
LEGISLATIVE AND JUDICIAL DEVELOPMENT IN LEGAL AID: A CRITICAL ANALYSIS

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ABSTRACT

As observed by Justice Lewis F. Powell: Equal justice under law is not merely a caption on the facade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists... it is fundamental that justice should be the same, in substance and availability, without regard to economic status.¹

Everyone has a right to legal aid irrespective of their financial status and without any form of discrimination. This right has also been enshrined under Article 14, 21 and 39A of the Constitution of India. However, the reality is far from it. Poor and illiterate people due lack of knowledge and awareness are unable to avail the services of free legal aid. Another problem is the lack of funding in this field which leads to the lack of good quality legal representation which is a huge hindrance to achieve justice. This research paper deals with how the legal aid India has developed massively both legislatively and judicially but still it is unable to achieve its goals and provide legal aid to all. The research paper also deals with the lacunae in the field of legal aid in India and states suggestions for its improvement.

¹ Justice Lewis F. Powell, Jr., U.S. Supreme Court Justice (Ret.), during his tenure as president of the American Bar Association (August 1976).

INTRODUCTION

Article 14 of the Constitution of India, 1950 talks about equality before law and equal protection of laws in India. It states that, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” It means the Constitution guarantees that everyone has an equal right to avail legal services and equal right to justice without any form of discrimination. But many a times, availing legal services seems impossible for people due to lack of money or lack of education or they stand in such a vulnerable situation where access to legal services is not easy. This is where the concept of legal aid comes into picture.

Legal Aid suggests giving free legal services to poor people and destitute who can't bear the cost of the hiring of a legal counselor for a case or a judicial procedure in any court, council or before a power. Legal Aid is the technique embraced to guarantee that nobody is denied of expert counsel and help as a result of absence of assets. Subsequently, the principal object is to give equal justice and to make it accessible to poor people, down trampled and more vulnerable part of society.

In this regard Justice P.N. Bhagwati rightly observed that:

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.

Legal aid is a state obligation and a citizen's right, not a bounty. Equal justice for all should be the paramount goal of the state. Therefore, legal aid aims to ensure that the letter and spirit of the constitutional promise are respected and that justice is equal to the less fortunate and weaker members of the society. The legal aid movement, although identified as an essential limb of the rule of law, has still not achieved its objective.

REVIEW OF LITERATURE

Dr. G. Mallikarjun in his journal article² quoting the observation of Justice Bhagwati:

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.

Has analysed the perception and ideology of legal aid in India, the positive of contribution of Indian judiciary in the field of legal aid, recognition of legal aid by law in India, obstacles and hindrances in legal aid and also gave suggestions to do away with these obstacles.

Ms.Silky Mukherjee in her journal article³ has briefly discussed about the ideology of free legal aid in India throwing light upon the constitutional provisions that encourage legal aid India and various international covenants on legal aid and also discussed the judicial role in the field of legal aid in India.

Dr.Jeet Singh Mann in his journal⁴ has talked about the legal aid system in India. He discussed about the historical developments in legal in India, the Indian Constitutional provisions and international instruments that recognize legal aid, the statutory parameters of free legal aid in India, the judicial role in the promotion of legal aid in India, lacunae in the field of legal aid and suggestions for improvement.

STATEMENT OF PROBLEM

Even though the Indian Constitution guarantees free legal aid to everyone so that every Indian citizen can get justice but in practice it is far from it. Poor and illiterate people due lack of

² Dr. G. Mallikarjun, *Legal Aid in India and the Judicial Contribution*, NALSAR Law Review, Vol.7 : No.1, 235-241, (2013).

³ Ms.Silky Mukherjee, *Constitutional Provisions for Legal Aid in India*, Bhartiya Law Review, 149-162, Jan-Mar, (2103).

⁴ Dr.Jeet Singh Mann, *Impact Analysis of the Legal Aid Services Provided by the Empaneled Legal Practitioners on the Legal Aid System in the City of Delhi*, , Final Report of the Research Project Under the University Grants Commission Research Award, NLU Delhi, (2012-14).

knowledge and awareness are unable to avail the services of free legal aid. Another problem is the lack of funding in this field which leads to the lack of good quality legal representation which is a huge hindrance to achieve justice. Even though judiciary has contributed massively to encourage and improve legal aid but due to improper implementation of the present laws and many other factors, people are unable to enjoy their right to free legal aid.

HYPOTHESIS

Due to lack of awareness, lack of funding and because of improper implementation of laws, poor, illiterate and needy people are unable to access legal aid.

RESEARCH METHODOLOGY

The researcher intends to adopt doctrinal method of study. The nature of research is intended to be descriptive and analytical. Data for study will be gathered from both primary sources such as, statutes, legislations, government policy documents, case laws, etc.; as well as secondary sources such as textbooks, journals, articles and relevant international instruments, both online as well as offline.

WHAT IS LEGAL AID?

Legal aid is referred to giving poor and needy people who can't afford a lawyer free legal services for a case or legal proceeding in any court, tribunal, or authority. It is the development that envisages that everyone irrespective of their cast, creed, sex, religion or financial status can access courts and other government organizations. According to Cambridge Advanced Learners Dictionary, "*Legal Aid means a system of providing free advice about the law and practical help with legal matters for people who are too poor to pay for it.*"⁵

The ideology of legal aid is as traditionally understood is referred to "*financial assistance to a person who wishes to assert or defend his rights in a court of law and who would not be able to do so without such assistance in view of his financial means.*"⁶

Thus, the term "Legal Aid" generally refers to a "*social arrangement, legal support, and social*

⁵ Available at: <http://dictionary.Cambridge.org/dictionary/british/legal-aid> (Last Visited on April 9, 2023).

⁶ Narain, Jagat, "Legal Aid-Litigational or Educational: An Indian Experiment," 25 Journal of the Indian Law Institution, (1983).

security program for extending and assisting the poorer and weaker members in enforcing their legal rights through the legal system.”

Legal aid is the technique taken on to ensure that not a single person is denied of professional advice and help in view of absence of money. Legal aid is to be made available to the poor and needy by providing a system of government funding for those who cannot afford the cost of litigation. As a result, the primary objective is to provide equal justice to the poor, downtrodden, and weaker section of society. In this regard Justice P.N. Bhagwati rightly observed that:

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.⁷

Legal aid focuses on distributive justice, the efficient use of welfare benefits, the end of illiteracy, and the abolition of social and structural prejudices. Legal aid encompasses both actual legal aid in the form of litigation and legal advice and preventative legal services in a comprehensive sense. Legal advice and preventive legal services are positive assistance to avoid injustice, whereas legal aid proper is redial legal services. Although the legal advice is related to legal aid, it does not involve a court case and has positive potential.

Legal Aid is not a single initiative; rather, it is a concerted positive movement based on the dynamic concepts of socio-economic justice and the rule of law. It aims to bring de facto equal justice to the poor and people with other disabilities in the context of the current trend of modern society toward egalitarianism and humanism in order to help and cause socio-eco-legal justice to reach the common man quickly, fairly, equally, and at little or no cost.

⁷ 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. Madhavsingh F. Solanki, M.L.A., Mr. Girishbhai C. Patel, Principal, New Lal College, Ahmedabad. His Lord ship answered to the question of inequality in the administration of justice between the rich and the poor.

Justice V.R. Krishna Iyer observed, “*The spiritual essence of legal aid movement is said to consist in investing the law with human soul.*”⁸ The legal aid philosophy envisions that “*the machinery of administration of justice*” should be easily accessible to the poor and socially disadvantaged, and that they should be provided with de facto equal opportunities in the process of administration of justice for Complete and Just enforcement of rights, ensuring “*equality before the law, and equal protection of the laws*” as promised by the Constitution.

The legal aid program is basically being implemented in two ways:

a) Legal aid for litigation and b) Legal aid for prevention or strategic planning

Preventive legal aid or advice is positive assistance in avoiding injustice or legal issues, whereas litigation legal aid is remedial legal service. It is given during the time spent suit in regard of court charges, process expense, attorney's expenses, and other authoritative costs and so on.

In India, the ideology of free legal aid is enshrined in the Constitution of India under Article 39A, which mandates the state to provide equal opportunities for justice and to ensure that the legal system is not inaccessible to any citizen on account of economic or other disabilities.

The purpose of the 1987 Legal Services Authorities Act was to carry out the constitutional requirement to provide poor and other underserved members of society with free legal assistance. Under this Act, the National Legal Services Authority (NALSA) was laid out as the apex body to arrange and screen the execution of legal aid programs all through the country.

Section 12 of The Legal Services Authority Act, 1987 states that only the following people are eligible for accessing free legal services. They are-

- a) A member of a Scheduled Caste or Scheduled Tribe;
- b) A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- c) A woman or a child;

⁸ Inaugural address at the 2nd State Lawyers' Conference Andhra Pradesh at Rajmurthy, (1976) 2. Sec.'1, 4.

- 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. This limit on income can be increased by the state governments. Limitation as to the income does not apply in the case of persons.

CASES WHEREIN LEGAL AID SERVICES ARE NOT PERMITTED

- Defamatory prosecution or prosecution initiated out of vengeance
- Procedures related to political race and elections
- Where the fine is below Rs.50/-
- Socio-Economic Offences.
- Where a person is independent with a lawsuit while seeking legal aid, their interests and rights remain unaffected.

DEVELOPMENT OF LEGAL AID IN INDIA

The ideology of legal aid was first initiated in the year 1952 when the Government of India first started addressing the question of legal aid for poor in various conferences of law ministers and law Commissions after the enforcement of the Indian Constitution.

In 1960, the government established some guidelines for programs of legal aid. Legal Aid Boards, Societies, and Law Departments launched legal aid programs in various states. During the 1950s and 1960s, the role of the welfare state changed and social objectives no longer accepted common objectives. People were allowed to seek after their own goals. As concerns about the power of welfare providers and professionals emerged, the welfare state expanded at this time along with legal aid provisions. As a result, there were more and more calls in the 1960s and 1970s for individuals to have the right to legally enforce their economic, social, and

cultural rights as well as welfare provisions. Citizens were able to legally enforce their economic, social, and cultural rights through new mechanisms, and welfare lawyers used legal aid to help low-income people deal with state officials. The Government of Bombay established a Committee on Legal Aid and Advice in 1950, which was led by Bhagwati J. The Committee recommended two criteria for determining eligibility for legal aid: the Prima facie case test and the Means Test. Another legal aid program was proposed the same year by retired Chief Justice of the Calcutta High Court Sir Arthur Trevor Harris. The Committee recommended that the party assisting the need not pay the Court fee, process fee, or any other fees, Justice P.N. Bhagwati was also Chairman of the Legal Aid Committee, which was appointed by the Government of Gujarat to suggest ways and means of providing free legal aid and advice to the poor and weaker section of the community; and that the Legal Aid Fund should bear such expenses of the assisted person and also served as Chairman of the State Legal Aid Committee, overseeing the operation of the Gujarat Pilot Project, which provided free legal advice. He was successful in developing a complex legal aid program. He is widely regarded as the pioneer of India's legal aid program, which included the establishment of legal aid camps in rural areas, collaboration with non-governmental organizations, and legal aid clinics. In its 14th Report in 1958, the Law Commission of India emphasized equal justice and free legal aid for the first time. According to the 14th Law Commission Report of 1958, a poor man is denied the opportunity to seek justice unless some arrangement is made to provide him with the means to pay court fees, advocates' fees, and other incidental costs of litigation. This means that laws have no protective value if they do not provide for an equality of opportunity to seek justice to all segments of society.

On October 22, 1972, Justice V Krishna Iyer was given the position of Chairman of Committee for Legal Aid 22nd. On May 27, 1973, the Committee presented its report to the Government after conducting sample surveys in the vast majority of the country. The connection between poverty and the law was the subject of the Committee on Legal Aid's report titled "Processionals Justice to the Poor." The Report likewise underscored the requirement for dynamic and far and wide legitimate guide framework that empowered regulation to contact individuals, instead of expecting individuals to arrive at the law.

In 1973, Justice V. R. Krishna Iyer presided over the Expert Committee on Legal Aid of the Ministry of Law and Justice, which produced the first significant report on legal aid. In focusing on the requirement for a legal reason for lawful guide, the Board of trustees underscored that,

"legitimate guide is an essential piece of the overall set of laws, not a question of noble cause or bound to the four walls of the court building." In addition, the report has acknowledged the significance of providing low-income people with legal aid in order to address the connection between poverty and the law.⁹In 1976, Justice P.N. Bhagwati and Krishna Iyer were appointed members of a Committee to recommend ways to implement the report on legal aid.

In 1977, the Committee presented a report titled "National Judicature Equal Justice and Social Justice" to Sen., the Law Minister at the time. The Judicature Committee's report, which primarily focused on the viability and working conditions of legal aid programs, was intended to be revised, updated, revised, and supplemented by the Expert Committee. The Juridicare Committee prioritized the State's responsibility for comprehensive legal aid projects because it recognized the "*value of lawyers' services in seeking remedies or asserting rights*". The primary purpose of the report was the acknowledgment that a legitimate administrations program that reflected western mentalities and beliefs couldn't work effectively in India in light of the fact that a couple of the issues of the poor are valid lawful issues. The Committee concluded that the legal profession must recognize law as a potential instrument to eradicate poverty by securing equal distribution of the country's material resources¹⁰. The report, while emphasizing the need for a new philosophy of the legal service program, cautioned that it "must be framed in the light of socio-economic conditions prevailing in the Country." This was the Committee's belief that a legal aid program should aim to radical transformation of the socioeconomic structure. "The traditional legal service program, which is essentially Court or litigation oriented, cannot meet the specific needs and the peculiar problems of the poor in our country," the report added. Legal services legislation was also included in the report, and Social Action Litigation was mentioned.

In order to oversee and supervise legal aid programs across the nation, a national Committee was established in 1980, with Hon. Justice P.N. Bhagwati then a Judge of the Supreme Court of India. The Committee was named as "CILAS (Committee for Implementing Legal Aid Schemes)" and began keeping an eye on legal aid programs all over the country. The establishment of Lok Adalats successfully provided litigants with an additional venue for the

⁹ Report Of The Expert Committee On Legal Aid: Processual Justice To The People, May 1973, Government of India, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs, New Delhi, 1973.

¹⁰ Report on National Juridicare: Equal Justice- Social Justice, Government of India, 1977.

conciliation of their disputes, adding a new chapter to the country's justice system.¹¹

The Legal Services Authorities Act was enacted in 1987 to provide a uniform statutory foundation for legal aid programs nationwide. The provision of assistance to individuals who would otherwise be unable to afford legal representation and access to the court system is known as legal aid by ensuring equality before the law, the right to counsel, and the right to a fair trial, legal aid is considered essential to facilitating access to justice.

STATUTORY RECOGNITION OF LEGAL AID IN INDIA¹²

Legal aid has been recognized as a fundamental right under articles 21 and 39-A of the Constitution of India. In consonance with the constitutional goal the Legal Services Authorities Act, 1987, Order 33 of the Code of Civil Procedure, 1908, Section 304 of the Criminal Procedure Code, 1973, the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, and National Legal Services Authority (Legal Aid Clinics) Regulations, 2011, have been implemented to provide legal aids to disadvantaged group of society in certain contingencies.

THE CONSTITUTION OF INDIA, 1950

Article 14 of the Constitution of India talks about “*equality before law and equal protection of laws*” in India. It states that, “The state shall not deny to any person equality before law or the equal protection of laws within the territory of India.” This also includes the ideology of legal aid within its ambit.

Article 21 of the Constitution of India talks about “*protection of life and personal liberty*”. It states that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” It also includes accessing legal aid.

The 42nd Amendment Act, 1976 to the Constitution, inserted a new provision free legal aid under Article 39A²⁷. The Constitution of India under Article 39-A mandates free legal aid to the poor and weaker sections of society.

¹¹ Introduction to Legal Aid system In India: NALSA, New Delhi available on the web site of the NALSA.

¹² Dr. Jeet Singh Mann, Impact Analysis of the Legal Aid Services Provided by the Empanelled Legal Practitioners on the Legal Aid System in the City of Delhi, The University Grants Commission Research Award, 2012-14, NLU Delhi, (2017).

Article 39A - Equal Justice and Free Legal Aid:

The 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 legislations or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.

THE CRIMINAL PROCEDURE CODE, 1973

According to Section 304 of the Criminal Procedure Code, “*Legal aid to accused at state expense in certain cases:*

- 1. 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 not sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the state.*
- 2. the high court may, with the previous approval of the state government make rule providing for-*
 - (a) The mode of selecting pleaders for defence under sub-section (2);*
 - (b) The facilities to be allowed to such pleaders by the courts;*
 - (c) The fee payable to such pleaders by the government, and generally, for carrying out the purposes of sub-section (1).*
- 3. the state government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other courts in the state as they apply in relation to trials before the courts of session.*

Section 304 of the Criminal Procedure Code stipulates that the state must pay for an indigent person to access to legal aid. During the time that cases are pending before the Court of Session, the state is obligated to ensure that the provision is adhered to. The state has the attentiveness to broaden the utilization of the arrangement to any class or preliminaries previously different courts in the State. In the event of infringement of the arrangement under Section 304, the choice conveyed by the court, will be proclaimed invalid and void.

THE CIVIL PROCEDURE CODE, 1908

Order 33 of the Civil Procedure Code talks about providing indigent person to institute suits, even without paying court fees. Order 33 Rule 9A of the code states that:

1. *Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.*

2. *The High Court may, with the previous approval of the State Government, make rules providing for-*

a. *the mode of selecting pleaders to be assigned under sub-rule (1);*

b. *the facilities to be provided to such pleaders by the Court;*

c. *Any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (1).*

(a) *Subs. by the A.O. 1950, for "Provincial Government" which had been subs. by the A.O. 1937, for "Government"*

Order 33 rule 18 talks about the powers of the government to provide for free legal aid services to indigent persons. It states that:

(1) *Subject to the provisions of this Order, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as indigent persons.*

(2) *The High Court may, with the previous approval of the State Government, make rules for carrying out the supplementary provisions made by the Central or State Government for providing free legal services to indigent persons referred to in sub-rule (1), and such rules may include the nature and extent of such legal services, the conditions under which they may be made available, the matters in respect of which, and the agencies through which, such services may be rendered.*

THE LEGAL SERVICES AUTHORITY ACT, 1987

The Legal Services Authority Act of 1987, with its amendments in 1994 and taking effect of November 5, 1995, works to create a National system for the provisions of free and comprehensive legal services to the disadvantaged groups of people in the society. In addition, the LSA was implemented in order to achieve the goals outlined in Article 39A of the Constitution. It requires the state to ensure equality before the law, and a justice system that promotes equal opportunity for everyone. Legal aid works to ensure that this sacred promise is fulfilled in its letter and spirit, and equal justice is made available to the poor, marginalized and vulnerable members of society. The LSA accommodates production of a few lawful administrations experts for making accessible, free and capable administrations of the empaneled legitimate practitioners, to the disadvantageous layers of the general public. Social justice for those who are unable to approach judicial or administrative authorities due to legal, social, or other disabilities is the Act's primary goal. Under the LSA, the specified agencies provide free legal aid to judicial and quasi-judicial authorities at various levels, including tribunals, subordinate courts, high courts, and the Supreme Court.

The various bodies under the hierarchy of the Act are as follows-

NATIONAL LEGAL SERVICES AUTHORITY (NALSA)

NALSA is a peak body which comprises of Chief Justice of India as the Patron-in-Chief and a retired Judge of Supreme Court as the Executive Chairman, who is nominated by the President. NALSA figures out strategies and standards as well as edges powerful affordable plans to make legal services under the Act effectively accessible. It also conducts periodic evaluations of legal aid programs, organizes camps for legal aid, encourages people to settle disputes in Lok Adalat, conducts and promotes research on legal services. It also encourages the education of paralegals and establishes legal aid clinics at a number of law schools and colleges. NALSA also supports the implementation of legal aid programs by NGOs and supervises State Legal Service Authorities.

State Legal Services Authorities

The Legal Services Authority Act mandates the establishment of a State Legal Services Authority by each state government. The Authority is comprised of a Chief Justice of the High

Court as Patron-in-Chief and an executive chairman who is either a current or retired judge of the High Court and is appointed by the Governor of the State. The State Legal Services Authority carries out the policies, rules, and strategies set by NALSA. The highest authority that oversees the state's legal services operations is this authority. It also runs Lok Adalats and other programs for legal aid.

DISTRICT LEGAL SERVICES AUTHORITIES

The Legal Services Act mandates that every state establish a District Legal Services Authority with the District Judge serving as chairman in each district. The duties and regulations established by the State Legal Services Authority are carried out by this authority. In addition, it organizes Lok Adalats and oversees the Taluka Legal Services Committee and other Districtbased legal services.

TALUKA LEGAL SERVICES COMMITTEE

The State Legal Services Authority establishes a Taluk Legal Services Committee with an exofficio Chairman appointed by the highest-ranking Judicial Officer. It also organizes Lok Adalat and oversees and coordinates the activities of the Taluk's legal services. Section 3A of the Legitimate Administrations Authority Act, states about the establishment of the Supreme Court Legal Services Committee, to give legal aid, assistance and justice to poor people and more vulnerable segments of the society. In addition, a Supreme Court Mediation Centre and Lok Adalats are organized by this committee in the Supreme Court. In addition, in accordance with Section 8A, the state legal services authority set up the high court legal services authority.

LOK ADALATS

Lok Adalats are a different way to settle disputes. The primary objectives of Lok Adalats are to expedite and inexpensively resolve cases and reduce court workload. The provisions pertaining to Lok Adalats' powers are outlined in Chapter VI of the 1987 Legal Services Authority Act. There are numerous advantages to Lok Adalats, like there is no need to pay a court fee, that it is a very amicable method of resolving disputes, that cases are resolved quickly, and that the parties are free to reach a compromise or agree to a settlement.

CONTRIBUTION OF JUDICIARY IN THE FIELD OF LEGAL AID

The Indian Judiciary, in its plethora of judgements, has made a massive contribution towards the rights of poor, illiterate and needy people to access justice and to provide them with free legal aid services as a matter of their right granted by the Constitution of India.

In *M.H. Hoskot v. State of Maharashtra*¹³, the Supreme Court “issued a set of prohibitions regarding free legal aid for inmates that are to be followed by all Indian courts, including the timely provision of a free transcript of the judgment.” Every facility for exercising the prisoner's right to appeal or revision must be made available by the administration of the jail. If a prisoner is unable to exercise his or her constitutional and statutory right of appeal, including special leave to appeal, due to a lack of legal assistance, the court has the authority to assign counsel to the prisoner if the prisoner does not object to the lawyer named by the court.

In *Hussainara Khatoon v. State of Bihar*¹⁴ the Supreme Court held that:

“It is the Constitutional right of every accused person, who, for reasons such as indigence, poverty or illiteracy cannot afford a legal counsel, to be provided with free legal aid by the State” as it is the duty of the State to do so under the Indian Constitution. *“In the absence of any free legal services the trial shall be considered as a violation of*

Article 21 of the Indian Constitution.”

Bhagwati, J has observed that:

“Procedure which does not make available legal services to accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as reasonable, fair and just.”

In *Sunil Batra v. Delhi Administration*¹⁵, the Supreme Court brings the professional Legal aid society into actions, and calls for their participation in this process and recommended the District bar to keep a call for prisoner's relief and observed that:

“The prisoner's rights shall be protected by the Court by its writ jurisdiction plus contempt

¹³ M.H. Hoskot v. State of Maharashtra, (1981) 1 SCC 635.

¹⁴ Hussainara Khatoon v. State of Bihar AIR, 1979 SC 1377-1381.

¹⁵ Sunil Batra v. Delhi Administration AIR 1980 SC 1579.

power. To make this jurisdiction viable, free legal services to the prisoner programme shall be promoted by professional organisations recognised by the Court.” such as 'e.g. free legal aid (S.C.) Society. The district bar shall recommend to keep a cell for prisoner's relief.

The sum and substance of the decisions in the Hussainara Khatoon's case are:¹⁶

- a) Recognition of the right to speedy trial, and the right to legal aid services under the umbrella of Article 21.
- b) Reformation in the Law of Bail since “*the present legal and judicial system denied justice to the poor and the needy*” because the system of bail with its misdirected emphasis in furnishing financial security operated adversely against the accused
- c) Bringing the obligation of rehabilitation of the victims of injustice on the State as a measure of Welfare and Social Justice. Apart from the reformation in the Law of Bail, the Supreme Court imbued its mind with Social Consciousness and welfare and put the obligation of rehabilitation of the victims of injustice on the State. This indicates that the constitutional obligation of the Supreme Court does not end on dispensing equal legal justice only but on doing complete justice, which cannot be done without taking recourse to socio-economic justice.

Finally, in *A.R. Antulay vs. R.S. Nayak, AIR 1992 SC 1701*¹⁷, a constitution Bench of five learned judges of the Supreme Court dealt with the question of “the right to speedy trial” and laid down certain guidelines which may be summarized as follows:

- a) *Fair, just and reasonable procedure implicit in Article 21 creates a right in the accused to be tried speedily.*
- b) *Right to speedy trial, flowing from Article 21, encompasses all the stages, namely, the state of investigation, inquiry, appeal, revision and re-trial.*
- c) *The concerns, underlying the right to speedy trial from the point of view of the accused, are :*
 - *The period of remand and pre-conviction detention should be as short as possible. In*

¹⁶ Sakshi Rewaria, Justice & Legal Aid, SSRN, available at Justice and Legal Aid by Sakshi Rewaria: SSRN.

¹⁷ A.R. Antulay v. R.S. Nayak, AIR 1992 SC 1701.

other words, the accused should not be subjected do unnecessary or long incarceration prior to the conviction;

- *The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimum;*
- *undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance I or nonavailability of witnesses or otherwise.*

In ***Khatri (II) v. State of Bihar***,¹⁸ the Court ruled that:

The Magistrate or the Sessions Judge before whom an accused appears “must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty and indigence, he is entitled to obtain free legal aid at the cost of the State.” We deplored that, in that case, “where the accused were blinded prisoners the Judicial Magistrate failed to discharge his obligation and contended himself by merely observing that no legal representation had been asked for by the blinded prisoners and hence was provided.” We accordingly directed the “Magistrates and Sessions Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty and indigence” and, “that he is entitled to free legal services at the cost of the State unless he is not willing to take advantage of the free legal aid provided by the State.” “We also give a general direction to every State in the country” ... “to make the provision for grant of free legal service to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situations” the only qualification being that the offence charge against an accused is such that on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representations.¹⁹

In ***Sukh Das v. Union Territory of Arunachal Pradesh***²⁰ the court observed that:

“It may therefore now be taken as settled law that free legal assistance at State cost is a

¹⁸ *Khatri (II) V. State of Bihar*, (1981) 1 SCC 635.

¹⁹ Mamta Rao, Public Interest Litigation: Legal Aid and Lok Adalats, Second Edition, Eastern Book Company, Lucknow, 2004, p 352.

²⁰ *Sukh Das v. Union Territory of Arunachal Pradesh*, AIR 1986 SC 991

fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty". The court further observed that, "this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21."

In, ***State of Haryana v. Darshana Devi***,²¹ the Court said that the poor shall not be priced out of the justice market by insistence on court-fee and refusal to apply the exemptive provisions of order XXXIII, CPC. The court observed:

"The poor shall not be priced out of the justice market by insistence on court-fee and refusal to apply the exemptive provisions of order XXXIII, CPC" The court stated, "The state of Haryana, mindless of the mandate of equal justice to the indigent under the magna carta of republic, expressed in article 14 and stressed in article 39A of the constitution" and that it has, "sought leave to appeal against the order of the high court which has rightly extended the 'pauper' provisions to auto-accident claims. Order XXXIII will apply to tribunals, which have the trappings of the civil court"... "even court also expressed its poignant feeling that "no state has, as yet, framed rules to give effect to the benignant provision of legal aid to the poor in order xxxiii, rule 9A, civil procedure code, although several years have passed since the enactment." The court also stated that, "Parliament is stultified and the people are frustrated. Even after a law has been enacted for the benefit of the poor, the state does not bring it into force by wilful default."

In ***State of Maharashtra v. Manubhai Pragaji Vashi***²², the court widened the scope of free legal aid and while interpreting Article 39-A held that:

"In a fit case the court can direct the ruling politicians to carry out the Directive Principles of State Policy even though these are stated to be non-justiciable in a court of law." "Further, there is inaction or slow action by the politicians and administrative officers, the judiciary must intervene." "The Apex Court clubbed legal aid with legal education and directed the State to revamp and restructure the deteriorating standards in legal education." The Supreme Court, in this case, directed the State "to provide grant-in aid to recognized law colleges so as to enable them to function effectively and in a meaningful manner and turn out sufficient number of well-trained or properly equipped law graduates".

²¹ State of Haryana v. Darshana Devi, AIR 1992 SC 855.

²² State of Maharashtra v. Manubhai Pragaji Vashi, (1955) 5 SCC 730.

That in turn will allow the State to provide free legal aid and certify that no citizen is denied access to justice by virtue of a disability. These aspects arise inevitably from Articles 21 and 39-A of the Constitution.

In the case of ***Centre for Legal Research v. State of Kerala***²³, Apex Court held that:

“The Voluntary organisations and social action group must be encouraged and supported by the state in operating the legal aid programme.” The court stated that, *“It is now acknowledged throughout the country that the legal aid programme which is needed for the purpose of reaching social justice to the people cannot afford to remain confined to the traditional and obligation oriented legal aid programme”* but *“it must taking into account the socio economic conditions prevailing in the country, adopt a more dynamic posture and take within its sweep what may be called aid Schemes.”*

In ***Markendeya v. State of U.P.***²⁴ the court held that:

“It is true that Article 39-A of the Constitution of India finds its place under the Directive Principles of State policy.” *“But the directive principles of state policy, though not strictly enforceable in Courts of Law, are yet fundamental in the Governance of the Country.”* *“But while considering the question of enforcement of fundamental rights of citizen, it is open to the Court to be guided by the Directive Principles to ensure that in doing justice the principles contained therein are maintained.”* *“Fundamental Rights and Directive Principles constitute conscience of the constitution. They constitute the true conscience and without faithfully implementing the Directive Principles, it is not possible to achieve the welfare state contemplated by the Constitution.”*

In ***Sheela Barse v. State of Maharashtra***²⁵, the Court reminded the lawyers of their duty to help the people in distress. Bhagwati. J. speaking for the Court held that:

“Lawyers must positively reach out to those sections of humanity who are poor, illiterate and ignorant, and who, when they are placed in crisis, do not know what to do or where to go or to whom they should go”. The learned judge pointed out that *“if lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, they will come into disrepute and*

²³ Centre of Legal Research v. State of Kerela, AIR 1986 SC 1322.

²⁴ Markendeya v. State of U.P. AIR 1989 SC 13.

²⁵ Sheela Barse v. State of Maharashtra, AIR 1983 SC 378.

large masses of people in the country would lose faith in lawyers and that would be destruction of democracy and rule of law.”

ISSUES AND CHALLENGES IN THE DOMAIN OF LEGAL AID

“Legal Aid became a statutory right in the 1990s but the government established Legal Aid Agency is financially undernourished²⁶.”- Granville Austin

Legal aid is not a charity or bounty, but is an obligation of the state and right of the citizens. The prime object of the state should be —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. But in spite of the fact that free legal aid has been held to be necessary adjunct of the rule of law, the legal aid movement has not achieved its goal. There is a wide gap between the goals set and met²⁷.

Even though the legislature and judiciary have contributed greatly in the field of legal aid and has taken many positive steps to make legal aid available to each and every person but the reality is far from it. On critically analyzing the ideology of legal aid, there are a lot of issues and challenges in the domain of legal aid and its goals and objectives are still not fulfilled. The major issues and challenges are as follows-

- a) ***Compromise in Quality:*** India's legal aid system does not strike the right balance between efficiency and quality disposal. It would appear that "access to justice" has been substituted for "justice." This could be derived from the working of Lok Adalats. They've become a way to get rid of cases, which is completely at odds with their original purpose, which was to speed up the process of getting justice. Consequently, to achieve speedy justice, serious compromise with respect to quality disposal of cases has been made.
- b) ***Improper incentives to Lawyers:*** Lawyers who deal with pro bono cases and cases related to legal aid are often provided with inadequate incentives by the government due to which this right of “access to justice” is seriously compromised.
- c) ***Lack of proper funding:*** The absence of adequate fund is a significant issue in legal aid in India, essentially on the grounds that the Indian legal system has countless cases, and a huge

²⁶ G. Williams cited in D.D. Basu, Commentary on the Constitution of India 4100, 8th edition, (2008).

²⁷ Dr. G. Mallikarjun, *Legal Aid in India and the Judicial Contribution*, NALSAR Law Review, Vol.7 : No.1, 235-241, (2013).

extent of the population can't stand to pay for legal services. As a result, many people lack access to justice and frequently see their legal rights violated. The Indian government's historically low priority on the issue of legal aid is one of the main contributors to the lack of funding for legal aid. As a result of the government's lack of funding for legal aid programs, legal aid organizations frequently lack resources and are overburdened. Additionally, a lack of public awareness of the Indian legal aid system means that many people are unaware of their legal rights or how to use legal aid services.

- d) ***Improper use of funding:*** Even though when there is a decent budget set aside for providing legal services, a lot of money doesn't get used, and sometimes the money spent isn't recorded. This demonstrates that there is a lack of awareness regarding the right to free legal aid services, that there is still bribery paid to legal counsel, the court staff, the policeman who recovers relevant documents, and prison officers, that there is no expert to oversee the finances of the legal services, that there are too many roles and too many funds available, and that the purpose of free legal aid is defeated.
- e) ***Untrained lawyers:*** The availability and quality of legal professionals pose challenges to the Indian legal aid system. Lawyers involved in legal aid services and legal aid programs are not provided sufficient training on legal aid due which they lack proper knowledge and expertise in the field which turns out to be a huge hindrance in legal aid services. Numerous attorneys are not sufficiently prepared or experienced in giving legal aid services, and they may not be propelled to work at legal aid cases because of the low expenses offered. Due to low wages and poor working conditions, numerous legal aid organizations struggle to recruit and retain skilled professionals.
- f) ***No provisions for paralegals:*** The Legal Services Authority Act of 1987 places paralegals at the center of the legal aid program. A paralegal volunteer is someone who has been trained to do so by a Legal Services Organization. Ironically, the Act provides paralegals with inadequate or nonexistent eligibility requirements, duties, training, and compensation.
- g) ***Neglect of children's rights:*** Rights with respect to children are often neglected or not given enough importance of are often seen and treated in the same light as the rights of the adults. As a result, the rights of children who are abandoned, orphaned or troubled are often in conflict with law because their needs are not properly catered to and their rights are often neglected or not properly acknowledged by the government officials and juvenile justice institutions.

- h) **Deficiency in Legal Service programs:** There exist plethora of deficiencies in the legal aid service programs. For instance, the availability and quality of legal professionals pose challenges to the Indian legal aid system. Lawyers involved in legal aid services and legal aid programs are not provided sufficient training on legal aid due which they lack proper knowledge and expertise in the field which turns out to be a huge hindrance in legal aid services. Furthermore, lack of any provision in the statute regarding the recruitment of lawyers from marginalized groups such as disabled, women and scheduled castes is also a huge drawback. Apart from this, clients are not requested criticism for their involvement in the legal aid services authority, there is no effective complain mechanism against lacking nature of legal aid. Also, there is no record of progress of cases as they are passed on to the legal aid panel lawyers to manage completely, there is no strategy to assess or follow up the legal counselor's exhibition or guarantee timely payment of fees which itself is deficient. Paralegals are amateurs with little experience, their roles are ambiguous, they lack adequate training, and their compensation is uncertain.
- i) **Improper functions of NGOs:** State organizations, for example, legal authorities and NGOs are not proactive in nature and don't stretch out help to the monitory and handicap institutions that are not very much aware of the legal aid services authority and draw in confidential attorneys all things being equal. Even though legal camps are held, they aren't well-organized, the audience isn't told what the program is going to be, and untrained people run the sessions, which are boring, long, and educational rather than interactive. Additionally, lawyers are least inclined to provide any kind of legal assistance due to improper fee payment.
- j) **Lack of education and awareness:** The main problem with these legal aid services is that they are for poor and illiterate individuals, who are uneducated, illiterate, and unaware about their rights and existence of these facilities. They are unaware of their fundamental rights and legal rights because they lack a legal education. Individuals are very little mindful of the legal aid services which they can access. As a result, the goal of the legal aid movement has not been achieved because people are unfamiliar with Lok Adalats, Legal Aid, etc.

SUGGESTIONS FOR IMPROVEMENT

A REVIEW OF THE STUDY CONDUCTED BY MARG²⁸: Multiple Action Research

²⁸ Aishwarya Agarwal, Legal Aid Challenges and Recommendations, editors-Kalpesh L.Gupta & Viralkumar B.Mandaliya, Legal Aid and Awareness in India: Issues & Challenges, Lambert Academic Publishing, Germany, (2018).

Group on Needs Assessment Study of Selected Legal Services Authorities analyzed the various issues in the field of legal aid and made the following suggestion-

- Empaneling Lawyers based on proper selection criteria- emphasizing on experience in related fields, commitment to justice, pro bono experience, and preference to those from marginalized groups; quick selection process; revising the panel regularly based on satisfaction of services extended.
- Monitoring the counsels appointed through feedback approach, a regular progress report of cases undertaken by the lawyer, putting in place a monitoring committee, etc.
- Training of lawyers in legal developments and also in shaping their attitude to a different section of the society they may have to engage with and also regular compensation of lawyers appointed.
- Paralegal training to encompass an understanding of their functions, legal processes to be undertaken by them, how to handle possible issues, rights of the marginalized, redressal mechanism, etc.
- Improved and efficient coordinating mechanisms to be set up with the state and non-state voluntary organizations dealing with rights of women, children, scheduled castes, scheduled tribes, disabled, minority sections, prisoners, etc.
- Efficient organizations of legal awareness camps, schemes and further expansion of legal literacy.
- Spreading awareness of Lok Adalats, training the personnel and encouraging people to settle disputes in Lok Adalats.
- Upgrading the infrastructure at the legal service centers, updating the websites, appointing more accounting and budgeting related staff with financial experience.
- Increase in the role of NGOs and empowering those further helps in establishing and preserving the contact between the accused and their friends and families.

FURTHER SUGGESTIONS BY THE AUTHOR:

- It is suggested that the poor and illiterate should be educated on their fundamental rights and given legal knowledge at the grassroots level of the country, as this is urgently needed. In order for the judiciary to carry out a program for legal literacy, the state administration must provide support.
- In the current situation, where the gap between those who have it all and those who don't is getting wider by the day, the judiciary ought to place a greater emphasis on Legal Aid. Additionally, when free legal aid is utilized as an essential component of the process of achieving distributive justice, it will be possible to eliminate social and structural discrimination against the poor.
- The right to free legal assistance has been upheld by a number of precedents and laws, but due to their ineffective implementation, the majority of people still believe it to be a myth. Therefore, in order to make legal aid in the country a reality rather than a myth in the minds of the people, it is necessary to concentrate on the efficient and proper implementation of existing laws rather than passing new laws.
- In order to expedite the process of reaching a settlement between the parties to a case and ensure that there will be no further appeals, legal aid providers should, at every level, make use of appropriate alternative dispute resolution (ADR) strategies.

CONCLUSION

Concluding the above research it can be said that the hypothesis stated earlier is true. In India, equal protection of the law and equality before the law are mentioned in Article 14 of the 1950 Constitution. That's what it expresses, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This indicates that without discrimination, the Constitution guarantees that everyone has the same right to access legal services and justice. Yet, numerous multiple times, benefiting lawful administrations appears to be outside the realm of possibilities for individuals because of absence of cash or absence of training or they stand in such a weak circumstance where admittance to legitimate administrations is difficult. The idea of legal aid comes into play at this point. Legal aid is referred to giving poor and needy people who can't afford a lawyer free legal services for a

case or legal proceeding in any court, tribunal, or authority. It is the development that envisages that everyone irrespective of their cast, creed, sex, religion or financial status can access courts and other government organizations.

Even though both the Indian Legislature and Indian Judiciary and many legal practitioners have made plethora to positive efforts and contributed greatly in the field of legal aid and to make justice accessible to all without any discrimination on any grounds but the reality is far from it. Due to the presence of various issues and challenges as stated above, the institution of legal aid is unable to meets its goals. Consequently, justice is still not accessible to all and people are still unable to avail the free legal aid services on which they have a right.

In order achieve the set goals, the legislature, the judiciary and the legal practitioners still have to make more efforts and contribute further for the betterment of the field of legal aid in India and to finally make justice accessible to all truly in practicality and not just on papers.

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