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LEGAL AID IN INDIAN CONSTITUTION

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ABSTRACT

Introduction: Legal aid may be taken to mean free legal assistance to the poor persons in any judicial proceedings before the Court, Tribunals or any authority. It intends to provide free legal assistance to the poor persons who are not able to enforce the rights given to them by law. Justice P.N. Bhagwati has clearly stated that legal aid means providing an arrangement in the society which makes the machinery of administration of Justice easily accessible and in reach of those who have to resort to it for enforcement of rights given to them by law.

Objectives: The objectives of the paper are to study the constitutional Provisions Relating to Legal Aid, to examine the Bodies under the Act and Their Hierarchy and to study the positive contribution of Judiciary Free Legal Aid in India.

Methodology: To fulfill this objectives researcher adopted is a doctrinal form and the author has referred secondary sources in doing the research analysis.

Conclusion: Legal aid means free legal service for the promotion of the welfare of the people. In India many efforts have been made in this direction for example the introduction of Lok Adalats. According to various articles of the Indian constitution, it is the right of an accused to ask for legal aid if he is not able to afford it.

Keywords: Legal Aid, constitutional Provisions, Law, Justice Etc.

1. INTRODUCTION

“Legal aid is central to righting wrongs and rectifying injustice.”

Sadiq Khan¹

1.1 Concept of Legal Aid:

Legal Aid implies giving free legal administrations to the poor and needy who cannot afford the administrations of a legal advisor for the conduct of a case or a legal proceeding in any court, tribunal or before a specialist. Legal Aid is the strategy adopted to ensure that no one is deprived of professional counsel and help in view of absence of funds. Therefore, the main question is to provide break even with justice is to be made accessible to the poor, downtrodden and weaker section of society. In such manner, Justice P.N. Bhagwati rightly observed that:²

“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.”

Therefore, 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.

Lawful guide endeavors to guarantee that protected vow is satisfied in its letter and soul and equivalent equity is made accessible to poor people, discouraged and weaker segments of the general public. It is qualified to specify that the Constitution of India gives³ that State should secure that the activity of the legitimate framework advances equity on a premise of equivalent opportunity, and might, specifically, give free lawful guide, by appropriate enactment or plans or in some other route, to guarantee that open doors for securing equity are not denied to any native by reason of financial or other inability. Constitution of India likewise makes it compulsory for the State to guarantee correspondence under the watchful eye of the law and a lawful framework which advances equity on a premise of equivalent chance to all.⁴

¹Available at: https://www.brainyquote.com/quotes/sadiq_khan_872547 (Last Visited on August 9, 2020).

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. Madhavsinh 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.

³ Article 39A of the Indian Constitution

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

1.2 Meaning of Legal Aid:

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

In the traditional sense legal aid is understood as 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

The general meaning of the term "Legal Aid", therefore is a legal support, social security, and social arrangement, for extending and providing special assistance or help to the poorer and weaker members to enable them to enforce their legal rights through legal process.

1.3 History of Legal Aid In India:

The Indian Constitution is the ultimate rule-book in our country. It has articles and clauses for every activity of the country. Article 39 A of the Constitution of India says that the State shall secure that the legal system promotes justice on a basis of equal opportunity, and shall provide free legal aid, in any way, to ensure that every individual is provided justice irrespective of the economic or social differences. Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which gives justice to all its subjects. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.⁷

The evolution of the idea of legal aid came up in France during the year 1851 when the government there introduced an act to provide legal help to the needy. In India, the concept of legal aid started in 1952 when the Government asked for the legal help to the poor in various Law Conferences. In 1980, a Committee was formed to supervise legal aid programs throughout the country under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati, then a Judge of the Supreme Court of India. It came to be known as CILAS -Committee for Implementing Legal Aid Schemes and it started working to provide legal help to the ones in need throughout the country. The setting up of Lok adalats was another achievement in the field of legal aid for the citizens of India. These courts speeded up the trial process in our country and thus justice was given faster.

In 1987, Legal Services Authority Act was enacted so that the concept of legal aid cells gain a statutory base and uniformity. Being not so perfect, this act was finally enforced in 1995 by Hon. Mr. Justice R.N. Mishra mainly and came into use. The National Legal Services Authority was constituted in 1995 and Hon. Dr. Justice A.S. Anand, Judge, Supreme Court of India took over as the Executive Chairman. A nationwide network was set up and the apex body being the National Legal Services Authority. They mainly promoted that every individual should get justice and for that, it laid down principles and policies so that as per the Constitution, legal service is available to all.

⁵ Available at: <http://dictionary.cambridge.org/dictionary/british/legal-aid> (Last Visited on August 9, 2020).

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

⁷ Introduction and history of NALSA, available at: <http://nalsa.gov.in> (Last Visited on August 9, 2020).

Certain measures were taken up so that the main motive of legal aid cells would fulfill. The following are some of the measures which were implemented by the Central Authority:

- Disposal of cases by the lok adalats
- Publicity to Legal Aid Schemes and programs to make people aware about legal aid facilities.
- Legal aid facilities in jails
- Accrediting NGOs and organizations for spreading legal awareness

“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.*⁸

2. LITERATURE REVIEW

“Free Legal Aid – a Human Right” By Kristel Jüriloo⁹ in his article he describe the States have an obligation to ensure equal access to justice. This obligation entails the provision of free legal aid to those without sufficient means to pay for legal services. The absence of free legal aid is a barrier to equal access to justice, which in turn detrimentally affects vulnerable groups, hindering equality in the enjoyment of human rights. In the assessment of criteria for free legal aid, relevant criteria are the significance of the rights that are affected, the general impact of the case, the complexity of the case, the ability to self-represent, and the chances of success.

“India Legal Aid Clinics: Creating Service Learning Research Projects to Study Social Justice” by David W. Tushaus¹⁰ in his article he explain the Law school legal aid clinics serve two main purposes. The first is to provide a better legal education to students. The second is to provide access to justice in the community. This article will provide some background on the importance of both of these missions. We will then discuss the results of a study of legal aid clinics across India in 2012–13. Indian undergraduate law school students⁴ designed and conducted this study under the direction of Dr Shailendra K. Gupta and Fulbright-Nehru Scholar David Tushaus at Banaras Hindu University. The research team obtained both quantitative and qualitative data from legal aid clinic directors for a

⁸ Swati Vijayvergiya *Legal aid in India*, (2013). available at: <http://www.legalserviceindia.com/article/1340-Legal-Aid-In-India.html> (Last Visited on August 9, 2020).

⁹ Kristel Jüriloo, “Free Legal Aid – a Human Right”,³³ *Nordic Journal of Human Rights* 203-219 (2015).

¹⁰ David W. Tushaus, “India Legal Aid Clinics: Creating Service Learning Research Projects to Study Social Justice”,² *Asian Journal of Legal Education* 100-118 (2015).

view of the state of clinical legal education in India at this time. The service learning process of forming the team and conducting the research is described here.

2. OBJECIVES

1. To study the constitutional Provisions Relating to Legal Aid.
2. To examine the Bodies under the Act and Their Hierarchy.
3. To study the positive contribution of Judiciary Free Legal Aid in India.

3. METHODOLOGY

The methodology used in accomplishment of this research paper is a doctrinal one.

4. ANALYSIS

4.1 Constitutional Provisions Relating to Legal Aid

Legal aid a constitutional right - Articles 21 and 39-A of the Constitution are as under:-¹¹

“21. Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.

“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 legislation or schemes or in any other way, to ensure that opportunities for securing Justice are not denied to any citizen by reason of economic or other disabilities”.

Article 21 is a fundamental right conferred under Part III of the Constitution. Whereas Article 39-A is one of the directive principles of the State Policy under Part IV of the Constitution. It has been held by the Constitution Bench of Supreme Court in Chandra Bhawan Boarding and Lodging, the *Bangalore V. State of Mysore*,¹² para 13 that “While rights conferred under Part III are fundamental, the directives given under part IV are fundamental in the governance of the country. There is no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other.

¹¹ Vidhan Maheshwari, Article 21 of The Constitution of India - The Expanding Horizons,(2018). Available at <http://www.legalserviceindia.com/articles/art222.htm#:~:text=The%20object%20of%20the%20fundamental,to%20procedure%20establishe d%20by%20law.&text=in%20such%20a%20case%20the,constitution%20or%20under%20general%20law.>

¹² AIR 1970 SC 2042 at 2050

4.2 Bodies under the Act and Their Hierarchy

An across the country arrange has been conceived under the Act for giving legitimate guide and help. National Legal Services Authority is the pinnacle body constituted to set down strategies and standards for making lawful administrations accessible under the arrangements of the Act and to outline best and sparing plans for lawful administrations.¹³

In each State, a State Legal Services Authority is constituted to offer impact to the arrangements and headings of the Central Authority (NALSA) and to give lawful administrations to the general population and lead Lok Adalats in the State. State Legal Services Authority is going by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or resigned Judge of the High Court is named as its Executive Chairman.

Local Legal Services Authority is constituted in each District to execute Legal Aid Programs and Schemes in the District. The District Judge of the District is its ex-officio Chairman.

Taluk Legal Services Committees are likewise constituted for each of the Taluk or Mandal or for a gathering of Taluk or Mandals to arrange the exercises of legitimate administrations in the Taluk and to compose Lok Adalats. Each Taluk Legal Services Committee is going by a senior Civil Judge working inside the purview of the Committee who is its ex-officio Chairman.

Keeping in mind the end goal to give free and capable legitimate administration, the NALSA has surrounded the National Legal Service Authority (Free and skillful Legal administration) Regulations, 2010. The striking component of Regulation is drawing in senior skilled legal advisors on installments of general expenses in exceptional cases like where the life and freedom of a man are in risk.

Incomparable Court of India has additionally set up Supreme Court Legal Services Committee (SCLSC) to guarantee free lawful guide to poor and underprivileged under the Legal Services Authorities Act. It is going by a judge of Supreme Court of India and has recognized individuals assigned by Chief equity of India. The SCLSC has a board of equipped Advocates on record with a specific least number of years of experience who handle the cases in the Supreme Court. Aside from that, the SCLSC has full-time Legal Consultant who gives legitimate counsel to poor prosecutors either on an individual visit or through the post.¹⁴

¹³available at: <https://nalsa.gov.in/about-us> (Last Visited on August 9, 2020).

¹⁴ *Ibid.*

4.3 Free Legal Aid in India: the positive Contribution of Judiciary

The Supreme Court of India got a noteworthy chance to make a vehement proclamation in regards to the privileges of poor people and destitute in judgment of **Hussainara Khatoon**¹⁵ where the solicitor conveyed to the notice of Supreme Court that the vast majority of the under trails have just experienced the discipline substantially more than what they would have had they been sentenced immediately. The postponement was caused because of the failure of the people required to draw in a legitimate guidance to protect them in the court and the primary purpose for their powerlessness was their neediness. Therefore, in this case, the court pointed out that Article 39-A emphasized that free legal service was an inalienable element of reasonable, fair and just procedure and that the right to free legal services was implicit in the guarantee of Article 21.

Two years later, in the case of **Khatri Singh v. State of Bihar**¹⁶, the court addressed the inquiry the privilege to free lawful guide to poor or indigent blamed who are incapable for engaging legal advisors. It held that the state is will undoubtedly provide such guide at the phase of trial as well as when they are first created before the judge or remanded every now and then and that such a privilege can't be prevented on the ground from securing financial constraints or administrative inability or that the charged did not request it. Justices and Sessions Judges must inform the blamed for such rights. The privilege to free legitimate services is a fundamental ingredient of sensible, reasonable and only technique for a man blamed for an offense and it must be held certain in the certification of Article 21 and the State is under a protected command to provide an attorney to a blamed individual if the conditions for the case and the necessities of equity so require. The State can't avoid this commitment by pleading financial or administrative inability or that none of the aggrieved detainees requested any lawful guide.

In **Suk Das v. Union Territory of Arunachal Pradesh**¹⁷, Justice P.N. Bhagwati, emphasized the need of the creating the legitimate awareness to the poor as they don't have the foggiest idea about their rights all the more particularly appropriate to free lawful guide and further observed that in India a large portion of the people are living in provincial zones are uneducated people and don't know about the rights conferred upon them by law. Even educated people don't know what are their rights and entitlements under the law. It is this absence of legitimate awareness they are not approaching an attorney for consultation and advise. Moreover, due to their ignorance and lack of education, they cannot end up independent and they cannot even help themselves. That is the reason the promotion of legitimate proficiency has dependably been recognized as one of the principal things of the program of the lawful guide movement in the country. I would state that even appropriate to education would not satisfy its genuine objective if education about legitimate entitlements isn't influenced available to people to and our constitutional promise of bringing justice to the doorsteps of the people would remain an illusion.

¹⁵ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98

¹⁶ *Khatri v. State of Bihar*, AIR 1981 SC 262

¹⁷ AIR 1986 SC 991

Justice Krishna Iyer, who is crusader of social justice in India, had properly said that if a detainee condemned to detention is practically unfit to practice his established and statutory right of claim comprehensive of unique leave to the Supreme Court for need of lawful help, there is understood in the Court under Article 142 read with Articles 21 and 39A of the Constitution, the ability to appoint direct for such detained individual for doing complete justice.¹⁸

It is a statutorily recognized public duty of each great branch of government to obey the rule of law and uphold the trust with the constitution by making rules to effectuate legislation meant to help the poor¹⁹. Though the law has been enacted to protect the poor the governments are lazy to implement the enacted law. The same was observed by *Supreme Court in State of Haryana v. Darshana Devi*²⁰, that "the poor shall not be priced out of the justice market by insistence on court-fee and refusal to apply the exemption provisions of order XXXIII, CPC. The state of Haryana, mindless of the mandate of equal justice to the indigent under the Magna Carta of therepublic, expressed in article 14 and stressed in article 39A of the constitution, 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. 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 willful default".

5. CONCLUSION AND SUGGESTION

5.1 Conclusion:

Legal guide isn't philanthropy or abundance however is a commitment of the state and right of the nationals. The prime protest of the state ought to be equivalent equity for all. In this manner, legal guide endeavors to guarantee that the sacred vow is satisfied in its letter and soul and equivalent equity is made accessible to the oppressed and weaker areas of the general public. Be that as it may, regardless of the fact that free legal guide has been held to be an important subordinate of the administer of law¹⁴, the legal guide development has not accomplished its objective. There is a wide hole between the objectives set and met. The real snag to the legal guide development in India is the absence of legal mindfulness. Individuals are as yet not mindful of their fundamental rights because of which the legal guide development has not accomplished its objective yet. It is the nonappearance of legal mindfulness which prompts misuse and hardship of rights and advantages of poor people.

¹⁸ *M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 81

¹⁹ Order 33, Rule 9A, Code Civil Procedure, 1908

²⁰ AIR 1972 SC 855

5.2 Suggestions

1. It is proposed that it is the need of great importance that the poor unskilled individuals ought to be granted with legal information and ought to be taught on their essential rights which ought to be done from the grass root level of the nation. For that legal needs the help from state organization to lead legal education program.
2. The legal should concentrate more on Legal Aid since it is basic in this present situation where the bay amongst haves and the less wealthy is expanding step by step. What's more, disposal of social and auxiliary victimization poor people will be accomplished when free Legal Aid is utilized as a vital device in achieving distributive equity.

Free Legal Services Authorities must be provided with sufficient funds by the State because no one should be deprived of professional advice and advice due to lack of funds.

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Article:

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