



Role of Legal Aid in Contemporary India

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Abstract

Legal Aid is professional legal assistance provided free or at nominal cost to indigent persons who need help. It is necessary to maintain rule of law and stability in the society. The purpose of this research paper is to scrutinize the problem of illiteracy, destitution, and economic and lack of awareness among the disadvantaged groups and whether the legal aid services are properly delivering to the needy or not. The prime concern is internal obstacles like lack of understanding law, inability to deal with cases, corruption etc. It is necessary that government must take steps to ensure legal aid services to poorer sections are implemented and encourage advocates to serve poor. Legal Aid is not charity it is the duty of state and right of citizens, hence it should be such that it ensures the Constitutional pledge of equal justice to poorer and weaker section of society.

Keywords: justice, rule of law, legal aid, constitution, equal justice

1. Introduction

“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”

Justice Hugo Black

The preamble of the Constitution of India also believes that there shall be Constitution which shall strive to provide justice in all forms particularly “social, economic and political; liberty of thought expression, belief faith and opportunity.” Illiteracy, rising corruption, destitution, lack of knowledge are some of the main factors which has veiled underprivileged class from being noticed by the formally established legal system.

There are various organizations and committees established for this noble purpose. The reports of different commissions directed the state to provide for free legal aid to the poor. As mentioned under the 40th paragraph of Magna Carta “To no one will we sell, to no one will we deny, or delay, right or justice”. Equal justice serves as the sacrosanct foundation of the Constitutional Justice.

The Legal Aid is worshipped as one amongst the basic Fundamental Right granted to every citizen of India and is available under one of the most cherished as granted under article 21 of the Constitution of India. The directive principles of the state policy grants equal justice and free legal aid to every citizen. The article 39 A of the Constitution states “the state shall secure that the operation of the legal system promotes free legal aid, by suitable legislation or scheme or in any other way to ensure opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

However apart from all these section 304 of CRPC grants legal aid to the accused at the expense of state as stated-“Where in a trial before the court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has no sufficient means to engage a pleader, the court shall assign pleader for his defence at the expense of the state”. Order 33 rule 17 of CPC 1908 states that if an indigent person is not able to avail the legal services then the court shall exempt him from paying court fees.

2. Historical background

Independence of Judiciary is very important for protecting the legal, fundamental rights of citizens and everyone. However unless judicial system is easily accessible to all no country can develop and grow in effective manner. The haves can approach Court of law easily but indigent and poor should be given equal opportunity to get their rights enforced. It is duty and obligation of state to provide compulsory legal aid to everyone who cannot afford due to economic or any other reason.

In India where basic rights has been enforced as fundamental by Constitution Article 14, 21, 22 then at same time by Article 39A Constitution makers put obligation on state to help the poor and needy, emphasis on legal poverty i.e. incapacity of people in making full use of laws and its institution, it has been now accepted as function of ‘Welfare State’. Article 39A provides that state shall promote legal system which provides justice on basis of equal opportunity and provide legal aid by suitable legislative enactments or schemes or in any other way, to ensure opportunity for securing justice is not denied. As right to legal aid is Directive Principles, one might question that whether Constitution makers and government just provided a lip service to public and made it toothless tiger. However this view is not valid as Article 39A has been made mandate by statutory enactment of Legal Service Authorities Act 1987 and also setting up of Permanent Lok Adalats and hence Article 39 A is enforced.

The first step regarding legal aid was prior to independence in 1945 when a society named Bombay Aid Society was set, post -Independence State Legal Aid Committees were formed, 14th Law Commission Report and Central government scheme 1960, National Conference on Legal Aid 1970 also came into existence.

2.1 Law Commission Report (1958)

Under Chairmanship of Mr. M.C. Setalwad then Attorney General of India who in his report investigated various aspects of judicial administration of nation. Commission suggested outlines to make some changes in Judiciary for speedier and less expensive justice. It was held that it is the state obligation

to provide legal aid and rejected plea that legal aid will make people more litigious, increase litigation or put load on budget etc. Also lawyers and legal fraternity should take moral and social responsibility for implementing free legal aid to poor.

It was also recommended that NH Bhagwati committee report given regard to Bombay should be applied in all states. Committee recommended for immediate setting of legal aid clinics in each High Court Bars by changing High Court rules ^[1].

2.2 PN Bhagwati Committee Report (1971)

Under chairmanship of Justice PN Bhagwati, the judge who observed “even while retaining the adversary system some changes may be effected where the judges be given participatory role in the trial so for poor, placing them in equal footing with the rich in the Administration of justice” ^[2].

The focus of commission was indigent people seeking justice. Also it wanted rules and legislation must be made considering socio- economic conditions of the country. The report stated in detail the Constitution and working of different legal Committee

- (i) Taluka Legal Aid Committee
- (ii) District Legal Aid Committee
- (iii) State Legal Aid Committee

2.3 Krishna Iyer Committee Report (1972)

Justice Iyer was Chairman of similar commission setup in 22nd October, and dealt with nexus of law and poverty. His emphasis was on PIL and widespread of legal aid system that reaches people rather than people reaching the law ^[3].

2.4 Juridicare Committee Report (1977) ^[4]

PN Bhagwati and Krishnan Iyer submitted a joint report named “report on National juridicare Equal Justice – social justice in 1977”. It recommended establishment of National Legal Service Authority (NALSA) ^[5] which will be accountable to the parliament.

Unfortunately Bhagwati, Iyer report remained in the shelf along with National Legal Service Bill. In 1980 central government constituted another committee for implementing legal aid scheme i.e. “Committee for Implementing Legal Aid Schemes (CILAS)” however there were certain deficiency in the working of CILAS hence central government enacted Legal Service Authority Act 1987 which came in power on 9th November 1995. The Act stated to establish National Legal Service Authority, State Legal Service Authority, District Legal Service Authority and setting up permanent Lok Adalats. The Act further provides supervision over State Legal Service Authority and District Legal Service Authority by the National Legal Service Authority.

3. Legal Service Act

An old saying that “ability is of little use without opportunity”. There is a need of opportunity to claim for one’s rights and defend oneself as and when required and an urge towards legitimate claims. Equality and equal opportunity serves to be of great importance as without equality the rights would not gain any meaning even if they have statutory base.

The concept of article 39 A was pre-existing and it was later incorporated under the articles 14, 21 and 22 of the Constitution of India as Fundamental Right. Both the substantive and procedural law were required to be reasonable

and must be according to the provisions of Article 14 and 21 of the Constitution of India. As held under *Maneka Gandhi v Union of India* ^[6] the concept of reasonableness was first developed, there was development of procedural law as well as the right to secure fair and expeditious trial according to the provisions as stated in the article 21 of the Constitution of India. Section 304 of the criminal procedure code 1973 which granted legal assistance to the accused at the expense of the State which implies that the provision of free legal aid existed even before the enactment of the Legal Service Authorities act, 1987. In *Hussainara Khatoon v Home Secretary* ^[7] it was held by the Supreme Court that while providing legal aid and assistance the elements of reasonableness, fair and just procedure cannot be negated. In absence of these elements the person seeking for legal aid shall be denied justice on economic and other disabilities. In the case of *Sheela Barse v State of Maharashtra* ^[8] the supreme court observed that providing legal assistance to the accused who is arrested and under facing grave peril of his life and liberty has been considered to be Constitutionally valid as mentioned under the Article 39 A, 14 and 21 of the Constitution. It is the fundamental right of the accused under the jeopardy of life and liberty to secure free legal assistance. However in the case of *Centre of legal research v State of Kerala* ^[9] the apex court directed the State government support voluntary organizations and various social associations engaged into provision of free legal aid.

There were various loopholes found during the working of CILAS and this served as a pathway for the statutory establishment of legal service authorities at national, state and district levels. The Legal Service Authorities Act was enacted in the year 1987 which further came into force on 9th November, 1995. The act provides the mechanism for functioning of National Legal Service Authorities, State and District level legal service authorities. The act was enacted under the supervision of Justice R.N Mishra who was then the Chief Justice of India.

The LSA act fulfils all the main objectives as led down by the framers of the Constitution under part IV and Article 39 A. The article empowers the state “to secure that the operation of the legal system promotes free legal aid, by suitable legislation or scheme or in any other way to ensure opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

The main question which arises in the mind with regard to legal aid is that who are the persons eligible to secure the benefit of free legal aid? The answer lies under the context of section 12 of Legal Services Authorities Act. The free legal assistance shall be provided to: women, children, schedule castes, scheduled tribes, beggar and victims of human trafficking, industrial workers, and persons kept in custody, economically challenged individuals.

The Section 8 of LSA act serves as guideline for state legal services authorities act. The State legal service authority (SLSA) must work corresponding with the rules of the Central government

3.1 Procedure for Application of Legal Aid

The control and management of legal service authorities shall be under panel lawyers or paralegal volunteers. The one who seeks legal aid could address their complaints and grievances either through an E-mail, oral or in written form in the main

office. The question whether an application falls under the eligibility criteria could be proved through an affidavit under section 12 of the LSA act.

The matters concerning litigation must be addressed to the monitoring committee which includes Member Secretary or secretary of LSA and other legal practitioners who shall decide in the time limit of eight weeks that whether an applicant shall be benefited to free legal assistance or not.

3.2 Lok Adalats

The section 19 of the LSA act authorises the settlement of disputes by the Lok Adalats. The central, the state, the district and taluk legal service committees shall be responsible for the establishment of Lok Adalats which settles the dispute through the mechanism of compromise between the parties. There are certain conditions stated under the article 20 of the LSA act. The cases could be referred to Lok Adalats only upon the consent of the parties through an application or only if the court considers the case as appropriate for Lok Adalats to be dealt with. The Lok Adalats are governed by the principles of Justice, Equity and fairness in order to arrive at compromise between the parties^[10].

The main objective of Lok Adalats is to create friendly environment to combat antagonism and suggest alternatives and solutions which is appreciated by both the parties through third party intervention. The main motive of Lok Adalats is to settle the disputes through the process of conciliation.

After the amendment in 2002, under section 22B the provision has been incorporated to set up permanent Lok Adalats for the purpose of pre litigation mechanism for settlement and conciliation of cases which are concerned with the public utility services. The permanent Lok Adalats consists of a chairman and the other two members. The chairperson must be rank of district judge and additional judge or the person who is higher the rank of district judge. The public utility services includes the services concerning with electricity, water, telephone and communication health services and postal services.

4. Legal Aid- Issues and Challenges in Modern India

It is rightly said that without darkness there is no value of sunshine. Prosperity and poverty are interrelated and latter should not be considered as cursed rather be endured. In India majority population lives in villages and most of them live hand to mouth existence, for them survival is more important than knowledge, awareness of their rights and duties.

We the people of India^[11] have made social justice an inalienable claim for legal literacy and fundamental rights, however painful the hostile forces may be. Other than poverty, illiteracy, failure of executive in effective playing its role in implementing welfare policies are major road blocks to legal aid services. It is therefore solemn duty of Legal Service Authority to ensure legal aid to poor.

Supreme Court Legal Service Committee has provided guidelines to provide legal aid to poor free of cost and middle income group at reasonable cost. However if women and children approaches the Legal Aid Authority or Committee then they must be provided such aid without question of financial position.

4.1 Tools to Tackle

Human resource are very vital for legal aid. The skill and

competence of lawyers, judges, and clerical staffs should be improved and updated. Latest technology like computers and other communication facilities should be facilitated. Most importantly all persons involved must co- ordinate properly. Corporate sector and NGO's must participate in this activity and lethargic and red- tapism should be eradicated. 'Also voluntary organizations and social action groups engaged in legal aid program must be encouraged and supported by the state'.

The Central Authority also known as NLSA must take measures to spread legal awareness and educate the weaker sections of society about their rights, benefits and privileges guaranteed by social welfare legislation.

The need of hour is innovative and effective policies which can increase the utility of the legal aid policy. Various State Legal Authority have done commendable and plausible job as effectively applying the legal aid with innovative techniques.

4.2 Several instances of State Legal Service Authority are- Haryana

Haryana State Legal Service Authority has permanent and continuous Lok Adalats established which enable public to take their disputes at pre- litigative stage to Lok Adalats for possible amicable settlement.

Counselling and conciliation Centres- This provides a forum to parties to express their views freely without any legal constraint. If such mediation is successful then parties are referred to Lok Adalat for recording their statements and pass award according and these decree have value of Civil Court.

Accreditation to NGO's and Social Action Groups- The authority provides Accreditation to genuine and authentic NGO's and Social Action Groups which work in field of Legal Literacy/ Legal Awareness/ Para Legal Activities etc. They also get grant from the NLSA for the required goal.

4.3 Delhi

Delhi is the capital of India and has a cosmopolitan character and it is expected from Delhi to be role model for other State Legal Service Authority. Even here new methods and tactics has been applied to get better results.

Permanent Legal Services Clinic- This clinic is manned by retired Judges, Bureaucrats, and eminent social personalities. The doors to justice are open 24*7 and the trained officials provide aid and advice even through phone.

Mobile Legal Service Clinic- The clinic vans visit various part of Delhi like slum areas, industrial areas, unauthorised colonies, college, schools etc and assisted by expert and well trained officials. They provide Legal Aid and counselling to target class as well create awareness of legal rights and remedies^[12].

5. Recommendations

The suggestive measures in this field are Alternative Dispute Resolutions (ADR's) like Arbitration, Negotiation, Mediation, and Conciliation these can be effective legal tool and provide inexpensive justice to the masses. Lok Adalats are the bed rock of legal service authorities and largely used to help the overburdened judiciary.

Adequate Financial Support- Juridicare programs cannot succeed without sufficient resources and funding. The funds allotted at present is not sufficient for such important scheme and substantial allocation of funds should be made to make the

functioning of NALSA more effective.

No compromise on quality- The quality must be maintained. The lawyers in the panel should be experienced. Law Ministry should come with policy that senior lawyers must deal at least 10 cases free of cost in a year.

Performance Appraisal by all Legal Aid Authorities- Here each District Legal Aid Service Authority should be compared and analysed with other District Legal Aid Service Authority, inter as well as intra states to encourage Legal Aid. State Authorities also can take similar steps in this regard by filing PIL for the benefit of public at large^[13].

Law Schools-The Law colleges, Universities must have free Legal Aid clinic which be manned by law students and through which the students can provide basic legal aid and advice to local people. Also legal academicians who with their knowledge and experience should play an active role in implementation of legal aid.

6. Conclusion

"The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice."

Justice Blackmun in *Jackson v. Bish*^[14]

Legal Aid is obligation on the state and not charity. It is very important that all legal functionaries should work actively, so as to achieve the Constitutional pledge in letter and spirit. One must ensure equal justice for all. However it is sad that even after more than 60 years of Independence the downtrodden and weaker sections of the society feel handicapped in pursuit of Justice and should be major concern for those who are engaged in justice delivery system.

The strategy should be such that even the weakest sections of the society living in remotest part of India should not feel that he suffered injustice. Priority should be given to women, Children, persons in custody and backwards of society who need special legal aid to evolve. Despite all the odds and obstacles we can hope that different legal authority should become potent force which will achieve the desired goal and dream of the founding father of Constitution of India and the people with whom are wielded powers of the sovereign power of the state. Legal awareness will definitely create confidence among them and will enable them to conscience use of law as an instrument of safeguarding the interest of the masses.

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