

Legal Aid in India: A Sight

Dr. Chiman Lal, Astit. Prof. of Political Science

S.D.College, (Lahore) Ambala Cantt.

Abstract:

Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial.

Keywords: Right, Amendment, Constitution, Guidelines, National, Schemes.

Introduction:

History of Legal aid in India: In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati the then Judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th of November 1995 after certain amendments were introduced therein by the Amendment Act of 1994.

Provisions relating Legal aid in India:

Article 39A of the Constitution of India, provides for 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" On the other hand, in the civil side, Order XXXIII. R.18 of the CPC1908 provided that the state and central governments may make supplementary provisions for providing free legal services to an indigent person.

Legal Services Authorities Act, 1987:-

Provisions relating to legal aid have been provided under the Legal Services Authorities Act, 1987. 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. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes.

Constitution of the National Legal Services:

The Central Authority shall consist of:

- the Chief Justice of India who shall be the Patron-in Chief;

- serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that government in consultation with the Chief Justice of India.
- The Central Government shall in consultation with the Chief Justice of India, appoint a person to be the Member-Secretary of the Central Authority, possessing such experience and qualifications as may be prescribed by that Government, to exercise such powers

Constitution of State Legal Services Authority:

A State Authority shall consist:

- the Chief Justice of the High Court who shall be the Patron-in-Chief; a serving or retired Judge of the High Court, to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and
- such number of other Members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.
- The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service not lower in rank than that of a District Judge, as the Member-Secretary of the State Authority, to exercise such powers
- A person functioning as Secretary of a State Legal Aid & Advice Board immediately before the date of constitution of the State Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this sub-section, for a period not exceeding five years.
- The administrative expenses of the State Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the State Authority shall be defrayed out of the Consolidated Fund of the State.

Criterion for Providing Legal Aid:

Section 12 of the **Legal Services Authorities Act, 1987** prescribes the criteria for giving legal services to the eligible persons. Section 12 of the Act reads as under:

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is

- member of a Scheduled Caste or Scheduled Tribe;
- a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- a woman or a child;
- a mentally ill or otherwise disabled person;

- 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
- an industrial workman; or
- in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause • of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or
- in receipt of annual income less than rupees nine thousand or higher amount as may be prescribed by the State Govt., if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Govt., if the case is before the Supreme Court.

Application made for free legal Aid can be rejected on the following basis:-

1. The applicant has enough money and can afford a lawyer,
2. Does not fulfill any of the eligibility criteria, or
3. The case does not deserve legal action.

If the application is rejected, then the reasons that it was rejected must be recorded and informed to the applicant. The applicant also has the right to appeal against the rejection to the Chairman of the authority.

The Legal Services Authority can't arbitrarily take away the legal aid that they have given you. But legal aid can be withdrawn if:

Supreme Court on Legal Aid:

The linkage between Article 21 and the right to free legal aid was forged in the decision in **Hussainara Khatoun v. State of Bihar** where the court was appalled at the plight of thousands of under trials languishing in the jails in Bihar for years on end without ever being represented by a lawyer. The court declared that "there can be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21." 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

In Khatri & Ors v. State of Bihar & Others 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

In Sukh Das v. Union Territory of Arunachal Pradesh the court observed that "It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty

and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21.”

In India Gandhi v. Raj Narain the Court said:”Rule of Law is basic structure of Constitution of India. No one so condemn unheard Equality of justice. There ought to be violations to the fundamental right or prerogatives, or privileges, only then remedy go to Court of Law. But also at the stage when he is first produced before the magistrate in absence of legal aid, trial is vitiated.”

In, State of Haryana v. Darshana Devi, the Court said 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.

In State of Maharashtra v. Manubhai Pragaji Vashi The court widened the scope of the right to free legal aid. The right to free legal aid is guaranteed fundamental right under Art 21 and 39A provides “equal justice” and “free legal aid.”

Conclusion:

The focus of legal aid is on distributive justice, effective implementation of welfare benefits and elimination of social and structural discrimination against the poor. It works in accordance with the Legal services Authority Act, 1987 which acts as the guideline of the rendering of free justice It’s a very wonderful right incorporated in our Constitution in the Article 39A to promote Justice on equal basis. In the case of **Khatri v. State of Bihar**, the court held that the right to legal aid is a fundamental right under article 21 of the Indian Constitution.

References:

1. Mathews and Outton: Legal Aid & Advice, London, Butterworths, 1971
2. Part 13 at p. 871, Quoted in Legal Aid Programme in India-A Constitutional Guarantee-Alka Shrivastav [3] John Rawls: A Theory of Justice, Universal Law Publishing Co. Pvt. Ltd. Delhi, 2000
4. Scott, C.H.: Legal Aid Past and Present, A Brief Bleak Picture, pp. 4-5.
5. What Next in the Law: Lord Denning, London Butterworths, 1982.
6. Public Interest Litigation – Legal Aid and Lok Adalats, Mamta Rao, Eastern Book Company.
7. Justice Krishna Iyer: Legal Aid to the Poor
8. Public Interest Litigation – Legal Aid and Lok Adalats, Mamta Rao, Eastern Book Company.
9. Justice N.H. Bhagwati and Justice Trevere Harris of Calcutta “Law as struggle: Public Interest Litigation in India”, Rajeev Dhawan Ed., 36 JILI 325 (1994).
10. Roma Mukherjee: Women, Law & Free Legal Aid, 1998 Deep & Deep, New Delhi.