

Critical Analysis on the Fruitful Concept of Legal Aid: Suggestions and Key Measures

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Abstract

Legal aid is generally considered to be pivotal and fruitful concept which provides for free legal services, free legal help assistance to the weaker sections of the society such as minorities, poor people. The term legal aid which implies giving free legal assistance to poor people and the very aim of this is that no one should be deprived of help assistance and their rights. It acts as a mechanism to provide facilities and services to those who are unable to afford legal representation and access to the court system. It is especially known for providing legal help, advice and representation and make legal services feasible and accessible and also makes sure that these services should be approach in remote areas as well where the people in that area, for lack behind in availing legal aid services.

Objective

The main objective of this paper is to make you know the concept of legal aid and the mechanism and functioning of it, especially how it proves to be fruitful after the National Legal Services Authorities Act, 1987 came and how it works and let you know the positive aspects of legal aid in providing services.

Methodology

To fulfill this objective researcher adopted doctrinal form and the author has referred to the secondary sources in doing the analysis.

Keywords: Legal Aid, Justice, Availing, Provisions, Constitution, Fruitful, Minorities, Authorities, Specialized Services, Marginalized Groups, Fair Trial.

INTRODUCTION

Concept of Legal aid -

According to Cambridge learner's dictionary – "legal aid" means a system of providing free advice about the law and practical help with legal matters for people who are poor to pay for it.

In general, it means to provide and make the facilities available in the society by which the administration of justice become easily accessible to all and also make sure that legal services should also be approached in the remote areas which are far lack behind in availing the services.

This concept make ensure that the enforcement of this came to be fruitful for the poor and the illiterate sections of society where the people are not aware about it and helps in make them to avail benefit of legal aid services.

History of legal aid in India and the constitutional provisions in context to the legal aid –

Historically, legal aid has its roots in the Right to Counsel and Right to fair trial movement of the 19th century in European Countries. Its origin has been traced back to the 1920's in Bombay, India with the establishment of the legal aid society by the lawyers.

Contribution of Justice

India's primary law of land, the Constitution provides and includes provisions for Legal Aid. Indian Constitution always connected and plays a crucial role in promoting social justice. Constitution of India makes it compulsory for the state to guarantee the correspondence under the watch eye of the law and also enhances such framework which enhanced equity and equivalent chance to all. Legal aid rooted in the principles of justice, equality and the right to a fair trial, in the context of the Indian Constitution enshrined as a fundamental V.R. Krishna Iyer and J. Bhagwati right.

Contribution of Justice working under the novel motion of judicial activism has actually expanded the dimension of free legal aid to a very far greater extent.

Article 39 – A (i.e.) The Directive Principles of State Policy (DPSP) by the 42nd amendment of the constitution in 1976 incorporated to provide free legal aid. Legal Aid is a constitutional right supported by Article 39-A and Article 21 of the Constitution of India.

Article 21 of the Constitution of India states that no person shall be deprived of his life and personal liberty except according to the proceeding established by law. Article 39 A of the Constitution of India i.e. (DPSP) emphasizes that the state shall ensure that the operation of the legal system promotes justice on the basis of equal opportunities and it shall provide free legal aid by the suitable legislation or schemes to ensure that opportunities are not denied to any citizen by reason for any economic or other disability in securing justice.

In a report on free legal aid in 1971, Justice Bhagwati has observed that “even while retaining the adversary system, some changes may be effected whereby the judge is given greater participating role in the trial so as to place poor, as far as possible on a footing of equality, with the rich in the administration of Justice.

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In 1987, Legal Services Authorities Act was enacted through which the concept of legal aid cells, camps gain a statutory position and also uniformity. This act was enforced in the year 1996 by Hon. Mr. Justice R.N. Mishra and came into use. This act came into use and Dr. Justice A.S. Anand, Judge of the Supreme Court of India took over as the executive chairman.

This act has a sole aim that every individual should get justice, for that this act lays down some principles, policies and also entitle authorities with their powers and functions.

In 1980 a committee at the National Level was constituted to oversee and supervise legal aid programmes throughout the country under the chairmanship of Honour. Justice Mr. P.N. Bhagwati the then judge of 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.

Bodies under the NLSA and their Hierarchy –

National legal Services Authority Act is the apex body constituted to lay down strategies and standards for making the lawful administration accessible to all by its best and enhances plans for lawful administration.

- (1) National Legal Services Authority (NALSA) - It was setup under chapter II of the Legal Services Authorities Act, 1987 at the top level i.e. National level aims to ensure the availability of legal services across the country. It communicates with the state level authorities regarding the implementation and measures to provide free legal aid.
- (2) State Legal Services Authorities (SLSA) - It was setup under chapter III of the Legal Services Authorities Act, 1987, the states are obliged to follow the guidelines given by NALSA regarding its scheme, policies at state level. It may include conducting legal aid camps, awareness programmes by gathering and forming a community of its people.
- (3) District Legal Services Authorities (DLSA) – DLSA encompasses task of communicating to the community from the direct point of contact. They rendered and organize legal literacy camps, legal rules sessions and also mediation centres to resolve disputes without the recourse to the court.
- (4) Taluk Legal Services committee- Section 11 A and its functions enlisted in Section 11 B. It work at the grass root level especially for the people in the rural and remote areas. They provide legal awareness and assistance to these people and ensure their well being, being their primary focus of effort to provide.
- (5) There are certain committees under the legal services authorities Act, 1987 such as SCLSC under sec. 3A, HCLSC under sec. 8A, TLSC under sec. 11A.
- (6) This act also includes National, State and District Legal aid fund provision under chapter 5 including sections 15, 16, 17 for the upliftment of weaker section of society and also a new provision for lokadalats under chapter VI of LSAA, 1987.

RIGHT TO FAIR TRIAL AND FREE LEGAL AID AS A FUNDAMENTAL COMMITMENT.

In order to have an idea regarding the right to have fair trial, we can have a look on various human right conventions and charters at global level.

(1) Universal Declaration of Human rights, 1848

Article 11(1) everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has all the guarantees necessary for his defense.

(2) International Covenant on Civil and Political rights, 1966

Article 14(2) everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Article 14(3): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.
- (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.
- (c) To be tried without undue delay.
- (d) 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 requires

and without payment by him in any such case if he does not have sufficient means to pay it .

- (e) To examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him .
- (f) To have free assistance of an interpreter if he cannot understand or speak the language used in court .

The European convention for the protection of human rights and fundamental freedoms , 1950

Article 6 : Right to fair trial . It reads :-

- (1) In the determination of his civil rights and obligations or of any criminal charge against him , everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law .
- (2) Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law .
- (3) Everyone charged with a criminal offence has the following minimum rights :-
 - (a) To be informed promptly , in a language which he understands in detail , of the nature and cause of the accusation against him .
 - (b) To have adequate time & facilities for the preparation of his defense .
 - (c) To defend himself in person or through legal assistance of his own choosing or , if he has not sufficient means to pay for legal assistance , to be given it free when the interests of justice so require .
 - (d) To have examine or examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him .
 - (e) To have the free assistance of an interpreter if he cannot understand or speak the language used in court .

Landmark Cases Generating Legal Aid Movement in India

1 M.H. Hoskot v. State of Maharashtra

The Supreme Court laid down some banning prescription for free legal aid to prisoners which are to be followed by all courts in India , such as furnishing of free transcript of judgement in time , to the sentences where the prisoners seeks to file an appeal or revision every facility for exercising such right shall be made available by jail administration , and if a prisoner is unable to exercise his right , constitutional and statutory right of appeal including special leave to appeal 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 to the prisoner provided he does not object to the lawyer named by the court .

2. Khatris v.State of Bihar

In this case, the court ruled that : “the magistrate or the sessions judge before whom an accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty and indigence , he is entitled to obtain free legal aid at the cost of the state ”.

3. Hussainara Khatoon v. State of Bihar

In this case, Justice Bhagwati observed that : “ Now , a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would , therefore , have to go through the trial without legal assistance , cannot possibly be regarded as reasonable , fair and just ” .

4. State of Maharashtra v. M.P. Vashi

In this case, while interpreting Article 39-A held that in a fit case the court can direct the ruling politicians to carry out the Directive Principles of State Policy even though these are stated to be non justiciable in a court of law . Further , there is inaction or slow action by the politicians and administrative officers, the judiciary must intervene . The Apex Court clubbed legal aid with legal education and directed the state to revamp and restructure the deteriorating standards in legal education . The Supreme Court , in this case, directed the state to provide grant – in – aid to recognized law colleges so as to enable them to function effectively and in a meaningful manner and turn out sufficient number of well trained or properly equipped law graduates .

That in turn , will enable the state to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. These aspects necessarily flow from Articles 21 and 39-A of the Constitution.

5. Suk Das v. Union Territory of Arunachal Pradesh

The question in this case was whether the fundamental right to legal assistance at state cost could be denied if he did not apply for legal aid . The court reiterates the holding of Khatri and Ors. v. State of Bihar and Ors. that the Magistrate is under an obligation to inform the accused of his right to free legal services if he cannot engage a lawyer because of poverty . In this case , since the Additional Deputy Commissioner did not inform the appellant of his right to free legal assistance and the accused remained unrepresented during trial, which led to a conviction; the trial was vitiated on account of the violation of the Fundamental Rights of the accused under Article 21 and the conviction was set aside .

6. State of Haryana v. Darshana Devi

The same was observed by Supreme Court in State of Haryana v. Darshana Devi (AIR 1972 SC 855) , 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 .

7. State of Haryana v. Darshana Devi

In State of Haryana v. Darshana Devi , the Supreme Court emphasized that the poor should not be excluded from the justice system due to court fees . The case highlighted the importance of legal aid and the application of Order XXXIII , CPC (which deals with “ paupers”) to Accident Claims Tribunals . The court recognized that the state had a constitutional obligation to ensure access to justice for all , including the indigent , and that the “ pauper” provisions should be extended to such tribunals .

Fruitful Mechanism and Suggestive Key Measures

There are suggestions which are in need of great importance such as →

- 1 **Legal Awareness and NGO'S :** The legal awareness should be reach to the remote areas so far as made it available to the illiterate in understanding their rights where NGO can

conduct workshops , seminars and community meeting programs for the rural for understanding about their legal rights and how to get legal assistance . Legal Awareness is something which is still far lack behind in remote areas of Rajasthan , Haryana and in several small villages .

- 2 **Legal Aid Programmes :** The basic idea behind legal aid programmes is social justice and free legal aid programmes for the poor by which they should have access of legal aid clinics when necessary . It's main aim is to educate people who resides in impoverished areas .
- 3 **Specialized Services :** It includes Alternative Dispute Resolution mechanisms(ADR) where it persuade poor people to choose free legal aid by choosing for ADR mechanism .
- 4 **Keep focus on Marginalized Groups :** Build legal aid services for tribal groups , migrant workers , Minority sections of society , LGBTQ+ Community so they can avail legal services more easily and efficiently .
- 5 **Legal literacy initiative :** In order to educate the masses of society about the law and its functions , power and rights . It should be necessary to educate people on roll out of a five - year programmes such as (NLSA) has formulated National plan of Action on spreading legal literacy across the country and also launched National Legal Literacy Mission (NLLM) for a period of five years i.e. 2005 to 2009 .
- 6 **Role of Legal Professionals :** It plays a crucial role in order to encourage to deliver free legal aid legal professionals should and must take step in behalf of people who are in need of legal aid and not aware of how to avail services as the constitution's promise to provide legal aid can only be cherished when society especially weaker , poor may assist and avail . So lawyers and legal professional should enrolled them in this field , so that the person who is in need of assistance can first approach and avail services .
- 7 **Support and Rehabilitation :** NGO's cannot only provide legal assistance to the people but they also give social support to people by having personal interactions , and also form social groups which keep an eye where injustice could be done and tries its best to reduce crime and injustice in society .
- 8 **Establishing Pro Bono – Clubs and includes for providing legal aid education in every law schools :** In order to increase legal literacy among masses , legal aid education centres should be in every law school where students can know much more practically by having Pro Bono clubs in their colleges and students might learn and know how to guide themselves in this field .
- 9 **Feedback Mechanisms :** Feedback is very necessary step , in order to get the feedbacks it must create feedback forms and circulate to people in order to receive what steps should be taken and where it may lack behind for the betterment of legal aid services .
- 10 **Community engagement programmes and targeted campaigns :** Several communities should come forward in community engagement where by being together they took steps like providing free school kits to poor children and also set up free medical campaigns for weaker sections of society and introduce a targeted campaign once in a month .
- 11 **Training & Development :** Training and development should be adhered to the volunteer NGO's , so they can improve and be trained how to proceed further in this field .
- 12 **Participation of Volunteers :** Volunteers play a pivotal role in creating awareness . The very best example for this is a female volunteer can connect to a poor female in order to assist the

information about menstruation and using pads for it. It is very important to keep in mind when interacting with rural people especially females, as they feel shy to communicate, so volunteers play a crucial part in connecting and communicating with them.

- 13 **Digital Platform** : It is now necessary in the technological world to create and expand online mediums for legal aid services to help people in places nearby and can easily accessible to them. Through this people may know the nearer centres for legal aid.
- 14 **Establishment of Lok Adalat** : By establishment of Lok Adalat, the process of dispensing justice has been revolutionised, it provides an additional forum for litigants which thereby helps with the burden of pending cases at the stream litigation.
- 15 **International Collaboration** : International Collaboration must involve in to the working of other prevailing human rights aid agencies across the globe, and adopt their way of operating which can be fruitful for Indian human rights aid model of our country.

Conclusion

Legal aid is considered to be a fruitful concept. The establishment of Legal Services Authorities Act, 1987 gave a path to the enhancement of the concept of legal aid and uplifts the loopholes and paces towards more development through the establishment of authorities under this act the criteria and entitlement, that no one can took disadvantage of entitling of free legal services, the criteria under section .12 can minimise the injustice by which other persons can avail the free services of the poor and weak people without in need of services.

Although our primary law of land (constitution) provides the guarantee of justice, equality and fair trial. Article 39 A and Article 21 A provides and supported that no person shall be deprived of his life and personal liberty (article .21A), whereas article 30 A – promotes justice on the basis of equal opportunities and provide free legal aid by suitable schemes to ensure that opportunities are not denied to any citizen by reason of his/her economic or other disabilities. In every concept whether old or new, there are some loopholes which are present everywhere, and need to be addressed. In legal aid it proves a fruitful concept but still some challenges are there which need to be addressed. It although paces development but still we needs to work on it. If the above mention key measures are fulfilled to the best, the best will be the outcomes.

References

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