Legal Aid Status in India Reality or Just a Myth in the Mind of the Countryman

Abstract

Legal aid is a system of government funding for those who can't afford to pay for advice assistance and representation. In India the standard of legal aid is very Progressive. The Problem is bringing about awareness and awakening of the large mass of people who are either exploited or are through sheer ignorance unable to get their rights full dues.

The large numbers of people are not able to take benefit of Law for getting Justice economic or other disabilities. The task of legal aid is to build a bridge between Justices by various methods including one of them as legal awareness which is most significant. Legal aid awareness programme implied giving free legal services to the poor and needy.

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Introduction

Whatever standards a man chooses to set for himself, be they religious, moral, social or purely rational in origin, it is the law which prescribes and governs his rights and duties towards the other members of the community. This somewhat arbitrary collection of principles he has very largely to take as he finds and in a modern society it tends to be so diverse and complex that the help of an expert is often essential not merely to enforce or defend legal rights but to recognize, identify and define them."

Mathews and Outton

"The Encyclopedia Britannica defines legal aid as phrase which is acquired by usage and court decisions, a specific meaning of giving to person of limited means grants or for nominal fees, advice or counsel to represent them in court in civil and criminal matters." Inability to consult or to be represented by a lawyer may amount to the same thing as being deprived of the security of law. "Rawls first principle of justice is that each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all." Legal Aid is the method adopted to ensure that no one is debarred from professional advice and help because of lack of funds. "Thus, the provisions of legal aid to the poor are based on humanitarian considerations and the main aim of these provisions is to help the povert-stricken people who are socially and economically backward."

Lord Denning while observing that Legal Aid is a system of government funding for those who cannot afford to pay for advice, assistance and representation said: "The greatest revolution in the law since the post-second World has been the evolution of the mechanism of the system for legal aid. It means that in many cases the lawyers' fees and expenses are paid for by the state: and not by the party concerned. It is a subject of such importance that I venture to look at the law about costs-as it was-as such it is-and as it should be."

Seven hundred years old clarion call of Magna Carta- "To no one will we sell, to no one will we refuse or delay the right to justice "very pertinently embodies the principle of legal aid. But it was only when the colonial hangover of the Indian legal system was pointed by the Committee for Legal Aid and was stated that the shadow of law created by the British to suit their convenience, has resulted in an insensitive system especially towards the socio-economic problems of the masses it set out to govern and regulate, that the Indian legislature incorporated the concept of legal aid in the form of Article 39A into our constitutional framework. Hence, legal aid is not a charity or bounty, but is a constitutional obligation of the state and right of the citizens. The problems of human law and justice, guided by the constitutional goals to the solution of disparities, agonies, despairs, and handicaps of the weaker, yet larger brackets of Bharat's humanity is the prime object of the dogma of "equal justice for all". Thus, legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the downtrodden and weaker sections of the society. Justice Krishna Iyer regards it as a catalyst which would enable

the aggrieved masses to re-assert state responsibility, whereas Justice P.N. Bhagwati simply calls it "equal justice in action". But, again the constitution not being a mystic parchment but a Pragmatic package of mandates, we have to decode its articles in the context of Indian life's tearful realities and it is here when the judiciary has to take center stage. The judicature, which by its creative interpretations has given an encyclopedic meaning to the concept of legal aid. Time and again it has been reiterated by our courts that legal aid may be treated as a part of right created under Article 21 and also under Article 14 and Article 22(1). The apex court has held access to justice as a human right. Thus, imparting life and meaning to law.

International Status

Over seven centuries ago, the beginnings of equal justice under the law were marked by the inscription in the 40th paragraph of the Magna Carta:

***"*To no one will we sell,**
to no one will we deny
or delay right or justice.*"*

"Thus on the green meadows of Runnymede was sown the constitutional seed of legal aid in the modern world which has travelled to all the continents as part of civilized jurisprudence."

The international concern for human rights found expression, after the First World War in covenants of the League of Nations and further in the Declaration of Human Rights, the Conventions which followed specifically incorporated the concept of legal aid.

Indian Status

"Humanism, which is the source and strength of legality, is writ large in the theme of legal services to the poor in that part of our planet where backwardness and indigence have struck the hardest blows through the legal process itself on the lowly and the lost." "Pre-British India had practiced "constitutional monarchy" and the days of the Hindu and Muslim rulers had witnessed unsophisticated methodology of dispensing justice to the poor, inexpensively and immediately. In short, justice to the citizens-high and low-has been an Indian creed of long ago."

"After Independence schemes of legal aid was developed under the aegis of Justice N.H. Bhagwati, then of Bombay High Court and Justice Trevore Harris of Calcutta High Court."[9] The matter of legal aid was also referred to the Law Commission to make recommendations for making the legal aid program an effective instrument for rendering social justice. Coming up with recommendation in its XIV report, under the leadership of leading jurist M.C. Setalvad, the Commission opined that free legal aid is a service which should be provided by the State to the poor. The State must, while accepting the obligation, make provision for funds to provide legal aid. The legal community must play a pivotal role in accepting the responsibility for the administration and working of the legal aid scheme. It owes a moral and social obligation and therefore the Bar Association should take a step forward in rendering legal aid voluntarily. These would include representation by lawyers at government expenses to accused persons in criminal proceedings, in jails, and appeals. "The Commission also recommended the substitution in Order XXXIII, Civil Procedure Code of the word 'pauper' with 'poor persons'."Acting on the recommendations of the Law Commission, the Government of India in 1960 prepared a national scheme of legal aid providing for legal aid in all courts including tribunals. It envisaged the establishment of committees at the State, District and Tehsil level. However due to the inability of States to implement the scheme because of lack of finances the scheme did not survive.

Meanwhile the judicial attitude towards legal aid was not very progressive. In **Janardhan Reddy v. State of Hyderabad AIR 1951 SC 217 and Tara Singh v State of Punjab Air 1951 SC 411** the court, while taking a very restrictive interpretation of statutory provisions giving a person the right to lawyer, opined that this was, "a privilege given to accused and it is his duty to ask for a lawyer if he wants to engage one or get his relations to engage one for him. the only duty cast on the Magistrate is to afford him the necessary opportunity (to do so). "Even in capital punishment cases the early Supreme Court seemed relentless when it declared that "it cannot be laid down in every capital case where the accused is unrepresented the trial is vitiated." Thus it can be pointed out that newly Independent India was not clear about the broad perspective of its legal aid programme.

For again trying to revive the programme, the Government of India formed an expert committee, the Krishna Iyer Committee, in 1973 to see as to how the states should go about devising and elaborating the legal aid scheme. The committee came out with the most systematic and elaborate statement regarding establishment of legal aid committees in each district, at state level and at the Centre. It was also suggested that an autonomous corporation be set up, law clinics be established in Universities and lawyers be urged to help. The Government of India also appointed a committee on judicature under the chairmanship of Justice P.N. Bhagwati to effectively implement the legal aid scheme. It encouraged the concept of legal aid camps and Nyayalayas in rural areas. The committee in its report recommended the introduction of concept of legal aid in the Constitution of India.

Accepting this recommendation in the 1976, Article 39-A was introduced in the Directive Principles of State Policy by 42nd Amendment of the Constitution. With the object of providing free legal aid, the Government of India had, by a resolution dated 26th September, 1980 appointed a Committee known as "Committee for Implementing Legal Aid Schemes" (CILAS) under the chairmanship of Chief. Justice P.N. Bhagwati to monitor and implement legal aid programs on a uniform basis in all the States and Union Territories. 'CILAS' evolved a model scheme for legal aid programs applicable throughout the country by which several legal aid and advice Boards were set up in the States and Union Territories.

Although legal aid was recognized by the Courts as a fundamental right under Article 21 reversing their earlier stance, the scope and ambit of the right was not clear till this time. The step was taken in **Sunil Batra v. Delhi Administration (1978) 4 SCC 494** where the two situations in which a prisoner would be entitled for legal aid were given. First to seek justice from the prison authorities and

second, to challenge the decision of such authorities in the court. Thus, the requirement of legal aid was brought about in not only judicial proceedings but also proceedings before the prison authorities which were administrative in nature. The court has reiterated this again in **Hussainara Khatoon v. State of Bihar (1980) 1 SCC 98** and said: "it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him. Free legal service to the poor and the needy is an essential element of any reasonable, fair and just procedure." The court invoked Article 39-A which provides for free legal aid and has interpreted Article 21 in the light of Article 39-A. The court upheld the right to free legal aid to be provided to the poor accused persons 'not in the permissive sense of Article 22(1) and its wider amplitude' but in the peremptory sense of article 21 confined to prison situations'

Two years thereafter, in the case of **Khatri v. State of Bihar AIR 1981 S.C. at page 926** Justice P.N. Bhagwati while referring to the Supreme Court's mandate in the aforesaid Hossainara Khatun's case, made the following comments, in paragraph 4 of the said judgment:

"It is unfortunate that though this Court declared the right to legal aid as a fundamental right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence, and whatever is necessary for this purpose has to be done by the State."

In 1986, in another case of **Sukhdas v. Union Territory of Arunachal Pradesh AIR 1986 S.C. 991** Justice P.N. Bhagwati, while referring to the decision of Hossainara Khatun's case and some other cases had made the following observations in paragraph 6 of the said judgment:-

"Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty because magnifies the impact of the legal troubles and difficulties when they come. Moreover, of their ignorance and illiteracy, they cannot become self-reliant; they cannot even help themselves. The Law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programs for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognized as one of the principal items of the program of the legal aid movement in the country to promote legal literacy. It would be in these circumstances made a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service, legal aid would become merely a paper promise and it would fail of its purpose."

It was in the above backdrop that the Parliament passed the Legal Services Authorities Act, 1987, which was published in the Gazette of India Extraordinary Part II, Section I No. 55 dated 12th October, 1987. Although the Act was passed in 1987, the provisions of the Act, except Chapter III, were enforced with effect from 9.11.1995 by the Central Government Notification S.O.893 (E) dated 9th November 1995. Chapter III, under the heading "State Legal Services Authorities" was enforced in different States under different Notifications in the years 1995-1998.

Legal Aid under Legal Services Authority Act, 1987

According to Section 2(1) (a) of the Act, legal aid can be provided to a person for a 'case' which includes a suit or any proceeding before a court. Section 2(1) (a) defines the 'court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions. As per Section 2(1)(c) 'legal service' includes the 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.

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority.

Under The Legal Services Authorities Act, 1987 every citizen whose annual income does not exceed Rs 9,000 is eligible for free legal aid in cases before subordinate courts and high courts. In cases before the Supreme Court, the limit is Rs 12,000. This limit can be increased by the state governments. Limitation as to the income does not apply in the case of persons belonging to the scheduled castes, scheduled tribes, women, children, handicapped, etc. Thus by this the Indian Parliament took a step forward in making the legal aid possible in the country.

Present Day Position

The notion of legal aid conceived wisely by the pioneers of legal world certainly needed vigorous execution by meticulous planning. The word of caution being very clear that the traditional legal service programme, which is essentially court or litigation, oriented cannot meet the specific needs and the peculiar problems of the poor demanded a unique approach to this socio- economic philosophy. As

observed by the Supreme Court "We do not think it is possible to reach the benefits of the legal process to the poor, to protect them against injustice and secure them their constitutional and statutory rights unless there is a nation- wide legal service programme to provide free legal services to them." Under such influence The Legal Service Authority Act, 1987 was enacted to accomplish the vision of providing legal aid to the exploited masses of this country, whose need till now was echoed either in the golden words of UDHR or The International Covenant on Civil and Political Rights or discussed in the board rooms of Law commission or deliberated by socio-legally concerned groups only. The data provided is a reflection of the realities of the legal aid scheme on which much of paper and ink has been used.

Stabilizing the Scales for Poor—Suggestive Measures

As contemplated by Justice Iyer and Bhagwati that the vast millions of Indians, steeped in ancient injustice and modern misery have little to hope for from the law, they have much to shoot against it. In such state of affairs it is imperative for state to take steps to keep the confidence of masses in the justice system breathing. Though the execution of the legal aid programme has been yielding favorable results but much more needs to be reformed. Our compilations of the suggestive measures in this area are:

Exploring ADRs

Using the various forms of ADRs like Arbitration, Conciliation, Negotiation and Mediation in the settling of disputes especially those involving matrimonial problems can prove to be an effective legal aid tool providing quick and inexpensive justice to the masses Focus on Lok Adalats in its true spirit: Lok Adalats, a permanent feature of the functioning of legal services authorities is largely being used as a tool of case management to help the over burdened judiciary and not so much as a instrument of the justice delivery to the litigant. If the `success' of the lok adalat stems from negative reasons attributable to the failures of the formal legal system, the utility of this mechanism may also be short-lived.

Adequate Financial Support

A master plan for juridicare cannot succeed without sufficient financial resource. An annual amount of Rs. 6 crore is being allocated to NALSA for the execution of its policies. The Committee is of the opinion that this amount is inadequate for such an important scheme and strongly recommends that substantial allocation should be made at Revised Estimate stage to make the functioning of NALSA more effective.[11]

No compromise on Quality

Free legal aid must not be read to imply poor or inferior legal services. The lawyers in the panel should be experienced. The law ministry should ensure the senior lawyers do at least ten cases a year free of charge in the courts.

Inform people

Lack of awareness is the main impendent in effective 'legal aid'. Efforts should be made to inform the public of the existence of these services by using electronic media and aggressive campaigns.

Sensitization of the judiciary

Awareness of schemes and programs to be able to guide the poor litigants in this regard.

Performance appraisal by all legal aid authorities:

Where each district legal aid service authority should be evaluated and compared with other district legal service authority inter as well as intra states to encourage legal aid.

Law schools:

Are the blossoming gardens of fresh, young talent. We suggest not only the inclusion of law students but also insertion of the legal academicians, who with their deepened knowledge and experience can be an active part in the implementation of the legal aid programme.

A reverse osmosis approach needs to be followed where rather than to wait for the poor to come and approach for legal aid a system with the help of Ngos to identify people in need of such services shall be developed, more so because people are ignorant both of their rights and also the availability of legal aid. The culture of donations by the privileged sections of the society should be encouraged.

Thus, the legal aid programme, if implemented will go a long way towards wiping the tears from the eyes of the teeming millions of our countrymen, by advancing social justice and providing them equal access to the law and justice institutions of the country. The question that whether it is a myth or reality, can be interpreted that the vision of the pioneers of the legal world is certainly turning into reality the myth is only of its implementation which will also take a real shape once certain minor reforms executed.

Conclusion

Thus we can find a paradigm shift in the approach of the Supreme Court towards the concept of legal aid from a 'duty of the accused to ask for a lawyer' to a 'fundamental right of an accused to seek free legal aid'. But in spite of the fact that free legal aid has been held to be necessary adjunct of the rule of law, (**Khatri v. State of Bihar, A.I.R. 1981 SC 928)** the legal aid movement has not achieved its goal. There is a wide gap between the goals set and met. The major obstacle to the legal aid movement in India is the lack of legal awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor. Thus 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. Because if the poor persons fail to enforce their rights etc. because of poverty, etc. they may lose faith in the administration of justice and instead of knocking the door of law and Courts to seek justice, they may try to settle their disputes on the streets or to protect their rights through muscle power and in such condition there will be anarchy and complete dearth of the rule of law. Thus legal aid to the poor and weak person is necessary for the preservation of rule of law which is necessary for the existence of the orderly society. Until and unless poor

illiterate man is not legally assisted, he is denied equality in the opportunity to seek justice.

Hence in this area we have a huge number of laws in the form of judgements as well as legislations 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 we need to focus on effective and proper implementation of the laws which we already possess instead of passing new legislations to make legal aid in the country a reality instead of just a myth in the minds of the countrymen

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