



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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LEGAL AID IN INDIA

~Nupur Mehra

INTRODUCTION-

Helping the poor litigants in resolving their disputes is regarded as a divine social service. Legal aid is treated as human rights in civilized societies across the world. The UDHR (Universal Declaration of Human Rights) adopted and proclaimed by the United Nations General Assembly, confers obligation on states to promote respect for rights and freedom by innovating progressive measures in every sphere of human life. In the present scenario, in more than 132 nations out of 193 UNO member states, a mechanism for rendering legal aid to needy and poverty ridden persons, specifically in criminal trials, has been made. In India also, the same mechanisms are being followed to provide legal assistance to the poor and needy litigants.

LEGAL AID IN THE FIELD OF ADR-

In the field of Alternate Dispute Resolution, legal aid assumes great significance because ADR proceedings often involve legal and procedural complexities. In India, Legal aid helps economically weaker parties participate effectively in disputes resolution mechanisms such as arbitration, mediation, conciliation, and Lok Adalats.

HISTORICAL BACKGROUND AND DEVELOPMENT OF LEGAL AID IN INDIA-

During pre-independence period, India did not possess any organized legal aid system. Poor litigants were mainly dependent upon voluntary organizations, charitable institutions, and socially conscious lawyers for legal assistance. The judicial system largely remained accessible only to financially capable people. After independence, India adopted the concept of “welfare state.” The government recognized that democracy would remain incomplete without social and economic justice. Consequently, attention was given to the establishment of an effective legal aid system.

A major step in the development of legal aid occurred in 1958 when the Law Commission of India, under the chairmanship of MC Setalvad, submitted its 14th report titled ‘‘Reform of judicial administration’’. The commission emphasized that equal justice could not be achieved unless legal assistance was made available to poor people. It recommended state-sponsored legal aid programmes to simplify legal procedures.

In 1980, the government established the committee for implementing legal aid schemes under the chairmanship of PN Bhagwati. The committee played a vital role in spreading legal awareness and promoting legal aid programmes throughout the country.

THE ESTABLISHMENT OF LEGAL SERVICES AUTHORITIES ACT, 1987-

One of the important legislative developments in the field of legal aid was the enactment of the Legal Services Authorities Act, 1987. The Act came into force on 9th November, 1995. Its main objective is to provide free legal services to weaker sections of society, to ensure equal opportunities for securing justice, to organize Lok Adalats for amicable settlement of disputes and to promote justice through inexpensive and speedy procedure. The Act established a nationwide legal aid framework consisting of National Legal Service Authority (NALSA), State Legal Service Authority (SALSA), District Legal Service Authority (DLSA); and Taluk Legal Services Committees.

LEGAL AID UNDER CONSTITUTION OF INDIA-

There are several benefits being given in the Constitution of India, 1950, to the economically weaker sections and to those who cannot get access to justice and legal aid. Article 14 guarantees equality before law and equal protection of law. True equality cannot exist unless every person has equal access to legal remedies and justice. Article 21 provides protection to life and personal liberty. The Supreme Court interpreted this provision broadly in several cases such as *Maneka Gandhi v. Union of India*¹ and *Hussainara Khatoon & Ors vs Home Secretary, State of Bihar*²

to include the right to fair procedure and access to justice.

Article 22 provides ‘no person who is arrested, shall be detained in custody without being informed, as soon as may be, of grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice, so that legal aid can't be denied to anyone

¹ (1978) 1 SCC 248

² (1980) 1 SCC 98

to ensure equality and access to justice. Article 39(A) directs the state to ensure that the legal system promotes justice based on equal opportunity and to provide free legal aid so that justice is not denied to any citizen because of economic or other disabilities.

LOK ADALAT: A PEOPLE'S COURT ENSURING ACCESS TO JUSTICE -

Lok Adalat works as a mechanism of ADR which helps in reducing burden on regular courts. After the enforcement of the Legal Service Authorities Act, 1987, Lok Adalats emerged as a significant instrument for providing speedy and affordable justice. Lok Adalats does not charge any court fees, and the court fee already paid is refunded. Section 22(1) provides that Lok Adalat shall have the same powers as are vested in a Civil Court under CPC, 1908³. This also means that awards passed by the Lok Adalat shall be deemed to be decree of the Civil Court or as the case may be, an order of any other court, and where a compromise or settlement has been arrived at, by Lok Adalat in a case referred to cognizance of cases⁴, the court fee paid in such a case shall be refunded in manner provided under Court Fees Act, 1870. Awards passed by Lok Adalat are not immune from judicial review under Article 227 of the constitution⁵. Lok Adalats provide procedure flexibility and speedy trial of disputes, and there is no strict application of procedural laws like CPC, 1908, and Evidence Act, 1872, while assessing the claim by Lok Adalats. Usually, the Lok Adalat deals with civil and compoundable criminal offences which helps the parties settle their disputes amicably, with procedural flexibility and cost efficiently rather than in comparison to regular court.

This less expensive, with flexible procedural mechanism helps to provide legal aid to all sections of society.

ROLE OF LEGAL AID IN EMPOWERING POOR AND LEGALLY DISADVANTAGED SECTIONS OF SOCIETY-

We have seen for decades that there are existing economically weaker sections in society and some of the people in our country are educationally disadvantaged also, and due to this they usually are not legally aware of their legal rights. It is also a little difficult for both to understand the legal procedures and that is the utmost reason they suffer the most during the litigation phase. Legal proceedings involve expenses such as lawyer fees, court fees, documentation

³ Legal Services Authorities Act, 1987

⁴ Section 20(1), Legal Services Authorities Act, 1987

⁵ Dr. Smt Shashi Prateek v. Charan Singh Verma and Anr AIR 2009 All 109: (2009) 1 AWC 212

costs, and travel expenses, so poor litigants often avoid approaching courts because they cannot afford legal representation. In view of these issues, legal aid emerged so that access to justice cannot be denied to any citizen of the country as guaranteed under Article 14 and 21 of the Constitution and further reinforced by Article 39A. Free legal advice, representation, and assistance in legal proceedings and through legal awareness programmes, counselling, and guidance, legal aid enables them to understand their rights and thereby ensuring that financial constraints do not become a barrier to justice and effectively participate in the justice system.

HOW LEGAL AID HELPS IN REDUCING THE REGULAR COURTS BURDEN-

Legal aid helps in reducing the burden on regular courts by promoting alternative dispute resolution mechanisms such as Lok Adalats, mediation, and conciliation. These mechanisms facilitate the speedy and amicable settlement of disputes, thereby reducing the number of pending cases before courts. Legal aid also helps litigants understand their legal remedies and procedures, which prevents unnecessary delays and ensures more efficient functioning of the judicial system.

JUDICIAL APPROACH TOWARDS FREE LEGAL AID AND FAIR TRIAL RIGHTS-

The judiciary has been instrumental in transforming free legal aid from a constitutional aspiration into an enforceable right. By adopting a liberal and purposive interpretation of the Constitution, the Courts have consistently emphasized that access to justice and a fair trial cannot depend upon an individual's financial capacity. This can be understood through the landmark case laws in which the courts have reinforced the State's obligation to provide free legal assistance to those who are unable to afford it, thereby strengthening the principles of equality, fairness, and the rule of law. In *Hussainara Khatoon v. State of Bihar (1979)*, the Supreme Court of India laid the foundation of the right to free legal aid by holding that access to legal representation and a speedy trial are indispensable components of Article 21 of the Constitution. The Court observed that justice cannot be meaningful if an accused is unable to defend themselves merely because of poverty. This judgment transformed legal aid from a welfare measure into a constitutional obligation, ensuring that indigent persons are not deprived of a fair trial. In *Khatri v. State of Bihar*⁶, the Supreme Court clarified that the State's obligation to provide free legal aid arises from the very first production of an accused before a Magistrate and does not depend on the accused making a request for it. The Court recognized that poor

⁶(1981) 1 SCC 627

and illiterate persons are often unaware of their legal rights and, therefore, the responsibility lies with the State to ensure that legal assistance is made available. The judgment shifted the burden from the accused to the State, making free legal aid a proactive constitutional duty.

In *Sheela Barse v. State of Maharashtra*⁷, the judgment expanded the scope of legal aid by recognizing that even persons in custody are entitled to legal representation and protection under Article 21. The Supreme Court held that prisoners, especially women and children, must be provided with legal assistance and protected against custodial violence and exploitation. The Court directed the authorities to ensure access to legal aid and to safeguard the fundamental rights of persons in custody. In *Suk Das v. Union Territory of Arunachal Pradesh (1986)*⁸, the Supreme Court reaffirmed that failure to provide free legal aid to an eligible accused amounts to a violation of Article 21. The Court held that a conviction recorded without informing the accused of their right to free legal representation cannot be regarded as a fair trial. It emphasized that the constitutional guarantee of legal aid must be effectively implemented rather than merely existing on paper. This judgment reinforced that denial of free legal aid can render a criminal trial unfair and constitutionally defective.

Through these decisions, the judiciary has transformed free legal aid into an indispensable element of a fair trial. The courts have consistently upheld that access to justice must be practical and meaningful, ensuring that financial incapacity does not deprive any individual of legal protection.

LACK OF LEGAL AWARENESS: A MAJOR BARRIER TO EFFECTIVE LEGAL AID-

In India, many people especially in rural and marginalized areas are unaware regarding their legal and constitutional rights because they are educationally disadvantaged or people are dependent on informal advice from family, village leaders, or local influencers instead of legal professionals. As a result, they do not report violations of their rights or seek legal remedies. Additionally, many people are not aware about free legal aid due to poor publicity of legal aid schemes, non-visibility and accessibility of legal aid clinics, insufficient number of legal aid camps and para-legal volunteers, lack of continuous awareness campaigns and poor coordination with educational institutions, NGOs, and local bodies. Due to this, eligible persons either do not approach courts or spend money on private lawyers despite qualifying for

⁷ (1983) 2 SCC 96

⁸ (1986) 2 SCC 401

free legal services. Women, members of marginalized communities, and economically weaker persons may hesitate to approach legal institutions due to social pressure, discrimination, or fear of retaliation. Another challenge affecting the effectiveness of legal aid is the limited participation of legal professionals. Many advocates are reluctant to undertake legal aid cases due to low remuneration, delayed payment of honoraria, heavy workloads, and inadequate institutional support. These factors may affect both the availability of competent legal aid lawyers and the quality of representation provided to beneficiaries. Addressing these concerns through better remuneration, timely payments, regular training, and institutional support is essential to strengthen the legal aid system. The lack of legal awareness requires continuous legal literacy campaigns, wider outreach by Legal Services Authorities, and greater use of schools, colleges, community programmers, and digital platforms. By making people aware of their rights and the availability of free legal aid, the justice system can become more accessible, ensuring that legal aid reaches those for whom it is intended.

CONCLUSION-

The journey of legal aid in India reflects the continuous effort to make justice more inclusive and accessible. While constitutional guarantees, legislative measures, ADR mechanisms, and judicial decisions have significantly strengthened the legal aid system. The objective of equal justice can only be achieved through effective implementation at the ground level. The real challenge lies in ensuring that legal assistance reaches every person who is unable to access the justice system due to economic, social, or informational barriers. By enhancing legal awareness, improving the quality of legal services, and strengthening institutional mechanisms, legal aid can move beyond being a legal provision and become a powerful instrument for social justice.