

Constitutional Provisions for free Legal Aid in India

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Abstract - The Constitution of India under Article 39-A mandates for free legal aid to the poor and weaker sections of society. The concept of legal aid was originally introduced in India in 1952 when the Indian government began to address the subject of legal assistance for the poor in many Law Ministers and Law Commissions conferences. In 1960, the government set guidelines for legal assistance programmes. At present Legal Aid is the provision of free legal assistance to the poor and needy who cannot afford to engage a lawyer to represent them in a court, tribunal, or before a government body. Legal Aid is a technique of ensuring that no one is denied justice for whatever reason. And free legal aid undoubtedly is beneficial to poor people and has been instituted with the noble purpose. Yet it has become a good ground for breeding corruption. Free legal aid for a fee is common practice. This paper discusses the constitutional provisions for free legal aid in India.

Keywords - Free legal aid, Indian Constitution, Justice, Poverty, Needy people, Lok Adalats

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INTRODUCTION

There is a famous saying that “the opposite of poverty is not wealth, the opposite of poverty is enough”. Whether poverty is caused by unemployment or is a lack of social, economic, political, or natural security or a lack of legal help for the poor. One of the fundamental criteria of just social order is that all people, affluent or poor, enjoy equal legal protection. So, what is legal aid?

Legal Aid is the provision of free legal assistance to the poor and needy who cannot afford to engage a lawyer to represent them in a court, tribunal, or before a government body. Legal Aid is a technique of ensuring that no one is denied justice for whatever reason. It is seen as critical in providing access to justice by protecting, among other things, equality before the law, the right to counsel, and the right to a fair trial. It is an essential component of a welfare state, as defined by a constitution, assuring welfare assistance through access to legal counsel and courts.

Its beginnings may be traced back to early 1851 in France when the government approved legislation to offer legal help to the impoverished. The concept of legal aid was originally introduced in India in 1952 when the Indian government began to address the subject of legal assistance for the poor in many Law Ministers and Law Commissions conferences. In 1960, the government set guidelines for legal assistance programmes. Many states established legal aid programmes through Legal Aid Boards, Societies, and

Law Departments. A nationwide committee was founded in 1980 to supervise and supervise legal assistance programmes across the country, chaired by Hon. Mr Justice P.N. Bhagwati, then-Judge of the Supreme Court of India. The Committee adopted the acronym CILAS (Committee for the Implementation of Legal Aid Schemes) and began monitoring legal aid operations throughout the country.

Lok Adalats opened a new chapter in the country's judicial system, and they were effective in providing a supplemental venue for litigants to solve their disputes through conciliatory ways. The Legal Services Authorities Act was enacted in 1987 to establish a legislative framework for legal assistance programmes throughout the country. The act was ultimately put into force on November 9th, 1995, after the Amendment Statute of 1994 made necessary adjustments to it.

NEED FOR FREE LEGAL AID

Legal aid has evolved in the thoughts of the people of the country from a responsibility of the accused to locate a lawyer and seek help to a fundamental right of an accused to get free legal counsel. Despite the statute's attempts to promote the notion of legal assistance in our state, the intended goals have yet to be met. In the country, there are several obstacles to seeking legal counsel.

Because individuals are still uninformed of their basic rights, the legal aid movement has failed to

fulfil its purpose. The impoverished are exploited and denied their rights and privileges due to a lack of legal understanding. As a result, it is vital to equip impoverished illiterate people with legal information and education on their fundamental rights, which should start at the grassroots level of the country. The poor are socially and economically disadvantaged, and they are uninformed of their legal rights and conflict resolution methods. They either give up their rights or wind up settling them on the streets, or they utilize their physical muscle to make matters worse. This destroys the country's judicial system, and individuals lose trust in the legal system's administration. As a result, legal assistance to the poor and vulnerable is required to sustain the rule of law, which is essential for the survival of society. Laws and rights that are unjust to all people are the same as those that keep the poor and misinformed in the dark and deny them justice.

The current justice system is exceedingly expensive through judicial adjudication, and this expense has been the most challenging aspect for normal people in both developed and developing nations to seek justice. Equal opportunities, rule of law, and fair trial, as guaranteed in our constitution and other constitutional provisions and documents around the world, cannot be maintained in a suit in which one party is inferior and the other is opulent, because the opulent party can appoint an expert lawyer who can easily take the fruits of the suit in favour of his clients, which the opposing lawyer cannot.

Former Chief Justice of India P.N. Bhagwati observed in the case of *Bondhu Mukti Morcha vs. Union of India* that where one of the parties to litigation belongs to a poor and deprived segment of the community and does not possess reasonable social and cultural resources, he is bound to be excluded as against a strong and dangerous foe. As a result, legal assistance will be essential to safeguard human dignity for as long as the poor remain in society. As a result, the provision of legal assistance is vital for democracies to continue on the road of rule of law and equal protection under the law.

As a result, as long as the poor exist in society, legal aid will be required to protect human dignity. Thus, the provision of legal aid is critical for democracies to walk safely on the path of rule of law and equal protection under the law.

CONSTITUTIONAL PROVISIONS FOR FREE LEGAL AID

According to Justice P.N. Bhagwati's report on the Legal Assistance Committee, "Legal aid means establishing arrangements in society so that the machinery of administration of justice becomes freely available and is not out of reach of those who must utilize it to enforce the rights entrusted to them." The Preamble of India's Constitution promises all citizens – justice, social equality, and economic equality.

According to Article 14 of the Constitution, "no person shall be denied equality before the law or the equal protection of the laws within the territory of India."

Article 21 of the Indian Constitution guarantees fundamental rights, including the protection of life and liberty. Also included in the article is the provision of legal aid services.

Article 38(I) states that the state shall strive to promote the welfare of the people by securing and protecting the social order as effectively as it can, in which social, economic, and political justice shall inform all institutions of national life.

"Provides equal justice and free legal aid," according to Article 39(A). It states that the state must ensure that the legal system operates in a way that promotes justice on an equal footing, and that the state must, in particular, provide free legal aid through appropriate legislation or schemes or in any other way to ensure that no citizen's right to justice is denied due to economic or other factors.

Article 38(I) states that the state shall strive to promote the welfare of the people by securing and protecting, as effectively as possible, a social order in which social, economic, and political justice shall inform all aspects of national life.

This is a piece of law that covers a variety of issues related to giving legal aid to the poor and oppressed. Legal aid a constitutional right - Articles 21 and 39-A of the Constitution are as under:-

"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, Bangalore V. –State of Mysore*, AIR 1970 SC 2042 at 2050, 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.

Working of the Legal Services Authorities in India

– Frame Works, Functions under The Legal Services Authorities Act, 1987 At Different Levels

Functions of the Central Authority – According to Section 4 of the said Act, the Central Authority shall perform all or any of the following functions, namely:

- Lay down policies and principles for making legal services available under the provisions, of this Act;
- Frame the most effective and economical schemes for the purpose of making legal services Available under the provisions of this Act;
- Utilize the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
- Take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections, of the society and for this purpose, give training to social workers in legal skills;
- Organize legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;
- Encourage the settlement of disputes by way of negotiation, arbitration and conciliation;
- Undertake and promote research in the field of legal services with the special reference to the need for such services among the poor;
- To do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;
- Monitor and evaluate implementation of the legal aid programmes at periodic intervals and Provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;
- Provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out of the amounts placed at its disposal for the implementation of legal services schemes under the provisions of this Act';)
- Develop, in consultation with the Bar Council of India, programmes for clinical legal

educations and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions;

- Take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;
- Make special efforts to enlist the support of the voluntary social welfare institution, working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and
- Co-ordinate and monitor the functioning of (State Authorities, District Authorities, Supreme Court Legal Services Committee, High court Legal Services Committees, Taluka Legal Services Committees and voluntary social service institutions) and other legal services organizations and give general directions for the proper implementations of the legal services programmes.

Under Section 5 of the said Act, the Central Authority is required to work in co-ordination with other agencies. In the discharge of its functions under this Act, the Central Authority shall, wherever appropriate, act in coordination with other governmental and non-governmental agencies, universities and other engaged in the work of promoting the cause of legal services to the poor.

UNDER CIVIL PROCEDURE CODE, 1908 AND CRIMINAL PROCEDURE CODE, 1908

Section 304(1) states, This section states that if the accused is unable to engage a pleader or advocate to defend in a trial before the Court of Session, and if the Court believes that the accused is unable to engage a pleader, it is the Court's duty to assign an advocate or a pleader for the accused's defence, and the expenses will be borne by the State.

ORDER 33, RULE 17, CPC, 1908

The Suit filed by or against a low-income person. When a person files a plaint and a petition but cannot afford the services of a lawyer then the court has the authority to appoint a pleader to an indigent person and exempt such person from paying the court fee as well.

STATUTORY PROVISIONS

The Legal Services Authorities Act is a statutory law that carries out the objectives mentioned in Article 39-A. The Legal Services Authorities Act was approved by Parliament in 1987 and entered into effect on November 9, 1995, to establish a countrywide standard network for delivering free and competent legal services to the weaker parts of society on an equal basis.

The National Legal Services Authority (NALSA) was formed under the Legal Services Authorities Act of 1987 to supervise and assess the execution of legal services accessible under the Act. When NALSA was established in 1995, Justice A.S. Anand, a Supreme Court of India Judge, was selected as its Executive Chairman. Certain procedures were taken to guarantee that the fundamental purpose of legal aid cells was met. The Central Authority has implemented the following steps. To begin, it involves Lok Adalat disposal of cases, as well as public awareness efforts for legal assistance schemes and programmes. Second, victims are provided with in-prison legal help, and third, non-governmental organizations are accredited to promote legal advocacy.

Each state has formed a State Legal Services Authority, and each high court has formed a High Court Legal Services Committee. District Legal Services Authorities and Taluka Legal Services Committees have been constituted in the Districts and most Talukas to provide free legal services to the people and conduct Lok Adalat in the State. The State Legal Services Authorities are led by the Hon'ble Chief Justice of the various Districts, whereas the Taluka Legal Services Committees are led by the Taluka Judicial Officers. The Supreme Court Legal Services Committee was founded to monitor and administer the Supreme Court of India's legal services programme.

SERVICES AND ELIGIBILITY

As part of the free legal aid programme, court costs, processing fees, and any other expenses paid or incurred in connection with any legal processes will be covered, as will a free advocate in legal proceedings. Aside from that, free legal aid will include the provision of certified copies of orders and other documents in legal proceedings, as well as the preparation of appeals, paper books, printing, and document translation in legal proceedings.

The Legal Services Authorities Act of 1987 establishes the legal services authorities. Only women and children, SC/ST members, industrial workers, victims of mass disasters, violence, floods, droughts, earthquakes, industrial disasters, disabled people, people in custody, people with an annual income of less than Rs. 50,000/-, and victims of human trafficking will be eligible for this free legal assistance. Persons who meet all or part of the criteria set out in Section 12 of this act are entitled to legal services if the relevant Authority determines that such person has a prima-facie case to prosecute or defend. Unless the

concerned authority has reason to doubt such affidavit, an affidavit made by a person as to his income may be considered sufficient to make him eligible for legal services.

HOW CAN YOU APPLY FOR LEGAL AID?

A person in need of free legal services can approach the relevant authority or committee via an application, which can be made either in written form or by filling out the forms prepared by the relevant authorities, stating, in brief, the reason for seeking legal aid, or it can be made orally, in which case an officer of the A relevant legal services authority or a paralegal volunteer may be able to help. A person can also apply for Legal Aid online to any Legal Services Institution in the nation by filling out the Legal Aid Application form accessible online at NALSA's website and attaching required documents.

FOLLOWING-UP PROCEDURE

Legal aid is provided to qualified individuals through legal services authorities ranging from the national to the taluka levels, such as the NALSA, State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, Supreme Court Legal Services Committees, and High Court Legal Services Committees. In addition, whenever NALSA receives an application or request for legal assistance, the authority passes it to the appropriate authorities. Once the application has been filed to the appropriate authorities, it will be reviewed by the relevant legal services institution to determine what action is required. The next stage in the application process would then be communicated to the parties involved. The activity conducted in response to a received application might range from offering counselling/advice to the parties to giving a lawyer to represent them in court, among other things.

ISSUES FOR WHICH LEGAL AID IS PROVIDED

By influencing societal norms, providing legal help to certain individuals benefits even others who do not get legal assistance; but, for this to occur, legal assistance must be supplied to a considerable number of individuals. As a result, legal assistance is a significant problem in societal progress. In society, focusing on the group those benefits is a disadvantage. Legal Aid may be able to give counsel in the case.

ADOLESCENT LEGAL CONCERNS

This covers school expulsion and suspension, as well as other school-related conflicts. Furthermore, certain agencies may represent adolescents in criminal cases, but only by court appointment.

CONCERNS ABOUT HOUSING

Expulsion, lockouts, personal foreclosure seizure, discrimination (racial and against families with children), conflicts with landlords about maintenance, rent contracts deposits, or issues with public housing are all examples of this.

METHODOLOGIES FOR CONSUMERS

Debt issues, contracts, warranties, repossessions, wage garnishments, discrimination, and advice on small claims court and bankruptcy processes are all addressed.

THE BENEFIT TO THE GENERAL PUBLIC

Welfare, food stamps, medical aid, supplementary security income, social assistance, and salary growth compensation are all included.

IMMIGRATION

Some projects deal with a small number of immigration law matters.

SENIOR LEGAL CONCERN

This encompasses nursing homes and other types of care facilities, as well as medical, Medicare, and Guardianship defence.

CONCERNS REGARDING FAMILY LAW

An annulment, adoption, custody, maintenance, guardianship, parental responsibility, restraining orders, paternity defence, and decree modification are all examples of this.

ISSUES FOR WHICH LEGAL AID IS NOT PROVIDED

There are several instances in which legal help cannot be granted, including-

1. Cases in which the individual requesting legal help is not personally involved.
2. The processes whose interests will not be jeopardised if they are not appropriately represented
3. Cases in which the fine imposed is less than Rs.50/-
4. Election-related proceedings
5. Economic offences and violations of social legislation
6. The prosecution acted in revenge.
7. Lying under oath

8. Court Disobedience

9. In cases related to Defamation

ISSUES AND CHALLENGES

Even with all of the legislation, committees, and authorities in place, there is a void that must be filled. Many individuals currently accept injustice because they cannot afford to pay a lawyer to defend them. There are several reasons for the enormous number of outstanding court cases; many individuals are innocent yet sentenced and unable to defend themselves. There are several impediments to the implementation of legal aid programmes, including:

1) Lack of public legal education and legal awareness

These legal aid programmes are intended for the poor and uneducated, whose major issue is a lack of knowledge. They lack legal knowledge, thus they are uninformed of their basic and legal rights. People are frequently ignorant of the legal aid services that are accessible to them. As a result, because the public is unfamiliar with Lok Adalat, the legal aid movement has failed to achieve its goal.

2) Lack of support by the advocates, lawyers, etc.

Nowadays, all attorneys and advocates seek reasonable compensation for their services, and the vast majority of them are hesitant to participate in such social services. Even though there are a limited number of attorneys that supply these services, a lack of high-quality legal counsel impedes the administration of justice.

3) Lack of powers to Lok Adalats

Lok Adalats have limited authority in contrast to civil courts. To begin with, suitable protocols are lacking. The parties cannot then be compelled to attend in court. Frequently, one of the parties fails to appear for the hearing, forcing the matter to be adjourned.

4) Underutilization of Para-legal volunteers

These paralegal volunteers' major role is to promote legal aid camps and programmes, as well as to reach out to the poor and disadvantaged segments of society. These paralegal volunteers, however, are not adequately trained, regulated, or validated. Furthermore, concerning to the general population, these volunteers are negligible.

Landmark Cases Generating Legal Aid Movement in India

In "*Abdul Hassan Vs. Delhi Vidyut Board*", Article 39-A emphasises that the legal system must be able to deliver justice quickly and on an equal basis to all citizens, as well as provide free legal aid, to ensure

that no citizen's right to justice is denied due to economic or other barriers, according to the Delhi High Court. The Legal Services Authority Act of 1987 was enacted in response to this situation. One of the Act's goals is to organise Lok Adalat to ensure that the legal system's operation promotes justice on an equal footing. The Act's provisions, which are based on indigenous principles, are intended to supplement the legal system. They will go a long way toward resolving the dispute for the litigants at a low cost and with minimal delay. The Act is an attempt by the legislature to relieve the courts of cases with a high burden of proof.

In another case of "*Moni Mathai v. Federal Bank Ltd*", The Kerala High Court stated that the Lok Adalats must also adhere to the principles of natural justice, equity, and fair play, as well as other legal principles. All of these unfortunate disputes could have been avoided if the Committee had taken care to notify the petitioners and obtain a written statement containing their version and present it to the Lok Adalat. The Lok Adalats must also remember that it is their responsibility to settle cases amicably rather than to dispose of them in some way.

In "*Rhem v/s Malclm*", the court observes that The State cannot deny the accused the constitutional right to a speedy trial because the State lacks sufficient financial resources to spend on improving the administrative and judicial apparatus to ensure a speedy trial. The government may have financial constraints and expenditure priorities, but the law prohibits any government from depriving its citizens of constitutional rights based on poverty.

In *M.H. Hoskot v. the State of Maharashtra*, The Supreme Court established some prohibitions for free legal aid to prisoners that must be followed by all Indian courts, such as the provision of a free transcript of judgement promptly; where a prisoner seeks to file an appeal or revision, the jail administration must provide every facility for exercising such right. If a prisoner is unable to exercise his constitutional and statutory right of appeal, including special leave to appeal, due to a lack of legal representation, the court has the power to assign counsel to the prisoner under Article 142, read with Articles 21 and 39-A of the Constitution, if the prisoner does not object to the lawyer named by the court.

In *State of Maharashtra v. M.P. Vashi*, while interpreting Article 39-A, the court decided that in appropriate cases, the court can order the ruling politicians to implement the Directive Principles of State Policy, even though they are not justifiable in a court of law. Furthermore, when politicians and administrative officers are acting ineffectively or slowly, the Court must step in. The Supreme Court combined legal aid with legal education, ordering the State to overhaul and restructure the declining legal education standards. In this decision, the Supreme Court ordered the State to pay grant-in-aid to accredited law colleges

for them to function effectively and meaningfully and to produce a sufficient number of well-trained or well equipped legal graduates. As a result, the State will be able to provide free legal assistance and ensure that no citizen is denied access to justice because of a disability. Articles 21 and 39-A of the Constitution compels these considerations.

CONCLUSION

Our judicial system is founded on one of the most fundamental natural justice canons: no one may be punished without first being heard. The demand for a hearing can never be justified unless the person seeking justice has adequately argued his case. In this situation, our criminal jurisprudence follows an interesting narrative, namely, allowing thousands of criminals to walk free while prosecuting only one innocent person. As a result, according to our extraordinarily liberal judicial system, no putative accused shall be considered guilty unless his guilt is established beyond a reasonable doubt. In this situation, our criminal jurisprudence follows an interesting narrative, namely, allowing thousands of criminals to walk free while prosecuting only one innocent person. As a result, according to our extraordinarily liberal judicial system, no putative accused shall be considered guilty unless his guilt is established beyond a reasonable doubt. Legal assistance should be a basic human right in a country like India, and it should be supplied at no cost to anybody in need of justice. Our Supreme Court has made multiple commendable efforts to incorporate this idea, which has existed in our legal system since its establishment. The legislature passed the Legal Services Authorities Act in 1987. Jurists have aided in this respect by providing useful remarks in several studies on a wide range of themes. To summarise, great progress has been made in this field to satisfy the basic need of a just society. However, more effort remains to be done to make the notion of free legal help a reality for the majority of the population. The most significant prerequisite in this respect is to raise legal knowledge among individuals from all walks of life. The legal language must be simplified so that the general public may grasp it. Above all, public-spirited attorneys are desperately needed to carry out the noble duty of providing justice to people from all walks of life. Only then can the lofty and idealistic goal of the legal assistance concept be fully achieved.

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