

LEGAL AID: A WAY TO EMPOWER THE SOCIETY

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Abstract:

This paper deals with the concept of legal aid. Legal aid has a close relationship with the welfare state, and the provision of legal aid by a state is influenced by attitudes towards welfare. Legal aid is a welfare provision by the state to people who could otherwise not afford counsel from the legal system. Legal aid also helps to ensure that welfare provisions are enforced by providing people entitled to welfare provisions, such as social housing, with access to legal advice and the courts. The purpose of this paper is to create the awareness of legal aid. People are not aware of rights and protection available under the law.

Introduction:

Legal aid is free legal assistance to the poor and weaker sections of the society with the object to enable them to exercise the rights given to them by law. Justice P.N.Bhagwati has rightly said that "*the poor and the 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.*"

The Constitution of India gives much emphasis on the constitutionalism and rule of law. In India the rule of law is regarded as a part of the basic structure of the Constitution and also of natural justice. The rule of natural justice says that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the cases against them, a fair opportunity to answer them, and the opportunity to present their own cases.

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The preamble of the Constitution secures to its citizen, social, economic and political justice. Article 14 of the Constitution makes it clear that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. The aim of Article 14 is to ensure equal justice. The guarantee of equal justice is meaningless if the poor or illiterate or weak persons cannot enforce their rights because of their poverty or illiteracy or weakness.

Articles 38 and 39, of the Constitution of India lay down clear mandate in this regard. According to Article 38 (1) the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic or political, shall inform all the institutions of the national life.

Article 39-A directs the State to ensure 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.

Right to free legal aid or free legal service is an essential fundamental right guaranteed by the Constitution. It forms the basis of reasonable, fair and just liberty under Article 21 of the Constitution of India, which says, “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

In *State of Maharashtra v. Manubhai Pragaji Vashi*, The Supreme Court has made it quite clear that it is now well established that the failure to provide free legal aid to an accused at the cost of the State unless refused by the accused, would vitiate the trial. In *M.H Hoskot v. State Of Maharashtra*, Justice KrishnaIyer observed that providing free legal aid is the State's duty and not Government's charity.

The Code of criminal Procedure and the Code of Civil Procedure also contain provisions in relation to the free legal aid. Section 304 of the Criminal Procedure Code provides that where in a trial before the Court of Session, 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 expense of the State. Section 304 makes it clear that the State is under an obligation to provide legal assistance to a person charged with offence triable before the Court of Session. It enables the State Government to direct that these provisions shall apply in relation to any class of trials before other courts in the State.

Order 33 of the Civil Procedure Code provides in respect of the suit by indigent person. On the application to sue as indigent person is being granted the plaintiff shall not be liable to pay court fee and in case he is not represented by a pleader, the Court may, if the circumstances of the case so requires, assign a pleader to him. This benefit has now been extended to the dependant also.

A separate legislation, The Legal Services Authority Act, 1987 has been enacted to constitute the Legal Service 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 organise Lok Adalats to secure that the operation of the legal system promotes justice. The Legal Services Authorities Act establishes statutory legal services authorities at the National, State and District level. It makes provisions in relation to Lok Adalat. The main object of the Lok Adalat is to provide quick justice at less expense.

International Covenant on Civil and Political Rights also under Article 14 (3)(d) guarantees to everyone: “Right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”

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 abrasive 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 aaganwadi workers, Members of local panchayat etc to act as intermediates between rural people and legal

service institutions. In state of Maharashtra v. Manubhai Pragaji Pragaji vashi, the Supreme Court has highlighted the necessity for capacity building and held that in order to provide the "free legal aid" it is necessary to have well-trained lawyers in the country. This is only possible if there are adequate number of law colleges with necessary infrastructure, good teachers and staff. The major drawback of legal aid movement in India is the lack of legal awareness. People are not aware of rights and protection available under the law. It needs to be realized that the promotion of awareness regarding legal aid is not the exclusive duty of the Legal fraternity. It is equally the concern and responsibility of the society at large. Constitutional commitment for legal aid can only be cherished if society comes forward to care for its vulnerable population.

Object of Legal Aid

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. 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.

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. 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.

Free Legal Services

The Free Legal Services include:

- Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- Providing Advocate in legal proceedings;
- Obtaining and supply of certified copies of orders and other documents in legal proceedings;
- Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

Eligible persons for getting free legal services include:

- Women and children;
- Members of SC/ST;
- Industrial workmen;
- Victims of mass disaster; violence, flood, drought, earthquake, industrial disaster;
- Disabled persons;
- Persons in custody;
- Persons whose annual income does not exceed Rs. 50,000/-
- Victims of Trafficking in Human beings.

Conclusion and suggestions:

Legal Aid implies giving free legal service 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. Hence, Legal Aid is not a charity or bounty, but is a constitutional obligation of the state and right of the citizens. The problems of human law and justice, guided by the constitutional goals to the solution of disparities, agonies, despairs, and handicaps of the weaker,

yet larger brackets of Bharat's humanity is the prime object of the dogma of "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. It is the duty of the State to see that the legal system promotes justice on the basis of equal opportunity for all its citizens. It must therefore arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities.

As political philosopher; Charles de Montesquieu said that; "*In the state of nature...all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law.*" The protection of law to poor, illiterate and weak is important to ensure equal justice. Legal aid is one of the means to ensure that the opportunities for securing justice are not denied to any person by reason of poverty, illiteracy, etc.

Suggestions

- Legal awareness programme should be made compulsory in the entire government department.
- Para legal volunteer should be appointed in the entire government department.
- A Permanent and Continuous Lok Adalat Scheme should be made applicable.
- Liaison with the Information and Broadcasting Ministry and Prasar Bharti for timely briefing about the projects and programmes to the Press and Media.
- Other publicity measures like, hoardings, production of short-films, skits in CD form and distribute copies to all.
- Printing of publicity materials like posters, pamphlets, booklets and distributing the required quantity of such materials to all, advertisements in newspapers and television (both private and Government owned) etc.
- Establishing Legal Aid Clinics in all Gram Panchayats (similar to primary health centres) by engaging competent lawyers as legal consultants in the clinics. Give wide publicity about the clinics with the help of local Self-Government Institutions.
- Setting-up Legal Aid Clinics in all law colleges and law universities and to encourage students to adopt remote village areas as their area of operation. For this purpose, the following strategies may be adopted:

- The students may be divided into small groups and deputed to the adopted villages.
- In urban areas, colonies and slum areas where economically and socially backward people reside may be chosen for setting up Legal Aid Clinics.
- Law Students should be guided by a team of senior Professors/Lecturers including part-time Lecturers. Rapport between the students and the people of the adopted area should be maintained throughout the year.
- Law Students shall identify the problems which require Legal Aid. They shall discuss the problem with the teacher-in-charge and if it warrants further free legal services, the matter should be brought before the Legal Services Authorities/Committees concerned.
- The students shall be encouraged to organize legal awareness classes for small groups of people (4 or 5 houses together or 10 to 12 people). It should be more in the form of informal gatherings.
- The students should aim at preventive and strategic legal aid.
- In appropriate cases, senior students and postgraduate students who have already enrolled as lawyers, may be entrusted with the filing and conducting of the litigation in the Courts free of cost.
- No fee shall be collected from the beneficiaries of legal aid clinic.

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