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Brief Study on The Concept of Free Legal Aid and Its Challenges in India

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ABSTRACT

Free legal aid is a legal service that is provided free of cost or sometimes at a lower cost to the needy and underprivileged sections of society who cannot afford to hire a lawyer to fight their cases. Free legal aid ensures that everyone gets justice and no one is deprived of justice due to insufficiency of funds. The right to free legal aid is a fundamental right under Article 21 of the Constitution. Even Article 39A of the Constitution mentions the Right to equal justice and free legal aid which was inserted by the forty-second amendment of the constitution. It tells us that everyone has the right to seek justice if their right has been violated and if they don't have the resources to fight for their rights the state shall provide free legal aid to them. This paper analyzes the concept of free legal aid and its applicability in India. It also discusses whether it is accessible to everyone in real or not.

Keywords: Free legal aid, justice, Fundamental right, Article 39A, 42nd Amendment.

I. INTRODUCTION

India is a Secular Country where everyone is equal in the eyes of Law. Judiciary is one of the pillars of the government which regulates and monitors the society. The main aim of the Indian judiciary is to maintain peace and harmony in the society. It tries to give justice to everyone whose rights have been infringed. Anyone who is aware of their Constitutional rights can seek remedy if such constitutional right is violated.² But India is where there are masses who are illiterates. The majority of them have no knowledge of our Judiciary System. They are not aware of their Constitutional rights. Even if they are aware of it, they cannot afford it because of their economic condition. In order to save these helpless people, the Indian Parliament incorporated Article 39-A in the constitution by the forty-second amendment of the Constitution in 1976. This provision provides each citizen the right to equal and fair justice and free legal aid. This ensures that Justice is available to all regardless of their financial and social condition. Seeking equal and fair justice is a basic human right. No one should be deprived of justice due to lack

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² SRIPRIYA.T, *Legal Aid and Awareness in India: Issues and Challenges*, LEGAL SERVICE INDIA E-JOURNAL, (Oct. 19, 2022,9:45 PM), <https://www.legalserviceindia.com/legal/article-82-legal-aid-and-awareness-in-india-issues-and-challenges.html>

of money. Article 39-A is supported by Article 21 of the Constitution which means that the right to free legal aid is a fundamental right and the state shall provide free legal service to those who cannot afford a lawyer to fight their cases.³ As per the principle of “audi altrem partem” both parties have the right to be heard and present their case before the court. It is the responsibility of the state to assure that everyone gets a chance to be heard and present their case before the court. There are people who are starving each day. They can’t even afford their everyday meals, and hiring a lawyer to fight for their justice is like a dream for them. This does not mean that they do not have the right to be heard or represented. To help such unprivileged sections Art 39 A was incorporated into the constitution.⁴ There are some provisions made under the Legal Services Authorities Act of 1987 in which NLSA, SLSA, and DLSA provides free legal aid to the economically backward sections. We will be further analyzing this concept in detail in the later sections of the society.

(A) Statement of problem

The concept of free legal aid was incorporated to help the but the reality is completely different. Free legal aid has been considered as a failure of Indian legal system. It is facing various problems in executing such services in real. Most of the people in India are not aware of the availability of free legal aid provided by the National Legal Service Authorities. And, those who are aware of it, are not sure whether fair service will be provided to them or not. Generally, the majority of lawyers are not interested to fight a case for free and those who are, either they are corrupted or they do not represent their clients seriously. There are some lawyers who ask their clients to pay extra money in spite of getting their fees from the legal aid committees.

There are very less number of lawyers who provide free legal services unconditionally. One of the major reasons which make our Indian lawyers disinterested in free legal services is that the payment received from the legal aid committees is very less. It is so less that such lawyers cannot even meet their daily expenses with that. So unless and until the economically backward sections are educated about their constitutional rights, nothing can stop them from being exploited and thus rendering free legal aid ineffective.

(B) Literature review

Kristel Juriloo⁵ referred free legal aid as the basic human right. In his article, he stated that the

³ Kirty, *supra note* at 1

⁴ *Id*

⁵ Taru Mishra, *IMPORTANCE OF LEGAL AID IN THE WAY OF JUSTICE IN INDIA*, RESEARCHGATE, (Oct.20, 2022, 2:36AM), https://www.researchgate.net/publication/362908883_IMPORTANCE_OF_LEGAL_AID_IN_THE_WAY_OF_JUSTICE_IN_INDIA.

state is responsible to ensure that everyone gets access to justice. Free legal aid should be provided to those who cannot afford to hire a lawyer due lack of resources. If free legal aid is not given, then the vulnerable groups of the society will be deprived of the equal justice. This would lead to the infringement of basic human rights as it violates the right to equality. He suggested some relevant criteria for free legal aid, which are the significance of the rights that are affected, the general impact of the case, the complexity of the case, the ability to self-represent, and the chances of success. In the year 2010, ⁶Dr. S.D. Moharana in his research paper wrote that the Legal aid is provided by the society to help its weaker sections in order to protect their rights and liberties.

He defined legal aid as a legal advice given when the legal issue has already been raised. With such advice, a lawyer can listen to the party facing the problem or suggest ways to tackle such a problem. The advice may be to avoid litigation; it may be to do so or it may take the shape of drafting an application or legal document. It's nothing but conciliation or mediation of pre-litigation.

(C) Research methodology

To write a research paper, we need to first identify and obtain authentic information supporting our research area. Here, the researcher went through statutory provisions, laws, and case laws to do research on the selected topic. She also referred to different articles, blogs, and e-books available on the internet. This paper tries to understand and analyse the concept of free legal aid and the challenges it is facing in its execution. This paper has been written in doctrinal, critical, and analytical methods and is completely based on the information available on the internet It has also considered guidance from the bare act of the Constitution.

II. THE CONCEPT OF FREE LEGAL AID

The concept of free legal aid provides free legal services to the underprivileged and backward sections of the society. It provides assistance to those who cannot afford a lawyer to fight their cases. It guarantees equal justice to every citizen of India. It makes sure that no one is deprived of justice because of their social standards. Even Article 39 A of the constitution states that it is the responsibility of the state to ensure that everyone gets the chance to present themselves before the court in order to seek justice and if someone cannot afford a lawyer to fight their case, then the state shall provide free legal assistance to that person. The right to free legal aid is a fundamental right that comes under Article 21 of the Constitution.

⁶ SHODH.INFLIBNET, <http://shodh.inflibnet.ac.in>.

III. HISTORIC BACKGROUND OF FREE LEGAL AID

The legal aid movement in India has a rich cultural history. This is not a sudden wishful thinking of some legal thinkers.⁷ The idea of social justice was not unknown in antiquity. It originates from the Vedic period. Traces of legal aid can be found in the Dharma Elements. The Vedas are divided into four sections namely Rigveda, Yajurveda, Samveda and Atharvaveda and elements of legal aid can be found in the Rigveda

In 1980,⁸ the national level Commission was established to manage legal aid programs nationwide and was chaired by Attorney General P.N. Bhagwati who was a judge of Supreme Court at that time. This commission became known as his CILAS (Committee for Implementation of the Legal Aid Scheme) and began overseeing legal aid activities throughout the country. In the year 1987, the Legal Services Agency Act was enacted, to give legal basis to be the uniform model national legal aid programs. The Act finally came into force on 9 November 1995 after certain changes were introduced by Amendment Act 199.

(A) Objectives of free legal aid

The basic objective of free legal aid are⁹:

1. No one should be deprived of justice solely because of poverty or other social impediments.
2. Quality administration of justice is required for smooth functioning of judiciary
3. Political democracy should influence social democracy. So that everyone gets that chance to enjoy the outcome of democracy.
4. There should to be easy availability of justice to all. No one should be discriminated on the basis of their social status.
5. Legislation must provide additional support to the vulnerable, oppressed and backward masses of society.
6. The state should become a welfare agency and provide social justice for all.

(B) Kinds of free legal aid

There are two types of free legal aid¹⁰

⁷ *Id*

⁸ Dr.Prativa Panda, Legal aid in India- an overview, WORLD WILD JOURNALS, (NOV,14.2022 5:45 PM)

⁹ Hrishikesh Jaiswal, *GOOD QUALITY FREE LEGAL AID IN INDIA A DISTANT DREAM*, SSRN.com, (Nov,14.2022, 3:30 PM), <https://papers.ssrn.com/sol3/papers.cfm?>

¹⁰ *Legal Aid In India*, LEGAL SERVICE INDIA E-JOURNAL, (Nov, 15. 2022, 7:45) <https://www.legalserviceindia.com/legal/article-5580-legal-aid-in-india.html>

1. Pre litigation legal Aid
2. Legal Aid during the process of litigation

Pre Litigation legal aid

The increase in the number of cases is a matter of concern. Litigation should be a last resort. The issues need to be resolved without leading to the complexity of the country's legal framework. This pre-litigation legal aid includes legal training, legal advice, legal education and, legal aid workshop. To remove such complexity, it is necessary to increasingly focused on pre-litigation services. Litigation should be used as a last resort. If pre-litigation services are performed properly, time and costs can be saved. In pre-litigation services, there will be minimal financial burden on the state. Therefore, priority is given to domestic pre-litigation

Legal Aid during the process of litigation services

The basic objective of legal aid during the proceedings is to provide free legal services to the poor and oppressed in society after the initiation of the litigation and during the proceedings. The Supreme Court has repeatedly warned that only experienced lawyers can be named on the panel because inexperienced lawyers may not adequately represent the claims of the poor. The legal community must respond without reservation. A well-structured and effective plan must be developed to apply the provisions of the Legal Service Boards Respect Act.

IV. PROVISIONS RELATED TO FREE LEGAL AID IN INDIA

Article 21: The right to free legal aid is a fundamental right defined under Article 21 of the Constitution. According to this article, no one should be deprived of his right to life and personal property except in accordance with the procedure prescribed by law.

In historical judgment of ¹¹*Hussainara Khatton & Ors. V. Home Secretary, State of Bihar (1980) ISCC98*, the hon'ble High Court pointed out that Section 39A emphasizes that free legal services are an inalienable part of the due process, fair and equitable and that the right to unjustified legal services is implicit in section 21.

In *Khatri v the State of Bihar (AIR 1981 SC 262)*, the Supreme Court held that the State was constitutionally bound to provide legal aid not only at the trial stage but also when it was first brought in court. judge or in pre-trial detention at any time.

Such a right cannot be denied on the grounds of financial limitation or administrative incapacity or because the defendant has not requested it. The judge or trial judge has the duty to inform the

¹¹ Deepali Shitole, *Legal Aid: How Can It Be Availed?*, Dr. D. Y. Patil Law College, (Nov.15, 2022,8:45) <https://law.dypvp.edu.in/blogs/legal-aid-how-can-it-be-availed>

defendant of that right.

Article 39 A: Article 39A of the Constitution was introduced by the 42nd Amendment of 1976, which provides equal justice and free legal aid. ¹²It ensures proper functioning of the legal order based on equal opportunities, promotes justice, and in particular to provide free legal aid through appropriate laws and plans or other means, ordered to secure the opportunity to secure.

Legal Service Authorities Act of 1987: Based on Article 39A¹³, Legal Service Authorities Act of 1987 was enacted by parliament. The very word "service" as used in this law indicates that it is not merely a matter of voluntary assistance, but the state's duty to provide legal services to the poor, illiterate and ignorant. is shown. Section 12 of the legal services act tells the criteria for the entitlement of legal services. A Person who is a member of SCs or STs, or, a victim of human trafficking, or, woman or child, a person with a disability, person who is the victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake, or industrial disaster, industrial Workman, or, person in custody including custody in a protective home is entitled to legal services. NLSA, SLSA, and, DLSA are some authorities working under legal service authorities which provide free legal services to the underprivileged sections of the society.

V. CHALLENGES FACED IN EXECUTION OF FREE LEGAL AID IN INDIA¹⁴

Lack of dedication – It has been observed that the legal aid councils do not take the motive of free legal aid seriously. This lack of dedication affects the quality of the services provided by them. This is the reason why the beneficiary has lost faith in the legal aid system and prefers private attorneys over legal aid attorneys. Litigants have complained of lack of interaction, delays in appearing in court, and careless discussions by the Legal aid Councils.

Poor Quality Legal aid Councils – The entire legal aid movement relies on legal aid and they are frontline providers and torch bearer of legal aid services. Expertise is the most important factor in any profession. If lawyers are demotivated and incompetent then the whole movement risks failing. LAC is rigorously tested during this implementation process, but has been observed not to work in real court.

Distinction between the quality of services provided by a private attorney and LACs – Various studies have confirmed that there are significant differences in the caliber and abilities of private attorneys and legal counsel. The argumentative and editorial power of private lawyers is considered superior to that of LAC. This service difference leads poor people to choose

¹² *Supra note* at 8

¹³ *Id*

¹⁴ Jaiswal, *Supra note* at 7

private lawyers, even if it means paying a lot of money.

Unreasonable Delay in Payment – The law requires that fees to be paid immediately, but in practice this is rarely the case. The refund process is very complicated, technical and cumbersome, and the fee is rarely paid. This unreasonable delay causes frustration with LAC involvement. According to the law, all costs incurred during the proceedings will be borne by his LAC and no advance payment will be made to the LAC by him for this purpose. Most of the supporters do not have a very good background and excessive lag causes them many difficulties. Approximately 50% of the Indian people are illiterate. Lack of legal knowledge indirectly makes people more inclined to take legal action. Illiteracy prevents the benefits of the law from reaching those in need. The government has set up many programs for poor people, but the benefits are not reaching them.

VI. CONCLUSIONS AND SUGGESTIONS

Legal aid is not a charity or a grant but a duty of the state and a right of citizens. The main goal of the state is to ensure “equal justice for all”.¹⁵ Thus, legal aid strives to ensure that constitutional commitments are made in writing and in spirit and that equal justice is made accessible to the most disadvantaged and oppressed sections of society. The Constitution of India with forty second amendment inserted the provision of Equal Justice and Free Legal Aid under Art 39A and based on this the Legal Services Authorities Act was enacted in the year 1987. The courts also have acknowledged these rights in various cases and have interpreted the statutes so, that they can give equal chance to both the parties. But unfortunately the legal aid movement has failed to achieve its goal. There is a big gap between the set goal and the achieved goal. The main obstacle to the legal aid movement in India is the lack of legal knowledge and awareness. People still are not aware of their basic right due to which legal aid movement are failing to achieve its goal. Due to lack of literacy, the benefits provided to the poor are being exploited.

Suggestions

- It has been suggested that it is essential for the illiterate poor to receive legal knowledge and to be educated about their basic rights from the grassroots level of the country. To do this, the judiciary needs the support of state administrative agencies to implement the legal literacy program.
- The justice system should focus more on legal aid as this is essential in the current

¹⁵ Dr. G. Mallikarjun, *LEGAL AID IN INDIA AND THE JUDICIAL CONTRIBUTION*, COMMONLII, (Nov.15,2022, 9:45PM) <http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf>

situation where the gap between the haves and have-nots is widening day by day. The elimination of social and structural discrimination against the poor will be achieved when free legal aid is used as an important tool to bring about distributive equity.

- There are a number of precedents and laws protecting the right to free legal aid, but they have proven to be a myth among the masses due to their ineffective enforcement. Therefore, the current need is to focus on properly and effectively implementing the existing laws rather than passing new legislation to provide legal aid in the country into reality rather than just a legend in the minds of countrymen.
- In providing Legal Aid, Legal Aid organizations at all levels should use appropriate ADR methods to expedite the settlement process between the parties to the case and the case that should be resolved without calling any more.
- Free legal services The competent authorities must be fully funded by the state because no one is deprived of the right to advice and professional advice because of a lack of funds.

VII. REFERENCES

- Nishita Kirty, Equal Justice and Free legal aid, INTERNATIONAL JOURNAL OF LAWMANAGEMENTANDHUMANITIES,(Oct.19,2022,7:41PM),<https://www.ijlmh.com/paper/equal-justice-and-free-legal-aid>
- SRIPRIYA.T, Legal Aid and Awareness in India: Issues and Challenges, LEGAL SERVICE INDIA E-JOURNAL, (Oct. 19, 2022,9:45 PM), <https://www.legalserviceindia.com/legal/article-82-legal-aid-and-awareness-in-india-issues-and-challenges.html>
- Taru Mishra, IMPORTANCE OF LEGAL AID IN THE WAY OF JUSTICE IN INDIA, RESEARCHGATE, (Oct.20, 2022, 2:36 AM) https://www.researchgate.net/publication/362908883_IMPORTANCE_OF_LEGAL_AID_IN_THE_WAY_OF_JUSTICE_IN_INDIA, .
- SHODH.INFLIBNET, <http://shodh.inflibnet.ac.in>.
- Dr. G. Mallikarjun, LEGAL AID IN INDIA AND THE JUDICIAL CONTRIBUTION, COMMONLII, (Nov.15,2022,9:45PM),<http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf>
