

# LEGAL AID IN INDIA AND THE JUDICIAL CONTRIBUTION

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*The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice.*

Justice Blackmun in *Jackson v Bish*

## **Introduction**

Legal aid to the poor and weak is necessary for the preservation of rule of law which is necessary for the existence of the orderly society. Until and unless poor illiterate man is not legally assisted, he is denied equality in the opportunity to seek justice. Therefore as a step towards making the legal service serve the poor and the deprived; the judiciary has taken active interest in providing legal aid to the needy in the recent past. The Indian Constitution provides for an independent and impartial judiciary and the courts are given power to protect the constitution and safeguard the rights of people irrespective of their financial status. Since the aim of the constitution is to provide justice to all and the directive principles are in its integral part of the constitution, the constitution dictates that judiciary has duty to protect rights of the poor as also society as a whole. The judiciary through its significant judicial interventions has compelled as well as guided the legislature to come up with the suitable legislations to bring justice to the doorsteps of the weakest sections of the society. Public Interest Litigation is one shining example of how Indian judiciary has played the role of the vanguard of the rights of Indian citizens especially the poor. It encouraged the public spirited people to seek justice for the poor. For that Supreme Court relaxed procedure substantially. Apart from Public Interest Litigation and judicial activism, there are reforms in the judicial process, where it aims to make justice cheap and easy by introducing Lok Adalat system as a one of the methods to provide free legal aid and speedy justice at the door steps of the poor. In this article the author highlights the importance of free legal aid in a constitutional democracy like India where a significant section of the population has still not seen the constitutional promises of even the very basic fundamental rights being fulfilled for them.

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## Legal Aid: The Concept

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:<sup>1</sup>

*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<sup>2</sup> 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

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1 Speaking through the Legal Aid Committee formed in 1971 by the State of Gujarat on Legal Aid with its Chairman, Mr. P.N. Bhagwati along with its members, Mr. J.M. Thakore, A.G., Mr. VV Mehta, Deputy Speaker, Gujarat Vidhan Sabha, Mr. Madhavsinh F. Solanki, M.L.A, Mr. Girishbhai C. Patel, Principal, New Lal College, Ahemdabad. His Lord ship answered to the question of inequality in the administration of justice between the rich and the poor.

2 Article 39A of the Indian Constitution

State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all<sup>3</sup>.

### **Free Legal Aid in India : The positive Contribution of Judiciary**

The Supreme Court of India got a major opportunity to make an emphatic pronouncement regarding the rights of the poor and indigent in judgment of *Hussainara Khatoon*<sup>4</sup> where the petitioner brought to the notice of Supreme Court that most of the under trails have already under gone the punishment much more than what they would have got had they been convicted without any delay. The delay was caused due to inability of the persons involved to engage a legal counsel to defend them in the court and the main reason behind their inability was their poverty. Thus, in this case 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.

Two years later, in the case of *Khatri v. State of Bihar*<sup>5</sup>, the court answered the question the right to free legal aid to poor or indigent accused who are incapable of engaging lawyers. It held that the state is constitutionally bound to provide such aid not only at the stage of trial but also when they are first produced before the magistrate or remanded from time to time and that such a right cannot be denied on the ground of financial constraints or administrative inability or that the accused did not ask for it. Magistrates and Sessions Judges must inform the accused of such rights. The right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require... The State cannot avoid this obligation by pleading financial or administrative inability or that none of the aggrieved prisoners asked for any legal aid.

In *Suk Das v. Union Territory of Arunachal Pradesh*<sup>6</sup>, Justice P.N. Bhagwati, emphasized the need of the creating the legal awareness

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3 Articles 14 and 22(1) of the Indian Constitution.

4 *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98.

5 *Khatri v. State of Bihar*, AIR 1981 SC 262.

6 AIR 1986 SC 991.

to the poor as they do not know their rights more particularly right to free legal aid and further observed that in India most of the people are living in rural areas are illiterates and are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness they are not approaching a lawyer for consultation and advice. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant and they cannot even help themselves. That is why promotion of legal literacy has always been recognized as one of the principal items of the program of the legal aid movement in the country. I would say that even right to education would not fulfill its real objective if education about legal entitlements is not made accessible to people and our constitutional promise of bringing justice to the doorsteps of the people would remain an illusion.

Justice Krishna Iyer, who is crusader of social justice in India, had rightly said that '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 Articles 21 and 39-A of the Constitution, the power to assign counsel for such imprisoned individual 'for doing complete justice'.<sup>7</sup>

It is a statutorily recognized public duty of each great branch of government to obey the rule of law and uphold the trust with the constitution by making rules to effectuate legislation meant to help the poor.<sup>8</sup> Though the law has been enacted to protect the poor the governments are lazy to implement the enacted law. The same was observed by Supreme Court in *State of Haryana v. Darshana Devi*<sup>9</sup>, 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, 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 39A 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 the civil court"...even court also

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7 *M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 81.

8 Order 33, Rule 9A, Code Civil Procedure, 1908.

9 AIR 1972 SC 855.

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 enacted for the benefit of the poor, the state does not bring it into force by willful default”.

### **Legal Aid in India: Statutory Recognition**

Though there was a statutory procedure providing free legal aid<sup>10</sup> by appointing the advocate for defending criminal case and by exempting court fees in civil cases, it was not really making any significant impact on the ability of the underprivileged people to get the judicial redressal for their grievances. Hence under tremendous constitutional persuasion from the Supreme Court the Legal Services Authorities Act, 1987 was passed by the parliament of India. The Act prescribes the criteria for giving legal services to the eligible persons. It makes a person eligible for assistance under the act if he is -

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a mentally ill or otherwise disabled person;
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home or in a juvenile home
- (h) of in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or
- (i) A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government<sup>11</sup>.

This limit on income can be increased by the state governments. Limitation as to the income does not apply in the case of persons

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10 Section 304(1) of Code of Criminal Procedure and Order 33, Rule 17 of Code of Civil Procedure.

11 Section 12 of the Legal Services Authorities Act, 1987.

belonging to the scheduled castes, scheduled tribes, women, children, handicapped, etc. Thus by this the Indian Parliament took a step forward in making the legal aid possible in the country.

According to the Act the 'court' is a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions<sup>12</sup>. Under the Act 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter<sup>13</sup>.

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority.

### **Bodies under the Act and Their Hierarchy**

A nationwide network has been envisaged under the Act for providing legal aid and assistance. National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

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12 Section 2(1) (a) of the Legal Service Authority Act,1987.

13 Section 2(1)(c) of the Legal Service Authority Act,1987.

District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman.

Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organize Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

In order to provide free and competent legal service, the NALSA has framed the National Legal Service Authority (Free and competent Legal service) Regulations, 2010. The salient feature of Regulation is engaging senior competent lawyers on payment of regular fees in special cases like where the life and liberty of a person are in jeopardy.

Supreme Court of India has also set up Supreme Court Legal Services Committee (SCLSC) to ensure free legal aid to poor and under privileged under the Legal Services Authorities Act. It is headed by a judge of Supreme Court of India and has distinguished members nominated by Chief justice of India. The SCLSC has a panel of competent Advocates on record with certain minimum number of years of experience who handle the cases in the Supreme Court. Apart from that the SCLSC has full time Legal Consultant who provides legal advise to poor litigants either on personal visit or through the post.

## **Conclusion and suggestions**

Legal aid is not a charity or bounty, but is an obligation of the state and right of the citizens. The prime object of the state should be “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. But in spite of the fact that free legal aid has been held to be necessary adjunct of the rule of law<sup>14</sup>, the legal aid movement has not achieved its goal. There is a wide gap between the goals set and met. The major obstacle to the legal aid movement in India is the lack of legal

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14 See note 6.

awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor.

### **Suggestions**

- It is suggested that it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. For that judiciary needs the support from state administration to conduct legal literacy programme.
- The judiciary should focus more on Legal Aid because it is essential in this present scenario where gulf between haves and have-nots is increasing day by day. And elimination of social and structural discrimination against the poor will be achieved when free Legal Aid is used as an important tool in bringing about distributive justice.
- There are number of precedents as well as legislations to up hold the right to free legal aid but they have just proven to be a myth for the masses due to their ineffective implementation. Thus the need of the hour is that one should need to focus on effective and proper implementation of the laws which are already in place instead of passing new legislations to make legal aid in the country a reality instead of just a myth in the minds of the countrymen.
- In providing Legal Aid, the Legal Aid institutions at all level should use proper ADR methods so as to speed up the process of compromise between parties to the case and with that matter will be settled without further appeal.

Free Legal Services Authorities must be provided with sufficient funds by the State because no one should be deprived of professional advice and advice due to lack of funds.