

# LOK ADALATS AND VICTIM JUSTICE IN INDIA

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## OUTLINE OF THE PRESENTATION

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- Introduction
- Alternative dispute resolution and the various types of the ADR in India
- What is Lok Adalat ?
- Objectives of Lok Adalats in India
- Origin of Lok Adalats in India
- Legal basis of the Lok Adalats
- Need for Lok Adalats in India
- Types of Lok Adalats
- Statistics
- Type of cases the Lok Adalat is permitted to handle
- Composition of team
- Procedure
- Benefits of Lok Adalats for the Victims
- Conclusions of the study
- Challenges ahead

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The Father of our Nation, MAHATMA GANDHI who began his career as a lawyer said :

' I had learnt the true practice of law.

I had to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties given asunder.

The lesson was so indelibly burnt into me, that large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases '

Now, years later, both in India and abroad we now call this the Alternate  
Dispute resolution.

In India, Alternative Dispute Resolution is emerging as a structural alternative and a refined prototype of dispute resolution with a legal basis in the amended provisions of the

- The Code of Civil Procedure,
- The Arbitration and the Conciliation Act,
- The Legal Services Authority Act.

The different types of Alternative dispute resolution we have in the statutes now in India are:

- Arbitration
- Negotiation
- Mediation
- Conciliation &
- Lok Adalat

**ARBITRATION:** This is a process in which

- a neutral third party or parties render a decision based on the merits of the case.
- the Victims and the offenders to the arbitration have some control over the design of the arbitration process.
- The advantages of arbitration process are
  - considerable saving of time
  - considerable saving of funds
- the limited possibility for challenging the award which in turn
  - contribute to the lower costs and
  - finality of outcome
- greater participation of the Victims than in the case of the courts/ judicial system.

**NEGOTIATION:** This process is basically

- Any form of communication between the victim and the offender to arrive at a mutually agreeable solution.
- In negotiation the victim and the offender have a choice of representing themselves or through negotiating agents.
- the Victims or their negotiators use one of the following strategies as the case requires to bring about an amicable settlement, with the active participation of the victims.

Types of negotiations

- the competitive bargaining method
- the cooperative bargaining method
- the principled negotiation

**MEDIATION:** This type of ADR aims at

- Facilitating the development of a compromise, consensus or agreement by the victim and the offender.
- The mediation process is overseen by a Mediator.
- The authority of the mediator rests on the consent of the victim and the offender, consequently they are authorized to facilitate the process
- Therefore the mediator has no independent
  - decision-making power
  - jurisdiction or
  - legitimacy
 beyond what is voluntarily offered by the victims and the offenders themselves.

➤ **Mediation also employs several**

- strategies,
- sub-strategies and
- techniques

**to encourage the victims and the offenders to reach an agreement.**

➤ **In some cases the mediator assists the victims and the offender with specific provisions of a settlement arrangement.**

➤ **The effectiveness of mediation is in the ability to create conditions under which the victims and the offender attempt to reach an understanding**

**CONCILIATION:** this type of ADR is a process by which conflicts are resolved by compromise or voluntary agreement. 10/13/2008

- A victim approaches the legal aid office and the advocate examines the case & sends a notice to the other party
  - If no settlement is reached, victims and the offender can seek the remedy through a court of law, for which again the committee extends free legal aid.
  - The victims & the offenders are free to accept or reject the recommendations of the conciliator.
  - The conciliator is, in the Indian context, often a government official whose report contains recommendations.
  - This process is sometimes considered synonymous to mediation as both the conciliator and the mediator are involved in the dispute resolution process with justice, objectivity, neutrality, independence and considerable expertise to facilitate a resolution of the conflict. 9
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**The LOK ADALAT– the literal translation is the ‘PEOPLES COURT’** 10/13/2008

Firstly, it provides people a quick, easy, accessible, non technical, sympathetic and victim friendly forum for resolution of disputes

Secondly, it helps overcome the hazard of the docket ‘explosion’ in India

- The informality of the process
  - The speed in dispute resolution
  - The relatively low cost
  - The ability of the process to focus on the victim’s interests and concern rather than exclusively on their legal rights
  - The Empowering of the victims, as there is a much greater involvement of the victims in the process
  - The essential confidentiality of the process and
  - The high success rate 10
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## THE NEED FOR LOK ADALATS IN INDIA

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In spite of the fact that the judicial system in India is well organized with a high level of integrity, the courts are confronted with five main problems:

- The number of courts and judges in all grades are alarmingly inadequate
- The increase in flow of cases in recent years due to different legislations enacted by the Central and State Governments
- The high Cost involved in prosecuting or defending a case in a court of law, due to heavy court fee, lawyer's fee and incidental charges.
- Undue delay in disposal of cases resulting in huge pendency in all the courts.
- The poor find it difficult to prosecute or defend a case due to high costs involved. Eminent judges of the Supreme Court and High Courts have many a time emphasized the need for free legal aid to the poor.

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## Origin of the Lok Adalats in India

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The Nyaya Panchayat originated in rural India, in the pre British era, where the participants of this court were

- The village head
- The victim & his family
- The offender & his family
- Friends and
- The community or the other villagers

There was an active involvement of the victim and the community.

**Mr. Justice P.N. Bhagwati** a former Chief Justice of the Supreme Court of India started Lok Adalats in the State of Gujarat during early **seventies**.

The First Lok Adalat was held in **Tamil Nadu Chennai in 1986**.

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### The Legal basis of the Lok Adalats :

- **The Legal Services Authorities Act, 1987** (as amended vide Act No. 37 of 2002) provides for setting up of a Permanent Lok Adalat.

The main objectives of this ACT are as follows:

- To quicken the process of justice as the well known and an oft repeated statement ***Justice delayed is Justice denied***
- Access to justice for the economically backward
- To secure free and competent legal services to weaker section;
- To organize Lok Adalats for speedy disposal of case:
- To ensure that operation of legal system promotes justice on the basis of equal opportunity.
- The Lok Adalat system is not a substitute the present legal system.
- It merely supplements the present legal system

### ➤ The Constitution of India:

- **Article 21 Of the Constitution of India:** The Supreme Court has reiterated time and again that speedy justice especially in criminal matters, is the essential component of the fundamental right to life and liberty enshrined in Art. 21 of the Constitution of India.
- **Art. 39-A of the Constitution:** The Act is undoubtedly a progressive step towards the fulfillment of the directive principle relating to legal aid to poor as contemplated by this article, thus increasing the **Access to Justice** for Victims

- **The Civil Procedure Code:** The amendments made to the Code of Civil Procedure by Amendment Act 46 of 1999 and Amendment Act 22 of 2002 seeks to institutionalize the ADR techniques in the Indian judicial system.

- **Section 89** has been introduced in the CPC which says : in any dispute before it, if the court finds that there exist elements of a settlement which may be acceptable to the parties, then the court should formulate the terms of settlement and give them to the parties for their observation and after receiving the observation of the parties, the court may re-formulate the terms of a possible settlement and refer the same for either Arbitration, Conciliation, or Negotiation, a settlement through Lok Adalat or Mediation.
- **Sec. 89 (2) (b) (C.P.C)**. Where a dispute has been referred to Lok Adalat, in accordance Section 20 of the Legal Services Authorities Act 1987 all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat.

- **Section 96 (3) of the CPC** says that the Lok Adalat will pass the award with the consent of the parties. Therefore, there is no need, either to reconsider or review the matter again, as the award passed by the Lok Adalat shall be final.
- Therefore, no appeal shall lie from a decree passed by the Court with the consent of parties.
- The award of the Lok Adalat is an order by the Lok Adalat with the consent of the parties, and it shall be deemed to be a decree of the civil court, therefore an appeal shall not lie from the award of the Lok Adalat as under Section 96(3) CPC.

- **The Court Fee Act, 1870.** In the event of a matter determined by compromise or settlement by a Lok Adalat in a case referred to it by a court, the Court – fee is to be refunded in the manner laid down the Court Fee Act, 1870.
- **Code of Criminal Procedure (1973):** Section 320 (1) and (2) of the Code of Criminal Procedure states that the offences compoundable under section 320 (1) and (2) of the Code of Criminal Procedure 1973 are disposed of by the Lok Adalat through a compromise between the victims and the offender

### **TYPES OF LOK ADALATS**

- Prison Lok Adalat, are being arranged inside the prisons to provide the under trial prisoners access to speedy justice. It is suggested that other prisoners should also be brought within the purview of Lok Adalat.
- Provident Fund Lok Adalat,
- Labor Law Adalat, etc
- Bijli – (Electricity) Adalat ( consumer protection remedies like Transport. Telephone etc)
- Permanent and continuous Lok Adalats

<b>CASES DISPOSED OF IN THE CENTRAL PRISON IN TAMIL NADU AS ON 29.02.2008</b>				
Place	Date of Inauguration	Adalats Held	Cases Referred	Cases Disposed
Chennai	15.08.2000	275	25,802	5,143
Madurai	21.12.2000	296	3,837	2,069
Trichy	18.02.2001	268	2,329	2,000
Vellore Men Women	31.03.2001	257  222	398  90	217  11
Cuddalore	30.08.2002	134	484	344
Salem	27.09.2003	347	721	709
Tirunelveli	12.02.2005	39	143	88
Coimbatore	02.04.2005	148	669	358
Alandur	-	66	562	562
		2,052	35,035	11,501

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<b>LOK ADALAT ORGANISED BY THE TAMIL NADU STATE AUTHORITY, HIGH COURT LEGAL SERVICES COMMITTEE, DISTRICT AUTHORITIES AND TALUK COMMITTEES</b>		
	Particulars	Figures relating to Legal Services Authority for the period from 01.11.97 to 29.02.2008
	Number of Lok Adalats	32,235
1	Motor Accident	63,700
	Award Secured	Rs.478,35,55,798-04
	OTHER CASES:	
2	Civil	11,176
3	Matrimonial	5,319
4	Criminal/Compoundable IPC	22,795
5	Land acquisition	12,007
	Award Secured	Rs.86,13,21,008-00
6	Labour Court	812
	Award Secured	Rs.1,57,69,879-75
7	Family Court	428
8	Family Court Appeals	3

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STATEMENT SHOWING THE NUMBER OF LOK ADALATS HELD, 10/13/2008 CASES SETTLED AND AMOUNT AWARDED INCLUDING, SPECIALISED LOK ADALATS, FOR THE PERIOD FROM 1986 TO 29.02.2008			
YEAR	ADALATS HELD	CASES SETTLED	AMOUNT AWARDED RS. P. P.
1986 to 31.10.1997 (Legal Aid Board)	2,690	62,552	207,44,45,683-22
01.11.97 to 31.12.1997	78	1,787	9,47,49,412-00
1998	687	14,897	85,97,63,386-54
1999	476	13,259	74,80,29,244-00
2000	940	9,664	62,37,52,965-00
2001	1,153	10,547	89,21,15,108-00
2002	4,231	12,992	105,77,08,923-98
2003	5,781	45,194	188,00,96,412.62
2004	6,851	49,231	183,65,46,210-29
2005	4,483	41,933	141,93,63,988-83
2006	3,510	52,166	120,56,17,790-07
2007	3,290	28,148	134,87,10,202-85
01.01.2008 to 29.02.08	755	7,841	34,00,71,263-00
TOTAL	34,925	3,50,211	1438,09,70,590-40

TYPE OF CASES THE LOK ADALAT handles : A Lok Adalat has the jurisdiction to settle, by way of effecting compromise and rendering Justice to Victims -	
➤	<b>Any civil dispute</b> with a public utility service and where the value of the property in dispute does not exceed Rupees ten lakhs or
➤	<b>Any criminal dispute</b> which does not involve an offence not compoundable under any law, ie any compoundable offence can be taken up in the Permanent Lok Adalat.

- any matter which may be pending before any court

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- as well as matters at pre-litigative stage ie disputes which have not yet been formally instituted in any Court of Law.
- Such matters may be civil in nature or criminal in nature,
- Lok Adalats can take cognizance of matters involving not only those persons who are entitled to avail free legal services but of all other persons also, be they women, men or children and even institutions.

- Though the Lak Adalat lends itself to easy settlement of money claims there is scope for settlement of other disputes as well.

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- Partition suits, damages and matrimonial cases can be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases.
- The nationalized banks and other financial institutions are the biggest victims in all the civil courts throughout the country

S.no	Offence	Sect IPC	Person by whom offence may be compounded
	2	3	4
1	Uttering words etc, with deliberate intent to wound the religious feelings of any person	298	The person whose religious feelings are intended to be wounded
2	Causing hurt	323, 334	The person to whom the hurt is caused
3	Wrongfully res –training or confining any person	341,3 42	The person restrained or confined
4	Assault or use of criminal force	352,3 55 358	The person assaulted or to whom criminal force is used
5	Mischief, when the only loss or damage caused is loss or damage to a private person	426, 427	The person to whom the loss or damage is caused
6	Criminal trespass	447	The person in possession of the property trespassed upon
7	House – trespass	448	-do -
8	Criminal breach of contract of service	491	The person with whom the offender has contracted.
9	Adultery	497	The husband of the woman

10	Enticing or taking away or detaining with criminal intent of a married woman	498	-do -
11	Defamation, except such cases, as are specified against Section 500 of the IPC	500	The person defamed
12	Printing or engraving matter, knowing it to be defamatory	501	-do -
13	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter	502	-do-
14	Insult intended to provoke a breach of the peace	504	The person insulted
15	Criminal intimidation except when the offence is punishable with imprisonment for seven years	506	The person intimidated
16	Act caused by making a person believe that he will be an object of divine displeasure	508	The person against whom the offence was committed.
17	Voluntarily causing hurt by dangerous weapons or means	324	The person to whom hurt is caused
18	Voluntarily causing grievous hurt	325	-do-

19	Voluntarily causing grievous hurt on grave and sudden provocation	335	-do -	10/13/2008
20	Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of other	337	-do -	
21	Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others	338	-do-	
22	Wrongfully confining a person for three days or more	343	The person confined	
23	Wrongfully confining for ten or more days	344	The person confined	
24	Wrongfully confining a person in secret	346	-do -	
25	Assault or criminal force to woman with intent to outrage her modesty	354	The woman assaulted to whom the criminal force was used.	
26	Theft, where the value of property stolen does not exceed two hundred and fifty rupees	379	The owner of the property stolen.	27

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27	Theft by clerk or servant of property in possession of master, where the value of the property does not exceed two hundred and fifty rupees	381	-do -	10/13/2008
28	Dishonest misappropriation of property	403	The owner of the property misappropriated.	
29	Criminal breach of trust, where the value of the property does not exceed two hundred and fifty rupees	406	The owner of the property in respect of which the breach of trust has been committed.	
30	Criminal breach of trust by a carrier where the value of the property does not exceed two hundred and fifty rupees	407	- do -	
31	Criminal breach of trust by a clerk or servant, where the value of the property does not exceed two hundred and fifty rupees	408	-do -	
32	Dishonesty receiving stolen, when the value of the stolen property does not exceed two hundred and fifty rupees.	411	The owner of the property stolen.	

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33	Assisting in the concealment or disposal of stolen property, knowing it to be stolen, where the value of the stolen property does not exceed two hundred and fifty rupees	414	-do-
34	Cheating	417	The person cheated
35	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect	418	- do -
36	Cheating by personating	419	- do -
37	Cheating and dishonestly inducing delivery of property or the making alteration or destruction of a valuable security	420	- do -
38	Fraudulent removal or concealment of property etc. to prevent distribution among creditors	421	The Creditors who are affected thereby.
39	Fraudulently preventing from being made a available for his creditors a debt or demand due to the offender	422	- do -
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40	Fraudulent execution of deed of transfer containing false statement of consideration	423	The person affected thereby	10/13/2008
41	Fraudulent removal or concealment of property	424	The person affected thereby	
42	Mischief by killing or maiming animal of the value of ten rupees or upwards	428	The owner of the animal	
43	Mischief by killing or maiming cattle, etc. of any value or any other animal of the value of fifty rupees or upwards	429	The owner of the cattle or animal	
44	Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person	430	The person to whom the loss or damage is caused	
45	House trespass to commit an offence (other than theft) punishable with imprisonment	451	The person in possession of the house trespassed upon	
46	Using a false trade or property mark	482	The person to whom loss or injury is caused	
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47	Counterfeiting a trade or property mark used by another	483	The person whose trade or property mark is counterfeited
48	Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark	486	- do-
49	Marrying again during the life time of a husband or wife	494	The husband or wife of the person so marrying
50	Defamation against the president or the Vice President or the Governor of a State or the Administrator of a Union Territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the public	500	The person defamed
51	Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman	509	The woman whom it was intended to insult or whose privacy was intruded upon.

### COMPOSITION OF TEAM conducting the lok adalat:

The team of consists off

- retired judicial officers
- service oriented advocates
- Academicians
- non political social workers
- women lawyers and
- woman social workers

**PROCEDURE:** The Lok Adalat shall be guided by the principles of

- natural justice
- objectivity
- fair play
- equity and
- Access to justice other principles of justice

without being bound by the

- Code of Civil Procedure and
- The Indian Evidence Act.

➤ Permission of the High court would be sought for the following:

- For holding a Lok Adalat
- For the functionaries of the legal aid system to scrutinize the records in the court and
- To obtain copies of the documents for documentation.
- To sit at the venue of the Adalat on the day of the Adalat.

- A list of cases in which both the victims and the offender have agreed to the matter being placed before the Adalat will be prepared.
- The cases would be documented and a preliminary discussion with the victims and the offender will be conducted.
- To enable the Courts to refer more contentious matters to Lok Adalats repeated sittings are also possible to the victims and the offender
- The settlement is achieved by explaining to the victims and the offender concerned that settlement must be carried out voluntarily and that their intervention is purely to lead the victims and the offender to an amicable settlement through persuasion and perseverance.
- Finally, if when a consensus is reached the dispute is settled.

### **Benefits of the Lok Adalats for the Victims:**

The benefits for the Victims receive through the Lok Adalat are multifaceted

- A Free and speedy disposal of the case.
- Not merely disputes are settled but goodwill is generated that ensures healing.
- The Adalat is an endeavor to put into practice the concept of taking justice to the doorsteps of the poor the needy.
- Victims and the offender are settling matters in these courts by a persuasive group of lawyers.

- The victims and the offender may be represented by their advocate or they can interact with the Lok Adalat judge directly and explain their stand in the dispute and the reasons thereof, which is not possible in a regular court of law.
- The disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat.
- The final order is capable of execution through legal process.

- a psychological reparation
  - financial benefits
  - a chance for reconciliation
  - Their views are heard and they are allowed to express the impact of the victimisation.
  - There is chance for an apology and restoration of relationship in the case of matrimonial disputes.
  - There is no strict application of the procedural laws and the Evidence Act.
- The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes.

- The victims and the offender may be represented by their advocate or they can interact with the Lok Adalat judge directly and explain their stand in the dispute and the reasons thereof, which is not possible in a regular court of law.
- The disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat.
- The final order is capable of execution through legal process.

### **CONCLUSION:**

It is evident from success of the alternate dispute resolutions like Arbitration, Mediation, Lok Adalats, Conciliation, and Negotiation, that India has taken the giant step towards the path to restorative Justice.

The process of the ADR in India, has the three common elements with the Restorative Justice process :

- Healing
- Victim offender mediation
- Apology and reintegration

According to Mika & Zehr the following are the "signposts" developed to

identify Restorative Justice processes :

- Focusing on harms suffered rather than laws broken.
- Showing a balanced concern for the victim and offender and involving both in the criminal justice process.
- Working toward restoration of victims through empowerment and response to their needs
- Supporting the offender and simultaneously encouraging him or her to understand, accept, and carry their commitments to repair the harm.

- Recognizing offenders' need to fulfill obligations which are restorative and not retributive in nature.
- Providing opportunities for direct and indirect victim offender dialogue.
- Involving and empowering the community through the judicial process, particularly by increasing its capacity to recognize and respond to crime.
- Encouraging collaboration and reintegration rather than coercion and separation
- Paying attention to the unintended results of activities and programs.
- Showing respect for the dignity of everybody, particularly victims, offenders, and colleagues concerned with justice.

## CHALLENGES AHEAD

- Victims rights are also recognized as Human rights and
- There is a balance between the rights of the accused and the rights of the victims and one is not sacrificed for the other and
- There as a realization that there is a great injustice to victims underlying the statement - '***a hundred accused can go free but one innocent man should not be punished***' which when rephrased is actually read as '***A hundred Victims can be denied Justice but one accused should not be denied Justice!***' and
- if this is the principle underlying our Criminal Justice Systems world over, leading to our understanding of Justice, I would like invite you all to contemplate if ours is a Criminal ***Justice*** System or A ***Criminal*** Justice System !

- ✘ India has reviewed its Laws the outcome are the Recommendations of the Justice Malimath's Committee on reforms of the Criminal Justice System. A Section deals with Justice to Victims, which when implemented would make Victim Justice in India a reality and not merely a rhetoric.

**QUESTIONS ?**

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**THANK YOU**

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