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UNREVIEWABLE CONSENT: SECTION 21 OF THE LEGAL SERVICES AUTHORITIES ACT, 1987 AFTER THE MEDIATION ACT, 2023

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ABSTRACT

Two Indian statutes now make a settlement reached without adjudication enforceable as a decree of a civil court. One permits that settlement to be set aside for fraud, corruption or impersonation. The other permits nothing at all. The statute that permits nothing is the one designed for litigants who cannot afford a lawyer. This article argues that because a Lok Adalat exercises no adjudicatory function, genuine consent is the sole jurisdictional fact upon which its award rests, and that Section 21 of the Legal Services Authorities Act, 1987 renders precisely that fact unreviewable. It argues further that the Mediation Act, 2023, having constructed a graduated protective architecture around consensual settlement, expressly declined in Section 26 to extend any part of it to Lok Adalats. The article proposes a narrow correction drawn from language Parliament has already enacted.

Keywords: Lok Adalat; Legal Services Authorities Act, 1987; Mediation Act, 2023; access to justice; consent; finality of awards.

I. INTRODUCTION

Indian law now contains two statutory routes by which a settlement reached without adjudication acquires the force of a civil decree. A mediated settlement agreement is enforceable as a decree under the Mediation Act of 2023, and it may be contested on specific grounds such as fraud, corruption, and impersonation.¹

¹ Sections 27–28 of the Mediation Act, 2023 (Act No. 32 of 2023). The Act was published in the Indian Gazette on September 15, 2023, after receiving the President's assent on September 14, 2023. It will take effect on a date that the Central Government may specify. Within the allotted time, Section 28 allows a mediated settlement

An award made by a Lok Adalat is considered a civil court decision under the Legal Services Authorities Act of 1987. It is final, binding on all parties involved, and cannot be appealed to any court.²

The asymmetry deserves attention chiefly because of who stands on each side of it. Mediation under the 2023 Act is, in practice, the resort of commercially capable parties advised by counsel. The Lok Adalat was conceived for those whom the ordinary courts had failed to reach: the litigant deterred by cost, delay, distance and unfamiliarity. It is the principal institutional expression of Article 39A of the Constitution. Yet it is the commercially capable party, and not the indigent one, whom Parliament has equipped with a statutory remedy against a settlement procured by fraud.

This article advances three claims. The first is that the Supreme Court's settled characterisation of the Lok Adalat as a purely non-adjudicatory body carries a consequence not fully worked out in the case law: consent is not merely one condition of a valid award but its entire jurisdictional foundation.³ The second is that Section 21 places substantial legal consequence upon that foundation while foreclosing any mechanism capable of testing it, so that the single fact on which validity depends is the one fact no forum meaningfully reviews. The third is that the Mediation Act, 2023 arrived with a ready template for correcting this and chose, in terms, to leave the older statute where it stood.

Part II sets out the statutory bargain. Part III establishes the centrality of consent. Part IV shows how much Section 21 rests upon it. Part V identifies the gap and draws the comparison with the 2023 Act. Part VI proposes a narrow reform.

II. THE STATUTORY BARGAIN

Article 39A of the Constitution is implemented by the Legal Services Authorities Act of 1987, which mandates that the State ensure that the legal system operates in a manner that promotes justice on the basis of equal opportunity. This includes the provision of free legal aid to ensure that opportunities to secure justice are not denied due to economic or other disabilities.⁴ The Lok Adalat is the Act's principal dispute-resolution instrument. Three features of the scheme matter for the present argument.

First, the Act regulates *referral*. Where a matter is referred by a court, no case may be

agreement to be contested on the grounds of fraud, corruption, or impersonation, or if the mediation was carried out in relation to a matter that the Act does not allow for mediation.

² Legal Services Authorities Act, 1987 (Act No. 39 of 1987), s. 21.

³ State of Punjab v. Jalour Singh, AIR 2008 SC 1209.

⁴ Constitution of India, art. 39A.

referred to a Lok Adalat without giving the parties an opportunity of being heard.⁵

It is worth being precise about where that safeguard operates. It attaches at the point of referral, before the parties have entered into any negotiation over terms. It secures the party's right to object to the *forum*. It says nothing whatever about the *outcome*.

The Act also imposes a jurisdictional limit of substance: a Lok Adalat has no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.⁶ Parliament thereby acknowledged, at least in the criminal context, that some disputes are unsuited to disposal by compromise, that consent cannot legitimate every outcome. The recognition is significant, and this article returns to it.

Second, the Act also governs effect. Every Lok Adalat award is regarded as a civil court decree; it is final, binding on all parties, and cannot be appealed to any court.⁷

Third, that finality extends to the Permanent Lok Adalat, whose awards the Supreme Court has confirmed are likewise final and not open to challenge in appeal.⁸ This warrants a pause. Permanent Lok Adalats constituted for public utility services may, where conciliation fails, proceed to decide the dispute on its merits.⁹ Identical finality therefore attaches to a settlement the parties negotiated and to a determination imposed upon them, two very different things carrying one consequence.

Taken together, these provisions constitute a bargain. The litigant surrenders the appellate rights that attend ordinary civil litigation and receives in exchange a forum that is free, immediate and procedurally undemanding. There is nothing objectionable in the structure of such a trade; comparable exchanges underpin arbitration and much of statutory tribunal practice. The question this article presses is narrower: whether the trade has been correctly priced, whether what the Act returns is adequate to what it takes away, given who is being asked to accept it.

III. NO ADJUDICATION, THEREFORE NOTHING TO REVIEW

The Supreme Court has been consistent that a Lok Adalat does not adjudicate. In *State of Punjab v. Jalour Singh*, the Court held its jurisdiction to be non-adjudicatory, and drew from that premise a conclusion of considerable practical reach: The ruling is not an award of the Lok

⁵ Legal Services Authorities Act, 1987, s. 20.

⁶ *Ibid.* The Act provides that a Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

⁷ *Ibid.*, s. 21.

⁸ *Canara Bank v. G.S. Jayarama*, Supreme Court of India, judgment dated 19 May 2022, noting that awards under ss. 21 and 22-E of the Act are final and cannot be challenged in an appeal.

⁹ The Permanent Lok Adalat was introduced by the Legal Services Authorities (Amendment) Act, 2002.

Adalat at all if the parties have not signed a compromise or settlement and the order makes no mention of any settlement.¹⁰

The document may bear the forum's name and carry its form; absent a recorded compromise it has no statutory existence. High Courts have applied the same characterisation, describing awards under the 1987 Act as resting on mutual settlement and compromise rather than on adjudication.¹¹

The characterisation is now beyond argument. Its implication, however, has not been fully drawn out.

If a Lok Adalat neither receives evidence nor determines rights, then nothing internal to its process generates the legitimacy of its award. An ordinary decree is legitimate because a judge heard evidence, applied law and gave reasons; those reasons are precisely what an appellate court examines. A Lok Adalat award has no such content. What it has, and all that it has, is the agreement of the parties. Consent is therefore not one condition among several. It is the sole jurisdictional fact. Remove it and, on the reasoning of *Jalour Singh* itself, there is no award but a nullity wearing the appearance of one.

That places a heavy burden on the mechanism by which consent is established, and it is here that the doctrine reaches its limit. *Jalour Singh* asks whether a compromise was signed and whether the order refers to it. Both are questions about the presence of a document. Neither is a question about the state of mind of the person who signed it. A reviewing court applying *Jalour Singh* can confirm that a signature appears on a page. It has no means of determining whether that signature records a choice the party wished to make, or a capitulation to the pressure of a forum in which the party appeared without counsel, possibly in a language not their own, before a presiding officer whose institutional performance is measured by disposal.

The doctrine, in short, polices the form of consent and stops there. That would be unremarkable in a scheme providing some further route for testing substance. Section 21 provides none.

IV. WHAT SECTION 21 DOES ANYWAY

Against that thin foundation, Section 21 is strikingly generous in the consequences it attaches.

The clearest illustration is *K.N. Govindan Kutty Menon v. C.D. Shaji*, where the Supreme

¹⁰ *Jalour Singh* (n 3).

¹¹ Letters Patent Appeal No. 1688 of 2019 (Patna High Court), judgment dated 6 August 2024 (the Chief Justice and Partha Sarthy J), holding that awards passed by Lok Adalats under the Legal Services Authorities Act, 1987 are not adjudicatory in nature but are based on mutual settlement and compromise, and can be challenged only under Article 226 of the Constitution before the High Court.

Court addressed the interpretation of Section 21 directly.¹² The Magistrate sent a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 to a Lok Adalat, where the parties reached a settlement that was documented in an award. The Court determined that the award was enforceable as a civil court judgment.

The transformation deserves to be stated plainly. A criminal complaint enters the forum. What emerges is an executable civil decree against which no appeal lies. The conversion is effected not by any judicial determination but by the agreement of the parties, given statutory force by Section 21. Whatever may be said for the outcome as a matter of efficient disposal, it demonstrates how much legal consequence the section is prepared to build upon a signed compromise. The finality is equally firm: awards under Sections 21 and 22-E cannot be assailed in appeal.¹³

Yet the award's legal character is not uniformly robust. In *New Okhla Industrial Development Authority v. Yunus*, the Supreme Court held that an award passed by a Lok Adalat cannot be said to be an award passed under Part III of the Land Acquisition Act, 1894; it is the compromise arrived at between the parties before the Lok Adalat which culminates in the award.¹⁴ The consequence was that the award could not be relied upon to invoke Section 28A of that Act, the provision by which other landowners may seek redetermination of compensation on the strength of an award made in favour of one among them.

Read together, the two decisions disclose an asymmetry worth naming. In *Govindan Kutty Menon* the award is strong enough to convert a criminal complaint into an enforceable civil decree. In *Yunus* it is too weak to constitute an award for the purposes of a benefit-conferring provision. The award's character appears to expand where it imposes obligations and to contract where it would confer entitlements.

Two qualifications are owed here. Each decision is defensible on its own statutory terms: the question in *Yunus* was the construction of a particular provision of the Land Acquisition Act, not the general status of Lok Adalat awards, and no inconsistency of reasoning is alleged. Nor is the pattern likely to be the product of design. But its incidence is not neutral. Enforcement under Section 21 typically runs against the individual party, while the entitlements in question as *Yunus* itself illustrates, are of the kind claimed by dispossessed

¹² K.N. Govindan Kutty Menon v. C.D. Shaji, Supreme Court of India, Civil Appeal No. 10209 of 2011 (arising out of Special Leave Petition (C) No. 2798 of 2010), judgment dated 28 November 2011 (Sathasivam and Chelameswar JJ).

¹³ Canara Bank (n 8).

¹⁴ *New Okhla Industrial Development Authority v. Yunus*, Supreme Court of India, judgment dated 3 February 2022, para 49.

landowners. Where the cumulative effect of unrelated decisions falls consistently on one side, that is a matter for legislative attention even where no court has erred.

V. THE GAP

A. *What no forum examines*

Because no appeal lies, the only avenue open to a party aggrieved by a Lok Adalat award is the constitutional jurisdiction of the High Court. The Patna High Court has recently confirmed the position in terms, holding that such awards, not being adjudicatory, can be challenged only under Article 226 before the High Court and doing so in a case where the challenge was founded on allegations of fraud and misrepresentation.¹⁵ Two difficulties attend that route.

The first is doctrinal. Writ jurisdiction is directed to jurisdictional error, procedural impropriety and illegality apparent on the record. It can determine whether a Lok Adalat exceeded its jurisdiction by entertaining a non-compoundable offence, for instance, whether the requirements attending referral were observed, or whether, following *Jalour Singh*, any compromise was signed at all. What it is not designed to do is inquire into the quality of a party's consent to terms. There is no record of the bargaining to examine, because the Act requires none to be kept. There are no reasons to test, because the forum gives none. The writ court is invited to review a process that, by statutory design, has left no reviewable trace.

The second difficulty is practical and, for present purposes, decisive. The party who must now approach a High Court is the party who came to a Lok Adalat because the ordinary courts were beyond their means. The remedy is available in inverse proportion to the need for it. A scheme that offers constitutional review as the sole recourse to a class of litigants defined by their inability to litigate has, in substance, offered very little. That writ review does occasionally succeed is not an answer; it is an observation about the small minority who reach it.¹⁶

It bears emphasis that the referral safeguard does not answer this. It operates before terms are discussed. Nothing in the Act attaches at the moment that actually determines the outcome, the moment of settlement.

¹⁵ LPA No. 1688 of 2019 (n 11). The appeal also raised whether a Debts Recovery Tribunal had jurisdiction to entertain a challenge to, or to recall, an award passed by a Lok Adalat on grounds of fraud or misrepresentation.

¹⁶ For an instance in the State of Chhattisgarh, the High Court was reported in January 2017 to have quashed an award of the Permanent Lok Adalat granting compensation of Rs. 97,200 with interest in a claim arising from a failed sterilisation procedure: 'High court quashes Lok Adalat's order', *The Times of India* (Raipur, 13 January 2017). Cited here as a press report of the outcome only.

B. What Parliament did in 2023, and declined to do

The Mediation Act, 2023 makes the omission harder to defend, because it demonstrates that Parliament knows how to build the protections the 1987 Act lacks.

The 2023 Act constructs a graduated architecture around consensual settlement. It provides for pre-litigation mediation undertaken voluntarily and with mutual consent.¹⁷ It identifies categories of dispute not fit for mediation at all.¹⁸ It imposes on the neutral a duty of disclosure in respect of conflicts of interest.¹⁹ It fixes a time limit for completion of the process.²⁰ It requires a mediated settlement agreement in defined form and provides for its registration.²¹ It requires a non-settlement report where mediation fails.²² It protects confidentiality and creates a privilege against disclosure.²³ It makes the settlement enforceable as a decree.²⁴ And it permits that settlement to be challenged on limited grounds, within a prescribed period, but challenged nonetheless for fraud, corruption, impersonation, or where the mediation concerned a dispute impermissible under the Act.²⁵

The contrast is set out below.

Feature	Legal Services Authorities Act, 1987	Mediation Act, 2023
Effect of settlement	Deemed decree of a civil court (s. 21)	Enforceable as a decree (s. 27)
Challenge for fraud	None; no appeal lies (s. 21)	Available (s. 28)
Limitation on challenge	Not applicable	Prescribed period (s. 28)
Neutral's disclosure duty	Not provided	Provided (s. 10)
Time limit on process	Not provided	Provided (s. 18)
Confidentiality and privilege	Not provided	Provided (ss. 22–23)
Record where no settlement	Return to the referring court	Non-settlement report (s. 21)
Excluded subject matter	Non-compoundable offences	Enumerated categories (s. 6)

¹⁷ Mediation Act, 2023, s. 5.

¹⁸ Ibid., s. 6.

¹⁹ Ibid., s. 10.

²⁰ Ibid., s. 18. The Act provides for completion of mediation within 180 days, extendable by a further period of 180 days by agreement of the parties.

²¹ Ibid., ss. 19–20.

²² Ibid., s. 21.

²³ Ibid., ss. 22–23.

²⁴ Ibid., s. 27.

²⁵ Ibid., s. 28.

Against that background, Section 26 of the 2023 Act provides that proceedings of the Lok Adalat and the Permanent Lok Adalat are not to be affected.²⁶

On its face this is a conventional savings clause, and it is easy to read past. Its effect, however, is to preserve the asymmetry set out above at the very moment when Parliament was legislating comprehensively on consensual dispute resolution and could have closed it. The 2023 Act does not merely fail to reform the 1987 Act. It legislates around it, and in doing so records a choice: the protective apparatus judged necessary for mediation was judged unnecessary for the forum handling the largest volume of disputes involving parties of least means.

A qualification is necessary, and it is one that sharpens rather than blunts the point. Several provisions of the 2023 Act, including those governing enforcement, are to come into force on such date as the Central Government may notify, and commencement has been staggered.²⁷ The asymmetry described here is therefore in part prospective. But the legislative choice has been made and enacted; what awaits notification is only the date on which it begins to bite. A commencement schedule is not a justification.

No principled basis for the distinction is apparent, and the relevant considerations run the other way. Parties to a commercial mediation ordinarily have counsel, comparable bargaining power, and the resources to detect and resist an improper settlement. Parties before a District Lok Adalat frequently have none of these. Where the risk of defective consent is greatest, the statutory response is weakest.

There is a further and more uncomfortable point. The 1987 Act already concedes the principle at issue. In excluding non-compoundable offences from Lok Adalat jurisdiction, Parliament accepted that consent cannot legitimate every disposition, and built a limit accordingly. The argument advanced here asks only that the same insight be applied where consent is alleged to have been procured by fraud rather than to have been directed at an inappropriate subject matter. The concession has been made; what remains is to follow it.

VI. A NARROW REFORM

The correction proposed here is deliberately modest, for three reasons. Lok Adalats dispose of an enormous volume of matters, and any reform materially slowing them would impose its own

²⁶ Mediation Act, 2023, s. 26.

²⁷ Mediation Act, 2023, s. 1. The Act comes into force on such date as the Central Government may by notification appoint, and commencement has proceeded in stages since the Act was published in the Gazette of India on 15 September 2023.

access-to-justice cost. The finality of settlements is, in the ordinary case, a benefit to both parties and should not be lightly disturbed. And a proposal is more likely to be adopted where it asks Parliament to extend language it has already approved than where it asks for something new.

The proposal is to import the grounds of Section 28 of the Mediation Act, 2023 into the Legal Services Authorities Act, 1987. An award of a Lok Adalat should be liable to be set aside on the grounds of fraud, corruption or impersonation, or where the matter was one over which the Lok Adalat had no jurisdiction, on application made within a fixed period. The application should lie to the court that made the referral rather than to the High Court, a forum the aggrieved party has already reached, at no further cost, and which holds the record.

It is worth being exact about what this does not do. It leaves Section 21's finality intact in every ordinary case. It restores no general right of appeal. It permits no reopening on the merits and no complaint that a party settled for less than a court might have awarded. It does not extend the timeline of any matter in which no allegation of fraud is made. It closes a single gap, on grounds Parliament has itself identified as sufficient to unsettle a consensual settlement, at a threshold Parliament has itself set.

A second and lighter measure merits consideration alongside it. If, on the reasoning of *Jalour Singh*, a signed compromise is the sole jurisdictional fact sustaining an award, the Act might reasonably require that fact to be recorded with more care than it presently is. A brief endorsement on the award confirming that the terms were explained to each party in a language they understand, that each party was informed of the right to decline settlement and return to the referring court, and that no party laboured under a representation-related disadvantage would create the minimal record that writ review currently lacks. It costs minutes, not months. And it would give substance to a safeguard which the Act presently gestures at but locates at the wrong stage of the process.

VII. CONCLUSION

Return to the comparison with which this article opened. Under the Mediation Act, 2023, a party defrauded into a settlement has a statutory route to have it set aside. Under the Legal Services Authorities Act, 1987, a party in the same position has a writ petition, before a High Court, against an award that contains no reasons and rests on a record that was never made.

The difference is not explained by the nature of the two processes, which are for present purposes the same: a consensual settlement given the force of a decree without adjudication. It is not explained by the relative capacity of the parties, which points firmly the other way. It is

explained only by the fact that the 1987 Act was drafted before these protections were thought of, and that the 2023 Act, having thought of them, chose in Section 26 to leave the older statute undisturbed.

The Lok Adalat was created to widen access to justice. It has been left with the narrowest remedial architecture in Indian settlement law. That a scheme founded on Article 39A should offer its users less protection than the scheme available to commercial litigants is a result no one appears to have intended, and one which the language of an Act already on the statute book is sufficient to correct.

