

Legal Aid- A Brief Introduction

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Abstract: Legal aid may be taken to mean free legal assistance to the poor persons in any judicial proceeding before 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 resort to it for enforcement of rights given to them by law.

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I. INTRODUCTION

The concept of Legal Aid to indigent persons has its roots in the principle of natural justice "Audi alteram partem" which means "hear the other side". It is essential that the weaker sections of the society who are in the need of fulfillment of constitutional guarantee of equal protection are prevented from having the benefit of law because they lack means of defending themselves and enforcing their rights. It has been rightly said that nothing rankles more in the human heart than a brooding use of injustice. One may put up with illness and hunger, but injustice makes one to sizzle when rich can enjoy the luxury of approaching the Court of Law and poor who need it equally cannot have it, because its expenses put it beyond their reach, the threat to the continued existence of Democracy and rule of law cannot survive if machinery of justice is not accessible to the poor as it is accessible to rich.

American Judge Blackmun said "Human considerations and Constitutional requirements are not, in this day, to be measured by dollar considerations"

In a welfare State, it is the obligation of the State to ensure the citizen's justice according to Law. For ensuring this justice, assistance of a Lawyer is essentially required because of intellectual deficiency or disability of the persons concerned and due to financial constraints, his inability to engage a lawyer, it becomes as a corollary to be first obligation. The second obligation of the State is to provide the necessary financial assistance to such aggrieved person.

The concept of legal aid is no longer confined to exemption from court fee and providing a Lawyer for the indigent whose cases have already reached the Court. Legal aid is now to be treated as part of a programme to secure the poor and disadvantaged their just share of the benefits of Society. The change in attitude is disclosed by the entry in to the Constitution word 'Socialist' in the pre-ambles. Article 39-A as a Directive Principle of State Policy, as a result of the 42nd amendment in 1976.

Person entitled for legal services:

About the person to whom legal aid and service should be given the committee recommended that though the members

of the backward classes needed special attention so far as the provision of legal services is concerned they should not be treated as a separate categories of separate category of person entitled to such aid respective of whether they are poor person or not. The Scheme of legal aid and services should not be based on class or status. The means test must be applied to them as well, but unless there is evidence to the contrary the means test must be presumed to be satisfied in the case of members of the belonging to backward class.

The four main divisions of such Backward Class are:

Scheduled Caste,
Scheduled Tribe,
Nomadic Tribes, and
Denotified Tribes.

Kinds of legal services:

The proper and effective legal service programmes should cover three different items of legal services:

- (i) Legal Aid,
- (ii) Legal Advice,
- (iii) Preventive Services.

Legal aid may be described as remedial legal service. Legal Advice and preventive service may be collectively labeled, preventive legal service it stated that successful implementation of preventive legal service programmes depend to a large extent of the degree and extend to which proper education can be given to the poor and the disadvantages social worker and Advocates. Research experiments and innovation in those of the law which seriously affect the lives of the poor should form another important part of preventive legal services program.

II. LEGAL PROVISIONS OF LEGAL AID AND SERVICES

India is a democratic country and there is rule of law. Law is sovereign i.e. Constitution of India. All the laws, rules and regulations are based on Constitution and the goal of Constitution is to provide equal justice.

Legal Aid - a Constitutional Right

Article 21 and 39-A of the Constitution are as under:-

"Article 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."

"Article 39-A - 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."

The linkage between Article 21 and the right to free legal aid was forged in the decision in Hussainara Khatoon Versus State of Bihar¹ where the court was appalled at the plight of thousands of undertrials languishing in the jails in Bihar for years on end without ever being represented by a lawyer. The court declared that "there can be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21." 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.

Justice Bhagwati declared "Legal Aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice."

In Sheela Bharse Versus State of Maharashtra² the Court observed "...Imagine the helpless condition of a prisoner who is lodged in a jail, who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problem where legal assistances is required but by reason of his being incarcerated, it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is, therefore, absolutely essential that legal assistance must be made available to prisoners in jails whether they be under trail or convicted prisoners."

Legal aid under Civil Procedure Code, 1908:

Order XXXIII of the Civil Procedure Code for filing suits by indigent persons who are too poor to pay court fee and allow them to institute suits without payment of requisite court fee. The provisions of order XXXIII are intended to enable indigent persons to institute and prosecute suits without payment of any court fees. Generally, a plaintiff suing in a court of law is bound to pay court fees prescribed under the Court Fee Act at the time of presentation of plaint but a person may be too poor to pay the requisite court fee. This Order exempts such person from paying the court fee at the first instance and allows him to prosecute his suit in forma pauperis, provided he

satisfied certain conditions laid down in this order. Moreover, Section 89 of the Code of Civil Procedure, 1908 also talks about Alternative Dispute Resolution (ADR) process, under which matters can also be resolved through Arbitration, Conciliation, Mediation and Lok Adalat.

Legal Aid under Code of Criminal Procedure, 1973:

According to section 304 of Cr.P.C. where, in a trial before the court of Sessions, 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 expenses of the State.

In case of R.M. Walawa³ Justice Krishna Iyer said "Indigence should never be a ground for denying fair trial or equal justice and particular attention should be paid to appoint competent advocate, equal to handling complex cases, not patronizing gestures to raw entrants at the Bar. Sufficient time and complete papers should also be made available so that the advocate chosen may serve the cause of justice."

In State of Haryana Versus Ram Diya⁴, it was held that in the Criminal Appeal the counsel appointed by the Court for the accused was not present at the time of hearing. The appeal was disposed of without hearing him. It was held that the case be remanded for fresh hearing.

The Supreme Court of India in Khatri Versus Bihar⁵ has held that the obligation to provide legal aid to the indigent accused does not arise only when the trial commences but arises right since the accused is produced before the nearest Magistrate as required by section 57 of the Code and Article 22(1) of the Constitution. The court said in Ranjan Dwivedi Versus Union of India⁶, However, the accused cannot obtain a writ of mandamus for enforcing this obligation. He must apply for it under section 304 Cr.P.C.

Special Law for providing Legal Services

Legal Services Authorities Act, 1987:

The Legal Services Authority Act, 1987 has been enacted to constitute legal services authorities 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.

In furtherance of the aims and objects as mentioned above, National Legal Services Authority has been constituted as per section 3 of the Act. Functions of the Central Authority, i.e. the National Legal Services Authority, have been specified in the settlement of dispute by way of negotiations, arbitration and conciliation. Intendment is to provide legal aid to implement legal aid programme, to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens, and to spread legal literacy and legal awareness

¹ AIR 1979 SC 1369

² AIR 1983 SC 378

³ AIR 1974 SC 1143

⁴ 1990 Cr.L.J. 1327

⁵ 1981 Cr.L.J. 470 SC

⁶ AIR 1983 SC 624

amongst weaker sections of the society. The idea is to see that litigation comes to an end by way of mutual conciliation, arbitration and negotiations. Punjab National Bank Versus Laxmi Chand Rai⁷.

Role of the Lawyers and Bar in Legal Aid Movement:

Law, legal education and legal aid are inter-related terms in modern developing societies, which are seeking to ameliorate the Socio-economic condition of the downtrodden masses of our society. It is the primary function of legal education to produce lawyers who are service oriented in a developing country like India.

It is sometime said that the organized Bar has not come forward to discharge its social responsibility particularly in the matter of giving legal aid to poor. But on closer analysis this proposition is found to be baseless. In fact, it is an underlying principle of professional ethics of every lawyer that he should not deny his service to a client on the ground of his poverty or deprivation. But due to lack of an organized structure and procedure for seeking legal aid. Poor legal aid profession could not help the poor in a big way. Now, legal aid has become a Directive Principle of State Policy and a fashionable rhetoric, the Central Government as well as State Government have come forward to set up appropriate structure for delivery of Legal Aid and the Bar Council of India also strides forward to make the legal aid scheme meaningful and successful. The Bar Council of India has taken the initiative for setting up a committee for organizing legal aid in pursuance of Section 9 A of the Advocates Act, 1961 which provides as under:-

"9A. Constitution of legal aid Committees.- (1) A Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, not exceeding nine but not less than five, as may be prescribed.

(2) The qualifications, the method of, selection and the term of office of the member of a legal aid committee shall be such as may be prescribed."

The biggest contribution of Bar in Legal Aid Movement is that Bar Council of India has framed out rules, known as "Bar Council of India Legal Aid Rules", 1983 to give effective support to legal aid scheme sponsored by Central Government. Under these rules a committee, known as Legal Aid Committee has been constituted consisting of 9 members. The Chairman of the Bar Council is ex-officio Chairman and the Secretary of the Bar Council of India is the Secretary of the said Committee. The term of the office members is of two years.

III. CONCLUSION

In a democracy, where rule of law is supreme; it is essential to ensure that even the weakest amongst the weak, poorest among the poor, in the country does not suffer injustice arising out of any abusive action on the part of State or private person. As a way forward there is need to ensure capacity building for legal aid movement. This requires

strengthening the skills of stakeholders of legal aid; law teachers, lawyers, law students, volunteers such as aanganwadi workers, Members of local panchayat etc to act as intermediates between rural people and legal service institutions.

IV. REFERENCES

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⁷ AIR 2000 MP 301