

Legal Services & Lok Adalats

(Legal Services Authority Act, 1987)

S.S. Upadhyay

Former District & Sessions Judge/

Former Addl. Director (Training)

Institute of Judicial Training & Research, UP, Lucknow.

Member, Governing Body,

Chandigarh Judicial Academy, Chandigarh.

Former Legal Advisor to Governor

Raj Bhawan, Uttar Pradesh, Lucknow

Mobile : 9453048988

E-mail : ssupadhyay28@gmail.com

Website: lawhelpline.in

C O N T E N T S

1.	Object and benefits of the provisions of the Legal Services Authority Act, 1987	2.	Cognizance of cases by Lok Adalat
3.	Bar or Limitations of powers of Lok Adalat	4.	Lok Adalat not to decide a case involving non-compoundable offences
5.	Appeal against award of Lok Adalat	6.	Revision against award of Lok Adalat
7.	Review of award of Lok Adalat	8.	Writ against award of Lok Adalat
9.	Finality of the award made by Lok Adalat	10.	(A) Reference of cases by courts to ADR mechanism (B) U.P. Civil Procedure Mediation Rules, 2009 & Sec. 89 CPC.
11.	Reformulation of terms of settlement u/s. 89 CPC	12.	Execution of award of Lok Adalat

1. Object and benefits of the provisions of the Legal Services Authority

Act, 1987--- The Supreme Court has enumerated following objects and benefits of the provisions of the Legal Services Authority Act, 1987----

- (1) No court fee
- (2) Procedural flexibility
- (3) Speedy trial
- (4) Direct interaction of the parties with the Judge
- (5) Binding nature of the award of Lok Adalat
- (6) Non-appellability and finality of the award of Lok Adalat

2(A). Cognizance of cases by Lok Adalat--- Interpreting the provisions of Sec.

20 of the Legal Services Authority Act, 1987, it has been held by the Supreme

Court that Lok Adalat can dispose of a matter by way of compromise or settlement between parties. See---

1. **State of Punjab vs. Mohinderjit Kaur, 2005 (1) SCJ 639**

2. **State of Punjab vs. Phulan Rani, JT 2004 (6) SC 214**

2(B). Lok Adalat competent to deal with pre-litigation case : A Lok Adalat is competent to deal with pre-litigation case as per Section 19(5)(ii) of the Legal Services Authorities Act, 1987. See : **Chaluvadi Murali Krishna & Another Vs. District Legal Service Authority, Prakasam District, Ongole, AIR 2013 AP 41 (DB)**

2(C). Lok Adalat can decide a case even without reference by the court concerned : Sections 19(5)(ii) and 20(2) unambiguously confer jurisdiction on Lok Adalat even without reference of dispute by Court. See : **Chaluvadi Murali Krishna & Another Vs. District Legal Service Authority, Prakasam District, Ongole, AIR 2013 AP 41 (DB)**

3. **Bar or Limitations of powers of Lok Adalat**--- If no settlement or compromise is or could be arrived at in between the parties, no order can be passed by the Lok Adalat in view of the provisions u/s. 20(3) & 20(5) of the Legal Services Authority Act, 1987. See---

1. **Union of India vs. Ananto, AIR 2007 SC 1561**

2. **State of Punjab vs. Ganpat Raj, (2006) 8 SCC 364**

4(A). Lok Adalat not to decide a case involving non-compoundable offences--
- Where a Chief Judicial Magistrate in U.P. had decided a criminal case as Lok Adalat involving non-compoundable offences u/s. 205, 419, 468, 471 of the IPC by awarding TRC (Till Rising of Court) to the accused on the basis of confession made by him, it has been held by the Allahabad High Court that in view of the provisions u/s. 19(5) of the Legal Services Authority Act, 1987, the CJM as Lok Adalat had no jurisdiction to decide the case involving offences which are non-compoundable under Cr.P.C. or under any other law. See--- **Sukhlal vs. State of U.P., 2002 (44) ACC 185 (All)**

4(B). Cases involving non-compoundable offences not to be placed before Lok Adalats :_The Allahabad High Court vide its C.L. No. 10/Admin.'G-II' dated : Allahabad 14.03.2018 has directed all the Judicial Officers of the State of Uttar Pradesh not to place before the Lok Adalats cases involving non-compoundable offences for disposal.

5(A). Appeal against award of Lok Adalat--- In view of the provisions u/s. 21(2) of the Legal Services Authority Act, 1987, an award made by Lok Adalat cannot be challenged in appeal u/s. 96(3) of the CPC. See---- **P.T. Thomas vs. Thomas Job, (2005) 6 SCC 478.**

5(B). Writ under Article 226 against award of permanent Lok Adalat maintainable : Order of permanent Lok Adalat acting as tribunal is amenable to writ jurisdiction under Article 226 of the Constitution of India. Stamp Reporter cannot refuse to accept petition under Article 226 on the ground that it is not maintainable. See :

- (i) Muntjir Vs. General Manager, PNB Metlife Insurance Company Ltd., AIR 2016 (NOC) 89 (All). Following rulings have been relied on in the above case.
- (ii) AIR 2015 SC 3269
- (iii) AIR 2003 SC 3044
- (iv) AIR 1967 SC 1.

6. Revision against award of Lok Adalat--- No revision u/s. 115 of the CPC lies against an award passed by Lok Adalat u/s. 21(2) of the Legal Services Authority Act, 1987. See--- **P.T. Thomas vs. Thomas Job, (2005) 6 SCC 478**

7. Review of award of Lok Adalat--- A review petition u/s. 114 CPC against an award of Lok Adalat passed u/s. 21(2) of the Legal Services Authority Act, 1987 does not lie. See--- **P.T. Thomas vs. Thomas Job, (2005) 6 SCC 478**

8. Writ against award of Lok Adalat--- An award of Lok Adalat made u/s. 21(2) of the Legal Services Authority Act, 1987 cannot be challenged even in writ jurisdiction of the High Court under Art. 226 of the Constitution. See--- **P.T. Thomas vs. Thomas Job, (2005) 6 SCC 478**

9. **Finality of the award made by Lok Adalat**--- An award of the Lok Adalat made u/s. 21(2) of the Legal Services Authority Act, 1987 becomes final and cannot be challenged under any of the remedies available under law (including appeal, revision, review or writ). See--- **P.T. Thomas vs. Thomas Job, (2005) 6 SCC 478**

10. **Reference of cases by courts to ADR mechanism u/s. 89 CPC & u/o. 10, rule 1-A CPC is mandatory**--- (A) Making of reference by court to the Alternate Dispute Resolution mechanism u/s. 89 CPC and u/o. 10, rule 1-A CPC (as amended w.e.f. 1.7.2002) is mandatory and not directory. See--- **Salem Advocates Bar Association vs. Union of India, (2005) 6 SCC 344 (Three-Judge Bench)**

(B) **U.P. Civil Procedure Mediation Rules, 2009 & Sec. 89 CPC**--- Allahabad High Court in exercise of its rules making power conferred under Part X of the CPC and Sec. 89 (2) (d) CPC has formulated ‘U.P. Civil Procedure Mediation Rules, 2009’ w.e.f. 13.8.2009 to give effect to the provisions of Sec. 89 CPC. These Rules have been notified in U.P. vide U.P. Government’s Notification “Nyaya Anubhag 2 (Adhinasth Nyayalaya), Noti. No. 1253/VII-Nyaya-2-2009-319-08, dated 13.8.2009”. These Rules now provide detailed procedure for courts to carry out the provisions contained u/s. 89 CPC.

10(C). **CPC & Evidence Act not made applicable to permanent Lok Adalats** : The alternative institutional mechanism of Permanent Lok Adalat in Chapter VI-A with regard to the dispute concerning public utility service is intended to provide an affordable, speedy and efficient mechanism to secure justice. By not making applicable the provisions of Code of Civil Procedure and the statutory provisions of the Indian Evidence Act, there is no compromise on the quality of determination of dispute since the permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice. Sense of Justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in

deciding a dispute on merit. See...**Bar Council of India Vs. Union of India, AIR 2012 SC 3246. (para 29)**

10(D). **Principles of natural justice & equity to guide the permanent Lok Adalats** : The alternative institutional mechanism of Permanent Lok Adalat in Chapter VI-A with regard to the dispute concerning public utility service is intended to provide an affordable, speedy and efficient mechanism to secure justice. By not making applicable the provisions of Code of Civil Procedure and the statutory provisions of the Indian Evidence Act, there is no compromise on the quality of determination of dispute since the permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice. Sense of Justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in deciding a dispute on merit. See...**Bar Council of India Vs. Union of India, AIR 2012 SC 3246. (para 29)**

11. **Reformulation of terms of settlement u/s. 89 CPC**--- Reformulation of the terms of settlements of the dispute in between the parties u/s. 89 CPC and u/o. 10, rule 1-A CPC (as amended w.e.f. 1.7.2002) is directory and not mandatory. See--- **Salem Advocates Bar Association vs. Union of India, (2005) 6 SCC 344 (Three-Judge Bench)**

12. **Execution of award of Lok Adalat**--- An award of Lok Adalat passed u/s. 21(2) of the Legal Services Authority Act, 1987 has to be executed as a decree by consent of compromise passed by Civil Court. See--- **P.T. Thomas vs. Thomas Job, (2005) 6 SCC 478**

13. **Powers of permanent Lok Adalat** Prime duty of permanent lok adalat u/s 22-C(8) of the Legal Services Authorities Act,1987 is of conciliator & not of adjudicator. See.... **Gajanand Prasad Keshari Vs. State of Jharkhand, AIR 2010 Jharkhand 100**

14. **Reference u/s 89 CPC when to be sent?**--- In the case of **Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Co.(P) Ltd., (2010) 8**

SCC 24, Civil Court exercising power u/s 89 CPC cannot refer a suit to arbitration unless all the parties agree for such reference. The broader guidelines of the Hon'ble Supreme Court are as under :

"The starting words of Section 89 clearly show that cases which are not suited for ADR process should not be referred under Section 89. Where the case is unsuited for reference to any of the ADR processes, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under Section 89.

The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature; (i) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the Court. (In fact, a even a compromise in such a suit is difficult process requiring notice to the persons interested in the suit, before its acceptance), (II) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, associations, etc.), (iii) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration. (iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc. (v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government. (vi) Cases involving prosecution for criminal offences. (Para 27) All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes:

- (i) All cases relating to trade, commerce and contracts, including disputes arising out of contracts (including all money claims); disputes relating to specific performance; disputes between suppliers and customers; disputes between bankers and customers; disputes between developers/builders and customers; disputes between landlords and tenants/licensor and licensees; disputes between insurer and insured;*
- (ii) All cases arising from strained or soured relationship, including disputes relating to matrimonial causes, maintenance, custody of children; disputes relating to partition/division among family members/coparceners/co-owners; and disputes relating to partnership among partners;*
- (iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including disputes between neighbors (relating to easementary rights, encroachments, nuisance, etc); (1) disputes, between employers and employees; (2) disputes among members of societies/associations/apartment owners' associations;*
- (iv) All cases relating to tortious liability, including claims for compensation in motor accidents/other accidents and*

(v) *All consumer disputes, including disputes where a trader/suppliers/manufacture/service provider is keen to maintain his business/professional reputation and credibility or product popularity. The above enumeration of "suitable" and "unsuitable" categorization of cases is not intended to be exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or additions by the court/tribunal exercising its jurisdiction/discretion in referring a dispute/case to an ADR process. (Para 28) Appeal allowed.*

15(A). Providing legal aid to an accused facing trial is mandatory: Interpreting Article 39-A of the Constitution and Section 303 & 304 of the CrPC, the Hon'ble Supreme Court has ruled that Article 39-A casts a duty on the State to ensure that Justice is not denied by reason of economic or other disabilities in legal system. Section 304 CrPC contemplates legal aid to accused facing charge in court of sessions. Failure of trial court to make an effective appointment of counsel to defend the accused would be denial of due process of law and violative of fundamental principles of judicial procedure on account of breach of mandatory provisions of Section 304 CrPC. Court is required to appoint a counsel for him at the expense of the state where accused is unable to engage a counsel. Until convicted, the accused has to be presumed to be innocent. See.....**Mohd. Hussain Alias Julficar Ali Vs. State (Govt. of NCT) Delhi, 2012 (76) ACC 836 (SC).**

15(B). Court must ask the accused whether he requires legal assistance : Where the criminal appeal of the convict/appellant Rajoo filed before the High Court against the judgment of conviction and sentence awarded for the offence of gang rape was upheld by the High Court without asking the convict appellant whether he required legal assistance, explaining the scope of Article 21 & 39-A of the Constitution, it has been held by the Hon'ble Supreme Court that both at trial as well as appellate stage an accused not represented by counsel is entitled to free legal aid at the expenses of State. The High Court's order upholding the conviction without asking the convict appellant whether he required legal assistance was set aside by the Hon'ble Supreme Court and the case was remanded

to the High Court for re-hearing. See.... **Rajoo Vs. State of MP, AIR 2012 SC 3034.**

15(B). Pre-conditions for asking for legal aid : For entitlement of legal aid, not only the criteria specified in any of Clauses u/s 12 of the Legal Services Authorities Act, 1987 has to be satisfied but it is also necessary to make out prima facie case to prosecute or to defend to the satisfaction of the concerned authority. See : **Syed Javeed Vs. District Legal Services Authority, Rangareddy District, AIR 2013 AP 56 (DB)**

16. Lok Adalat not empowered to direct opening of gate of hospital : Permanent Lok Adalat has no jurisdiction u/s 22-C(7), 22-C(8) and 22-A(b) of the Legal Services Authorities Act, 1987 to order opening of gate of Hospital on the ground of failure of conciliation. See : **The Dean & Principal, M.K. C.G. Medical College and Hospital Vs. Bijay Kumar Patnaik, AIR 2013 Orissa 91 (DB)**

17. Award by Chairman of PLA alone not valid : A permanent Lok Adalat under Section 22-B of the Legal Service Authorities Act, 1987 shall consist of three persons including Chairman. An award passed by the PLA u/s 22-E of the said Act shall be final if passed by majority of persons constituting the PLA. An award passed by the Chairman singly is invalid. See : **Reliance General Insurance Company Limited Vs. Subhash Gupta & Another, AIR 2013 (NOC) 69 (Panjab & Haryana).**

18. Compromise in Lok Adalat filed by Advocate only invalid: Where in a Motor Accident Claim, an award by Lok Adalat was passed u/s 21 of the Legal Services Authorities Act, 1987 on the basis of compromise filed by the Advocate engaged by the parties but the compromise was not signed by the parties, it has been held that the authorization to file compromise through Vakalatnama had to be supplemented by actual compromise being signed by the parties themselves and the award was declared invalid. See : **Smt. Madhu Bala Vs. H.P. Singh & Another, AIR 2013 All 54 (All).**

* * * * *