

Legal Aid: Constitutional As Well As Statutory Provisions

Abstract

Legal Aid implies the provision of giving free legal services to the poor and needy who are unable to afford the services of a lawyer for the conduct of their case or legal proceedings in any court or before an authority. The state has an obligation to ensure equal access to justice encompassing several fundamental human rights, such as right to equality before law, right to fair trial, right to access to court, right to effective remedy and right to be recognized as a person before law. My paper focuses on constitutional provisions and National Legal Services Authority Act at the central level providing facilities concerning legal aid.

Keywords: Encompassing, Impediment, Judgment, Transcript, Indigence, Vakalatnama, Declaration, Lok Adalat and Accused.

Introduction

Legal Aid includes providing an arrangement in the society so that the mission of administration of justice becomes easily accessible and is not out of the reach of poor and illiterate who are unable to reach the court because of ignorance and poverty which should not be an impediment in their way of obtaining justice from the courts. Justice P.N.Bhgwati¹ has very clearly stated the meaning and object of the legal aid. According to him one need not to be a litigant to seek aid by means of legal aid.² While he has focused it as equal justice in action and Justice Krishna Iyer considered it a catalyst which would enable the aggrieved masses to re-assert State's responsibility.³

Aim of Study

The purpose of the study of legal aid in relation with human rights is to identify trends and regulations in the administration of justice as well as how far legal aid has provided justice to poor and to all the categories mentioned in National Legal Services Authority Act. Other aim is to evaluate whether legal aid is accessible to all the beneficiaries and their human rights are not violated. The objective of the study of legal aid attempts to examine the policy, law and practice on legal awareness as well as to focus on legal aspect of National Legal Services Authority Act and how far it is in conformity with the constitutional perspective.

Review of Literature

In order to make study on Legal Aid vis-a-vis human rights, the researcher has gone through many books and articles on this subject. The researcher has consulted book by S. Muralidhar, Law, Poverty and Legal Aid: Access to Criminal Justice, Lexis Nexis Butterworths Publications, Asher Flynn and Jacqueline Hodgson, Access to Justice and Legal Aid, comparative perspective on unmet legal need, Oxford: Hart Publications, 2017, Dr N. R. Madhava Menon, "Legal Aid and Justice to the Poor" and A Primer on Legal Practice, by N R Madhav Menon, National Law School of India University and Bar Council of Kerala, M. K. Nambiyar Academy for Continuing Legal Education, Kochi., 2017, constitutional law of India, legal cases, notes and material dealing with concerned area.

Constitutional Provisions

The preamble of the constitution and Article 14, give much emphasis on the equal justice. For the maintenance of equal justice in real sense every person should have opportunity to seek justice. The economic inequality, sometimes prevents a poor person to seek justice. In such condition the free legal aid to poor and weak persons is necessary for the maintenance of equal justice in real sense.

Article 38 and 39A of the Constitution of India are notable. According to Article 38(1), the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic or political, shall inform all the institutions of the national life.



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Article 39A provides that the State shall secure that the operation of legal system promotes justice on a basis of equal opportunity 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 disabilities. Right to free legal aid or free legal service is essential ingredient of 'reasonable, fair and just procedure' and implicit in the guarantee of the right to life and personal liberty under Article 21.⁴ This is the constitutional right of every accused person who is unable to engage lawyer due to poverty.⁵ The State is under the mandate to provide a lawyer to an accused person if the circumstances of the case and needs of justice so require provided the accused person does not object to the provision of such lawyer.⁶

In *State of Maharashtra vs. Manubhai Pragaji Vashi*,⁷ the Supreme Court has observed that it is the duty of the State to afford grants-in-aid to recognized private law colleges. For providing the free legal aid, there must be trained lawyer in the country and this is possible only when there are adequate number of law colleges with necessary infra-structure, good teacher and staff. Since the Government is not able to establish adequate number of law colleges, it is the duty of the Government to permit the establishment of duly recognized private law colleges and afford them grant-in-aid on similar lines which is given to the Government law colleges. The court has made it clear that Article 21 and Article 39-A, casts duty on the State to give grant-in-aid to the recognized private law colleges similar to the Faculties of Art, Science, Commerce etc. This duty cannot be avoided on the ground of paucity of funds or otherwise.⁸ In a case⁹ the Supreme Court has made it quite clear that it is now well established that the failure to provide free legal aid to an accused at the cost of the State unless refused by the accused, would vitiate the trial.

The Supreme Court¹⁰ has opined that the State should encourage and support the participation of the voluntary organizations or social action groups in operating the legal aid programme.¹¹ Such organizations or groups should not be under the control of the Government.¹²

In a case Justice Krishna Iyer¹³ has rightly observed that providing free legal aid is the State's duty and not Government's charity.

In the case of *Khatri v. State of Bihar*,¹⁴ the Supreme Court has held that free legal aid to the poor under Article 39-A, applies to granting bail also. The argument on behalf of the State that free legal aid would be applicable in the trial and not in the initial stage was rejected by the Court. The Court has held that the right to free legal aid starts from the time of arrest of the person and continues till the judgment is pronounced. If the judgment is pronounced and the accused person refers appeal against it to the higher court, the right to free legal aid will continue and he will be entitled to it even in case of such appeal. The Court has opined that it is the duty of the court to remind him that he is entitled to the free legal aid.

In *M.H.Hoscot v. State of Maharashtra*,¹⁵ the Supreme Court has laid down guidelines in case of prisoners to be followed by lowest court to highest court in country. They are as follows:-

1. Court shall furnish a free transcript of the judgment when sentencing a person to prison term.
2. In the event of any such copy being sent to the jail authorities for delivery to the prisoner, by the appellant revisional or other Court, the official concerned shall with quick dispatch, get it delivered to the prisoner and obtain written acknowledgement thereof from him.
3. Where the prisoner seeks to file an appeal or revision, every facility for the exercise of that right shall be made available by the jail administration.
4. Where the prisoner is disable from engaging lawyer on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentences and the ends of justice so require, assign competent counsel for the prisoner's defence provided the party does not object to that lawyer.
5. The State which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to the assigned counsel such sum as the court may equitably fix.
6. These benign prescriptions operated by force of Article 21 (strengthened by Article 19(1)(d) read with sub-Article (5)) from the lowest to the highest court where deprivation of life and personal liberty is in substantial peril.

In *S.C. Legal Services Committee v. Union of India*,¹⁶ the Supreme Court has issued directions in respect of free legal aid. The directions include the following:-

Prisoner/convict will be provided with free copy of judgment of Session Court or High Court within 30 days of the pronouncement of judgment. Prisoner will be informed by jail superintendent about the availability of free legal aid and asked him whether he would his right to free legal aid. Judgment of the Session Court or High Court should be explained to the prisoner in the language as understood by him. Every jail will have to provide at the cost of the State Exchequer copy of vakalatnama, Affidavit etc. in the form required by the High Court or Supreme Court.

In *Sugreev v. Sushila Bai*,¹⁷ the Court has observed that the Constitution of India postulates a society in which socio-economic and legal justice is available to allow the basis that they are equal. To enforce the Constitutional mandate of equality before the law, the State has to ensure access to justice. That is to say that the opportunity for securing justice are not denied to any citizen by reason of economic or other disability. Article 39-A, inserted by the Constitution (Amendment) Act, 1976 provides for equal justice and free legal aid.

Justice is traditionally equated with equality, fairness and respect for rule of law.¹⁸

E: ISSN No. 2349-9443

Statutory Provisions

The Criminal Procedure Code

The Criminal Procedure Code and the Civil Procedure Code also contain provisions in relation to the free legal aid.

Section 304(1) of the Criminal Procedure Code provides that wherein 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 not sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the State. Section 304(2) provides that the High Court may, with the approval of the State Government make rules for the mode of selecting pleaders for defence under aforesaid sub-section (1) of Section 304, the facilities to be allowed to such pleaders by the Courts, the fees payable to such pleaders by the Courts, the fees payable to such pleaders by the Government and for carrying out the purposes of sub-section (1) stated above.

Sub-section (3) of Section 304, provides that the State Government may, by notification, direct that as from such date as may be specified in the notification that the aforesaid provisions of sub-section (1) and sub-section (2) of Section 304 shall apply in relation to any class of trials before other courts in the State as they apply in relation to trial before the Courts of Session.

Section 304, thus makes it clear that the State is under an obligation to provide legal assistance to a person charged with the offence triable before the Court of Session. It enables the State Government to direct that this provision shall apply in relation to any class of trials before other courts in the State.

The Civil Procedure Code

Order XXXIII of the Civil Procedure Code provides in respect of the suit by indigent person. On the application to sue as indigent person is being granted the plaintiff shall not be liable to pay court fee and in case he is not represented by a pleader, the Court may, if the circumstances of the case so requires, assign a pleader to him. This benefit has now been extended to the dependant also. According to Rule 18 of Order XXXIII and the provisions contained therein, the Central Government or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those persons who have been submitted to sue as indigent persons. The Order XLIV makes provisions in respect of appeals by indigent person.

A separate legislation, the Legal Service Authority Act, has been passed so as to provide legal aid to the poor and weaker sections of the society.

The Legal Services Authority Act

Object and Importance

The Legal Services Authority Act, 1987 has been enacted to constitute the Legal Service Authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to secure that

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the operation of the legal system promotes justice on a basis of equal opportunity.

It is to be noted that the legal service should be taken to mean the rendering of any service in the conduct of a case or legal proceeding before any court or authority or Tribunal and extending advice on a legal matter or issue. It may be in the form of providing advocates at the State expenses. It may also be in the form of making payment of court fee on behalf of the persons who are eligible for legal aid. It may also be in the form of paying other expenses connected with the litigation, e.g. expenses in relation to the preparation of documents or summoning of the witnesses, etc.

In *Sugreev v. Sushila Bai*,¹⁸ the court has observed that the Legal Services Authorities Act has been enacted by the Parliament to constitute the Legal Services Authorities to provide free and competent legal services to the weaker sections of the society to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to secure that the operation of the Legal System promotes justice on the basis of equal opportunity. It is a tribute to the framers of the Constitution. It furthers their endeavour to establish that there would be equality before the law and a vibrant and fair justice delivery system that would ensure it. It is for the legal functionaries to achieve the goal set out in the Act so that meaningful assistance is given to those who are not in a position to pursue legal remedies on account of poverty, want of knowledge or other such handicappedness.

Article 39A of the Constitution of India imposes duty on the State to 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 disabilities besides the right to free legal aid is now considered the part of the right to life and personal liberty guaranteed by Article 21.¹⁹

To fulfill the constitutional obligation, in 1987 the Legal Services Authorities Act was passed. The Legal Services Authorities Act establishes statutory legal services authorities at the National, State and District level. It makes provisions in relation to Lok Adalat. The main object of the Lok Adalat is to provide quick justice at less expenses.

The main object of the Legal Services Authorities Act is to provide free and competent legal service to the weaker section of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to secure that the operation of the Legal System promotes justice on a basis of equal opportunity.

In a case the Karnataka High Court²⁰ has observed that the Legal Services Authorities Act, 1987 has been promulgated to provide free and competent legal service to the weaker section of the society and to organise Lok Adalats to ensure that the

E: ISSN No. 2349-9443

operation of the legal system promotes justice on the basis of equal opportunity.

The Legal Services Authorities Act, 1987, extends to the whole of India except the State of Jammu and Kashmir. The provisions of the Act may be discussed under the following headings:

Who are Entitled to Legal Services

According to Section 12 of the Legal Services Authorities Act, 1987 every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:

1. A member of a Scheduled Caste or Scheduled Tribe; or
2. A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution; or
3. A woman or a child; or
4. A person with disability as defined in clause (i) of Section 2 of the persons with Disabilities (Equal Opportunities Protection of rights and full Participation) Act, 1995; or
5. A person under circumstances of undeserved want such as being victim of a mass disaster, ethical violence, caste, atrocity, flood, drought, earthquake or industrial disaster; or
6. An industrial workman; or
7. In custody including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 or in a children home within the meaning of clause (e) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987; or
8. In receipt of annual income less than twenty five 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 fifty thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme court. Rule 12 of the National Legal Services Authority rules, 1995 makes provision in relation to the upper limit of annual income of a person entitling him to legal services under clause (h) of section 12 if the case is before the Supreme Court. This rule has been amended by the National Legal Services Authority (Amendment) Rules 2000. After this amendment the provisions of this rule are as follows –

Any citizen of India whose annual income from all sources does not exceed 50,000 rupees shall be entitled to legal services under clause (h) of section 12(stated above).

According to Section 13 of the Legal Services Authorities Act persons who satisfy all or any of the criteria specified in section 12 (stated above) shall be entitled to receive legal services provided that the concerned authority is satisfied that such person has prima facie case to prosecute or to defend.

An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this

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Act, unless the concerned authority has reason to believe such affidavit.

Section 28 of the Legal Services Authorities Act empowers the State Government, in consultation with the Chief Justice of the High Court, to make rules so as to provide upper limit of annual income of a person entitling him to legal services under clause (h) of section 12, if the case is before a Court other than the Supreme Court. In this respect various State Governments have made provisions by making rules.

It is to be noted that Section 27 of the Legal Services authorities Act empowers the Central Government to make rules in relation to the upper limit of annual income a person entitling him to legal service under clause (h) of the Section 12 if the case is before the Supreme Court. Such rules can be made by the Central government in consultation with the Chief Justice of India. In the exercise of the power conferred by Section 27, the Central Government has made the Supreme Court Legal Services Committee rules, 2000. It contains rules in relation to the said upper limit also. Rule 7 of the said rules of 2000 provides in respect of the upper limit of annual income of a person entitling him to legal services under clause (h) of Section 12 (stated above). According to this rule a person whose annual income from all sources does not exceed 50,000 rupees per annum shall be entitled to the legal services under clause (h) of Section 12.

In *Sugreev v. Sushila Bai*,²¹ the Rajasthan High Court has held that where an application is filed by litigants of poor economically weaker section of society to sue as indigent person, it is the duty of the court either to send the matter to the concerned authority under the Legal Services Authorities Act or the concerned authority under Rule 18 of Order 33 of C.P.C. to grant free legal services. Where despite of having been made known of her or his this legal right under this Act, the litigant of the category enumerated under section 12 of the Act does not desire to get free legal service, the advocate concerned in the form of formal declaration of his own or of the litigant concerned to be enclosed to the petition, suit, application, revision and appeal, etc., as the case may be, which is presented in the court. The court, on the first available opportunity to it to ascertain from the litigant concerned whether he or she is desirous of taking the free legal services or not; where he or she may desire to get these benefits, he or she may be directed to approach the concerned Legal Service committee or the authority. Where the litigant of this category as enumerated under section 12 o the Act is not desirous to avail of his/her this legal right, the court may proceed in the matter. The court may have to record this fact in the proceedings.

Conclusion

Thus in India the goal under legal aid has not been able to be achieved as the general public is not aware of their basic rights. It is necessary that poor illiterate should be imparted legal knowledge and which should be done from the grass root level of the country. Free legal Services Authorities must be provided with sufficient funds by the state because no one should be deprived of legal right due to lack of

E: ISSN No. 2349-9443

funds. Legal Aid has come to comprehend not only legal representation and assistance in litigation but also such other regulations as legal advice in arbitration and conciliation, creation of legal awareness and assertiveness in the masses.

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