable by the parties in respect of matters of cases brought before or referred to a Lok Adalat.

(3) The Secretary of the High Court Legal Services Committee or the District Authority or the Chairman of the Talukaa Legal Service Committee, as the case may be, shall provide all assistance as may be necessary to the Lok Adalats,

(4) Every Bench of the Lok Adalat may evolve its own procedure for conducting the proceeding before it and shall not be bound by either the Civil Procedure Code or the Evidence Act or the Code of Criminal Procedure subject, however, to the principle of natural justice.