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## ROLE OF LEGAL AID IN INDIA

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### INTRODUCTION

The Legal Aid is very essential for the survival of human dignity. India is a democratic republic country. Its constitution consists of the existence of a peaceful and orderly society; justice must be reached to all human beings to secure justice in a democratic republic system. In the preamble of Indian Constitution, the word 'Justice' has been placed in priority order. The preamble to the Constitution of India speaks of justice, social, economic and political and of equality of status and opportunity. The main object behind this is to establish a system in which everyone gets the protection of laws and is treated equally in the manner of consuming his rights and getting remedies under the law. Hence the concept of justice is enshrined in our Constitution. The Right to Legal Aid is the most significant concept for achieving the aim of equal justice, which means the weaker section, the downtrodden, the ignorant, illiterate, and economically disadvantaged person should not be left without means of having recourse to judicial process.

The preamble to the Constitution of India speaks of justice, social, economic and political and of equality of status and opportunity. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws. Thus, Equality in the administration of justice is the basis of our Constitution. Indeed, equality is the base of all modern systems of jurisprudence and administration of justice. Equality before the law necessarily involves the concept that all the parties to a proceeding in which justice is sought must have an equal opportunity of access to the Court and of presenting their cases to the Court but access to the Courts is by law made dependent upon the payment of court fees, and the assistance of skilled lawyers is in most cases necessary for the proper presentation of a party's case in a court of law. In so far as a person is unable to obtain access to the Court of

law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose. Unless some provision is made for assisting the poor man for the payment of court fees and lawyer's fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice. The rendering of legal aid to the poor litigant is, therefore, not a minor problem of procedural law but a question of a fundamental right in its character.

14th Report of the Law Commission of India, submitted in September 1958, had produced one full chapter to Legal Aid. After tracing the historical development of this concept and making a study of the Indian needs for such a legal program, the commission, headed by Mr. M.C. Setalvad, recommended that:

1. Free legal aid to poor persons and persons of limited means is a service that the modern state and, in particular, a Welfare State owes to its citizens. The State must, therefore, accept this obligation and make available funds for providing such legal aid to poor persons and persons of limited means.
2. The legal profession must in the main, if not entirely, accept the responsibility for the, administration and working of schemes of legal aid. This responsibility should be discharged by profession by organizing and by serving on bodies which will render legal aid, and representing in courts poor persons or persons of limited means on the payment of only a proportion of the fees payable on taxation.
3. The legal profession owes a moral and social obligation to poor members of society, which must be discharged by every member of the profession doing a certain amount of legal work free for poor persons.
4. The scheme for legal aid to poor persons and persons of limited means outlined by the Committee on Legal Aid and Advice appointed by the Government of Bombay in 1949 and the scheme outlined by the West Bengal Committee should, with suitable modifications made in the light of local needs and conditions, be adopted by all states as soon as financial conditions permit.
5. The states should, pending the implementation of such schemes, make provisions for legal aid in gradual stages.
6. Measures in furtherance of legal aid should be adopted immediately.
7. Bar Associations should take immediate measures to render legal aid on a voluntary basis.

## **HISTORICAL BACKGROUND**

In India, After the 14th Law Commission Report, 1958, Justice P. N. Bhagwati Report, 1970-1971, and the Supreme Court Expert Committee Report, 1973, and many discussions on free Legal Aid since independence. Finally, in the year of 1976 the 42nd Amendment was made which incorporated the provisions of Free Legal Aid in the Constitution of India under Article 39A. The Indian Constitution does not expressly provide the right to free Legal Aid as a fundamental right but under the Directive Principles of State Policy. Article 39A provides for free Legal Aid in all cases involving indigent person and some statutory provisions have right to Legal Aid in India e.g. section 304 of The Code of Criminal Procedure, 1973, Order XXXIII of The Code of Civil Procedure, 1909, Sections 6 and 7 of The Advocates Act 1961, and Sections 8(c), and 37(1) g. The Juvenile Justice (Care and Protection of Children) Act, 2015, deals with the right to Legal Aid. Section 154 of The Protection of Civil Rights Act, 1955 provides the provision of adequate facilities including Legal Aid to the person subjected to any disability arising out of “Untouchability” to enable them to avail themselves of such rights and for the special provision of right to Legal Aid the National Legal Service Authority Act, 1987 was adopted throughout the country.

Section 12 of The Legal Services Authorities Act, 1987 provides the criteria for giving Legal Services. According to this section: 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 to 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 & Full Participation) Act ,1995
- 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(104 of 1956) or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of

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(14 of 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.

## **THE STRUCTURE OF LEGAL AID IN INDIA**

Despite the fact that there was a legal procedure giving the free legal aid, in criminal cases by providing an advocate for defending the case and in civil cases by absolving the court fees, still it was not so much having any critical effect on the ability of the oppressed individuals to get legal redressal for their problems. Consequently, the Legal Services Authorities Act, 1987 was passed by the Parliament of India under gigantic constitutional persuasion from Supreme Court. The Act recommends the rules and criteria for giving legitimate administration to the eligible people. "It makes a person eligible for help under the act if he is: -

1. A member of a Scheduled Caste or Scheduled Tribe;
2. A victim of human trafficking or beggar as per Article 23 of Indian Constitution;
3. A woman or a child;
4. A mentally ill or otherwise disabled person;
5. A person under circumstances of undeserved want such as being a victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster;
6. An industrial workman;
7. In custody, including custody in a protective home or in a juvenile home; or in a psychiatric hospital or psychiatric nursing home according to section 2 clause 9(g) of the Mental Health Act, 1987;
8. A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government.

It is expedient to discuss the judicial trends in India regarding the Legal Aid while discussing Constitutional and statutory provisions, reports and opinions of experts of the same. The Supreme Court has held that Legal Aid to the poor and deserving is part of personal liberty as enshrined in Article 21 of the Constitution.

In *M. H. Hoskot v. State of Maharashtra*<sup>1</sup>, the Supreme Court observed that free Legal Aid for a citizen is implicit in Article 21 and an essential ingredient of a reasonable, fair and just procedure. In this case, J. Krishna Iyer, observed: “if a prisoner sentenced to imprisonment is virtually unable to exercise his Constitutional and statutory right of appeal for want of legal assistance, there is implicit under Article 14 read with articles 21 and 39A of the Constitution, power to assign a counsel for such imprisoned individual for doing complete justice.”

In *Hussainara Khatoon v. State of Bihar*<sup>2</sup>, the court pointed out that Article 39A emphasized that free legal service was an inalienable element of “reasonable, fair and just” procedure and that the right to free legal services was implicit in the guarantee of Article 21.

In *Ajmal Kasab v. State of Maharashtra*<sup>3</sup>, the apex Court held that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, one would be provided Legal Aid at the expense of the State. The Court held that the duty provides him with a lawyer at the commencement of the trial is absolute unless the accused voluntarily makes an informed decision and tells the court, in clear and unambiguous words, that he doesn't need the help of any lawyer and would rather defend himself personally. Inability to do as such would vitiate the trial and the resultant conviction and sentence, if any, given to the accused. The Court in the directed all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceedings.

In *Mannan v. State of Bihar*<sup>4</sup>, Supreme Court held that the accused had the right to be provided with Legal Aid at all stages, including the stage of consideration of the question of sentence.

## CHALLENGES

Though Indian Model has transposed from a charity-based model to a utilitarian model on legal aid with Rawlsian remnants, it still falls short of crease in realizing Rawlsian principles. It is also argued that liberty of 'access to justice' is offered an inferior position under the wide

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<sup>1</sup> AIR 1978 SC 1548.

<sup>2</sup> (1980) 1 SCC 98

<sup>3</sup> (2012) 9 SCC 1.

<sup>4</sup> AIR 2019 SC 2934.

array of liberties entrenched under the Indian Constitution. The empathetic expressions of the Indian Supreme Court haven't found adequate space under the statutory scheme conceived by the Parliament. The Indian story fails to narrate effective discourses on equality principle as well as difference principle. This can be highlighted as:

Firstly, Indian model fails to fine tune an effective balance between values of efficiency and quality disposal. It appears justice' has been forsaken from 'access to justice': This could be<sup>5</sup> illustrated through the functioning of the Lok Adalats. They have emerged as case disposal mechanism, entirely inconsistent with the purpose for which they were created - which was the speedy delivery of justice.<sup>6</sup> In its pursuit of speedy disposal of cases some serious compromise in quality disposal and unsolicited matters being dealt by Lok Adalats is not unknown.

Secondly, to realize Rawls' difference principle a more equitable scheme of incentives for lawyers needs to be implemented. Individual liberty of 'access to justice is likely to be significantly compromised in absence of adequate incentives for lawyers to take people from the vulnerable section.

Thirdly, paralegals are placed at the heart of legal aid scheme under the Legal Services Authorities Act, 1987. Paralegal volunteer' means a paralegal volunteer trained as such by Legal Services Institution."<sup>7</sup> The irony is, the eligibility criteria, responsibilities, training and remuneration of paralegals are either not provided in the Act / Regulations or provided extremely poorly. Indian Institute of Paralegal Studies attempted to define the functions of paralegals which go on to show their greater significance in the entire functioning of legal aid<sup>8</sup> in the country.

The legal aid system in India has proven ineffective to provide and avail the free legal assistance certain difficulties and challenges are being experienced in our nation. The issues with regard to the provisions of free legal assistance to the needy people getting increased day-by-day and the challenges have also been taking its growing rapidly. Under these circumstances, the National Legal Services Authority, being the Strewed, with the strength of the State Legal Services Authorities, being its forefront warriors, is taking the relentless effort to find out solutions with the active assistance of the Government both Central and State to tackle the situation. Given below is the analysis of the difficulties (issues) and challenges in

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<sup>5</sup> Institutions created under the Legal Services Authorities Act, 1987, for speedy disposal of compoundable cases

<sup>6</sup> Report on the Study of Notional Legal Services Authorities Act in the State of Gujarat

<sup>7</sup> National Legal Services Authority (Free and Competent Legal Services) Regulations, Regulation 2(f) (2010)

<sup>8</sup> Supra Note 40

providing free legal assistance to the poor and marginalized people and also reach out the solutions.

The right to legal aid is not always freely available, restrictions and regulations while exercising this right is always there. To this, the apex court has held that when on a non-evidential basis, a party to a dispute keeps insisting that the amicus curiae hasn't performed his role effectively, the court should disband the counsel and look for another one with proper judicial scrutiny.<sup>9</sup> The purpose of the Article 39A is also defeated when an inexperienced young lawyer would be appointed to defend the accused. But to deal with this issue, the court has observed that since international charters provide for adequate and effective defence, it can be construed that Legal aid was given under Article 39A also implies that the council appointed by the State should also be competent to defend the accused."<sup>10</sup> Where the counsel provided by the state<sup>11</sup> failed to appear for the hearing of the case on the fixed date and the case was decided against the interest of the accused, the Supreme Court did intervene in such a case in *Jainendra Kumar v. State of Maharashtra* and set aside the High Court's verdict and issued instructions for a fresh hearing.<sup>12</sup>

#### **RECOMMENDATIONS FOR IMPROVEMENT:**

- It is suggested that it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. For that judiciary needs the support from state administration to conduct legal literacy programme.
- The judiciary should focus more on Legal Aid because it is essential in this present scenario where gulf between haves and have-nots is increasing day by day. And elimination of social and structural discrimination against the poor will be achieved when free Legal Aid is used as an important tool in bringing about distributive justice.
- There are number of precedents as well as legislations to up hold the right to free legal aid but they have just proven to be a myth for the masses due to their ineffective implementation. Thus, the need of the hour is that one should need to focus on effective and proper implementation of the laws which are already in place instead of passing new legislations to make legal aid in the country a reality instead of just a myth in the minds of

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<sup>9</sup> State NCT of Delhi v. Navjot Sandhu (2005) 11 SCC 600

<sup>10</sup> State of Haryana v. Darshana 1979 AIR 855

<sup>11</sup> Sheela v. State of Maharashtra, AIR 1983 SC 378

<sup>12</sup> Jainendra kumar v. State of Maharashtra (1990) Supp SCC 777

the countrymen. In providing Legal Aid, the Legal Aid institutions at all level should use proper ADR methods so as to speed up the process of compromise between parties to the case and with that matter will be settled without further appeal.

- Legal literacy is the basis for the survival of the constitutional democracy in any country and can bring a radical change in the society. The judicial system in India works on the presumption that all the citizens are aware of their rights and can approach the concerned institution. Educating individuals regarding issues affecting their lives regulated by the law, is legal education.
- Legal awareness can empower a person to demand justice and effective remedies at all levels. Each and every person should be made aware of the basic law of the country. Basic level of legal education should be made compulsory in the school. Awareness of the legal know-how helps the citizens to exercise their rights and duties and comply with the law.
- Legal-Aid literacy, knowledge and education should be promoted and developed with association of pamphlets, Newspapers, Magazines, T.V., Radio, Booklets, Handbooks, Dairies and Posters or other related things also should be distributed to people or masses for its awareness and accessibility. Awareness, literacy, knowledge Accessibility towards masses or people should also be by electronic means as e-media, social media, social sites etc.

## **CONCLUSION**

The protection of law to poor, illiterate and weak is important to ensure equal justice. Legal Aid is one of the means to ensure that the opportunities for securing justice are not denied to any person by reason of poverty, illiteracy, etc. Rule of law and equality before law are the essential pillars of a democracy. Indian polity has adopted them as the fundamental rights of its citizens, enshrined in the Constitution of Indian Republic. Though desirable, real equality amongst the people of a society never exists in any system of governance. And the litigating persons, unequal in their muscles and money-power, find this inequality, in a complex, cumbersome and a costly system of administration of justice, interfering with their equal standing before the law of the land makes their stature unequal - one is a privileged and other a pauper. Faced with such a reality of life, the rulers of the country and the persons with a democratic bias find a remedy in Legal Aid to the one lower in social status amid weaker in his economic means. Legal Aid, as a leverage provision, lifts the deprived and the destitute to

make him stand equal to his adversary - one moneyed and muscled. Legal Aid is free legal assistance to the poor and weaker sections of the society with the object to enable them to exercise the rights given to them by law.

Justice P.N. Bhagwati has rightly said that "the poor and the illiterate should be able to approach the Courts and their ignorance and poverty should not be an impediment in the way of their obtaining Justice from the Courts." The Constitution of India gives much emphasis on the constitutionalism and rule of law. In India the rule of law is regarded as a part of the basic structure of the Constitution and also of natural justice. The rule of natural justice says that individuals should not penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the cases against them, a fair opportunity to answer them, and the opportunity to present their own cases.