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LEGAL AID IN INDIA: PROMOTING ACCESS TO JUSTICE AND EMPOWERING THE MARGINALIZED

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Abstract

India is a nation where both the rate of poverty and the rate of crime are rising daily. With the amount of people living in our country, not everyone can find work or maintain a living standard. It is also true that not all victims of crime can afford to defend themselves. Everybody has a right to be heard, even under the natural justice rule. The right to equal justice and unrestricted access to the courts is covered in Article 39A of the 1949 Indian Constitution, which was added by the 42nd Amendment. Legal aid refers to providing free legal assistance to the underprivileged and disadvantaged who cannot afford a lawyer to represent them in a case or legal action before a judge, jury, or other authority. The first legal aid movement appears to have started in 1851, when a law requiring lawyers to assist the poor was passed in France. The organised State efforts to help the poor and needy in Britain date back to 1944, when Lord Chancellor Viscount Simon appointed the Rushcliffe Committee to investigate the resources available in England and Wales for providing legal advice to the underprivileged and to make recommendations for the state as a whole. The National Legal Services Authority (NALSA), State Legal Services Authorities (SLSAs), and District Legal Services Authorities (DLSAs) are just a few of the stakeholders whose roles and responsibilities are examined in this article's analysis of the current legal aid architecture and mechanisms. Additionally, it lists and explores the difficulties and restrictions encountered in the operation of legal aid programmes, including insufficient financing, a lack of awareness, and coordination problems. The essay also assesses the influence and efficacy of legal aid projects in terms of improving justice delivery, empowering marginalised communities, and reducing case backlogs. Overall, the article emphasises the importance of legal assistance in India's legal system and stresses the demand for all-encompassing and inclusive strategies to guarantee equal opportunity for justice to all.

Keywords – free legal aid, equal justice, legal aid council, legal service authority

Introduction- A basic right that guarantees fairness and equality in all legal systems is access to justice. Ensuring equitable access to the justice system becomes essential to creating an inclusive society in a varied nation like India where socio-economic inequities are prevalent. Legal assistance programmes are crucial in reducing the gap between underrepresented groups and law enforcement and enabling people to properly exercise their

rights. Any legal system's major goals are to uphold national peace and harmony and to administer justice. 'Fair, reasonable, or just' are definitions of justice [1]. It is essential for the rule of law or the legal system to be established as supreme in any democracy. It aids in helping people receive justice for wrongs committed against them. The existence of the judicial system also maintains an eye on the actions of the legislature and executive, two important



democratic institutions. By virtue of its mere existence, it protects and secures the citizens. Additionally, it provides people the impression that their concerns will be acknowledged and that people can seek justice. Equal justice is provided for in Article 39A of the Indian Constitution, making it quite apparent that justice is something. The "audi altrem partem" principle, which in this context refers to both parties' rights to be heard and to submit their cases, is outlined in the rule of natural justice. In accordance with Article 39A of the Indian Constitution, those from economically disadvantaged groups or those unable to afford legal assistance on their own may also get free legal aid. The state has a duty to make sure that everyone has an equal chance to be heard and receive justice. In India, not everyone has the financial means to engage a lawyer. Some people don't even have enough money to buy food for themselves, let alone consider hiring a lawyer. In this article the author would be discussing about legal aid history in brief then would talk about the (NLSA),(SLSA) and the problems faced by the country in providing free legal aid and problems faced. However, despite significant progress, legal aid in India faces several challenges. Inadequate funding, lack of awareness among the target population, bureaucratic hurdles, and coordination issues between various stakeholders hinder the effective delivery of legal aid services. Overcoming these challenges requires a concerted effort from all stakeholders involved in the legal aid system. And would then talk about how can they be treated and would be concluding with it.

I. Brief history-

A. Year 1949 – 1957- The concept of providing free legal assistance to low-income clients was first put up by the Bombay Legal Aid Society. A group known as "The Committee on Legal Aid and Legal Advice in Bombay" was originally established in 1949 under the direction of Justice P.N. Bhagawati. As Chief Justice of the Calcutta High Court, Sir Arthur Trevor Harris then created a committee to investigate the case

after Justice Bhagawati. Additionally, it was stated in the Law Commission report from 1958 that providing legal aid to poor petitioners is not an inconsequential matter of procedural regulation but a question concerning character, which amply illustrates the significance of addressing the issue if offering free legal aid.

B. Legal service authority act 1987- In accordance with Article 39-A of the Indian Constitution and the recommendations of its committees, the Central Government of India passed the Legal Services Authorities Act, 1987. The Amendment Act of 1994, which made a number of changes to the original Act, was followed by the Legal Services Authority Act of 1987, which went into force on November 9th, 1995. The Act allows those who are economically vulnerable, socially disadvantaged, and disabled to access legal assistance. The Legal assistance Committee oversaw the legal assistance programme, which was established by Justice P.N. Bhagawati in 1971. The Act seeks to inform the public on the law, provide free legal aid, and establish Lok Adalats with the goal of ensuring that no one would be denied access to justice due to a disability or financial considerations. The country's system for administering justice has been revolutionised by the establishment of Lok Adalats. The nation's courts still have a sizable number of open cases. The administration has already taken a number of steps to lower the number of open cases. The plan was successful in giving litigants another forum in addition to providing a supplement for conciliation agreements.

C. NLSA- On December 5th, 1995, the National Legal Services Authority was established. On July 17, 1997, His Lordship the Hon. Dr. Justice A.S. Anand, Judge of the Supreme Court of India, assumed the position of Executive Chairman of the National Legal Services Authority. His Lordship started the National Legal Services Authority's operational process soon after taking office. In December 1997, the authority hired its first Member

Secretary, and by January 1998, the other officials and personnel had also been chosen. The National Legal Services Authority office started operating as intended in February 1998.

II. Role of judiciary – In India, the judiciary has always been a strong advocate for and supporter of free legal aid. It is clear from the past that the Honourable Justices P.N. Bhagwati and Krishna Iyer were instrumental in the push for legal assistance and emphasised the value of free legal aid in India. Various judicial rulings have been successful in advancing the legal assistance programme. Among them are:

A. Suk Das v. Union Territory of Arunachal Pradesh-

This was one of Justice P.N. Bhagwati's historic rulings. He claimed that because there are so many uneducated people in India, many of them are unaware of their legal rights. Therefore, it is crucial to increase people's knowledge of the law and legal issues; this is why legal aid is so crucial.

B. Sheela barse v. Union of India-

According to the Hon'ble Court's ruling in this case, Article 21 of the Indian Constitution implicitly guarantees everyone the fundamental right to a prompt trial.

C. Sunitha v. State of Telangana –

In this case, the solicitors kept going on strike, which caused cases to recur and jeopardised the justice that the court was supposed to administer. This case concerns how Art. 39A guarantees everyone the same access to justice and opportunities, but that regular bar strikes are impeding the prompt administration of justice. Both the bar and the bench should strive to uphold and administer justice.

D. State of Haryana v. Darshana Devi-

Hon. justice Krishna Iyer ruled in this case that Order XXXIII of the Civil Procedure Code's exemption provisions should be extended to Accident Claims Tribunals and that no impoverished person should be denied access to the legal system only because of the court cost.

III. NLSA –

A. Constitution of NLS-

1. the Chief Justice of India, who will serve as the Executive Chairman, the President in consultation with the Chief Justice of India, who will serve as the Patron-in-Chief;

2. A Supreme Court judge who is currently on the bench or has recently retired; and c. any other members with the experience and qualifications that the Central Government may specify, to be nominated by that government in consultation with the Chief Justice of India.

3. The Central Government shall appoint a Member-Secretary of the Central Authority, possessing the experience and qualifications as may be prescribed by that Government, to exercise such powers and carry out such duties under the Executive Chairman of the Central Authority, after consulting with the Chief Justice of India.

B. Supreme court legal service committee –

1. To exercise the powers and carry out the duties as may be specified by rules made by the Central Authority, the Central Authority must establish a Committee to be known as the Supreme Court Legal Services Committee.

2. A current Supreme Court judge who will serve as the Chairman;

3. The number of additional members with the experience and credentials that the Central Government may specify, to be proposed by the Chief Justice of India. A person with the experience and credentials required by the Central Government shall be appointed as the Committee's Secretary by the Chief Justice of India.

C. Functions and duties –

1. Establishing Lok Adalats that are permanent and ongoing for the purpose of resolving disputes and open cases before going to court;

2. Creation of counselling and conciliation centres across the nation's districts;

3. the appointment of "Legal Aid Counsel" in each of the nation's magistrate courts;

4. the release of "Nyaya Deep," NALSA's official newsletter;

IV. SLSA-

A. Constitution of SLS-

1. the High Court's Chief Justice, who will serve as the Chief Patron;

2. A High Court judge who is now serving or has retired, to be chosen by the Governor after consulting with the High Court Chief Justice, who will serve as the Executive Chairman;

3. The State Government must choose such other Members, with such experience and credentials, as it may specify, in conjunction with the Chief Justice of the High Court.

4. As the Member-Secretary of the State Authority, the State Government, in consultation with the Chief Justice of the High Court, shall designate a member of the State Higher Judicial Service, not below the rank of a District Judge, to exercise the powers and perform the duties under the Executive Chairman of the State Authority as may be prescribed by the State Government or as may be delegated to him by the Executive Chairman of that Authority.

B. High court legal service committee-

1. For each High Court, the State Authority shall establish a committee, to be known as the High Court Legal Services Committee, to exercise the authority and carry out the duties specified by the State Authority's regulations.

2. A High Court judge who is currently sitting who will serve as chairman; and

3. The Chief Justice of the High Court shall propose such other Members having such experience and qualifications as may be provided for in regulations enacted by the State Authority.

C. Functions of state authority-

1. Provide legal assistance to those who meet the requirements outlined in this Act.

2. Hold Lok Adalats, including Lok Adalats for cases before the High Court

3. implement proactive and smart legal assistance initiatives

V. DLSA-

A. Constitution of district legal service authority-

1. the District Judge who shall be its Chairman

2. The State Government must propose the names of such other Members, with such

experience and qualifications as may be stipulated by the State Government, in conjunction with the Chief Justice of the High Court.

3. SALARY- The Consolidated Fund of the State shall be used to cover the administrative costs of each District Authority, including the salaries, allowances, and pensions due to the Secretary, officers, and other District Authority workers.

B. Functions of district authority-

1. Coordinate the Taluk Legal Services Committee's and the District's other legal services' activities;

2. The District should organise Lok Adalats

VI. Issues faced to provide legal aid-

There is still a gap that needs to be filled even after numerous law provisions, committees, and authorities. Many people still accept injustice today because they cannot afford to have a lawyer defend them. Many people who are innocent but condemned and unable to defend themselves are among the many reasons why there are so many cases in court that are still outstanding. The execution of legal aid services is hampered by a number of difficulties and problems.

A. Inadequate Funding:

One of the biggest problems is that there aren't enough funds available for legal aid programmes. The effectiveness of the system is impacted by the limited budget, which limits the scope and calibre of legal aid services. It becomes challenging to offer comprehensive legal aid to the disadvantaged and marginalised groups in society without sufficient funding.

B. Limited awareness -

In India, many people, especially those from disadvantaged groups, are unaware of the presence and advantages of legal aid programmes. They are unable to receive legal assistance services due to their ignorance, which limits their ability to pursue justice. Campaigns to promote legal literacy and raise public awareness are essential for tackling this issue.

C. Geographical Disparities-

India's enormous size and diversified population make it difficult to provide universal access to legal aid services throughout the nation. Due to the absence of actual legal aid institutions and clinics, remote and underserved areas frequently have trouble getting access to legal assistance. This gap can be closed via creative strategies like technology-driven solutions and mobile legal assistance vans.

D. Lack of support by lawyers –

The majority of lawyers and advocates nowadays do not want to take part in such social services since they all want to be paid fairly for their work. Only a small number of solicitors provide these services, yet the absence of competent legal counsel makes it more difficult to administer justice.

VII. Conclusion –

How exquisitely said by U.S. Supreme Court Justice Hugo Black in the year 1964 "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has" When all those in need and those with low incomes are aware of it and taking advantage of it as it is their fundamental right, the aim of legal aid will have been accomplished. In conclusion, legal assistance in India is essential for advancing access to justice and strengthening disadvantaged groups. It is a fundamental right that the Constitution guarantees and plays an important role in bridging the gap between the disadvantaged and the legal system. The commitment of India to ensuring equitable justice for all is evidenced by the historical evolution of legal assistance in the nation, from the pre-independence era to the founding of statutory organisations like NALSA, SLSAs, and DLSAs. However we have seen that even today we have seen that there are still issues which we face such as the lack of support by lawyers for which the government should make it mandatory to do pro bono cases for example every lawyer should do atleast 5% of their cases pro bono . the lack of funds which leads to the lack of good infrastructure . It is essential to allocate enough

funds and increase funding for legal aid programmes in order to address these issues. The lack of awareness among people. It is crucial to educate the target community about their legal rights and the services that legal aid may provide. Together, we can make sure that India stays committed to delivering equitable justice and nurturing a society where no one is left behind. Legal assistance is a crucial component of that commitment.

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