



Legal aid-constitutional imperative

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Abstract

Legal aid to the poor is quintessential for protecting the rule of law which is prerequisite for the existence of the well-organized society. Until poor illiterate people are not legally supported, they are denied equality to seek desired justice. Therefore, an initiative has been put forth towards making the legal services serve the needs of poor and those deprived; the Indian Judiciary has taken an active role in providing free legal aid to the poor. Since the ambition of the constitution is to provide justice to everyone and the directive principles are an integral part of the constitution, it dictates that judiciary has been conferred duty to defend rights of the poor as also of society as a whole. The judiciary through its noteworthy judicial interventions has guided the legislature to enact a suitable legislation to guarantee justice to the weakest sections of the society. Public Interest Litigation is one prominent example through which Indian judiciary has played the role of the custodian of the rights of Indian citizens especially the poor. By Public Interest Litigation and judicial activism, there have been substantial changes in the judicial techniques, where it confers to make justice affordable by introduction of Lok Adalat system to provide free legal aid and prompt justice to the poor. Through this article, the author signifies the prominence of free legal aid in India where a significant section of the population has still not been able to benefit from the constitutional assurance for seeking justice.

Keywords: legal aid, poor, indigent, equality, justice, court fees, equity

Introduction

Legal Aid denotes free legal assistance to the poor and needy who cannot avail the aid of a lawyer for the conduct of legal proceeding in a court, tribunal or before an authority. Legal Aid is the device constituted to certify that no one is denied of legal advice because of lack of resources to consult a lawyer. Therefore, the main aim is to secure uniform justice to be made accessible to the poor and weaker section of society. In this regard Former Chief Justice of India Justice P.N. Bhagwati observed that ^[1]:

“The legal aid means providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law, the poor and 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. Legal aid should be available to the poor and illiterate, who don't have access to courts. One need not be a litigant to seek aid by means of legal aid.”

It is essential to state that the Constitution of India provides ^[2]

that “State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability”.

Constitution of India mandates for the State to ensure equality before law and equal opportunity to all ^[3]. Legal aid movement foremost came in to limelight in the US with the organization of institutions by the German Society of New York to provide free legal assistance to the immigrants who had just arrived in the states. Afterward, academic and artistic works advanced thoughts that urged the Bar to feel that it was their obligation to offer portrayal to the individuals who had no entrance to the lawful framework and this prompted the development of Public Interest Litigation too. At that point there were private firms who were exclusively committed to the reason for extending the privilege of legal aid.

International conventions and provisions concerned with legal aid inspired the ideas for legal services in India as well. For example, Article 8(e) of the American Convention on Human Rights provides “the accused with an ‘inalienable’ right to be aided by a state provided counsel, who may or may not be paid (according to the domestic law) in case the defendant is unable to defend himself on his own or appoint a counsel for the same in the time frame stipulated by law ^[4].” The European Convention on Human Rights under Article 6 stated

¹ Speaking through the Legal Aid Committee formed in 1971 by the State of Gujarat on Legal Aid with its Chairman, Mr. P.N. Bhagwati along with its members, Mr. J.M. Thakore, A.G., Mr. VV Mehta, Deputy Speaker, Gujarat Vidhan Sabha, Mr. Madhavsinh F. Solanki, M.L.A, Mr. Girishbhai C. Patel, Principal, New Lal College, Ahmedabad. His Lordship answered to the question of inequality in the administration of justice between the rich and the poor.

² Article 39A of the Indian Constitution

³ Articles 14 and 22(1) of the Indian Constitution.

⁴ Article 8(e) of the American Convention on Human Rights

that “the accused who doesn’t have adequate resources to afford legal assistance or fails to defend himself, the right to be given a lawyer of his choice by the state, in order to satisfy the aims of justice [5].”

India, being a welfare state, must try to advance the prosperity of its citizens through equitable laws and uniformity of chances to all. Legal aid is a blessing to all people who may have been denied access to equality and were casualties of abominations. It is a method for evacuating imbalances existing in the general public as far as access to legal aid is concerned.

Contribution of Judiciary

The Supreme Court of India received an opportunity to make a categorical pronouncement concerning the rights of the poor and indigent in judgment of *Hussainara Khatoon v. State of Bihar* [6] where the applicant conveyed to the notice of Supreme Court that the greater part of the under trials have effectively undergone the punishment considerably more than what they would have had they been sentenced immediately. The postponement was caused because of failure of the people to get an adequate legal advice to shield them in the court and the principle purpose for their powerlessness was their neediness. Accordingly, the court called attention to Article 39-A which emphasized that free legal aid was a basic component of sensible, reasonable and just strategy and that the privilege to free legal aid was verifiable in the certification of Article 21.

In the case of *Khatri v. State of Bihar* [7], the court addressed the question regarding the right to free legal aid to poor and indigent person who are not financially stable to consult a lawyer to defend themselves. The court held that the state will undoubtedly give such aid at the phase of trial as well as when they are first produced before the magistrate or remanded and that such a right can't be prevented on the ground from securing budgetary requirements or regulatory powerlessness or that the denounced did not requested it. Magistrate and Sessions Judges must inform the concerned person regarding such rights. The right to free legal aid is a basic element of sensible and reasonable constitutional approach for a person accused for an offense and it must be held verifiable in the context of Article 21 and the State is under an obligation to give a lawyer to an accused individual if the conditions for the case and the necessities of equality so require. The State can't dodge this commitment by arguing budgetary or managerial failure or that none of the detainees requested any legal aid.

In *Suk Das v. Union Territory of Arunachal Pradesh* [8], Justice P.N. Bhagwati, highlighted the need of the making the legal aid to the poor as they are not acquainted with their rights and especially idea regard to free legal aid and further held that in India the greater part of the general population is living in rural regions and these people don't know about the rights which are bestowed upon them by law. Indeed, even proficient individuals don't recognize what are their rights and privileges under the law. It is this absence of legal awareness

that they are not moving toward a lawyer for consultation and prompt. Additionally, in light of their numbness and lack of education, they can't wind up noticeably independent and they can't help themselves. That is the reason that advancement of legal education has dependably been perceived as one of the key things of the program of the legal aid in the country. The court stated that right to education would not satisfy its genuine goal if instruction about lawful privileges is not made available to people and sacred guarantee of conveying equality to the general population would remain a distant dream.

In *M.H. Hoskot v. State of Maharashtra* [9], Justice Krishna Iyer, who was crusader of social justice throughout India, rightly stated that if a detainee condemned to detainment is not able to protect his constitutional and statutory right of appeal and special leave petition to the Supreme Court for want of legal consultation, that is verifiable in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, the state is under an obligation to assign legal counsel for such detained individual for doing complete justice.

Recommendations Made By the Courts

In *Ranjan Dwivedi v. Union of India* [10], the Supreme Court pronounced that a writ of mandamus cannot be issued to execute Article 39A however the social objective of free legal aid and equivalent justice can be secured only by suitable legislation and enactments.

In *Centre for Legal Research v State of Kerala* [11], the Supreme Court expressed that to guarantee that these projects are fruitful the state ought to stretch out its help to deliberate associations to empower open cooperation in this undertaking of giving free legal aid and the court additionally said that these projects are expected to guarantee that social justice reaches the general population, subsequently it cannot be confined to the customary methods for extending legal aid through litigation and changing socio economic circumstances should be kept in mind and embrace a dynamic technique including legal education, setting legal administration camps, advancing public interest litigation and organising Lok Adalats.

In *Central Coal Fields v Jaiswal Co. Ltd* [12], the Supreme Court, while emphasizing Article 39A pointed out that the court fees should be levied according to the expenditure incurred in dispensing justice as high court fees may prevent access to justice for those people who cannot afford it.

In any case, there might be cases when free legal aid may not be provided for example offences concerning child abuse, prostitution, relating to contempt of court, those concerning defamation, offences against women etc.

Issues Concerning Legal Aid

The right to legal aid is not always available at disposal and there are some restrictions and regulations that have to be followed while exercising the right to free legal aid.

⁵ Article 6 of the European Convention on Human Rights

⁶ (1980) 1 SCC 98.

⁷ AIR 1981 SC 262.

⁸ AIR 1986 SC 991.

⁹ (1978) 3 SCC 81.

¹⁰ AIR 1983 SC 224

¹¹ AIR 1986 SC 2195

¹² AIR 1980 SC 2125

In *State NCT of Delhi v. Navjot Sandhu* ^[13], the court stated that when on a non-evidential basis a party to a dispute continues demanding that the amicus curiae has not played out his part successfully, the court ought not simply disband the insight and search for another that satisfies the party without satisfactorily exploring into the execution of the guidance against whom the protest has been made and the court should likewise remember that a negative decision at the trial may make the party make a case about his counsel yet this ought not be accepted without legitimate judicial scrutiny.

In *Sheela v. State of Maharashtra* ^[14], the court stated that since international conventions stipulate for passable defence, it can be held that Legal aid enumerated under Article 39A implies that the legal counsel assignee by the State should be proficient to defend the accused.

The absence of a specialist to direct the accounts of the legal services has prompted understaffed foundations, unnecessary parts and vast assets at transfer. Additionally, the infrastructure in the legal aid committees is obsolete. There is no electronic arrangement for recording of grumblings or following advancement of cases. No uncommon plans have been made for the debilitates to approach the legal aid framework. The framework needs straightforwardness and does not give satisfactory responses to the applications recorded under the Right to Information Act. Some education materials are difficult to fathom as a result of complex dialect. Who are marked as crooks by the framework and need to decay in the penitentiaries is a case of how the privilege to legal aid is vital to secure their entitlement to life and sense of pride so that by criminalizing them, they are not made to backpedal to their hopeless condition of neediness and wrongdoing.

There are few insufficiencies in the legal aid program as well. Legal counsellors occupied with free legal aid are not given satisfactory training on legal aid nor is there any exceptional arrangement for enrolling legal counsellors from minimized gatherings like the debilitated, women etc. The parties are not requested input on their involvement with the legal aid expert, there is no powerful protestation system against insufficient nature of legal aid received, there is no record of advancement of cases as they are left to the legal aid board advisor to manage, there is no technique to assess or follow up the attorney's execution or guarantee auspicious instalment of charges which itself is deficient. Mostly lawyers are unpractised novices, have questionable parts, are not prepared adequately, and they have unverifiable benefit.

State and non-State organizations, for example, legitimate experts and NGOs are not proactive in nature and don't stretch out help to the minority and handicap foundations who are not very much aware of the legal aid specialist. Legal camps, however held, are not productively composed and the gathering of people is not insinuated of a program that will be held for them, the sessions are repetitive, extensive and informational as opposed to intelligent and is carried on by untrained staff which just adds to the absence of mindfulness about lawful administrations.

Statutory Recognition

There was a statutory procedure providing free legal

¹³ (2005) 11 SCC 600

¹⁴ AIR 1983 SC 378.

aid ^[15], by appointment of the advocate for defending criminal case and by exemption of court fees in civil cases, it was not making any significant and desirable impact on the underprivileged and indigent people to get the judicial notice for their grievances. Therefore, under constant constitutional persuasion from the Supreme Court, the Legal Services Authorities Act, 1987 was passed. It makes an individual eligible for aid under the act if -

- a. A member of a Scheduled Caste or Scheduled Tribe;
- b. A victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- c. A woman or a child;
- d. A mentally ill or otherwise disabled person;
- 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 or in a juvenile home
- h. of in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or
- i. A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government ^[16].

The limit prescribed on income can be increased by the order of state governments. Limitation as concerning income does not have any effect in the case of individuals belonging to the scheduled castes, scheduled tribes, women, children, handicapped, etc. Under the Act 'legal service' is described as "rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter ^[17]."

Legal Services Authorities subsequent to looking at the qualification criteria of a candidate and the presence of a prima facie case in his favour provide him counsel at the expense of state and pay the requisite court fees and bear every cost regarding the case. The individual to whom legal aid is given is not called upon to spend anything on the case once it is upheld by a Legal Services Authority.

Bodies under the Act and Their Hierarchy

A system across nation has been incorporated under the Act for providing legal aid. National Legal Services Authority is the apex body constituted to set down arrangements and standards for making legal aid accessible under the arrangements of the Act and to outline best and prudent plans for lawful administrations ^[18].

In each State a State Legal Services Authority ^[19] is formed to give effect to the policies and directions of the National Legal Services Authority and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority is headed by the Chief Justice of the concerned

State High Court who is its Patron-in-Chief of the authority. A serving or retired Judge of the respective High Court is nominated as its Executive Chairman.

District Legal Services Authority ^[20] has been constituted at every District to execute Legal Aid Programmes in the particular District. The District Judge of the concerned District is its ex-officio Chairman.

Taluk Legal Services Committees ^[21] are constituted for each Taluk or Mandal or group of Taluk or Mandals to manage the activities of legal services in the Taluk or Mandal and to organize Lok Adalats in such areas. Every Taluk or Mandal Legal Services Committee is headed by Senior Civil Judge functioning within the jurisdiction of the Committee who is its ex-officio Chairman.

Supreme Court of India has organized Supreme Court Legal Services Committee (SCLSC) ^[22] to facilitate free legal aid to poor and under privileged under the context of Legal Services Authorities Act. It is headed by a judge of Supreme Court of India and has its distinguished members nominated by Chief justice of India. The SCLSC also consist of a panel of proficient Advocates on record with required minimum number of years of experience of handling the cases in the Supreme Court. The SCLSC also has full time Legal Consultant who affords legal advice to poor and indigent litigants through personal visit or post.

Nalsa Regulations, 2010

In 2010, the National Legal Services Authority implemented the National Legal Services Authority (Free and Competent Legal Services) Regulation under Section 29 of the Legal Services Authorities Act, 1987. The Regulations are concerned with the Legal Service Committees of the Supreme Court, High Courts, the relevant states, district and taluks. The important components of the Regulation are as following:

Selection of Panel

The lawful guide administrations are enriched with the benefit to ask for applications from legal practitioners with obligatory capable learning to decide the kind of cases they may be depended with. The board will be set up by the Executive Chairman or Chairman of the legal aid committee in consultation with the Attorney-General, Advocate General for concerned High Courts, Government pleader for district/taluks and the Bar Association President. The legal practitioner ought to have three years of relevant experience with the bar for being considered for empanelment. The individual attributes like skill, respectability, reasonableness, and experience ought to be given due consideration. Certain boards may be kept up for different sorts of cases. The Panel must be reconstituted every three years. In such circumstances where legal practitioner wishes to pull back from a case depended to him, he may pass on this to the Member Secretary and he may enable him to do in that capacity. The legal advisor is restricted from taking any cost, pay or other gainful idea from any person for whom lawful administrations are rendered under the Regulations or Act. The board legal

¹⁵ Section 304(1) of Code of Criminal Procedure and Order 33, Rule 17 of Code of Civil Procedure

¹⁶ Section 12 of the Legal Services Authorities Act, 1987.

¹⁷ Section 2(1)(c) of the Legal Service Authority Act,1987

¹⁸ Section 3 of the Legal Service Authority Act,1987

¹⁹ Section 6 of the Legal Service Authority Act,1987

²⁰ Section 9 of the Legal Service Authority Act,1987

²¹ Section 11A of the Legal Service Authority Act,1987

²² Section 3A of the Legal Service Authority Act,1987

advisor may be pulled from a case or his name may be removed from the board by temperance of non-execution of commitments acceptably or for exercises against the Act or Regulations ^[23].

Monitoring Committee

The Regulations enumerates procurement for constituting the Monitoring Committees and their respective functions. These Committees are entitled to submit report on monthly basis to the Chairman of the legal service committee. The report should highlight an evaluation of the ground in every legal aid case and the assignment of panel lawyer or retainer lawyer to a particular case ^[24].

Payment of Fee

The Regulations details the guidelines with regards to payment of fees to panel lawyers which should be according to the State regulations directly on receipt of accomplishment of techniques from them. It recommends frequent revision of honorarium for the different sorts of administrations given by panel lawyers in such cases ^[25].

Senior Advocates

The consultation with senior advocates might be effective if the Chairman of the legal service institutions highlight an assessment to that effect at instances of public importance where actual threat to life of the applicant exists ^[26].

Recommendations of Committee

The National Commission was formed to review the functioning of the Constitution and thereby submitted a report on 31st March, 2002, that made some recommendations regarding access to justice and legal aid.

The Commission made the following relevant recommendations-

In relation to Article 30 of the Constitution of India, another Article called Article 30A to be inserted in Constitution of India as follows:

“Article 30A- Access to Courts and Tribunals and Speedy Justice

1. Everyone has a right to have any dispute that can be resolved by the application of law decided in a public hearing before nay independent court or where appropriate, another independent and impartial tribunal or forum.
2. The right to access to courts shall be deemed to include the right to reasonable and effective justice in all matters before the courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object ^[27].”

²³ Regulation 8, National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.

²⁴ Regulation 10, National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.

²⁵ Regulation 14, National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.

²⁶ Regulation 15, National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.

²⁷ Report of National Constitution Committee, 31st March 2002.

Conclusion

Legal aid is not a philanthropy or abundance; however, it is a commitment of the state and right of the natives. The prime question of the state ought to be equivalent equity for all. Subsequently, legal aid endeavours to guarantee that the protected promise is satisfied in its letter and soul and equivalent equity is made accessible to the oppressed and weaker segments of the general public. In any case, notwithstanding the way that free legal aid has been held to be essential of the administer of law, the legal aid development has not accomplished its objective. There is a wide hole between the objectives set and met. The real snag to the lawful guide development in India is the absence of legitimate mindfulness. Individuals are as yet not mindful of their essential rights because of which the development has not accomplished its objective yet. It is the nonappearance of legitimate mindfulness which prompts misuse and hardship of rights and advantages of poor people. The idea of legitimate administrations has been guzzled in the working of the legal with a specific end goal to secure and advance equity in the general public. It's the obligation forced on the legislature to allow legal help. Given the absence of mindfulness in the nation, costly direction, unverifiable and tedious legal procedures and the hazard of defilement in the legal, it is basic to refine the way toward getting to equity with a specific end goal to guarantee equity to the poor.

In general, one might say that India has performed appropriately in building up instruments to apportion legal aid proficiently. By organizing Lok Adalats, Public Interest Litigation, Nyay Adalat, and so forth it has just promoted the reason for legitimate administrations. In any case, similar to all strategy programs, legal aid additionally experiences a few wasteful aspects, for example, access and attention to lawful to a little area of the populace, and this might be overwhelmed by extending legitimate education to the underestimated bunches too. Likewise, if a legitimate establishment is set up to sort out and check the issues identifying with legal aid, the program would have the capacity to improve the situation. Other intentional and non-state associations ought to likewise be urged to connect with themselves in the conceding free legal help so that more individuals can approach equity.

Legal aid organizations ought to likewise be made more responsible to some self-sufficient outer office directing the working of these projects. Legal aid activities should likewise make utilization of elective question determination, for example, placation, customer advising, intervention. And so forth likewise, the advantages of legal aid ought not exclusively be coordinated only to the poor areas of society yet in addition to those torment from incapacity and separation. The part of schools in advancing legal aid ought to likewise be accentuated, more lawful guide focuses ought to be set up and clinical instruction and expert bono work by law offices ought to be energized.

References

1. Indian Constitution, 1949.
2. American Convention on Human Rights, 1969.
3. European Convention on Human Rights, 1953.
4. Code of Criminal Procedure, 1973.
5. Code of Civil Procedure, 1908.

6. Legal Services Authorities Act, 1987.
7. National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.