

# Legal Aid in India: Judicial Contribution

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**Abstract – For the existence of society justice must be for all, whether the person is poor or rich he must get the justice. We exist because of the existence of society and Society exists because of the justice delivery system which provides justice to each and every individual of the society. In the society every person must get the equal opportunity to seek justice. In the society every person must get the equal opportunity to seek justice but this is not possible without giving legal assistance to the poor and illiterate persons. In the recent past the interest was taken by the Judiciary to provide legal assistance to the needy. For the existence of democratic country the Independent and impartial Judiciary is essential so that the court may protect the constitution and the rights of the individuals in the society irrespective of their financial conditions. In our constitution directive principle of state policy also gives direction to the court to protect the interest of the individual in the society as a whole and the interest of the individual who is poor or illiterate is also protected by the judiciary. The judicial intervention of the judiciary has compelled the Legislature to make a suitable legislation to protect the interest of weakest section of the society so that they can get the justice from our justice delivery system. One of the examples of judicial intervention to protect the interest of weaker section of the society is judicial activism. The main aim of Indian Judiciary is to make our justice delivery system efficient and for that Lok Adalat was introduced by the judiciary as one of the methods to provide easy access to justice and to avoid delay in the procedure of justice delivery. The free Legal Aid to the poor is not a mercy of the state but it is the duty of the state.**

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## INTRODUCTION

Legal aid means free legal services to the poor and needy persons during legal proceeding before any tribunal, court or any authority. Article 39 (a) of the constitution provides that the disability of any person cannot be the justified ground to deny a person to get the justice. If a person is not able to afford the service of a lawyer because of the financial disability he can apply for the free legal aid. Legal aid is an impressive step to improve our justice delivery system to make ensure that no one is deprived of lawyer's advice because he was not having sufficient funds. Therefore the object of the free Legal Aid is to make ensure that equal opportunity to get the justice is provided to the poor and weaker section of our society. According to Justice P. N. Bhagwati "The legal aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to report to it for enforcement of it's 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, it is essential to provide legal aid to the needy and poor persons by the fund of the government. The aim to provide legal aid is to ensure the spirit of our constitution to provide equal justice to the individuals of society so that the weaker sections of the society may also get the justice from our justice delivery system. State has a duty mentioned in our constitution to make suitable legislation and schemes to give equal opportunity to everyone irrespective of their financial condition or any other disability. It is obligatory for the state to provide justice and ensure the equality before law.

The Supreme Court gave important directions related to the protection of the interest of the poor persons in the case of Hussainara Khatoon.[1] Sometimes the person who is under trial and do not have money to hire the service of an advocate have to spend time in the jail even after the completion of the maximum time period of the punishment which could be given to him if his guilt was proved by the prosecution. Maximum time the reason of the delay is the financial disability of the person and in this case the same issue was raised by the petitioner in the Supreme Court that a large number of persons had already spent that much time in the jail which is more than the maximum time period of the punishment provided in the law for the offence for

which they are charged. The court held that under article 39 A of the constitution the state is duty bound to provide legal assistance to all the members of the society and court also held that right of free legal aid is also provided in article 21 of the constitution. After 2 years one another case was decided by the Supreme Court, in *Khatri vs State of Bihar*[2] that the right of free legal aid is guaranteed by the constitution and it is the obligation on the state government to give free legal aid to the accused if he is not having sufficient money to hire services of an advocate and state cannot run away from its duty on the grounds of administrative inability of financial constraints for that the right of free legal aid was not demanded by the accused. It is duty of the court to inform the accused about his right to demand for the legal aid if he is poor. The fair, just and reasonable procedure for the accused person is not possible without providing the right of representation by the advocate and this is the duty of the state to ensure the guarantee provided in the article 21 of the constitution.

In *Sukh Das vs Union Territory of Arunachal Pradesh*[3] justice P.N. Bhagwati observed that in our country through the rights are provided to the poor and illiterate persons to ensure the equality before the law but because of the illiteracy they are not aware about it and without awareness about the rights they cannot enjoy the same. To improve our justice delivery system only enactment of the laws and providing the rights to the citizens are not enough but the people must be aware about their rights provided by the state. It is sad to say that even the literate people of our nation is not aware about their rights and that is why it must be the prime duty of the state to make programs to aware the general public about their rights such as right of legal aid.

According to justice Krishna Iyer "if a Prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to the Supreme Court for want of legal assistance, there is implicit in the court under article 142 read with article 21 and 39 A of the constitution, the power to assign counsel for such imprisoned individual for doing complete justice." [4] For the existence of democratic country the existence of the rule of law is essential and the government must not be lazy to implement the enactments made to protect the interest of the members of the society. [5] In the case of *Haryana vs Darshana Devi*[6] it was held by the court that "the poor shall not be priced out of the justice market by insistence on court fee and refusal to apply the exemptive provisions of order xxxiii of CPC. The state of Haryana, mindless of the mandate of equal justice to the indigent under the Magna Carta of Republic, expressed in Article 14 and stressed in article 39 A 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 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 elected for the benefit of the poor, the state does not bring it into force by willful default."

## LEGAL AID IN INDIA

If a person is not in the position to enforce the rights provided to him by the law then he has the right of Legal Aid. The members of society must have easy access to the justice whether he is a poor or illiterate. Free Legal Aid is essential to maintain the social structure of the nation and it is related with the basic structure of our constitution and necessary for the existence of rule of law in our system which provides justice. Article 38(1) States "The state shall promote the welfare of the people by securing and protecting the social order including justice".

Article 39 A of the Constitution states that "the state shall in particular, provide free Legal Aid by suitable legislation or schemes, to ensure the opportunities for securing justice are not denied to any citizen". To make the legal Aid more effective some steps must be taken by the government as only participation of the lawyers are not enough and the teaching staff of law colleges and the students must also take active participation in the Legal Aid so that the program of Legal Aid may become more effective. Legal awareness and basic Legal education of each and every member of our society is essential for the progress of our society. For the Welfare of our society the concept of free Legal Aid was introduced and in this direction one major step is the Lok Adalat. If the accused is not able to defend him because of the reason that he is poor then he has a right to ask for the Legal Aid. In India the statutory provisions related to the legal aid was there for appointing an advocate to defend the criminal case and in civil cases by exempting the court fees but all those provisions was not helpful to improve our justice delivery system by providing justice to underprivileged people for their grievance. So, to provide justice to all the members of the society The Legal Services Authorities Act, 1987 was passed by the parliament of India. The act also described criteria that who can take benefit of this act and if a person applies to take benefit of this act the legal services authorities shall examine the eligibility criteria before providing him a lawyer at the expense of the state. If the person applied for the legal assistance under this act and the same is provided to him then he is not called upon to spend anything. According to the Supreme Court legal aid is not a charity but right of the citizens and the obligation of the state.

In India "The National Legal Service Authority" is the Apex body and the work of this body is to lay down policies and principles so that the members of our society may get justice inspite of their disabilities. In every state the State Legal Service Authority is constituted and it has to give effect the policies made by the national legal service authority and also to follow it's directions and to conduct the lok adalats in the state. The head of the State Legal Service Authority is the chief justice of the High Court of the state and the retired justice of the High Court may be nominated as the executive chairman. In every district the District Legal Service Authority is constituted to execute the legal aid program and to aware the people in the district about their legal rights. The District Judge is the ex officio chairman of the district legal service authority.

"The National Legal Service Authority(free and competent legal service) Regulations, 2010" has been framed to ensure equal justice to the members of the society. The Supreme Court Legal Service Authority Act is also enacted to provide free legal aid to the poor and disabled. The Supreme Court Legal Service Committee is headed by the judge of Supreme Court and the members of the committee are nominated by the Chief Justice of India.

## CONCLUSION:

To provide equal opportunity to seek justice to the members of society is the prime duty of the state. To provide legal aid to needy is not a charity but obligation of the state as the state has a duty to ensure equal justice to all. In our country the principle of rule of law is applicable and rule of law is not possible without protecting the rights of the weaker section of the society. The Legal Aid Movement in our country is unfortunately not an achieved goal. The major problem our country is facing to achieve the goal is lack of legal awareness. In our country large numbers of people are not aware about their legal rights. In our justice delivery system even the accused person has the right of representation and no one can be denied to have the representation by the legal expert on the ground of financial disability. Without the existence of the rule of law a democratic country cannot exist. Right of Legal Aid is provided under article 21 of the constitution. In our justice delivery system no one can be punished without giving him an opportunity to defend himself, if a person is punished without giving opportunity to defend himself then it shall be considered as unconstitutional.

## REFERENCE

1. Hussainara Khatoon vs State of Bihar , AIR 1979 SC 1369
2. 1981 SCR (2) 408, 1981 SCC (1) 627
3. Sukh Das v. Union Territory Of Arunachal Pradesh., A.I.R 1986 S.C 99
4. AIR 1986 SC 1991
5. M. H. Hoskot vs State of Maharashtra (1978) 3 SCC 81
6. 1979 AIR 855, 1979 SCR (3) 184

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