

Concept of free legal Aid And International Laws

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Abstract - "Legal aid" refers to assistance given to low-income and otherwise disadvantaged individuals so that they may use the legal system to uphold their rights. If we are serious about helping the economically disadvantaged, we must provide them with access to legal counsel both within and outside of the judicial system. The Preamble to India's constitution lays forth the document's overarching goal: to protect the social, economic, and political rights of Indian citizens. Free or low-cost legal representation is provided to those who cannot otherwise afford it as part of legal assistance. The preamble of India's constitution declares that its overarching goal is to ensure the social, economic, and political fairness of the Indian people. The main concept of providing free legal service is to help the needy people those who are not able to afford an advocate for the justice. As in India, there is a lot of poverty and people are so poor that they are no able to afford an advocate so free legal aid is necessary to those.

Keywords - Legal Aid, Constitution of India , Equal Justice, League of Nations, International Committee of Legal Aid experts

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INTRODUCTION

"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."

- Justice P.N .Bhagwati

Legal aid is the provision of free legal representation to low-income people who would otherwise be unable to afford one in a legal proceeding or other judicial or administrative proceeding. Legal aid has been established to guarantee that no one is financially unable to get competent representation in court. In this light, one of the primary purposes of establishing and maintaining a system of universally applicable justice is to ensure that the weak and disadvantaged sections of society have access to it. There must be a system in place in society that makes the tools of administration of justice openly available and within the means of those who need to turn to them in order to enforce their given rights. It is safe to say that providing access to justice for the poor has never been easy for any judicial system. States must take the lead in guaranteeing that everyone has a chance to protect their rights and advance their interests under the law if this ideal is to be more than just a slogan. There has been a lot of change in the way that legal assistance is provided across the globe. The simultaneous emergence of these shifts is, of course, not accidental. Worried about the impact of the State's cutbacks on

legal assistance, attorneys are making an attempt to fill the void. After WWII, several nations established state legal assistance programmes, making it simpler for citizens to have fair access to the courts. These measures were part of a larger welfare state push to improve access to healthcare, affordable housing, reliable income support, and enough funding to enable legal aid lawyers to accept cases at rates near to their market worth.

Section 2(a) of the Legal Aid Act, 2000 defines "legal aid" as "the provision of legal advice, the payment of attorney fees and litigation expenses, and any other assistance to people who have suffered economic disaster, are destitute, or are otherwise defenceless." Getting legal representation is not a favour, but a right that must be fought for. However, the Indian Constitution does not include a provision explicitly addressing the provision of legal representation. However, the 42nd Amendment Act of 1976 introduced a new Article 39(a) to the Indian Constitution, which was a major step toward the creation of legal assistance. Relevant provisions in the codes of criminal procedure and civil procedure have also been revised to ensure equitable and social justice in both criminal and civil proceedings. A brief overview of legal aid under international law is required to completely appreciate the Indian legal system. This article uses India as a case study to analyse the impact of international treaties on domestic legal assistance systems.

Free Legal Aid in India and Statutory Recognition

By appointing an advocate to represent defendants in criminal proceedings and waiving filing costs in civil cases, the legal aid provision of the statute did not greatly hinder the capacity of the poor to seek redress in court. Therefore, the Supreme Court constitutionally pressed the Indian government to pass the Legal Services Authorities Act, 1987. The standards for providing legal assistance to qualified individuals are spelled forth in the Act. One may qualify for aid under the law if they meet the requirements set out in this provision. -

- a) A person who belongs to a "Recognized Caste" or "Recognized Tribe";
- b) A beggar, or a victim of human trafficking as defined by Article 23 of the Constitution;
- c) A woman or a child;
- d) A mentally ill or otherwise disabled person;
- e) A person in need who has suffered hardship through no fault of their own, such as in the aftermath of a catastrophic event, racial or religious cleansing, genocide, or natural or man-made catastrophe; or
- f) An industrial workman; or
- g) In custody, including custody in a protective home or in a juvenile home or in a psychiatric hospital or psychiatric nursing home within the meaning of clause
- h) of Section 2 of the Mental Health Act, 1987; or
- i) A resident of the state whose monthly income is less than Rs. 50,000 or any other higher amount as may be stipulated by the State Government.

Individual states have the option of raising this income cap. Scheduled caste members are exempt from federal income limits, and individual state governments may increase those limits if they see fit. There is no minimum income required for persons who belong to the scheduled castes or scheduled tribes, women, children, the disabled, etc. Therefore, the Indian Parliament authorised the provision of legal help. Any tribunal or other authority formed by any act now in existence to undertake judicial or quasi-judicial tasks is considered a "court" under the Act, including civil, criminal, and revenue courts. "Legal service" is defined broadly under the act to include the provision of advice on any topic of law as well as the administration of any lawsuit or other legal proceeding before any court, other authority, or tribunal. If an applicant meets the necessary criteria and there is a prima facie case in his favour, Legal Services Authorities will provide him with counsel at State expense, pay the necessary court charge in the issue, and cover any incidental expenses related with the case. Once a Legal Services Authority has paid for a client's case, the client has no further financial responsibility for the case.

Following World War I, worldwide concern for human rights was given expression in some articles of the League of Nations Covenant. This occurred in the

early 20th century. In addition, everyone knew that establishing social justice for everyone was the key to establishing worldwide tranquilly.

Having access to legal counsel was crucial since achieving social justice for everyone without it was unattainable. The International Committee of Legal Aid Experts convened in Geneva from July 30 to August 31, 1924, after necessary preparations were made under the auspices of the League of Nations. Representatives from France, England, Norway, Italy, Poland, Spain, the United States, and Japan all attended the meeting. Justice for the poor was the primary topic of their talks. In 1927, the League of Nations published its findings from a survey of legal assistance systems across the world.

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

The United Nations General Assembly passed and officially declared the Universal Declaration of Human Rights on December 10, 1948. Its purpose was to foster a global culture of respect for human rights and freedoms by setting a high bar for state performance. Each individual is guaranteed a set of rights and liberties that are detailed in the Declaration's Preamble and its thirty Articles.

Achieving social justice for the disadvantaged is facilitated by the Declaration in several ways. The Declaration's Preamble affirms that all people are created equal and endowed with inalienable rights that form the basis for global liberty, justice, and tranquilly. It is the principal vehicle through which the Declaration's overarching ambitions and guiding principles are communicated. It is abundantly obvious from the preamble that justice and equality are at the heart of the Declaration's aims. The pursuit of justice and the promotion of equality are complementary values. There can be no justice without parity. As stated in the Declaration of Human Rights, a lack of resources will hinder a person from asserting his or her human rights. As a result, having access to legal representation is now fundamental to realising the goals outlined in Declaration of Human Rights' introductory text.

The Declaration's guiding principles are outlined in Article 1. Human rights and dignity are emphasised. The seed of social justice may be sown with the assistance of equality, and it can flourish with the support of the law. Therefore, the provision of legal help to those in need has been acknowledged since 1948.

Regarding the exercise of human rights and fundamental freedoms, Article 2 lays down the foundational principle of equality and non-discrimination. That it protects people from being treated unfairly because of their "Property" is a key feature. The wealthy and the impoverished are afforded the same legal protections. Legal aid programmes assist low-income people keep the

promise of equality alive so that they may benefit from society's ideals of fairness. In many ways, this provision mirrors Article 15(1) of the Indian Constitution.

According to Article 7, everyone has the same protection under the law and is treated equally. No one should be denied due process in the court system just because they lack the financial resources to pay their way. Regardless of the expense to the government, it is the duty of government to ensure that everyone is safeguarded equally. This clause is quite similar to Articles 14, 15, and 16 of the Indian Constitution and Article 39-A of the Protection of Civil Rights Act of 1955. When a person's basic rights have been violated, they have the right to seek redress before the national tribunal as outlined in Article 8.⁴

Article 10 states that everyone has the right to a public and fair hearing before a neutral and independent tribunal to determine his or her rights. An attorney must be present at any hearing. It is the responsibility of the state to offer legal representation to anybody who cannot pay it. This article's notions are comparable to those found in Article 50 of the Indian Constitution and in Sections 55, 303, 304, 310, 327, 461 and 479 of the Code of Criminal Procedure of 1973.

While the Declaration is not a legally binding document, it does serve as a morally binding pledge, a benchmark for international norms, and a guiding document. It has had a significant influence on the worldwide legal aid movement.

EUROPEAN CONVENTION FOR PROTECTION OF HUMAN RIGHTS, 1950⁵

On September 1, 1953, after being signed on November 4, 1950, in Rome, the European Convention on Human Rights became legally binding across Europe. Legal representation for individuals accused of a crime is addressed under Article 6(3)(C) of the Convention. Article 6(3) states, "Everyone accused with a criminal crime has the following rights: to defend himself in person or with legal counsel of his choice, or if he has adequate means to pay for legal representation, to be granted it for free when the interests of justice so demand." The Convention guarantees the right to free legal assistance for anybody facing criminal charges. For the provisions of Article 6(3) (C) of the Convention to apply, a claimant must provide evidence that they satisfy all of the requirements set out in that article.

⁴ 'Muralidhar S, *Law Poverty and Legal Aid* (Lexis Nexis, Butterworth, New Delhi, 2004)

⁵ 'Bimal N Patel, *A Comprehensive guide of laws of Human Rights in Commonwealth Countries*, 1st edi., 2007, Wadhwa, Nagpur, at 88.

It is only those who have been criminally charged that are covered by Article 6 of the Agreement. This provision only ensures access to legal counsel at no cost when doing so is in the public interest; it does not guarantee a fair trial.

UNITED NATIONS CONFERENCE, 1965⁶

The third UN Conference on Crime Prevention and Treatment was held in Stockholm in 1965. The Conference recognises the importance of access to legal counsel. Discussion at this meeting focused on how to best provide legal representation to persons who have been convicted of a crime. Everyone present acknowledged the need of obtaining legal representation for individuals who had been arrested, accused, or convicted. Access to legal counsel is not only a fundamental human right, but also a safeguard against injustice in the face of insufficient legal representation. Therefore, insufficient access to legal aid may contribute to an increase in recidivism.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966⁷

Two important agreements came after the Universal Declaration of Human Rights and made its principles into binding international law for any country that ratified them. Both were international agreements: the first was the International Covenant on Civil and Political Rights and its Optional Protocol; the second was the International Covenant on Economic, Social, and Cultural Rights.

The UN General Assembly ratified the two Covenants and Protocols on December 16, 1966. Both accords were ratified and entered into effect on their respective dates (March 23, 1976 and January 31, 1977). India accepted the Covenants and Protocol, although with reservations. The Indian court system has given civil and political rights the importance they merit, and has made efforts to ensure their enforcement. When interpreting and applying Part III of India's Constitution, the Indian Judiciary has accorded these civil and political rights the weight they deserve and made efforts to ensure their enforcement.

According to Article 14(1) of the International Covenant on Civil and Political Rights, everyone has the right to equitable treatment in the judicial system. To decide one's rights and responsibilities or the result of a criminal allegation, everyone has the right to a public hearing before a competent, independent,

⁶ 'Sujan Singh, *Legal Aid Human Right to Equality* (Deep & Deep Publications, New Delhi, 1996) 15

⁷ Andrew S. Butler, "Legal Aid Before Human Rights Treaty Monitoring Bodies", 49 *ICLQ* (2000) 369

and impartial tribunal that has been constitutionally established.

In the event that a criminal complaint is filed against a person, that person has the right to the following minimum safeguards under Article 14(3), which must be applied uniformly and without exception:

- (a) He has the right: (a) to be notified without undue delay of the nature and reason of the complaint against him;
- (b) To confer with counsel of his choice and be given sufficient time and space to prepare his case.
- (c) To be tried without unjustified delay
- (d) To be present at his trial, and to offer his defence either in person or via counsel of his choice; to be notified, if he does not have counsel, of this right; and to have counsel assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he lacks sufficient means to pay for it;

The inclusion of the right to legal help is a welcome addition to our Covenant. It is possible to offer legal representation to those who cannot pay it by the state if doing so will further the cause of justice. Article 14's mandate that no one should be punished without a prior hearing exemplifies a basic principle of Natural Justice: that no one shall be deprived of their right to a fair trial.

TEHRAN CONFERENCE

When the inaugural International Conference on Human Rights was held in Tehran, it was a groundbreaking event, bringing together experts from across the world to discuss human rights in all their complexity. There were delegates from 84 countries as well as representatives from three UN organs, 48 non-governmental organisations (NGOs), 4 intergovernmental organisations (IGOs), and 4 specialised agencies of the United Nations.

The Conference declares in its final declaration that civil and political rights are impossible to realise without also enjoying economic, social, and cultural rights. It was decided during the Conference to pass a resolution on legal assistance that states:

- (a) To safeguard human rights and basic liberties, governments (a) should promote the expansion of existing legal assistance programmes; and (b) should support new programmes.
- (b) Establishing criteria for providing financial, professional, and other legal aid to victims of apparent violations of their basic rights.
- (c) Governments need to think about how to pay for such an all-encompassing legal assistance programme.

- (d) In order to lessen the financial and other resource constraints of those seeking legal remedy,
- (e) If at all possible, governments should (e) simplify regulations and procedures.
- (f) The governments involved should work together to ensure that those who have suffered wrongs may have access to qualified legal counsel.

AMERICAN CONVENTION ON HUMAN RIGHTS, 1969⁸

In the same year (1969), both the European Convention for the Protection of Human Rights and the American Convention on Human Rights were ratified. As an example, Article 24 of the Convention declares that all people are created equal and are therefore entitled to the protection of the law without prejudice or favouritism.

Every poor person has the inalienable right to state-funded legal representation in all judicial proceedings, as guaranteed by Article 8(2)(e) (i.e., from the remand stage on words until the verdict is rendered). People who are unable to afford legal representation are considered to be indigent.

STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS⁹

A pre-trial detainee has the right to free legal representation, visits from his counsel to help him prepare his defence, and the ability to give his attorney instructions in confidence under Rule 93. The Legal Services Authorities Act mandated the creation of prison clinics in India. Inmates will be updated on their rights to legal representation by advocates for the law, law school faculty and students, and other visitors to the prison. Judges of the district court were mandated to make unannounced visits to correctional facilities.

CONVENTION ON INTERNATIONAL ACCESS TO JUSTICE, 1980

Keep in mind that, according to Article 1, everyone who lives in a contracting state on a regular basis, regardless of nationality, is afforded the same access to legal representation in civil and commercial matters as a resident of that state. It is

⁸ Available at http://www.hrcr.org/docs/American_convention/oashr5.html (Last visited on 3 /1/2010)

⁹ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

intended that this item be applied to matters now being heard in both courts and tribunals.

A party is not responsible for any costs associated with the submission, review, or determination of a request for legal assistance, as stated in Article 11.

BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT¹⁰

In accordance with Article 17(2), a detainee has the right to have a court or other entity appoint a lawyer for him without having to pay the legal fees.

INTERNATIONAL COURT OF JUSTICE TRUST FUND¹¹

When conflicts are being considered by an international court of justice, individual governments and cases get legal aid. The International Court of Justice Secretary-Trust General's Fund was established by the General Assembly on November 1, 1989, under the agenda item titled "Report of the International Court of Justice," to aid states in resolving their disputes via that institution. Javier Perez de Cuellar, the UN Secretary-General, made the announcement. The trust concept was developed to assist governments in overcoming financial impediments to bringing their disputes to the ICJ for judicial settlement.

Establishment and Operation of the Fund

Secretary-Trust General's Fund to Assist States in the Settlement of Disputes: Regulations and Procedures Justification for establishing the trust fund, its mission, its purpose, and the application process and conditions were all laid down by the International Court of Justice. By virtue of his position as the United Nations' top bureaucrat, the Secretary-General is the one tasked with establishing the Trust fund and carrying out the UN's principal judicial instrument's mission of encouraging judicial settlement.

The Office of Legal Affairs within the UN Secretariat provides the core services and aids the Secretary-General in administering and implementing the trust fund. The UN conducts internal audits of the trust fund. Article 1(1) of the UN Charter establishes the Organization's Purposes, and Article 33 of Chapter VI describes the various peaceful dispute resolution options, including negotiation, inquiry, mediation, conciliation, arbitration, and judicial resolution. These provisions provide the legal basis for trust funds. The trust fund is financed by contributions from governments, NGOs, the private sector, and the

business community. In 1992's annual report, the Secretary-General revealed that 34 countries had contributed a total of \$583,705 to the trust fund since its inception in 1989.

The purpose of the trust fund is to give little financial aid to nations so as to encourage them to bring their disputes to the ICJ. The money will go toward helping poor countries pay off the costs associated with a settlement or judgement from the International Court of Justice (ICJ).

The cost of going to court may add up quickly. Although "the court's expenditures" were covered by the United Nations, that money went toward administrative charges alone. Each party will be responsible for paying their own printing and translation fees for any papers filed in a language other than English or French.

The company cannot evaluate everyone who applies for a grant or loan. A basic prerequisite for applying to the ICJ is to be a resident of a state that is eligible to do so. All member states of the United Nations must abide by the decisions of the International Court of Justice. Non-UN member states are welcome to join the International Court of Justice at the suggestion of the Security Council and subject to conditions that will be resolved on a case-by-case basis by the General Assembly.

A state can join the ICJ and become a party to the Statute by submitting a general or specific statement to the court's registrar admitting the court's jurisdiction and pledging to abide by its ruling and by the terms of the Statute. This is in addition to accepting the responsibilities of a UN member under Article 94 of the Charter. A state must have standing before the ICJ, but it also must be so financially unstable that it cannot pay to execute a judgement from the ICJ.

As a result, the first international accords to acknowledge legal assistance did so under the umbrella of the notion of equality. The Universal Declaration of Human Rights makes this point quite obvious. After the International Covenant of Economic, Social, and Cultural Rights was signed in 1966, the concept of legal assistance as a distinct organisation began to take shape. These works paved the way for many nations to explicitly recognise the right to legal counsel. But in India, even before these international organisations existed, access to legal assistance was considered a fundamental human right. Possible causes for this trend include British rule in India. Efforts were made to enhance legal assistance in post-colonial India.

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD-1990¹²

¹⁰ Adopted by General Assembly Resolution 42/173 of 9 December 1988

¹¹ Peter H.F.Beldcer, "International Legal Aid In Practice ; The ICJ Trust Fund", 87 *Am. J. Ind. L.* (1993) 659 - 668

¹² Supra note 9 at 283.

The African Children's Charter (ACC) was established on November 29, 1999, after its adoption by the Organization of African Unity in 1990. If a juvenile is accused of a crime and cannot afford legal representation on his own, the state must provide one for him under Article 17 (2)(c)(iii). This is not a voluntary good but a necessary evil.

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES¹³-1999 (ENTERED INTO FORCE 2003)

Migrant workers who face criminal accusations are entitled to legal representation at state cost, as stated in Article 18 (3) (d), if the interest of justice so requires.

PRINCIPLES FOR THE PROTECTION OF PERSONS WITH MENTAL ILLNESS AND THE IMPROVEMENT OF MENTAL HEALTH CARE-1991¹⁴

Principle 18 states that a person filing a complaint or appeal has the right to choose and appoint legal representation. If the patient doesn't get them, a lawyer should be provided for free to the extent that the patient can't afford one.

This perspective is reflected in Section 12 of India's Legal Services Authorities Act of 1987. Access to justice for people with disabilities is guaranteed under the Legal Services Authorities Act, as outlined in CI I of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act 1995.

EUROPEAN CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS-1996¹⁵

Legal counsel for minors in proceedings before a judicial body is mandated when applicable under local law.¹⁶

- (a) Where the bearers of parental obligations are prohibited by internal law from representing the child due to a disagreement with the latter, the kid has the right to ask for the appointment of a special representative.¹⁷

¹³ Bimal N Patel, An In-Depth Analysis of Human Rights Legislation Across the Commonwealth, 14 edi.,2007, Wadhwa , Nagpur, at 481

¹⁴ The UN General Assembly passed this resolution. 46/119 of 17 December 1991

¹⁵ Supra Note 11 at.302

¹⁶ Article 4 of the European Convention on the Exercise of Children's Rights

¹⁷ Article 4

- (b) If the bearers of parental duties are barred from representing the child in court proceedings because of a conflict of interest, a representative must be appointed.¹⁸

COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS-2005¹⁹

In accordance with its own laws on restitution and legal redress, each nation that has signed the convention is obligated to provide victims the right to legal counsel and free legal assistance.

CONCLUSION

International treaties and their impact on domestic legislation need discussion before drawing any firm conclusions. International treaties sometimes serve as the inspiration for local legislation, with some requiring states to enact stricter laws in order to comply with their terms. There is no denying that there are times when local laws go too far. Sometimes forward-thinking domestic legislation or the interpretation of local courts inspires international treaties. Judiciary reform in domestic tribunals is, nonetheless, influenced by international agreements. In cases when an international convention conflicts with domestic law, a court may uphold a judicial interpretation that is in compliance with the convention even if the treaty itself may not be enforceable.

Because of the increasing interconnectedness of people throughout the world, there is a growing consensus that certain aspects of law need to be uniform regardless of cultural differences. Take the human rights system as an example. Political and cultural variety necessitates the development of new perspectives on fundamental human rights such as the right to life, human dignity, and the respect for the rights of women, children, etc. This is why it's important to have a system of international law that is both fair and just. This is the case with the fast developing human rights infrastructures of nations like India, the United Kingdom, and the United States. To sum up, it may be said that:

"No Society can develop without peace and Security,

No State can be Secure, if its people are condemned to poverty without hope, and

No nation can be secure or prosperous for long,

If the basic rights of its citizens are not protected"²⁰

¹⁸ Article 9

¹⁹ Supra Note 11 at 778

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²⁰ 'Kofi Annan, "The Eyes of the World are Upon You", XLM
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