

Legal Aid Is An Instrument To Achieve Social Justice: Judicial Response

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“The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice”.¹

Abstract:

Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority.

The Indian Constitution provides for an independent and impartial judiciary and the courts are given power to protect the constitution and safeguard the rights of people irrespective of their financial status. Since the aim of the constitution is to provide justice to all and the directive principles are its integral part of the constitution, the constitution dictates that judiciary has duty to protect rights of the poor as also society as a whole.

Legal Aid is the method adopted to ensure that no one is debarred from professional advice and help because of lack of funds. Thus, the provisions of legal aid to the poor are based on humanitarian considerations and the main aim of these provisions is to help the poverty-stricken people who are socially and economically backward.

Key word: Legal aid, Constitutional mandate, Legislative protection, Judiciary

I. INTRODUCTION:

Legal aid to the poor and weak is necessary for the preservation of rule of law which is necessary for the existence of the orderly society. Until and unless poor illiterate man is not legally assisted, he is denied equality in the opportunity to seek justice. Therefore as a step towards making the legal service serve the poor and the deprived; the judiciary has taken active interest in providing legal aid to the needy in the recent past.

The judiciary through its significant judicial interventions has compelled as well as guided the legislature to come up with the suitable legislations to bring justice to the doorsteps of the weakest sections of the society. Public Interest Litigation is one shining example of how Indian judiciary has played the role of the vanguard of the rights of Indian citizens especially the poor. It encouraged the public spirited people to seek justice for the poor. For that Supreme Court relaxed procedure substantially. Apart from Public Interest Litigation and judicial activism, there are reforms in the judicial process, where it aims to make

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¹ Justice Blackmun in *Jackson v Bishop*

justice cheap and easy by introducing Lok Adalat system as a one of the methods to provide free legal aid and speedy justice at the door steps of the poor. In this article the author highlights the importance of free legal aid in a constitutional democracy like India where a significant section of the population has still not seen the constitutional promises of even the very basic fundamental rights being fulfilled for them.

II. THE CONCEPT OF LEGAL AID:

Legal Aid is the method adopted to ensure that no one is deprived of professional advice and help because of lack of funds. Therefore, the main object is to provide equal justice is to be made available to the poor, down trodden 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.”² 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.

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. It is worthy to mention that the Constitution of India provides that 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 disability.³ Constitution of India also makes it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all.⁴

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

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The preamble of the Constitution of India encapsulates the objectives of the Constitution makers to build a new Socio-Economic order where there will be Social, Economic and Political Justice for everyone and equality of status and opportunity for all. This basic objective of the Constitution mandates every organ of the state, the executive, the legislature and the judiciary working

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, Ahemdabad. His Lord ship answered to the question of inequality in the administration of justice between the rich and the poor.

³ Article 39A of Constitution of India.

⁴ Articles 14 and 22(1) of Constitution of India.

harmoniously to strive to realize the objectives concretized in the Fundamental Rights and Directive Principles of State Policy.

Law has to grow in order to needs of the fast changing society. Law must not be static it must be living & growing. The advent of Public Interest Litigation (PIL) is one of the key components of the approach of 'Judicial Activism' that is attributed to the higher judiciary in India. The strategy of public interest litigation has been evolved by Supreme Court with a view to bring justice within the easy reach of the poor and disadvantaged sections of the community. Judiciary has played a decisive role which makes the law, creates the law, discovers the law & invents the law in the quest for social justice.

The traditional rule is that the rights to move the Supreme Court is only available to those whose Fundamental Rights are infringed. A person who is not interested in the subject matter of the order has no *Locus Standi* to invoke the jurisdiction of the court. But the Supreme Court has now considerably liberalized the above rule of *Locus Standi*. The court now permits the "public spirited persons to file a writ petition for the enforcement of Constitutional and statutory rights of any other person or a class, if that person or a class is unable to invoke the jurisdiction of the High Court due to poverty or any social and economic disability. The widening of the traditional rule of *Locus Standi* and the invention of Public Interest Litigation by the Supreme Court was a significant phase in the enforcement of Human Rights.

In *S.P. Gupta vs. Union of India and others*⁵, the seven member bench of the Supreme Court held that "any member of the public having "sufficient interest" can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of their poverty or other disabilities. A person need not come to the court personally or through a lawyer. He can simply write a letter directly to the court complaining his sufferings. Speaking for the majority Bhagwati, J. said that any member of the public can approach the court for redressal where, a specific legal injury has been caused to a determinate class or group of persons when such a class or person are unable to come to the court because of poverty, disability or a socially or economically disadvantageous position. In the instant case, the court upheld the right of lawyers to be heard on matters affecting the judiciary. By this judgment Public Interest Litigation became a potent weapon for the enforcement of "public duties" where executed inaction or misdeed resulted in public inquiry".

The strategy of Public Interest Litigation has been evolved by this court with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community.⁶ In *Peoples Union for Democratic Rights vs. Union of India*,⁷ the Supreme Court held that "Public Interest Litigation is brought before the court the court not for purpose of enforcing the right of one individual against another as happened in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of Constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantageous position should not go unnoticed and underdressed".

⁵ AIR 1982 SC 149

⁶ Bihar Legal Support Society vs. Chief Justice of India (1986) 4 SCC 767

⁷ AIR 1982 SC 1473

In *Bandhu Mukti Morcha vs. Union of India*,⁸ the Apex Court held that “the power of the Supreme Court under Article 32 includes the power to appoint Commission for making enquiry into facts relating to the violation of Fundamental Rights. The Apex Court further held that Public Interest Litigation through a letter should be permitted, but expressed the view that, in entertaining such petitions, the court must be cautious so that, it might not be abused. The court suggested that all such letters must be addressed to the entire court and not a particular judge and secondly it should be entertained only after proper verification of materials supplied by the petitioner. This is known as epistolary jurisdiction”.

The advent of Public Interest Litigation is one of the key components of the approach of “Judicial Activism” that is attributed to the higher judiciary in India. The verdict of Bhagwati, J. in *M. C. Mehta vs. Union of India*,⁹ opened the doors of the Apex Court of India for the oppressed, the exploited and the down-trodden in the villages of India or in urban slums. The poor in India can seek enforcement of their Fundamental Rights from the Supreme Court by writing a letter to any judge of the court even without the support of an Affidavit. The court has brought legal aid to the door steps of millions of Indians which the executive has not been able to do despite that, a lot of money is being spent on new legal aid schemes operating at the central and state level.

The main object of the Free Legal Aid scheme is to provide means by which the principle of equality before law on which the edifice of our legal system is based. It also means financial Aid provided to a person in matter of legal disputes. In the absence of Free Legal Aid to the poor and needy, Fundamental Rights and Human Freedoms guaranteed by the respective Constitution and International Human Rights covenants have no value.

Though, the Constitution of India does not expressly provide the Right Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and are not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39-A in the Constitution. This is the most important and direct Article of the Constitution which speaks of Free Legal Aid. Though, this Article finds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it many a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

⁸ AIR 1984 SC 803

⁹ AIR 1987 SC 1087

Maneka Gandhi vs. Union of India¹⁰ case was a catalyst which laid down a foundation for interpreting Articles 39-A and 21, widely to cover the whole panorama of Free Legal Aid. In the instant case the Supreme Court held that procedure established by law in Article 21 means fair, just and reasonable procedure.

In *Madhav Hayawadan Rao Hosket vs. State of Maharashtra*¹¹, a three judges bench (V.R. Krishna Iyer, D.A. Desai and O. Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.P.C. together declared that “the Government was under duty to provide legal services to the accused persons. Justice Krishna Iyer observed that “Indian socio legal milieu makes free legal services, at trial and higher levels, an imperative procedural piece of criminal justice. The Supreme Court decided the point of Legal Aid in appeal cases as follows “If a prisoner sentenced to imprisonment is virtually unable to exercise his Constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the court under Article 142 read with Articles 21 and 39 A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice”. The court further added that legal Aid in such cases is state’s duty and not Government’s charity.

In the words of justice Krishna Iyer, “Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence of incommunicado situation, the court shall, if the circumstances of the case, the gravity of sentence and the ends of justice so require, assign competent counsel for the prisoners defence, provided the party does not object to that lawyer. The state which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum of as the court may equitably fix”.

In *Hussainara Khatoon and others vs. Home Secretary, State of Bihar*¹², the main observations of the Supreme Court are on speedy trial. Bhagwati and Koshal, JJ observed that “the speedy trial, which means reasonably expeditious trial, is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21. However the Apex Court declared the speedy trial as a constituent of Legal Aid and directed the Government to provide Free Legal Aid service in deserving cases”. This case reinforces the principles laid down in *M.H. Hoskot*’s case.

Justice Bhagwati observed that “Article 39-A of the Constitution also emphasizes that free legal service is an unalienable component of reasonable, fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore clearly an essential ingredient of “reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in Article 21 of the Constitution. In the instant case justice Bhagwati emphasized upon the necessity of introducing by the central and state Governments, a dynamic and comprehensive legal services programme with a view to reaching justice to

¹⁰ AIR 1978 SC P597

¹¹ AIR 1978 SC 1548

¹² AIR 1979 SC 1360

the common man. His lordship thought this cause as a mandate of equal justice implicit in Articles 14, 21 and also the compulsion of Constitutional directive embedded in Article 39-A. The concern of his lordship was that such programmes of legal Aid are intended to reach the justice to the common man”.

In *Sunil Batra vs. Delhi administration (II)*¹³ justice Krishna Iyer observed that “the free legal services to the prison programmes shall be promoted by professional organization recognized by the court. His lordship further added that the District Bar Association should keep a cell for prisoner relief.”

In *Khatri v. State of Bihar*¹⁴ It held that “the state is constitutionally bound to provide legal aid not only at the stage of trial but also when they are first produced before the magistrate 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 accused did not ask for it. Magistrates and Sessions Judges must inform the accused of such rights. The right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so 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”.

It is submitted that while making the above observations, the Supreme Court was more concerned with Article 39-A and least bothered to Article 21. Right to Free Legal Aid was raised to the status of a Fundamental Right in *Hoskot*’s case as a part of fair just and reasonable procedure under Article 21 and this premise was reinforced in cases of *Hussaniara*, *Khatra (I)*. Right of Free Legal Aid was included in under the protective umbrella of Article 21, which is a Fundamental Right under the Constitution. Though Article 39 A, a non-enforceable and non justiciable directive principle became an enforceable Fundamental Right. Hence Free Legal Aid is a Fundamental Right which can be enforced against the state as defined in Article 12 of the Constitution, if Free Legal Aid is denied for whatever reasons.

In *Suk Das v. Union Territory of Arunachal Pradesh*¹⁵, Justice P.N. Bhagwati, emphasized the need of the creating the legal awareness to the poor as they do not know the their rights more particularly right to free legal aid and further observed that “in India most of the people are living in rural areas are illiterates and are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness they are not approaching a lawyer for consultation and advice. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant and they cannot even help themselves. That is why promotion of legal literacy has always been recognized as one of the principal items of the program of the legal aid movement in the country. I would say that even right to education would not fulfill its real objective if education about legal entitlements is not made accessible to people and our constitutional promise of bringing justice to the door steps of the people would remain an illusion”.

¹³ AIR 1980 SC 1579

¹⁴ AIR 1981 SC 262

¹⁵ AIR 1986 SC 991

IV. LEGAL AID IN INDIA: STATUTORY RECOGNITION

Since 1952, the Govt. of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Govt. for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati then a Judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. Hon. Mr. Justice R.N. Mishra the then Chief Justice of India played a key role in the enforcement of the Act.

The advent of Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats, pursuant to the constitutional mandate in Article 39-A of the Constitution of India. It contains various provisions for settlement of disputes through Lok Adalat. It is an Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

A nationwide network has been envisaged under the Act for providing legal aid and assistance. National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman.

Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organize Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

In order to provide free and competent legal service, the NALSA has framed the National Legal Service Authority (Free and competent Legal service) Regulations, 2010. The salient feature of Regulation is engaging senior competent lawyers on payment of regular fees in special cases like where the life and liberty of a person are in jeopardy.

Supreme Court of India has also set up Supreme Court Legal Services Committee (SCLSC) to ensure free legal aid to poor and under privileged under the Legal Services Authorities Act. It is headed by a judge of Supreme Court of India and has distinguished members nominated by Chief justice of India.

The Act prescribes the criteria under sec 12 for giving legal services to the eligible persons. "Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is-

- a) a member of a Scheduled Caste or Scheduled Tribe;
- b) a victim of trafficking in human beings or beggar as referred in article 23 of the Constitution;
- c) a woman or a child;
- d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]
- 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 within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or
- h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court."

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

V. SUGGESTIONS:

1. It is suggested that it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. For that judiciary needs the support from state administration to conduct legal literacy programme.
2. The judiciary should focus more on Legal Aid because it is essential in this present scenario where gulf between haves and have-nots is increasing day by day. And elimination of social and structural discrimination against the poor will be achieved when free Legal Aid is used as an important tool in bringing about distributive justice.
3. There are number of precedents as well as legislations to up hold the right to free legal aid but they have just proven to be a myth for the masses due to their ineffective implementation. Thus the need of the hour is that one should need to focus on effective and proper implementation of the laws which are already in place instead of passing new legislations to make legal aid in the country a reality instead of just a myth in the minds of the countrymen.
4. In providing Legal Aid, the Legal Aid institutions at all level should use proper ADR methods so as to speed up the process of compromise between parties to the case and with that matter will be settled without further appeal.

VI. CONCLUSION:

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 met. The major obstacle to the legal aid movement in India is the lack of legal awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor.

It needs to be realized that the protection and promotion of the constitutional values is not the exclusive domain of the Legislature, Executive & Judiciary. It is equally the concern and responsibility of the Legal fraternity.

I will conclude by remembering the words of Mahatma Gandhiji that “the measures of country’s greatness should be based on how well it cares for its most vulnerable populations”.