

FREE LEGAL AID AND LEGAL SERVICES AUTHORITY ACT, 1987

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"Justice must not only be done, it must be seen to be believed"

J. B. Morton

INTRODUCTION

The Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. Legal Aid is the method adopted to ensure that no one is deprived of professional advice and help because of lack of funds. Therefore, the main object is to provide equal justice is to be made available to the poor, down trodden and weaker section of society. Legal aid is to be made available to the poor and needy by providing a system of government funding for those who cannot afford the cost of litigation.

"A just society is the one where justice prevails throughout alike .To have equal right to approach the court is rendered useless if the right can't be exercised. It is then, nothing more than a paper promise .The rich and influential can approach the courts because they have means, but the poor have to face injustice simply because they have no money to hire a lawyer. It is therefore in the interest of justice to establish a social order when the poor not only have the right but also the means to seek justice. The idea of legal aid to the poor is, thus a step in this direction".¹

Judicial appointment of attorneys to represent impecunious litigants without compensation is not a new development. Colonial and early American statutes authorised courts to provide counsel at the request of indigent charged with capital crimes. By the late nineteenth century

¹ Monish Arora , *Short Essays & Paragraphs on Law* (University Law Publishing Co., Delhi, 2ndEd., 2006) p.75

most state courts had ceased to depend on statutory authority, exercising the power to appoint counsel as part of their inherent or constitutional authority to regulate the practice of law within the state. In recent years, the need for legal representation for the poor has increased. Growing recognition of the importance of legal representation to obtaining a fair outcome in criminal cases, culminating in the Supreme Court's announcement of a constitutional right to counsel in criminal prosecutions has resulted in greater demands upon lawyer's time. An increasing rate of criminal activity and the requirement of representation at a greater number of stages of the criminal justice process have also contributed to this burden. In civil cases, as well there has been a growing acceptance of the notion that legal representation of poor litigants results in fairer judicial determinations.²

Justice P.N. Bhagwati rightly observed that, ***“The legal aid means providing an arrangement in the society so that the mission of administration of justice becomes easily accessible and is not out of reach of those who have 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.”***

Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. It is worthy to mention that the Constitution of India provides that 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 disability.³ Constitution of India also makes it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all.⁴

Legal aid to the poor and weak is necessary for the preservation of rule of law which is necessary for the existence of the orderly society. Until and unless poor illiterate man is not

² Bruce Andrew Green, "Court Appointment of Attorneys in Civil Cases: The Constitutionality of Uncompensated Legal Assistance" Columbia Law Review (1981) 366.

³ Article 39 A, the Indian of Constitution

⁴ Articles 14 and 22(1) of the Indian Constitution

legally assisted, he is denied equality in the opportunity to seek justice. Therefore as a step towards making the legal service serve the poor and the deprived.

CREATIVE STEP OF SUPREME COURT PROVIDES FREE LEGAL ASSISTANT

The Indian Constitution provides for an independent and impartial judiciary and the courts are given power to protect the constitution and safeguard the rights of people irrespective of their financial status. Since the aim of the constitution is to provide justice to all and the directive principles are in its integral part of the constitution, the constitution dictates that judiciary has duty to protect rights of the poor as also society as a whole. The judiciary through its significant judicial interventions has compelled as well as guided the legislature to come up with the suitable legislations to bring justice to the doorsteps of the weakest sections of the society. Public Interest Litigation is one shining example of how Indian judiciary has played the role of the vanguard of the rights of Indian citizens especially the poor. It encouraged the public spirited people to seek justice for the poor.

In *Hussainara Khatoon*⁵ where the petitioner brought to the notice of Supreme Court that most of the under trails have already under gone the punishment much more than what they would have got had they been convicted without any delay. The delay was caused due to inability of the persons involved to engage a legal counsel to defend them in the court and the main reason behind their inability was their poverty. The court said that righto free legal aid is implicit in Article 21.

In the case of *Khatri v. State of Bihar*⁶, the court answered the question the right to free legal aid to poor or indigent accused who are incapable of engaging lawyers. 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. Magistrates and Sessions Judges must inform the accused of such rights. The right to free legal services is an essential ingredient of reasonable, fair and just procedure for a

⁵ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98

⁶ AIR 1981 SC 262

person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require...The State cannot avoid this obligation by pleading financial or administrative inability or that none of the aggrieved prisoners asked for any legal aid.

In *Suk Das v. Union Territory of Arunachal Pradesh*⁷, Justice P.N. Bhagwati, emphasized the need of the creating the legal awareness to the poor as they do not know their rights more particularly right to free legal aid and further observed that in India most of the people are living in rural areas are illiterates and are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness they are not approaching a lawyer for consultation and advice. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant and they cannot even help themselves. That is why promotion of legal literacy has always been recognized as one of the principal items of the program of the legal aid movement in the country. I would say that even right to education would not fulfil its real objective if education about legal entitlements is not made accessible to people and our constitutional promise of bringing justice to the door steps of the people would remain an illusion.

In *M.H. Hoskot*⁸ case Justice Krishna Iyer had rightly said that a prisoner has a right to represent himself with the help of article 21 and 39 A of the constitution.⁹

In the case of *State of Haryana v. Darshana Devi*¹⁰ the Supreme Court observed 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. The state of Haryana, mindless of the mandate of equal justice to the indigent under the Magna Carta of republic, expressed in article 14 and stressed in article 39A of the constitution, has sought leave to appeal against the order of the high court which has rightly extended the 'pauper' provisions to auto-accident claims. Order XXXIII will apply to tribunals, which have the trappings of the civil court"... ..even court also expressed its poignant feeling that "no state has, as yet, framed rules to give effect to the benignant provision of legal aid to the poor in order xxxiii, rule 9A, civil procedure code,

⁷ AIR 1986 SC 991.

⁸ *M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 81

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

¹⁰ AIR 1972 SC 855.

although several years have passed since the enactment. Parliament is stultified and the people are frustrated. Even after a law has been enacted for the benefit of the poor, the state does not bring it into force by wilful default”.

In the field of legal assistant, the existing law specially provides free legal aid¹¹ 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.

STATUTORY PROVISIONS UNDER CIVIL LAW

Legal Services Authorities Act, 1987

Under tremendous constitutional persuasion from the Supreme Court the Legal Services Authorities Act, 1987 was passed by the parliament of India. According to the Act the 'court' is a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions.¹² Under the Act 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.¹³ Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority.

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 –

- i. a member of a Scheduled Caste or Scheduled Tribe;
- ii. a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;

¹¹ Section 304(1) of Code of Criminal Procedure, 1973 and Order 33, Rule 17 of Code of Civil Procedure, 1908.

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

¹³ Section 2(1) (c), ibid

- iii. a woman or a child;
- iv. a mentally ill or otherwise disabled person;
- v. 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
- vi. an industrial workman; or
- vii. in custody, including custody in a protective home or in a juvenile home
- viii. of in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or
- ix. A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government¹⁴ .

CONCLUSION

Legal aid is not a charity but it is an obligation of the state and right of the citizens. The prime object of the state should be —equal justice for all. Thus, legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the downtrodden and weaker sections of the society. But in spite of the fact that free legal aid has been held to be necessary adjunct of the rule of law¹⁴, the legal aid movement has not achieved its goal. There is a wide gap between the goals set and met. The major obstacle to the legal aid movement in India is the lack of legal awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor.

“The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice.”¹⁵

¹⁴ Section 12 of the Legal Services Authorities Act, 1987

¹⁵ Justice Blackmun in *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968)