

News

Lakshadweep Bar Association requests Kerala High Court to abolish Mukthiyar system.



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Kerala HC and Lakshadweep Island

The Lakshadweep Bar Association has urged the Kerala High Court to abolish the Mukthiyar system prevalent in the Union Territory Infrastructural and Other Issues Relating to Administration of Justice in the Lakshadweep Islands.

The association made comments to this effect in its counter affidavit in a suo motu case started by the High Court to address issues pertaining to judicial infrastructure in Lakshadweep.

Mukthiyars are pleaders who, owing to their experience with customary laws relevant to the islands, are entitled to participate in court processes as power of attorney holders.

In Lakshadweep, Mukthiyars are mainly retired government personnel. They approach the litigants personally and get a mukhtyarnama executed in their favour even in criminal situations.

In its affidavit, the group stated that Mukthiyars act without any controls, posing a threat to the administration of justice itself.

"The Mukthiyar system currently in operation in Lakshadweep continues to function in the lack of any mandated norms, regulations, or institutional framework to oversee its practice. There is likewise no defined disciplinary authority to oversee or regulate the conduct of people functioning under this system. This lack of regulation creates a potential threat to the fair and impartial administration of justice," the affidavit stated.

With the existence of qualified lawyers practicing on the islands, litigants no longer require the services of mukthiyars.

"Therefore, the continuation of the Mukthiyar system, in the absence of legal oversight or regulation, may compromise the integrity of judicial proceedings and hinder the development of a robust, accountable legal system in Lakshadweep," the association concluded.

The amicus curiae designated by the Court to assist in this case, barrister Enoch David Simon Joel, likewise proposed that the Mukthiyar system be eliminated, albeit in a progressive way.

In the amicus report, Joel voiced concerns similar to those of the organization regarding the lack of rules governing the operation of Mukthiyars.

"There is no established qualifying qualification for a person to be a mukhtyar. There is no selection process, no instrument that relates to the powers/duties of mukhtyars and no authority to control or register the said class of mukhtyars. Anybody can appear in front of Court/legal authority claiming to be a mukhtyar and every Court/authority has to permit him to conduct or defend the case of his client," the amicus report added.

Notably, Joel added that Mukthiyars even wear black coats while appearing before the Court and provide a document known to as a mukhtyanama, saying they are licensed to represent the client.

He further claimed that Mukthiyars are typically not well acquainted in the law. This is damaging to the interests of litigants represented by them, especially in criminal matters.

"Mukhtyars being permitted to appear on behalf of accused in criminal cases is violative of the rights guaranteed to a citizen under Article 22(1) of the Constitution of India as well as under Section 340 of the Bharatiya Nagarik Suraksha Sanhita, 2023," the amicus said.

Joel ascribed the predominance of the system to the fact that the Advocates Act, 1961 has not been made applicable to the islands as the laws bans anyone who is not an advocate from practicing law before any court.

Therefore, Joel recommended for dismantling the system in a progressive way and for creating awareness amongst islanders regarding the lack of formal credibility of Mukthiyars.

The amicus, however, urged the Court to also safeguard the welfare of current Mukthiyars by creating a welfare system for them and maybe employing their skills in other conflict resolution methods such as mediation.

"The Lakshadweep Administration as well as the High Court of Kerala can think about framing of necessary Schemes under the Legal Services Authorities Act, 1987, wherein the service of such mukhtyars can be effectively utilised in alternate dispute resolution (ADR) proceedings" the amicus advised.

The Lakshadweep Muktyar Association has since approached the High Court seeking to be impleaded in the suo motu case.

The Association has indicated in its application that it would press for recognising Mukthiyars with a specified number of years of practice under their belts, as advocates under Section 24(3) of the Advocates Act.

Kerala High Court Suo motu Lakshadweep Union Territory of Lakshadweep Mukthiyar System