



Judiciary Activism And Free Legal Services In India

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

- Justice Blackmun

Abstract:

India is a large country with a mass population and the majority of the people are illiterate. Many of them are even not aware of the legal system prevailing in our country and also their fundamental rights. On the other hand, even though people are aware of it, they cannot afford it because of their economic and social backwardness. They are in a helpless situation to engage the services of legal counsel, which has become costly nowadays. With a view to providing free legal services to the needy section of society, the Parliament of India has incorporated a specific directive principle viz. Article 39A by 42nd amendment of Constitution in 1976.

Keywords: Legal Aid, Legal Services, Constitutional provisions.

1. Introduction:

“Legal Aid is central to righting wrongs and rectification injustice.”

- Sadiq Khan

Legal Aid service is applicable to the poor and needy who cannot afford the service provided by the lawyer for conducting any case or a legal proceeding in the court, tribunal or any other authority. The very first legal aid movement was introduced by France for providing legal assistance to the indigent in the year of 1851. In British, the state provides legal aid services to the poor and needy since 1944, when Lord Chancellor, viscount Simon appointed Rushcliffe committee to enquire about the facility existing in England and wiles for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that person in need of legal advice are provided the same by the state. Not only litigants but anybody on the road can get the service provided under Free Legal Services.

Since 1952, the Govt. of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Government for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. In 1980, a committee at the national level was constituted to oversee and supervise legal aid programs throughout the country under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati was then a 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. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programs throughout the country on a uniform pattern. This Act was finally enforced on the 9th of November 1995 after certain amendments were introduced therein by the Amendment Act of 1994¹.

The contribution made by Justice V.R.Krishna Iyer to the development of Legal Aid – “ Processional Justice to Poor” – A Report. The contribution of justice Krishna Iyer towards the development and incorporation of the concept of legal aid the in Indian legal system has been tremendous. His report titled Processional Justice to Poor has gone a step further in enabling the recognition of poor for the purpose of giving legal aid. In a report on Free Legal Aid in 1971. Justice Bhagwati observed " even while retaining the adversary system, some changes may be effected whereby the judge has given the greater participatory role in the trail so as to place poor, as far as possible, on a footing of equality with the rich in the administration of justice."

¹ The National Legal Service Authority Rules, 1995, Bare Act, The Legal Service Authority Act, 1987

2. Objective of Study:

1. To research the legal aid provisions of the Constitution.
2. To look at the Hierarchy and Bodies covered by the Act.
3. To study the positive contribution of Judiciary Free Legal Aid in India.

3. Meaning of Legal Aid:

Various definitions on legal aid over glob:

Europe:

Article 47 of the Charter of Fundamental Rights of the European Union provides that legal aid will be made available to those who lack sufficient resources, in so far as such aid is necessary to ensure effective access to justice.

Denmark:

In Denmark, applicants must satisfy the following criteria to receive legal aid for civil cases: The applicant must not earn more than kr. 289,000 (\$50,000) a year and the claims of the party must seem reasonable. In respect to criminal cases, the convicted will only have to cover the costs if he or she has a considerable fixed income – this is to prevent recidivism.²

New Zealand:

The legal aid system in New Zealand provides Government-funded legal assistance to those who are unable to afford a lawyer. Legal aid is available for almost all court actions across all levels of the court system. This includes criminal charges, civil issues, family disputes, appeals and Waitangi Tribunal claims.³

India:

Free legal aid is the provision of free legal services in civil and criminal matters for those poor and marginalized people who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any Court, Tribunal or Authority⁴.

4. Constitutional Provision Relating to Legal Aid:

Under **Article 14** fundamental rights of the constitution of India provide that the state shall not deny to any person equality before the law or equal protection of the law within the territory of India. Equality before law necessarily involves the concept that all the parties to legal proceedings must have an equal opportunity of access to the court and of presenting their cases to the court. Therefore, Article 14, rendering legal services to the poor litigant is not just a problem of procedural law but a question of a fundamental character.

Article 21 Right to free legal aid at the cost of the state to an accused who cannot afford legal services for reasons of poverty, indigence or incommunicado situation is part of fair, just and reasonable procedure under article 21⁵. Not only that, the trial court is under an obligation to tell an accused who fails to afford legal representation that he is entitled to be represented by a lawyer at the cost of the state⁶.

Article 39A⁷ of the Constitution of India provides that 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 scheme 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. This article has often been relied upon in support of right to legal aid as well as legal aid programs⁸. It has been also relied upon in association with Article 21 to cast a duty on the state to afford grant-in-aid to recognized private law colleges⁹.

5. Legal Services Authorities Act,1987:

The Indian Constitution's Article 39A guarantees equal justice for all people by offering free legal assistance to the society's impoverished and weaker groups. The Constitution's Articles 14 and 22(1) further require the State to guarantee equality before the law and a legal system that advances justice based on equal opportunity for all. In order to create a nationwide uniform network for delivering free and competent legal services to the weaker sectors of society on the basis of equal opportunity, the Legal Services Authorities Act was enacted by the Parliament in 1987 and came into effect on November 9th, 1995. The Legal Services Authorities Act of 1987 established the National Legal Services Authority

² *Domstol.dk*. Archived from the original on 19 December 2012.

³ Legal Aid – Ministry of Justice, New Zealand on 10 October 2012.

⁴ nalsa.gov.in/services/legal-aid/legal-services

⁵ *M.H.Hoskot v. State of Maharashtra* (1978) 3 SCC 544

⁶ *Khatri (2) V. State of Bihar* (1981) SCC 627, AIR

⁷ 39A inserted by the Indian Constitutional (amendment) Act,1976

⁸ *Hussainara Khatoon (4) v. State of Bihar*, (1980) SCC 98

⁹ *State of Maharashtra v. Manubhai Pragaji Vashi*, (1995) 5 SCC 730

(NALSA) to oversee and assess the implementation of legal aid programs and to establish the policies and guidelines for providing legal services in accordance with the Act. Every State has established a State Legal Services Authority, and each High Court has established a High Court Legal Services Committee. To carry out the policies and directives of the NALSA, provide free legal services to the public, and hold Lok Adalats in the State, District Legal Services Authorities and Taluk Legal Services Committees have been established in the districts and the majority of Taluks¹⁰.

5.1 What are Legal Services?

Free legal aid is one of the services offered by the legal profession to those members of society who fall under the jurisdiction of Section 12 of the Legal Services Authority Act of 1987. It also comprises conducting Lok Adalats for the peaceful resolution of issues that are now pending or that have not yet been filed, through compromise, in order to raise legal awareness through promoting legal literacy in addition, NALSA takes the required actions through social action lawsuits with reference to any issue of particular importance to the society's weaker groups. Legal services also include assisting recipients in receiving benefits under various government programs, rules, and laws.

5.2 Free Legal Services:

The Free Legal Services include: -

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

5.3 Eligibility for getting free legal services:

Under section 12 of the Legal Service Authorities Act, 1987 every person who has to file or defend a case shall be entitled to legal services under this Act if that person is—

- a) Women and children;
- b) Members of SC/ST
- c) Industrial workmen
- d) Victims of mass disaster, violence, flood, drought, earthquake, industrial disaster.
- e) Disabled persons.
- f) Persons in custody
- g) Persons whose annual income does not exceed Rs. 1 lakh (in the Supreme Court Legal Services Committee the limit is Rs. 5,00,000/-).
- h) Victims of Trafficking in Human beings or beggar

6. Bodies under the Act:

An across country arrangement has been conceived under the Act for giving legitimate guidance and help. National Legal Services Authority is the pinnacle body constituted to set down strategies and standards for making lawful administrations accessible under the arrangements of the Act and to outline best and sparing plans for lawful administrations¹¹.

A State Legal Services Authority is established in each State to oversee Lok Adalats in the State, provide legal services to the general public, and give effect to the policies and directives of the Central Authority (NALSA). The Chief Justice of the State High Court serves as the State Legal Services Authority's Patron-in-Chief. Its Executive Chairman is designated as a High Court judge who is either serving or has resigned.

Each District establishes a Local Legal Services Authority to carry out its own Legal Aid Programs and Schemes. Its ex-officio Chairman is the district's district judge. (DLSA)

To organize the activities of legal services in the Taluk and to create Lok Adalats, Taluk Legal Services Committees are also established for each Taluk or Mandal or for a group of Taluks or Mandals. Each Taluk Legal Services Committee is led by an ex-officio Chairman who is a senior Civil Judge employed within the Committee's jurisdiction.

The National Legal Service Authority (Free and Skilled Legal Administration) Regulations, 2010, have been developed with the intention of providing free and competent legal administration. In severe situations, such as when a man's life and freedom are in jeopardy, Regulation draws in senior experienced legal counsel on instalments of general expenses.

The Supreme Court Legal Services Committee (SCLSC) was established by the Unparalleled Court of India in accordance with the Legal Services Authorities Act to provide free legal advice to the impoverished and the underprivileged. It is being overseen by a Supreme Court of India judge and has approved personnel that the Indian Chief Equity of India designated. The Supreme Court matters are handled by a board of qualified Advocates with a specified minimum number of years of experience under the SCLSC. Additionally, the SCLSC employs a full-time legal consultant who provides honest advice to underprivileged prosecutors either through personal visits or through the mail.

¹⁰ doj.gov.in

¹¹ Doj.gov.in

7. Contribution of the Judiciary to Free Legal Aid in India:

In the case of **Hussainara Khatoon**¹², the Supreme Court of India had a significant opportunity to make a strong statement regarding the rights of the poor and destitute. The attorney brought to the court's attention the fact that the majority of those currently on trial have only received much harsher punishment than they would have if they had been sentenced immediately. The delay was brought about by the people's inability to secure the legal counsel they needed to defend them in court, and their dependence was the main factor in their helplessness. As a result, the court in this case noted that Article 39-A stressed that free legal services were an essential component of reasonable, fair, and just procedures and that the right to free legal services was a prerequisite to the protection provided by Article 21.

Two years later, the court addressed the issue of the right to a free legal counsel for the destitute or indigent who are unable to hire one in the case of **Khatri Singh v. State of Bihar**¹³. It was determined that the state will undoubtedly provide such assistance during the trial phase, as well as when cases are first brought before judges or occasionally remanded, and that such a privilege cannot be denied on the basis of financial restrictions, administrative limitations, or the fact that the accused did not request it. Justices and Sessions Judges must inform those being held accountable of these rights.

Justice Krishna Iyer, a champion of social justice in India, stated correctly that the court, under Article 142 read with Articles 21 and 39A of the Constitution, has the authority to appoint a direct for such a detained individual to carry out full justice if the detainee is practically unable to exercise his established and statutory right to request comprehensive of special leave to the Supreme Court for need of legal assistance¹⁴.

Each great branch of government has a statutorily acknowledged public duty to maintain the constitution and the rule of law by issuing regulations to carry out laws intended to aid the underprivileged. Despite the fact that the law was intended to safeguard the underprivileged, governments rarely put it into practice. In **State of Haryana v. Darshana Devi**¹⁵, the Supreme Court made the same observation: "The impoverished shall not be priced out of the justice market by insistence on court fee and reluctance to utilize the exemption provisions of order XXXIII, CPC." The state of Haryana has asked for permission to appeal the high court's order that correctly extended the "pauper" provisions to auto-accident claims, despite the mandate of equal justice to the poor under the Magna Carta of the Public, as expressed in article 14 and emphasized in article 39A of the constitution. Tribunals, which have the trappings of the civil court, shall be subject to Order XXXIII. Even the court stated its heartbreaking sentiment that despite many years have passed since the law's establishment, "no state has, to date, formulated procedures to give effect to the benignant provision of legal assistance to the needy in order xxxiii, rule 9A, civil procedure code. People are impatient, and Parliament is sluggish. The state does not intentionally default on bringing into effect legislation even after it has been passed for the benefit of the poor.

8. Conclusion:

Legal guidance is a commitment of the state and a right of the people, not generosity or abundance. Equivalent equity for all should be the state's main protest. In this way, legal guidance aims to ensure that the holy pledge is upheld in both letter and spirit and that oppressed and weaker segments of society can access equal justice. However, despite the fact that the production of free legal guides has been considered a key aspect of the administration of law, the goal has not been achieved. The gap between the goals set and those achieved is considerable. The lack of legal awareness is the main obstacle to the growth of legal guides in India. Because people are still unaware of their fundamental rights, the goal of legal guide development has not yet been met. The lack of legal awareness leads to the abuse of poor people's rights and privileges as well as their hardship.

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¹⁵ AIR 1972 SC 855

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