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Legal aid in India and the role of Indian judiciary

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Abstract

Giving free legal services to the underprivileged and destitute who cannot afford to hire an attorney to represent them in court, before a tribunal, or before an authority is known as legal aid. Ensuring that everyone has equal access to justice requires legal aid. In this article, the author has tried to focus on the methodology and function of the court in relation to the legal assistance entitlement. There is nothing to the idea that the right to receive legal aid is a fundamental right. But the result of the Indian Constitution's Article 21's judicial interpretation of the most prized Right. The exposition of India's constitutional right to free legal assistance and the guidelines set out by the Legal Services Authority Act, 1987 serve as the article's conclusion.

Keywords: Assistance, prominent, legal-aid; under privilege, judiciary

Introduction

Legal assistance to the underprivileged and vulnerable is essential to maintaining the rule of law, which is required for a stable social structure to exist. The impoverished, illiterate guy is denied the equal chance to pursue justice until and unless he receives legal assistance. Thus, in an effort to make the legal system serve the underprivileged and destitute, the judiciary has recently shown a keen interest in offering legal help to those in need. The Indian Constitution guarantees an impartial and independent judiciary, and the courts have the authority to uphold the rights of all citizens, regardless of their financial situation, and to defend the constitution. Given that the goal of the constitution is to ensure that everyone has access to justice and that the directive principles are an essential component of the document, the constitution requires the court to uphold the rights of the impoverished and the general public. The legislature has been forced and influenced to make decisions by the judiciary's notable judicial interventions. Having the appropriate laws in place to provide justice to the weakest societal segments. One illustrative instance of how the Indian judiciary has championed the rights of Indian citizens, particularly the impoverished, is Public Interest Litigation. It inspired those with a strong sense of civic duty to work for the poor's justice. Because of this, the Supreme Court significantly loosened the rules. In addition to judicial activism and public interest litigation, the court system is being reformed with the goal of making justice more affordable and accessible. One such reform is the introduction of the Lok Adalat system, which intends to give the impoverished access to free legal aid and quick justice. In a constitutional democracy like India, where a sizeable portion of the populace has yet to witness the fulfilment of the constitution's promises to them regarding even the most basic fundamental rights, the author of this essay emphasises the need of free legal assistance.

Legal Aid: Analysing the concept

Legal aid refers to providing free legal assistance to the underprivileged and destitute who are unable to pay for an attorney's representation throughout the course of a case or legal procedure in any court, tribunal, or before an authority. The strategy used to guarantee that no one is denied access to expert counsel and assistance due to a lack of funding is known as legal aid. Therefore, the primary goal is to ensure that the underprivileged, marginalised, and weaker segments of society have access to equitable justice. Regarding this, Justice P.N. Bhagwati correctly noted that ^[1]

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

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¹ Pn Bhagwati in 1971 during Gujarat legal aid workshop

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 As a result, the government should establish a system of funding to enable people who cannot afford the expense of litigation to get legal assistance.

Legal assistance works to guarantee that the Constitution's promises are kept in law and spirit and that the weaker, impoverished, and disadvantaged groups in society have equal access to justice. It is important to note that the Indian Constitution stipulates that the State must guarantee that the legal system operates to promote justice on the basis of equal opportunity. In particular, the State must provide free legal aid through appropriate laws or programmes or in any other way to guarantee that no citizen's opportunity to secure justice is denied due to an economic or other disability [2].

Free legal aid in India: The concept 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 v. State of Bihar* [3]. The landmark case highlighted the issue of prolonged detention of undertrial prisoners, many of whom were unable to afford legal representation. The Supreme Court's ruling recognized the fundamental right to a speedy trial and mandated the release of those prisoners who had been detained for an unreasonable period without trial. This judgment not only emphasized the importance of protecting the rights of the poor and indigent but also set a precedent for future cases addressing similar issues in India's criminal justice system

Two years later, in the *Khatri v. State of Bihar* [4] case, the court addressed the issue of providing free legal assistance to poor or indigent individuals who couldn't afford lawyers. The court ruled that the state is constitutionally obligated to offer such assistance not only during the trial but also when these individuals are initially brought before a magistrate or detained intermittently. This right should not be denied based on financial constraints, administrative challenges, or the fact that the accused did not explicitly request it. Magistrates and Sessions Judges must inform the accused of this right.

The right to free legal services is a fundamental component of a fair and just legal process for individuals accused of crimes, and it should be considered implicit in the protections guaranteed by Article 21 of the constitution. The state is constitutionally mandated to provide a lawyer to an accused person when the circumstances of the case and the interests of justice necessitate it. The state cannot evade this responsibility by citing financial or administrative limitations or by claiming that none of the affected prisoners requested legal assistance.

In the case of *Suk Das v. Union Territory of Arunachal Pradesh* [5], Justice P.N. Bhagwati stressed the importance of

raising legal awareness among the economically disadvantaged, as they often lack knowledge about their rights, particularly the right to free legal aid. He further noted that in India, a significant portion of the population resides in rural areas and lacks basic education, rendering them unaware of the legal rights bestowed upon them. Even educated individuals may not be well-informed about their rights and entitlements under the law.

This lack of legal awareness results in people not seeking legal counsel or advice. Additionally, due to their lack of knowledge and literacy, they are unable to be self-sufficient and help themselves in legal matters. Consequently, the promotion of legal literacy has always been a crucial component of the legal aid movement in the country. Justice Bhagwati argued that even the right to education cannot fully achieve its intended purpose unless education about legal rights is made accessible to the people. Without such education, the constitutional commitment to deliver justice to the doorsteps of the people would remain unrealized.

Justice Krishna Iyer, a prominent advocate for social justice in India, correctly stated that when a prisoner, who has been sentenced to imprisonment [6], is practically unable to exercise their constitutional and statutory right to appeal, including seeking special leave to the Supreme Court, due to a lack of legal assistance, the court has the inherent authority, derived from Article 142 in conjunction with Articles 21 and 39-A of the Constitution, to appoint legal counsel for such incarcerated individuals to ensure that complete justice is served.

It is a legally recognized obligation of each major branch of government to adhere to the rule of law and uphold the commitments made to the constitution by creating regulations that put into effect laws designed to assist the impoverished [7]. Despite the existence of laws aimed at protecting the welfare of the poor, the government often displays lethargy in their enforcement. The Supreme Court's observations in the case of *State of Haryana v. Darshana Devi* [8] underscored the importance of ensuring that the economically disadvantaged are not excluded from the justice system due to high court fees and a failure to apply exemptions outlined in Order XXXIII of the Civil Procedure Code (CPC).

The state of Haryana, seemingly disregarding the principle of equal justice for the indigent, as articulated in Article 14 and emphasized in Article 39A of the Constitution, sought permission to appeal against the high court's decision to extend the "pauper" provisions to claims related to auto accidents. The court also expressed its poignant concern that, despite the passage of several years since the enactment of Order XXXIII, Rule 9A of the Civil Procedure Code, no state had taken the initiative to formulate rules that would actualize the generous provisions of legal aid for the poor. This lack of action by Parliament and the government left the people feeling frustrated because, even when laws are established for the benefit of the impoverished, the state does not actively put them into effect, leading to deliberate inaction.

Legal aid and Indian laws: An legislative measures

Though there was a statutory procedure providing free legal

² Article 14 & 22(1) of the Indian Constitution

³ Sec 98; 1979

⁴ AIR 1981 SC 262

⁵ AIR 1986 SC 991

⁶ (1978) 3 SCC 81

⁷ Order 33, Rule 9A, Code Civil Procedure, 1908

⁸ AIR 1972 SC 855

aid 10 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 ^[9]. 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:

1. A member of a Scheduled Caste or Scheduled Tribe.
2. A victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution.
3. A woman or a child.
4. A mentally ill or otherwise disabled person.
5. 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.
6. An industrial workman.
7. In custody, including custody in a protective home or in a juvenile home.
8. Of in a psychiatric hospital or psychiatric nursing home within the meaning of clause.
9. (g) of section 2 of the Mental Health Act, 1987.
10. A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government ^[10].

The state governments may raise this income ceiling. The income restriction does not apply to women, children, scheduled tribe members, people with disabilities, members of scheduled castes, or anybody else. Thus, by doing this, the Indian Parliament advanced the cause of enabling legal assistance throughout the nation.

The Act defines a "court" as a civil, criminal, or revenue court as well as any tribunal or other body established by a law now in effect to perform judicial or quasi-judicial responsibilities ^[11]. Giving advice on any legal topic as well as providing assistance in the conduct of a case or other legal procedure before a court, authority, or tribunal is considered "legal service" under the Act ^[12].

Legal Services Authorities will give an application state-funded legal representation, pay the requisite court fee, and cover all other related costs after reviewing the applicant's qualifying requirements and determining whether there is a strong case in his favour. Once the case is backed by a Legal Services Authority, the recipient of legal aid is not required to spend any money on it.

Defining bodies under the Act

The Act envisions a national network for the provision of legal aid and support. The National Legal Services Authority is the supreme authority established to establish guidelines and standards for providing legal services in accordance with the Act's requirements and to develop the

most practical and cost-effective legal services programmes. Every State has a State Legal Services Authority established to carry out Lok Adalats in the State, provide legal services to the public, and implement the directives and policies of the Central Authority (NALSA). As its Patron-in-Chief, the Chief Justice of the State High Court is in charge of the State Legal Services Authority. The High Court's Executive Chairman is chosen from among its nominated judges, either active or retired.

In each district, a District Legal Services Authority is established to execute Legal Aid Programs and Schemes. The District Judge of the respective district serves as the ex-officio Chairman of this authority. Similarly, Taluk Legal Services Committees are formed for each taluk (or mandal) or a group of taluks or mandals to coordinate legal services within the taluk and organize Lok Adalats. A senior Civil Judge operating within the committee's jurisdiction serves as the ex-officio Chairman of each Taluk Legal Services Committee ^[13].

To ensure the provision of free and competent legal services, the National Legal Service Authority (NALSA) has developed the National Legal Service Authority (Free and Competent Legal Service) Regulations in 2010. These regulations notably involve the engagement of experienced lawyers who are paid regular fees in special cases where an individual's life and liberty are in jeopardy.

The Supreme Court of India has also established the Supreme Court Legal Services Committee (SCLSC) with the aim of offering free legal aid to the impoverished and underprivileged, as per the Legal Services Authorities Act. The SCLSC is headed by a Supreme Court judge and comprises distinguished members nominated by the Chief Justice of India. The committee maintains a panel of competent Advocates on record, with a minimum number of years of experience, who handle cases in the Supreme Court. Additionally, the SCLSC employs a full-time Legal Consultant who provides legal advice to indigent litigants, either through personal visits or by correspondence.

Conclusion and Suggestion

Legal assistance is a sovereign mandate and a citizen's right; it is neither a charity nor a boon. Equal justice for all should be the state's main goal. Legal assistance therefore works to guarantee that the constitution's promises are kept in law and spirit and that the weaker and oppressed groups in society have access to equal justice. However, even though it has been determined that free legal assistance is an essential component of the rule of law

The legal aid movement in India has fallen short of its intended objectives. A substantial disparity exists between the envisioned goals and the actual accomplishments. The primary impediment to the success of the legal aid movement in India is the significant deficiency in legal awareness. People remain uninformed about their fundamental rights, which is a key reason the legal aid movement has yet to attain its objectives. The absence of legal awareness results in the exploitation and denial of the rights and benefits of the impoverished.

Suggestion

Legal Education and Awareness: It is imperative to educate

⁹ The Dynamics of Access to Justice", available at: <http://www.thehindu.com/todayspaper/tp-opinion/The-dynamics-of-access-to-justice/article14770045.ece> (PDF)

¹⁰ Section 12 of the Legal Services Authorities Act, 1987

¹¹ Section 2(1) (a) of the Legal Service Authority Act, 1987

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

¹³ Pathak, Varun, "A Brief History of Legal Aid, available at www.legalservicesindia.com, Volume23No-12

the impoverished and illiterate population about legal knowledge and their fundamental rights, starting at the grassroots level of the country. This can be achieved through community-based legal education programs that provide accessible and comprehensive information on basic legal concepts, procedures, and rights. By empowering individuals with legal knowledge, they can make informed decisions, protect themselves from exploitation, and actively participate in the justice system to ensure their rights are upheld. This necessitates collaboration between the judiciary and state administration to conduct legal literacy programs effectively.

Focus on legal aid

The judiciary should prioritize and emphasize the importance of legal aid, particularly in the present scenario where the gap between the privileged and underprivileged is widening. Legal aid plays a crucial role in ensuring equal access to justice for all individuals, regardless of their financial status. By providing legal assistance to those who cannot afford it, the judiciary can help bridge the gap and promote a fair and equitable legal system. Additionally, prioritizing legal aid can also contribute to reducing the burden on courts by facilitating early resolution of disputes through mediation and other alternative dispute resolution mechanisms. Utilizing free Legal Aid as a crucial tool can contribute significantly to eliminating social and structural discrimination against the less privileged.

Effective interpretation of laws

While there are many legal precedents and laws that support the provision of free legal assistance, these rights are frequently beyond the reach of the general population because of inadequate execution. This issue arises due to various factors such as limited funding for legal aid programs and a shortage of qualified lawyers willing to provide pro bono services. As a result, individuals who cannot afford legal representation often face significant barriers in accessing justice and navigating the complex legal system. As a result, the emphasis should be redirected toward the efficient and correct execution of the existing laws, transforming the concept of legal aid into a tangible reality, rather than just a theoretical idea.

Utilizing ADR Method to offer legal aid, legal organizations at various levels should embrace suitable Alternative Dispute Resolution (ADR) techniques to accelerate the resolution of disputes between parties engaged in a case. ADR techniques such as mediation and arbitration can help parties involved in a case reach a mutually agreeable solution without the need for lengthy court proceedings. By promoting the use of ADR, legal organizations can save time and resources while ensuring that individuals have access to fair and efficient dispute resolution mechanisms. ADR can facilitate the settlement of issues without the necessity for additional appeals.

Funding legal source authority

To guarantee that individuals do not go without professional advice and support because of financial limitations, it is essential for the State to provide substantial funding to Free Legal Services Authorities. Satisfactory financial resources are critical for upholding the principles of justice and ensuring equal access to legal assistance. Without adequate funding, Free Legal Services Authorities may struggle to

meet the growing demand for legal aid, leaving vulnerable individuals without the necessary guidance and representation. Additionally, sufficient financial resources enable these authorities to recruit and retain qualified professionals who can effectively navigate complex legal issues on behalf of those in need.

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