

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 3 | Issue 6

2021

© 2021 International Journal of Legal Science and Innovation

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at submission@ijlsi.com.

Access to Justice for Marginalized People in India

PRIYAL SINGH PARIHAR¹

ABSTRACT

Purpose – The purpose of this this article is to give briefing about Fundamental Right to Free Legal Aid In India with the Judicial Contribution of the Supreme Court of India. It also highlights the organizations and bodies that are responsible for providing legal aid to needy and poor people it further focuses on justice to be provided if one cannot afford it.

Design/methodology/approach - The article uses case studies, planning provisions, different ideas in order to provide with the knowledge of legal aid in India. Legal terms and their significance are addressed in a manner that will also be comprehensible to a non-legally trained readership.

Findings – There are certain judicial decisions and laws that are demonstrating the free legal aid that is provided in India to needy and poor people in a prescribed manner. The article focuses on the issues related to free legal aid and provides laws, provisions, case studies that deal with free legal aid.

Research limitations/implications – Free legal aid is related with the justice in the country. it basically points out how justice must not be constrained to how much money one has and therefore legal aid must be provided to needy and poor people.

Originality/value - The research focuses on providing fair, honest trial and also justice to the people who cannot afford it and also the organizations that help to promote it.

Key Words – Free legal aid, needy and poor individuals, justice, society.

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

– U.S. Supreme Court Justice Hugo Black (1964)

I. INTRODUCTION

Legal aid is critical for the preservation of rule of law that is important for the existence of the

orderly society until and unless poor illiterate man isn't lawfully aided, he's denied equality within the chance to seek justice thus as a step towards making the legal service serve the poor and also the deprived; the judiciary has taken active interest in providing legal aid to the poor in the recent past. The Indian Constitution provides for an independent and impartial judiciary and also the courts are given power to

¹ Author is a B.B.A.LL.B. Graduate in India.

shield the constitution and safeguard the rights of individuals regardless of their monetary standing. Since the aim of the constitution is to produce justice to any or all and also the directive principles are in its integral part of the constitution, the constitution dictates that judiciary has duty to shield rights of the poor as additionally society as a full. The judiciary through its vital judicial interventions has compelled as well as guided the assembly to return up with the appropriate legislations to bring justice to the doorsteps of the weakest sections of the society. Public Interest proceeding is one shining example of how Indian judiciary has played the role of the vanguard of the rights of Indian voters particularly the poor. It inspired the public spirited individuals to seek justice for the poor. For that Supreme Court relaxed procedure substantially. Excluding Public Interest proceeding and judicial activism, there are reforms within the judicial method, wherever it aims to form justice low-cost and easy by introducing Lok Adalat system as a one of the ways to produce free legal aid and speedy justice at the door steps of the poor. During this article the author highlights the importance of free legal aid in a Constitutional democracy like India wherever a big section of the population has still not seen the constitutional promises of even the very basic rights being fulfilled for them.

² 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.

II. LEGAL AID: THE CONCEPT

The idea of legal aid is based on equal justice that's achieved only if protection of law is provided to poor, weak and illiterate individuals. Legal aid means that giving free legal services to the people who are needy and poor and who cannot avail the services of a lawyer for the conduct of a case or proceedings before any court or a tribunal. These services additionally embody payment of court fees, process fees or other charges. Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a professional for the conduct of a case or a due process of law in any court, tribunal or before an authority. Legal Aid is the technique to confirm that nobody is deprived of professional advice and help due to lack of funds. Therefore, the main object is to produce equal justice is to be created available to the poor, down trodden and weaker section of society. in this regard Justice P.N. Bhagwati justly ascertained that:²

“The legal aid means providing an arrangement within the society so the missionary of administration of justice becomes simply accessible and isn't out of reach of these who ought to resort thereto for social control of its given to them by law, the poor and illiterate ought to be able to approach the courts and their ignorance and financial condition shouldn't be an impediment in the way of their getting justice

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

from the courts. Legal aid ought to be obtainable to the poor and illiterate, who do not have access to courts. One need not be a litigant to seek aid by means of legal aid.”

Therefore, legal aid is to be made obtainable to the poor and needy by providing a system of government funding for those that cannot afford the value of legal proceeding. Legal aid strives to Confirm that constitutional pledge is fulfilled in its letter and spirit and equal justice is created obtainable to the poor, downtrodden and weaker sections of the society. It’s worthy to say that the Constitution of India provides³ that State shall secure that the operation of the system promotes justice on a basis of equal opportunity, and shall above all, give free legal aid, by appropriate legislation or schemes or in the other way, to ensure that opportunities for securing justice aren’t denied to any citizen by reason of economic or alternative disability. Constitution of India additionally makes it obligatory for the State to confirm equality before law and a system that promotes justice on a basis of equal opportunity to any or all.⁴

III. LEGAL AID: A CONSTITUTIONAL MANDATE

Legal aid means the supply of legal help or any kind of legal help to those that are in need of it. There are many instances where we tend to may witness that due to poverty and lack of other amenities, many people are unable to approach the court and are deprived of justice. In the modern India, where the fee of lawyers is sky-

rocketing, the necessity for free of charge legal aid is terribly essential to ascertain the authority of justice and maintain the religion of the individuals towards law and legal machinery .42nd Constitutional amendment Act⁵ inserted the “Free Legal Aid” in part IV of the Constitution. Entry number 11A was additionally incorporated within the concurrent List by that each State and Central Government got the power to frame rules with reference to legal aid.

Amendments were additionally done in the Code of Civil Procedure within the year 1976, which amended Order xxxiii and Order xlv. Rule 18 of Order xxxiii⁶ that has been inserted provides for ability of central government and the State Governments to make such supplementary provisions as it thinks appropriate providing free legal services to those that are permissible to sue as indigent persons. Further, Article 22⁷ of the Constitution of India states that no one shall be denied the right to counsel, and to be defended by a legal professional of his choice. Therefore, free legal aid in civil as well as criminal matters isn't solely a right but also a Constitutional mandate. Article 39A of the Constitution of India that provides for Equal justice and free legal aid that states, “The State shall secure that the operation of the system promotes justice, on a basis of equal opportunity, and shall, particularly, give free legal aid, by appropriate legislation or schemes or in the other way, to make sure that opportunities for securing justice

³ Article 39A of the Indian Constitution

⁴ Articles 14 and 22(1) of the Indian Constitution.

⁵ 42nd amendment act 1976

⁶ ORDER XXXIII OF CPC

⁷ Article 22 of the Indian Constitution

aren't denied to any citizen by reason of economic or other disabilities.”

The Preamble itself provides for Justice in social, economic and political aspects. It additionally provides for equality of status of opportunity. In Article 14⁸ of the Constitution that's provides that the “State shall not deny to any individual equality before law or the equal protection of the laws within the territory of India.” Further in Section 304 (1)⁹ that states Legal aid to be accused at State expense in certain cases it is mentioned that 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/her defence at the expense of the State. Also section 7 (1) (ib)¹⁰ that provides the Functions of Bar Council of India and further mentions that bar council to organize legal aid to the poor in the prescribed manner; Moreover Section 6 (1) (eee)¹¹ also provides to organize legal aid to the poor in the prescribed manner.

In light of the preceding provisions, it becomes a obligation of the State to supply for such measures and take such necessary steps that make sure that no citizen is empty justice and free legal aid is offered to all no matter the background to which they belong.

IV. FREE LEGAL AID IN INDIA: THE POSITIVE CONTRIBUTION OF JUDICIARY

The Supreme Court of India got a major chance

to create an emphatic pronouncement concerning the rights of the poor and needy in judgment of **Hussainara Khatoon vs state of Bihar**¹² where the petitioner delivered to the notice of Supreme Court that most of the under trails have already under gone the penalty far more than what they might have gotten had they been condemned without any delay. The delay was caused due to inability of the persons involved to engage a legal counsel to defend them within the court and therefore the main reason behind their inability was their financial condition. Thus, during this case the court detected that Article 39A emphasised that free legal service was an inalienable element of reasonable, honest and just‘ procedure which the right to free legal services was implicit in the guarantee of Article 21. Two years later, in the case of **Khatri v. State of Bihar**¹³ , the court answered the question the right to free legal aid to poor or needy defendant who are incapable of engaging lawyers. It held that the state is constitutionally bound to give such aid not solely at the stage of trial but also when they are first produced before the judge or remanded from time to time and that such a right cannot be denied on the ground of financial constraints or administrative inability or that the defendant failed to ask for it. Magistrates and Sessions Judges should inform the defendant of such rights. the right to free legal services is a necessary ingredient of reasonable, fair and just procedure for an individual defendant of an offence and it should be held implicit in the

⁸ Article 14 of the Indian Constitution

⁹ The Code Of Criminal Procedure, 1973

¹⁰ THE ADVOCATES ACT, 1961

¹¹ THE ADVOCATES ACT, 1961

¹² (1980) 1 SCC 98.

¹³ AIR 1981 SC 262.

guarantee of Article 21 and therefore the State is under a constitutional mandate to produce a lawyer to an accused person if the circumstances of the case and the needs of justice thus require...The State cannot avoid this obligation by pleading financial or administrative inability or that none of the aggrieved prisoners asked for any legal aid. **In Suk Das v. Union Territory of Arunachal Pradesh**¹⁴, Justice P.N. Bhagwati, emphasised the requirement of the making the legal awareness to the poor as they do not know their rights more particularly right to free legal aid and further observed that in India most of the individuals reside in rural areas are illiterates and aren't aware of the rights conferred upon them by law. Even literate individuals don't know what are their rights and entitlements under the law. it is this absence of legal awareness they're not approaching a lawyer for consultation and advise.

Moreover, because of their ignorance and illiteracy, they can't become self-reliant and that they cannot even help themselves. that's why promotion of legal literacy has always been recognized as one of the principal things of the program of the legal aid movement within the country. I might say that even right to education wouldn't fulfil its real objective if education regarding legal entitlements isn't created accessible to individuals and our constitutional promise of bringing justice to the door steps of the individuals would remain an illusion.

Justice Krishna Iyer, who is crusader of social

justice in India, had rightly said that if a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to the Supreme Court for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, the power to assign counsel for such imprisoned individual for doing complete justice.¹⁵

It is a statutorily recognized public duty of every great branch of government to obey the rule of law and uphold the trust with the constitution by creating rules to effectuate legislation meant to help the poor.¹⁶ though the law has been enacted to shield the poor the governments are lazy to implement the enacted law. the same was determined by Supreme Court in State of **Haryana v. Darshana devi**¹⁷, 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 33, CPC. Even once a law has been enacted for the good thing about the poor, the state doesn't bring it into force by wilful default.'

Further in the case **Madhav Hayawadanrao Hoskot Vs State of Maharashtra**¹⁸ it was observed In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court also the court laid down that a person entitled to appeal against his/her sentence has the right to ask for a counsel, to prepare and argue the appeal. And the criteria

¹⁴ AIR 1986 SC 991.

¹⁵ M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 81

¹⁶ Order 33, Rule 9A, Code Civil Procedure, 1908

¹⁷ AIR 1972 SC 855.

¹⁸ (1978) 3 SCC 81

for giving legal services to the eligible persons of the society are laid down in Section 12 of legal services authority act 1987. Moreover in the case **State of Maharashtra Vs Manubhai Pragaji Vashi & ors**¹⁹. It was observed the State and other authorities to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability.

V. BODIES AND ORGANISATION

A nationwide network has been envisaged under the Act for providing legal aid and assistance. **National Legal Services Authorities (NALSA):** NALSA is the apex body implanted beneath the LSA Act by the Central Government. It lays down necessary policies and principles to form legal services accessible, as provided for under the provisions of the LSA Act. It additionally incorporates a duty to form simplest and economical schemes for legal services and to grant funds to State Legal Services Authorities and NGOs for implementing legal aid programmes and schemes.

State Legal Services Authorities: The State Legal Services Authorities is implanted to effectuate the policies and directions of NALSA. it's additionally accountable for providing free legal aid, conducting Lok Adalats and undertaking strategic and preventive legal aid programmes and alternative functions as the state authority may fix by regulations after

consulting the NALSA.²⁰

District Legal Services Authorities: District Legal Services Authorities are implanted in each district to perform functions as delegated upon them by the State Legal Services Authorities. they're additionally accountable for coordinating the activities of Taluk Legal Services Authorities and Lok Adalats within their district along with managing other legal services within the district.²¹

Supreme Court Legal Services Committee: The Supreme Court Legal Services Committee is established to perform such functions as required by the rules created by the central authority for it to perform. It consists of a sitting judge of the Supreme Court as the Chairman, a Secretary appointed by the chief justice of india and such other members, nominated by the chief justice of india in accordance with the rules created by the central government.²²

High Court Legal Services Committee: it's implanted by the state authority to perform such functions as may be prescribed by the rules created by the state authority and consists of a sitting judge of high court as the Chairman, a Secretary appointed by the chief justice of high court and such other members as nominated by the chief justice of high court in accordance with the rules created by the state authority.²³

¹⁹ 1 1995 SCC (5) 730

²⁰ Section 7 of the Legal Services Authorities Act, 1987

²¹ Section 10 of the Legal Services Authorities Act, 1987

²² Section 3A of the Legal Services Authorities Act, 1987

²³ Section 8A of the Legal Services Authorities Act, 1987

Taluk Legal Services Committees: the most functions of the Taluk Legal Services Committee are²⁴:

1. coordinating the activities of legal services in the Taluk;
2. Organising Lok Adalat within the Taluk;
3. Perform such other functions as prescribed by the district authority.

It consists of the senior most Judicial Officer operating within the jurisdiction of the Committee as the ex-officio chairman and such number of other members as nominated by the government in consultation with the chief justice of the high court.²⁵

VI. CONCLUSIONS

Legal aid isn't a charity or bounty, however is an obligation of the state and right of the citizens. The prime object of the state ought to be equal justice for all. Thus, legal aid strives to confirm that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made obtainable to the downtrodden and weaker sections of the society. however in spite of the very fact that free legal aid has been command to be necessary adjunct of the rule of law¹⁴, the legal aid movement has not achieved its goal. there's a good gap between the goals set and met. the main obstacle to the legal aid movement in India is the lack of legal awareness. individuals are still not attentive to their basic rights because of that the legal aid movement has not achieved its goal

nonetheless. it's the absence of legal awareness that results in exploitation and deprivation of rights and benefits of the poor.

“The concept of seeking justice cannot be equated with the vlue of dollars. Money plays no role in seeking justice.”

- **Justice Blackmun in Jackson v Bisht**

²⁴ Section 11B of the Legal Services Authorities Act, 1987

²⁵ Section 11A of the Legal Services Authorities Act, 1987