

Legal Aid & Awareness is essential for just and proper society as well as effective judicial system. Article 39A of the Constitution of India provides for equal justice and free legal aid. There have been significant developments in the area of legal and awareness in last one year in India. Looking at this changes, ProBono India launched the 2nd Dr. A P J Abdul Kalam National Legal Essay Competition – 2017. In this competition total 37 entries were received, and out this top ten good quality essays have been covered in this edited book.

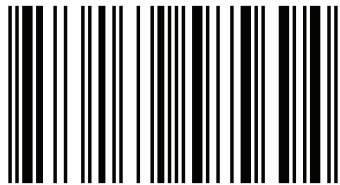
Legal Aid & Awareness in India



Kalpeshkumar L. Gupta (Ed.)
Viralkumar B. Mandaliya (Ed.)

Legal Aid & Awareness in India: Issues & Challenges

Dr. Kalpeshkumar L. Gupta & Dr. Viralkumar B. Mandaliya have been working in interdisciplinary area of research at Gujarat National Law University, Gandhinagar which is among the top five law institution in India. For more details visit www.klgupta.in & www.probono-india.in.



978-613-9-58569-4

Gupta, Mandaliya (Eds.)

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Academic Publishing

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Cover image: www.ingimage.com

Publisher:

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17 Meldrum Street, Beau Bassin 71504, Mauritius

Printed at: see last page

ISBN: 978-613-9-58569-4

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Legal Aid & Awareness in India: Issues & Challenges

Edited by

Dr. Kalpeshkumar L. Gupta & Dr. Viralkumar B. Mandaliya
Lambert Academic Publishing, Germany

Preface

Legal Aid & Awareness is essential for just and proper society as well as effective judicial system. Article 39A of the Constitution of India provides for equal justice and free legal aid. There have been significant developments in the area of legal and awareness in last one year in India. To deliberate on this subject, ProBono India in association with Skillfull India, NGO (An initiative of Vision for Tomorrow Charitable Trust, India) launched the 2nd Dr. A P J Abdul Kalam National Legal Essay Competition – 2017. Theme of this competition was “**Legal Aid & Awareness in India: Issues & Challenges**”

The Competition was open for LL.B., LL.M. & Ph.D. students studying in any of the recognized Law Schools / Colleges / Departments of the Universities in India. In this competition total 37 entries were received, and out this top ten good quality essays have been covered in this edited book. I hope this book will help in policy making in the area of Legal aid and awareness in India.

Jai Hind !

Date: 1st March 2018
Place: Surat

Dr. Kalpeshkumar L. Gupta
Founder
ProBono India
www.probono-india.in

Acknowledgements

First of all we would like to thank Mr. Chintan Pathak (Cyber Security Consultant, Techlawyer & President, Skillfull India, NGO, An initiative of Vision for Tomorrow Charitable Trust, India) for extending a great support in terms of sponsorship for this competition. Without his support, this competition would have not been possible.

We would like to thank all the participants from all the India for submitting very good quality of essays in the competition. Because of their effort, we have come up with this edited book.

We are grateful to all our jury members for taking their valuable time in evaluating all submitted essays.

Jai Hind !

Date: 1st March 2018

Place: Surat

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1. Justice in Action: A Critique

Harsbita Sukebija

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“To no one will we sell, to no one will we deny or delay right or justice.”

-40th Paragraph, Magna Carta, 1215

Introduction

The Constitution of India is founded on the principles of equality and justice. The Article 14 of the Constitution ensures that every person is treated equally before the law and also provides equal protection of law to all irrespective of their religion, sex, race, caste or place of birth¹, while Article 22(1) ensures that no one, who is being arrested, be denied the right to consult, and to be defended by, a legal practitioner of his or her choice². Despite these provisions enunciated by the Constitution as fundamental rights, a large number of people remain a stranger to justice because of their inability to afford legal services. For 21.2% poor population in India³ it is a long and expensive road to justice, where the need for money at every step of legal system forces the poor to settle for injustice.

Recognizing the need to make justice available to the poor and downtrodden, the concept of legal aid was introduced. Hon'ble Mr. Justice P.N Bhagwati has rightly described legal aid as 'equal justice in action'⁴, which means giving free legal services to the poor and needy, who cannot afford the services of a lawyer, so as to ensure that no one is deprived of professional legal advice because of his or her economic status.⁵ Justice should not be equated with money as was stated by Justice Blackmun in *Jackson vs. Bishop*, in which he observed that *“The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice”*⁶. Initially, legal aid programmes were limited to appointing lawyers for those in need and paying court fees and other legal expenses on their behalf. However, the concept of legal aid has widened over the years and includes legal literacy, Lok Adalats and public interest litigation (PIL); thus, an effective legal aid programme not only focus on litigation but also on preventive services including legal advice and legal awareness. Legal aid is imperative for providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial.

Historical Background- Legal Aid Movement in India

In 1950s and 1960s, after the independence, the concept of welfare state took predominance and many states introduced various schemes to provide free legal aid to the needy. In 1958 the Law Commission of India in its 14th Report emphasized equal justice and free legal aid and Kerala was the first state to formulate a policy on legal aid, called Kerala Legal Aid (to the poor) Rules that extended assistance of the lawyer to the poor through the courts. The

¹ Art. 14, the Constitution of India, 1950

² Art. 22(1), the Constitution of India, 1950

³ Poverty & Equity, The World Bank, <http://povertydata.worldbank.org/poverty/country/IND> (01/10/2017)

⁴ Free Legal Aid, LAWyersclubindia, <http://www.lawyersclubindia.com/articles/Free-Legal-Aid-5166.asp> (01/10/2017)

⁵ Dr. G. Mallikarjun, Legal Aid in India and the Judicial Contribution, NALSAR Law Review 234, 235 (2013), <http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf> (01/10/2017)

⁶ *Jackson vs. Bishop*, 404 F Supp 2d, 571 (1968, US Court of Appeals Eighth Circuit)

Governments of Maharashtra and Tamil Nadu also came up with such similar schemes to provide legal assistance to the scheduled castes, scheduled tribes and other backward classes and poor in civil and criminal cases.⁷

In the year 1971, a committee was constituted under the chairmanship of Hon'ble Mr. Justice P.N. Bhagwati which emphasized on the proactive role of judges in ensuring justice to all and detailed the constitution and working of different legal Committees, namely- (i) Taluka Legal Aid Committee, (ii) District Legal Aid Committee and (iii) State Legal Aid Committee.⁸ In 1973, an Expert Committee on Legal Aid of the Ministry of Law and Justice under the chairmanship of Hon'ble Mr. Justice V.R. Krishna Iyer published a report titled "Processual Justice to Poor", which stressed on the need for a statutory basis for legal aid, need to set up legal aid clinics in Law Schools and role of Nyaya Panchayats in administration of justice at grass root levels. This report dealt with nexus of law and poverty, apart from laying emphasis on PIL and need to spread legal aid system that reaches people rather than people reaching the law.⁹

In 1977, Justice P.N. Bhagwati and Justice Krishna Iyer submitted a joint report namely "National Juridicare Equal Justice and social justice". They analyzed the viability and working conditions of legal aid programs, recognized the value of lawyers' services in seeking remedies or asserting rights, and also recommended establishment of National Legal Service Authority (NALSA). It aimed to revise, update, reevaluate and supplement the report of the Expert Committee.¹⁰ However, it was the Forty Second Constitutional Amendment in the year 1976 that placed an obligation on the State to provide free legal aid and recognized free legal aid as a statutory right by inserting Article 39A.

Article 39A on **Equal Justice and Free Legal Aid** reads as-

*"The 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 disabilities."*¹¹

The above principle has been recognized as Directive Principle of State Policy which empowered the poor and the illiterate to seek justice.

In 1980, another committee was formed under the chairmanship of Hon'ble Mr. Justice P.N. Bhagwati, called Committee for Implementation of Legal Aid Scheme (CILAS). It played an

⁷ Shashank Kumar Dey & Nupur Kumary, Role of Legal Aid in Contemporary India, International Journal of Law (2016), <http://www.lawjournals.org/download/57/2-5-43-469.pdf>, (01/10/2017)

⁸ Ibid 2

⁹ Ministry of Law, Justice & Company Affairs Department of Legal Affairs, Government of India, Processual Justice to the People

¹⁰ Ibid 7

¹¹ Art. 39A, the Constitution of India, 1950

important role in monitoring legal aid activities across the country and introduced Lok Adalats as an effective tool to settle disputes.¹²

Role of judiciary in legal aid movement

Judiciary has been a catalyst and a major proponent of free legal aid in India. Role of Justice P.N. Bhagwati and Justice Krishna Iyer in legal aid movement is unforgettable. Emphasizing on the importance of free legal aid in India, Justice P.N. Bhagwati observed-

“The legal aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of rights given to them by law, the poor and the 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 the illiterate, who don't have access to courts. One need not be a litigant to seek aid by means of legal aid.”¹³

Starting from late 1970s the judiciary laid down several precedents which became the foundation of an effective legal aid programme. One of the earliest judgements in this regard was ***Hussainara Khatoon vs. Home Secretary, State of Bihar*** in 1979, which exposed gross and shocking state of administration of justice in the state of Bihar where a large number of under trials were languishing in jails and had already undergone the punishment much more than what they would have got had they been convicted without any delay. The main reason behind the delays was the inability of those under trials to hire a counsel, who could defend them. Justice P.N. Bhagwati held that the right to free legal service is an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence which is guaranteed by Article 39A and implicit in Article 21. Further, the Hon'ble Judge stressed that the state is under a constitutional mandate to ensure speedy trial and cannot avoid its obligation by pleading financial or administrative inability.¹⁴

In the same year, Justice Krishna Iyer, known as the crusader of social justice, extended the provisions of Order XXXIII, Civil Procedure Code¹⁵ to Accident Claims Tribunals in the case of ***State of Haryana v. Darshana Devi***. The Hon'ble Judge held 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” and that “wiping every tear from every eye has judicial relevance”.¹⁶

The above principles were reiterated by Justice P.N. Bhagwati in ***Khatri vs. State of Bihar***, by making it incumbent on the Sessions Judges to inform the accused of his or her right to free legal aid, if such a person is unable to employ the services of a lawyer because of poverty or indigence, otherwise. The Hon'ble Judge said-

¹² Sarfaraz Ahmed Khan, Lok Adalat, 64 (2006)

¹³ Free Legal Aid, LAWYERSclubindia, <http://www.lawyersclubindia.com/articles/Free-Legal-Aid-5166.asp>, (01/10/2017)

¹⁴ Hussainara Khatoon vs. Home Secretary, State of Bihar, 1979 AIR 1369

¹⁵ Order XXXIII of Civil Procedure Code relates to Suits by Indigent Persons

¹⁶ State of Haryana v. Darshana Devi, 1979 AIR 855

“It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose”¹⁷.

In ***Sheela Barse vs. Union of India***, the Hon’ble Court again restated that the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution. The Hon’ble Court also laid down guidelines regarding trial of children accused of any offence, including setting up of remand homes for such children.¹⁸

In the year 1986, another landmark judgement was given by Justice P.N. Bhagwati in the case of ***Suk Das vs. Union Territory of Arunachal Pradesh***, where the accused was convicted by the lower court because of his inability to engage a lawyer to represent him in the court. The Hon’ble Court observed that in India a huge population is illiterate and people are not aware of their rights, therefore, it is essential to promote legal literacy. Hence, legal awareness was recognised as an inherent component of legal aid movement in India.¹⁹

Other Statutes and International Conventions

The Code of Criminal Procedure, 1973 and the Code of Civil Procedure, 1908 also contain provisions in relation to free legal aid. Section 304 of the Code of Criminal Procedure, 1973 provides that-

“Where in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State”²⁰.

Thus, Section 304 clearly states the duty of the State to ensure fair trial to any person charged with an offence. Hon’ble Justice Krishna Iyer remarked-

“Indigence should never be a ground for denying fair trial or equal justice”²¹.

Order XXXIII of the Civil Procedure Code, 1908 also provides in respect of the suits by indigent person. Rule 9A of the said Order empowers the court to assign a pleader to an indigent person and such a person shall not be liable to pay court fee.²² In fact, Legal Aid in a criminal case is recognized as a matter of right; and in civil case, as assistance for redressal of grievances and matters incidental thereto.²³ A number of international treaties also recognize free legal aid as a basic human right. One such treaty is International Covenant on Civil and Political Rights which was ratified by India on 10th April, 1979. Article 14(3)(D) of the Treaty guarantees to every individual-

¹⁷ Khatri vs. State of Bihar, 1981 SCC (1) 627

¹⁸ Sheela Barse vs. Union of India, JT 1986 136

¹⁹ Suk Das vs. Union Territory of Arunachal Pradesh, 1986 AIR 991

²⁰ S. 304, The Code of Criminal Procedure, 1973

²¹ R.M. Wasawa vs. State of Gujarat, 1974 AIR 1143

²² Order XXXIII, Rule 9A, Civil Procedure Code, 1908

²³ Rama Sundari Ivaturi, Evaluation of Legal Aid and Legal Literacy-Tools of Social Justice, Shodhganga, <http://hdl.handle.net/10603/7785> (04/10/2017)

*“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 require, and without payment by him in any such case if he does not have sufficient means to pay for it”.*²⁴

Legal Services Authorities Act, 1987

A new era of legal aid movement started in 1987 with the assent of President to Legal Services Authorities Act, 1987. However, the Act was finally enforced in 1995 after certain amendments were incorporated in the original Act at the behest of judiciary. Justice R.N. Mishra, the then Chief Justice of India, played a key role in the enforcement of the Act, and in 1998 Justice A.S. Anand took over as the executive chairman of National Legal Services Authority.²⁵

The Act provided statutory support to fulfil the objective of social justice as laid down in the Preamble of our Constitution. The Act has two-fold objectives: (1) To provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and (2) To organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

The provision contained in Section 12 of the Act²⁶ lays down the category of people who are entitled to free legal aid under the Act. According to the said Section, following are entitled to legal services:

- a) a member of a Scheduled Caste or Scheduled Tribe
- b) a victim of trafficking in human beings or beggar as referred to in article 23 of the Constitution
- c) a woman or a child
- d) a person with disability as defined in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
- e) a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic, violence, caste atrocity, flood, drought, earthquake or industrial disaster
- f) an industrial workman
- g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987
- h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court

²⁴ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.refworld.org/docid/3ae6b3aa0.html> (05/10/ 2017)

²⁵ Introduction and History of NALSA, NALSA, <http://nalsa.gov.in/about-us> (02/10/2017)

²⁶ S. 12, Legal Services Authority Act, 1987

The Act has laid down an institutional framework with National Legal Services Authority(NALSA) at the national level, State Legal Services Authority in each State, District Legal Services Authority in each District of a State and Taluk Legal Services Committee for each Taluk or Mandal or a group of Taluk or Mandals.

***National Legal Services Authority (NALSA)*²⁷**

NALSA is the apex body with Chief Justice of India as the Patron-in-Chief and a retired judge of Supreme Court as the Executive Chairman, who is nominated by the President in consultation with the Chief Justice of India. NALSA is entrusted with the formulation of policies and principles as well as frame the most effective and economical schemes for making legal services available under the provisions of the Act. It organises legal aid camps, encourages settlement of disputes through Lok Adalats, undertake and promote research in the field of legal services and conduct periodic evaluation of legal aid programmes. It plays an active role in the promotion of legal literacy, setting up of legal aid clinics in universities and law colleges and training of paralegals. In addition, it monitors and coordinates the activities of State Legal Services Authorities and disburses funds and grants to State Legal Services Authorities and non-governmental organisations for implementing legal aid schemes and programs.

***State Legal Services Authorities*²⁸**

The Legal Services Authority Act requires each state government to constitute a State Legal Services Authority, with Chief Justice of High Court as the Patron-in-Chief and a serving or retired judge of the High Court as the executive chairman, who is nominated by the Governor of the state in consultation with the Chief Justice of High Court. The State Legal Services Authorities implement the strategies and policies laid down by NALSA. Apart from this, the State Legal Services Authorities play a pivotal role by functioning as the State level apex body for the legal services activities taking place in the State concerned. The main activities include giving legal service to persons who satisfy the criteria laid down under this Act, conducting Lok Adalats and undertaking preventive and strategic legal aid programmes.

***District Legal Services Authorities*²⁹**

The Legal Services Authority Act requires each state government, in consultation with the Chief Justice of High Court, to constitute District Legal Services Authority for each district in the state, with the District Judge appointed as the chairman. The District Legal Services Authority is required to perform such functions as delegated by the State Legal Services Authority. In addition, it coordinates the activities of the Taluk Legal Services Committee and other legal service in the District, organises Lok Adalats and also co-ordinates with non-governmental institutions and universities to promote the cause of free legal aid.

***Taluk Legal Services Committee*³⁰**

A Taluk Legal Services Committee may be constituted by the State Legal Services Authority with the senior-most Judicial Officer as the ex-officio Chairman. This Committee has been

²⁷ Ss. 3 & 4, Legal Services Authority Act, 1987

²⁸ Ss. 6 & 7, Legal Services Authority Act, 1987

²⁹ Ss. 9 & 10, Legal Services Authority Act, 1987

³⁰ Ss. 11A & 11B, Legal Services Authority Act, 1987

entrusted to co-ordinate the activities of legal services in the Taluk, organise Lok Adalats within the Taluk and perform such other functions as the District Authority may assign to it.

The Legal Services Authority Act has also led to establishment of ***Supreme Court Legal Services Committee*** under Section 3A of the Act for the effective rendering of justice and providing legal aid and assistance to weaker sections of the society. Supreme Court Legal Service Committee provides free legal aid to litigants whose annual income does not exceed Rs.1,25,000 per annum. It also provides free legal assistance to persons belonging to Scheduled Castes and Scheduled Tribes, women, children, disabled persons, victims of trafficking, mass disaster, ethnic violence, caste atrocities, flood, drought, earthquake or industrial disaster etc., persons in custody and industrial workmen, irrespective of their financial means.³¹ A person entitled to free legal aid can make an application for the same to the Secretary of the Committee. The legal aid granted by the Committee includes provision of an Advocate for preparing and arguing the case, cost of preparation of the matter and all applications connected therewith. The Committee also organises Lok Adalats in the Supreme Court premises from time to time and Supreme Court Mediation Centre has been functioning under the patronage of the Committee.³²

In addition to the Supreme Court Legal Services Committee, Section 8A requires setting up of High Court Legal Services Authority by the State Legal Services Authority. The Act also requires establishment of National Legal Aid Fund, State Legal Aid Fund and District Legal Aid Fund for meeting the provisions of the Act, i.e., rendering legal services to the poor and the needy.³³

Lok Adalats

An important element of legal aid is establishment of Lok Adalats as an alternative means of dispute resolution. Lok Adalats were started with the main aim of decreasing the heavy workload of courts in the country and ensure speedy disposal of cases. Chapter VI of the Legal Services Authority Act, 1987 lays down the provisions relating to constitution and powers of Lok Adalats.³⁴ Over the years the preference for Lok Adalats has gained momentum because of its various benefits. Some of them are listed below:

- i. There is no court fee in Lok Adalat and in case parties have already paid court fee in the regular court the same is refunded as per Court Fees Act, 1870.
- ii. There is no strict application of procedural laws, such as the Civil Procedure Code, 1908 and the Evidence Act, 1872, before the Lok Adalat.
- iii. Lok Adalats ensure speedy disposal of cases.
- iv. Lok Adalats act as conciliators, where parties are free to voluntarily compromise or settle through the process of "give and take".

³¹ Efficacy of the Legal Services Authorities Act, 1987.

http://shodhganga.inflibnet.ac.in/bitstream/10603/12650/11/11_chapter%207.pdf (03/10/2017)

³² The Supreme Court of India, Indian Judiciary Annual Report 2015-2016, 89 (2015-16),

<http://supremecourtindia.nic.in/pdf/AnnualReports/annualreport2015-16.pdf> (02/10/2017)

³³ Ss. 8A, 15, 16 & 17, Legal Services Authority Act, 1987

³⁴ Ss 19, 20, 21 & 22, Legal Services Authority Act, 1987

Justice Ramaswamy has rightly said-

“Resolving disputes through Lok Adalat not only minimizes litigation expenditure, it saves valuable time of the parties and their witnesses and also facilitates inexpensive and prompt remedy appropriately to the satisfaction of both the parties”³⁵.

Issues and Challenges

Since the inception of Legal Services Authority Act, 1987, a total of 1,58,88,621 eligible persons have been provided free legal services by State Legal Services Authorities, out of which about 17,07,814 persons belonging to Scheduled Caste, 6,94,528 Scheduled Tribes, 13,22,059 persons belonging to backward communities were beneficiaries. Around 15,91,492 women, 2,24,593 children, and 7,01,399 people in custody have also benefited.³⁶ As on 31.01.2016, 1575 legal aid clinics have been set up in schools, colleges and universities in the country.³⁷ However, there still exists huge gap between what has been envisioned by the advocates of legal aid and actual implementation of legal aid programmes. The legal aid programme in India suffers from a number of shortcomings and challenges which are discussed in this section.

Deplorable Quality of Legal Representation

A major problem faced by the legal services institutions/programmes is their inability to attract good talent because of the abysmally low fee paid to the lawyers. This has serious repercussions on the quality of legal representation, and thus, the poor and needy suffers the most. In addition, absence of a mechanism that could monitor the progress of cases entrusted to the panel lawyers leads to excessive adjournments and delay in justice.

Unsatisfactory Legal Services to Under Trials Prisoners

Time and again the judiciary has laid down guidelines protecting the rights of under trial prisoners and accused persons to free legal aid³⁸. The Indian constitution as well as various Statutes like the Code of Criminal Procedure, 1973 guarantees the right to free legal aid to the accused persons. Since the Legal Services Authority Act, 1987 was enacted, out of the total list of 1.77 crore beneficiaries of various schemes of the Legal Services Authority, only 4.59 lakh persons in custody, i.e. around 2.6% of the total beneficiaries, have been provided with legal aid.³⁹

NALSA (Legal Services Clinics) Regulations, 2011 mandates establishment of legal aid clinics where there are barriers to access legal services institutions; for example, inside jail premises.

³⁵ Significance of Lok Adalats in Present Scenario, Legal Services India, <http://www.legalservicesindia.com/article/article/significance-of-lok-adalats-in-present-scenario-583-1.html> (03/10/2017)

³⁶ Statement showing the number of persons benefitted through Legal Services and Advice held by State Legal Services Authorities under Legal Services Authorities Act, 1987, since inception (as on 30.06.2017), NALSA

³⁷ Statement by Shri P.P. Chaudhary, Minister of State for Law and Justice and Electronics and Information Technology, Statement regarding Free Legal Services, Lok Sabha (28/07/2016), <http://164.100.47.190/loksabhaquestions/annex/9/AU2063.pdf> (02/10/2017)

³⁸ Hussainara Khatoun vs. Home Secretary, State of Bihar, 1979 AIR 1369, State of Haryana v. Darshana Devi, 1979 AIR 855, Khatri vs. State of Bihar, 1981 SCC (1) 627, Sheela Barse vs. Union of India, JT 1986 136, Suk Das vs. Union Territory of Arunachal Pradesh, 1986 AIR 991

³⁹ The Supreme Court of India, Annual Report 2014, 120 (2014), <http://supremecourtindia.nic.in/pdf/AnnualReports/annualreport2014-15.pdf> (02/10/2017)

Many states have taken positive step to meet 2011 NALSA Regulations; for instance, Rajasthan has passed RLSA Guidelines in 2012 for establishment of legal aid clinics in jails. Similarly, Himachal Pradesh, Tamil Nadu, Chandigarh, Bihar and Orissa have trained some long term prisoners as Para-Legal Volunteers “who contact other prisoners on a regular basis and report to the panel lawyers”⁴⁰ and in Kolkata jails, “retired judicial officers have been engaged to meet the prisoners and seek their requirements”⁴¹. Despite various judicial precedents and legal enactments, a large number of under trial prisoners are rotting in jails because not only they are denied of their right to counsel, but also the quality of legal services is grossly inadequate. There still exists lack of flow of information between the prison authorities and inmates and inadequate publicity to the jail clinics.

Inadequate Support to Legal Services Clinics

College students are generally very enthusiastic in legal and social services. NALSA (Legal Services Clinics) Regulations, 2011 require establishment of legal aid clinics in law colleges, law universities and other institutions, however, these clinics are not given requisite support in respect of budget and services of panel lawyers.

Underutilization of Para-Legal Volunteers

The role of Para-Legal Volunteers in reaching out to the weaker sections of the society has been recognized under the legal aid programme. However, Para-Legal Volunteers’ scheme suffers from lack of proper monitoring, verification and inadequate payments to the Para-Legal Volunteers. For a population of 1.3 billion, there are only around 55,000 Para-Legal Volunteers.⁴²

Inadequate Legal Awareness Programmes and School Legal Literacy Programmes

The information regarding the legal aid programme do not reach the people who need it the most, i.e. the poor, needy and marginalised sections of the society. These people are deprived of the benefits and rights that they enjoy under various Acts and programmes because of lukewarm efforts towards legal awareness programmes. Moreover, school students can serve as the greatest asset for delivering legal aid services door-to-door. But, no efforts have been made to spread legal literacy to schools.

Limited Powers to Lok Adalats

Lok Adalats can serve as mediators, conciliators and arbitrators and provide a platform for pre-litigation settlement. However, they have limited powers when compared with other civil courts. Apart from lack of procedure to serve notice to appear, there is lack of powers to compel appearance of parties, as non-appearance despite service of notice doesn’t empower Lok Adalats to proceed ex-parte, thus, making them ineffective in delivery of legal services.

⁴⁰ Minutes of the 14th All India Meet of the State Legal Services Authorities, UPSLSA, <http://upslsa.up.nic.in/Minutes%20of%2014th%20All%20India%20Meet.docx> (04/10/2017)

⁴¹ Ibid

⁴² Statistical Information in respect of Para-Legal Volunteers, NALSA

Scanty Human Resource

A successful implementation of Legal Services Authority Act depends on the efficient working of legal services institutions established under the said Act, which in turn depend on the availability of sufficient and quality administrative workforce. Despite repeated stress on the need for having sufficient staff for the State and District Legal Services Authorities, the posts of full time district secretaries are still vacant.⁴³ This is mainly due to lack of adequate number of judicial officers. Further, there is urgent need to employ experts to look after the work of administration and accounts.

Lack of Uniformity in Victim Compensation Scheme

Usually the justice administration system focuses on punishment to the accused, but the victims are forgotten. Huge funds are lying with the state governments for victim compensation schemes but are not fully utilized. Further, there are huge discrepancies in the rates of compensation fixed by the victim compensation scheme of different states for various injuries. The states have their own schemes for victim compensation under Section 357A of Code of Criminal Procedure, 1973⁴⁴ and there is also a Central Victim Compensation Fund Scheme, run by the Central Government. In ***Tekan Alias Tekram vs. State of Madhya Pradesh (Chhattisgarh)***, the Hon'ble Supreme Court directed that all States and Union Territories shall formulate a uniform victim compensation scheme, taking into consideration the quantum of compensation fixed under the scheme adopted by the State of Goa. However, the states still need to comply with this judgment.⁴⁵

Underutilization of Funds

Legal services institutions established under the Legal Services Authority Act are allotted funds for meeting the objectives of the Act. Such funds are for conducting Lok Adalats, mediation and legal aid, as well as for training and payments to Para-Legals and panel lawyers and for setting up legal aid clinics. However, there is acute underutilization of funds by State Legal Services Authorities in several states: Madhya Pradesh with 87 percent funds unspent, Jharkhand with 53.87 percent and Uttar Pradesh with 44.8percent.⁴⁶

Suggestions

Martin Luther King Jr. said- *Injustice anywhere is threat to justice everywhere.*"

1. Legal aid is not a charity or bounty, but is an obligation of the State and right of the citizens⁴⁷. Thus, it is obligatory on the part of policymakers to introduce appropriate reforms to improve delivery of legal services to one and all.

⁴³ Minutes of the 14th All India Meet of the State Legal Services Authorities, UPSLSA, <http://upslsa.up.nic.in/Minutes%20of%2014th%20All%20India%20Meet.docx> (04/10/2017)

⁴⁴ Section 357A says- Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation

⁴⁵ ***Tekan Alias Tekram vs. State of Madhya Pradesh (Chhattisgarh)***, ILC-2016-SC-CRL-Feb-8

⁴⁶ Minutes of the 14th All India Meet of the State Legal Services Authorities, UPSLSA, <http://upslsa.up.nic.in/Minutes%20of%2014th%20All%20India%20Meet.docx> (04/10/2017)

⁴⁷ Free Legal Aid, LAWyersclubindia, <http://www.lawyersclubindia.com/articles/Free-Legal-Aid-5166.asp> (01/10/2017)

2. Quality of legal services depends upon the quality of lawyers we engage and for this purpose a good lawyer has to be reasonably compensated. The 14th All India Meet of the State Legal Services Authorities was held in Hyderabad, Telangana in the year 2016, which laid down minimum fee structure, subject to reconsideration every three years, for the panel lawyers in order to attract and retain competent legal professionals.
3. High court- (i) Rs. 1500 for drafting of substantive pleading such as Writ Petition, Counter Affidavit, Memo of Appeal, Revision, Reply, Rejoinder, Replication etc., (ii) Rs. 500 per application (subject to maximum of Rs.1000 for all applications) for drafting of Miscellaneous applications such as stay, bail, direction, exemption etc. and (iii) For Appearance – Rs.1000 per effective hearing and Rs.750 for non-effective hearing, subject to maximum of Rs.10000 per case.⁴⁸
4. Subordinate courts including tribunals- (i) Rs. 1200 for drafting of substantive pleading such as Suit, Matrimonial Proceedings such as Divorce, Maintenance, Custody, Restitution etc., Succession, Probate, Memo of Appeal, Revision, Written Statement, Reply, Rejoinder, Replication etc., (ii) Rs. 400 per application (subject to maximum of Rs 800 for all applications) for drafting of Miscellaneous applications such as stay, bail, direction, exemption etc. and (iii) For Appearance – Rs.750 per effective hearing and Rs.500 for non-effective hearing, subject to a maximum of Rs.7500 per case.⁴⁹
5. A monitoring system shall be in place in order to keep tabs on the progress of each legal aid case and performance of each Panel Lawyer⁵⁰. In addition, training of Panel Lawyers shall be conducted on a regular basis.
6. Legal aid clinics shall be established inside each jail and there shall be facility to conduct interviews of jail inmates by jail visiting Panel Lawyers and Para-Legal Volunteers. The jail authorities shall set up permanent hoardings displaying information regarding availability of free legal aid services inside the jails.
7. The 14th All India Meet of the State Legal Services Authorities also recommended constitution of an Under-Trial Review Committee (UTRC) in every District. All UTRCs will hold quarterly meetings to review the cases of all UTPs who are: (i) entitled to be released on bail under Section 436A Code of Criminal Procedure, 1973, (ii) who have been granted bail but could not be released due to non-furnishing of bail bond and (iii) involved in criminal compoundable offence; and hence recommend suitable action to be taken by the District Legal Services Authorities.⁵¹
8. Permanent Legal Aid Clinics shall be established in all schools and colleges across the country. The State Government shall conduct periodic legal awareness drives in schools

⁴⁸ Minutes of the 14th All India Meet of the State Legal Services Authorities, UPSLSA, <http://upslsa.up.nic.in/Minutes%20of%2014th%20All%20India%20Meet.docx> (04/10/2017)

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

and colleges and encourage students to become part of legal aid movement as Para- Legal volunteers.

9. Steps shall be taken to employ sufficient and competent administrative staff in legal services institutions in order to expand the reach of legal aid programmes.
10. The State Governments shall revise their victim compensation schemes on the lines of the judgment passed by the Hon'ble Supreme Court in *Tekan Alias Tekram vs. State of Madhya Pradesh*⁵².
11. A comprehensive plan shall be laid out to effectively utilize the unspent funds lying with legal services institutions.
12. The state governments shall partner with private law firms, non-governmental organizations and civil society organizations to provide pro-bono legal aid services to the marginalized. In the case of *Centre for Legal Research vs. State of Kerala*, Hon'ble Justice P.N. Bhagwati held that the State must encourage and support the participation of voluntary organizations and social action groups in order to achieve the objective of Article 39A of the Constitution.⁵³
13. Dedicated efforts shall be made for enactment of Legal Practitioners (Regulation and Maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting the Rule of Law) Bill 2010⁵⁴, which establishes legal services board and an ombudsman for complaints against professionals. It also establishes the duty of every legal practitioner to give free legal services to the financially weaker consumers/clients who fall just above the income levels prescribed under Section 12(h) of the Legal Services Authorities Act, 1987.

Conclusion

Reginald Heber Smith, pioneer of legal aid movement in USA, wrote in his book *Justice and the Poor*⁵⁵ –

“Without equal access to the law, the system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented.”

It is an obligation of the legal profession to ensure that justice is accessible to all, regardless of their economic status. India being a welfare state, this obligation rests not only on the legal professionals and judiciary but also the Government. From the enactment of Legal Services Authority Act, 1987 to recent innovations such as mobile legal services, tele law service and nyaya mitra scheme the government has been putting its heart and soul to fulfill the constitutional pledge of ‘equal justice to one and all’ in its letter and spirit. However, there is a

⁵² *Tekan Alias Tekram vs. State of Madhya Pradesh (Chhattisgarh)*, ILC-2016-SC-CRL-Feb-8

⁵³ *Centre for Legal Research vs. State of Kerala*, AIR 1986 SC 1322

⁵⁴ *Legal Practitioners (Regulation and Maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting the Rule of Law) Bill, 2010 (draft bill, 2010)*

⁵⁵ *Reginald Heber Smith, Justice and the Poor (1919)*

long way to go. The Legal Services Authority Act, 1987 needs to be implemented in its true spirit, deficiencies in the legal services need to be recognized and a conscious effort has to be made to improve them and last but not the least, measures must be taken to provide legal education at the grass-roots. To achieve the goal of “*Sabka Sath, Sabka Vikas and Sabka Nyay*” government, judiciary, legal professionals, law firms, non-governmental organizations and civil society members all have to work in tandem and make ‘justice to all’ a reality.

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Brief About Author



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2. Legal Aid: The Great Leveler in Indian Courts

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“Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law as doubtful luxury and the poor who need it most cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real because democracy’s very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.”

-- M.H. Hoskot v. State of Maharashtra⁵⁶

Introduction

Audi Alterm Partem is the basic principle of law in the world. It means that no party to a suit or case must be left unheard, i.e. a decision or judgment must be given only after hearing both the sides. Thus, in legal aid, the underlying basis is the right of the litigant to be adequately represented in a legal proceeding even though he cannot afford to get himself represented on his own. The right to be represented by a pleader is inherent in our Constitution and this right assumes meaning only if citizens can approach the court notwithstanding any disability, whether social, economic or political. Also, the Supreme Court has given such a wide interpretation to Article 21 of the Constitution that a court proceeding in which either side is not adequately represented by a legal counsel shall be considered void *ab initio*. Moreover, the judiciary would also lose all its significance if people for whom institution of justice exists are unable to have recourse to it. Acts like Legal Services Authority Act has been the torchbearer in so far as providing legal aid to deserving persons is concerned and apart from the act, the Criminal Procedure Code, Civil Procedure Code, and the Advocates Act also contain provision for the grant of legal aid in specific instances.

The Concept and Meaning

Generally, legal aid denotes legal assistance to poor persons free of cost in any judicial proceedings before a Court or a Tribunal, in quasi-judicial proceedings, in administrative proceeding or even simply as consultation.

The meaning of legal aid has been very beautifully observed by Justice P.N. Bhagwati⁵⁷:

“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 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.

⁵⁶ AIR 1978 SC 1548 : (1979) 1 SCR 192 : (1978) 3 SCC 544 : 1978 UJ 847 : 1978 Cr LJ 1678 : 1978 CrLR 362 : 1978 SCC (Cr) 468

⁵⁷ Speaking through the Legal Aid Committee formed in 1971 by the State of Gujarat on Legal Aid with its Chairman, Mr. P.N. Bhagwati along with its members, Mr. J.M. Thakore, A.G., Mr. V.V. Mehta, Deputy Speaker, Gujarat Vidhan Sabha, Mr. Madhavsingh F. Solanki, M.L.A., Mr. Girishbhai C. Patel, Principal, New Lal College, Ahmedabad. His Lordship answered to the question of inequality in the administration of justice between the rich and the poor

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."

Therefore, the main object is to make equal justice available to the poor, downtrodden and weaker section of society. Legal aid implies not only representation through a lawyer at state expense in court proceedings but also includes legal advice, legal awareness, legal mobilization, Public Interest Litigation (PIL), law reform and a variety of strategic and preventive services which will help the individual as a class to avoid injustice.

Thus, the concept of legal aid has been considerably expanded so as to include –

- Representation by a lawyer in civil, criminal and administrative proceedings.
- Education of the poor of their rights
- Organization of the poor and mobilizing voluntary social action groups seeking legal reforms
- Provision of affirmative state action to achieve effective equality
- Monitoring of welfare administration
- Innovation of new strategic tools for cheap and expeditious justice to poor and conducting PIL.

Historical Background

Historically, legal aid has played a strong role in ensuring respect for economic, social and cultural rights which are engaged in relation to social security, education service provision, employment law and anti-discrimination legislation which may be provided publicly or privately. In the 1940s the concept of welfare state arose and it was believed that citizens had a collective responsibility for securing economic, social and cultural rights. Those citizens who were unable to provide for themselves would be helped by the state. Thus the enforcement of rights was collective and through legal aid.

Later, in the 1960s and 1970s, an increasing number of individuals started to enforce their rights. To help them mechanisms emerged to help and advice people with low income to get justice. By the 1980s there was a decline in the concept of a classic welfare state and citizens came to be regarded as consumers with choice in services. Here legal aid was provided only for court cases and not for administrative complaints of the dissatisfied citizen. And by the second half of the 20th century, views regarding legal aid as a necessity emerged supported by jurists such as Mauro Cappelletti who argued that legal aid was essential in providing individuals with access to justice.

Evolution of Legal Aid in India

To track the evolution of legal aid in India, we can divide the timeline into two primary parts. They are – 1. Legal Aid in Pre-independence India and 2. Legal Aid in Post-Independence India.

Legal Aid in Pre-independence India: The concept of Legal aid can be traced back to the period of British rule. But due to the paradigm shift of rulers from Muslim to British, Indian found it

hard to adapt to the change in the justice system. Further, the attitude that the government displayed towards the Indian courts was not helpful either. They merely sought to crush any form of dissent and this resulted in loss of credibility on their part. To restore the public faith, perhaps the legal aid system was introduced via the Code of Criminal Procedure, passed in 1898 which contained a provision wherein the accused when on trial for a capital offence before the sessions court, had the opportunity to be represented by a lawyer at the expense of the state. This protection was, however, discretionary and entirely dependent on the politics of a case. Around 1924, groups like Bombay Legal Aid Society cropped up that tried to help the economically weak and the indigent with their meagre funding.

Legal Aid in Post-Independence India: In early 1950s efforts to increase effective legal aid were made however these efforts were restricted to creation of multi-tiered legal system and helping the indigent only. The Law Commission of India in 1958 in its 14th Report recommended increasing the scope of legal aid to include the economically weaker sections but it didn't call for setting up of legal aid clinic in law schools. In 1970 the Bhagwati Committee shifted its focus from the traditional model of "remedial legal aid", to "preventive legal aid". It was here for the first time that alternative dispute resolution was advocated through the form of legal counselling in the nature of negotiated settlements and compromises. The two-member Juridicare Committee in 1976 called for the establishment of national level legal aid programme and legal aid clinics in law schools. It emphasized on preventive legal aid and sought participation from students and volunteers.

However, the 42nd Amendment Act neutralized the effectiveness of the committee and its report in 1977 remained only on paper along with the National Legal Services Bill draft. The report was again taken up in 1987 and resulted in the passing of Legal Services Authorities Act under A-39A that considerably expanded the scope of Legal aid and along with the establishment of Lok Adalats and Permanent Lok Adalats, there has been a change in the understanding of Legal Aid.

Current approach to Legal Aid

Deviating from the traditional meaning of legal aid, the Hon'ble Supreme Court has initiated the development of a new constitutional right – Right against Poverty by expanding the term Legal Aid. The landmark cases, in so far as this new approach towards the concept of legal aid is concerned are –

- Peoples Union for Democratic Rights v. Union of India⁵⁸
- Babu Singh v. State of U.P.⁵⁹
- Moti Ram v. State of M.P.⁶⁰
- Inder Singh v. Delhi Administration.⁶¹

In all these cases the crux of the Hon'ble Court's observation was that removal of poverty, the root cause of all discrimination and incapacities, should also receive adequate state attention as being a part of legal aid program since the idea of legal aid is not to keep providing lawyers

⁵⁸ (1982) 3 SCC 235: AIR 1982 SC 1473

⁵⁹ (1978) 4 SCC 494

⁶⁰ (1978) 4 SCC 47

⁶¹ (1978) 4 SCC 161

free of cost but remedy the anomalies which perpetuate inequalities. Hence, the new school of thought emphasizes the need to formulate legal aid programme for adopting a very proactive and aggressive approach towards legal awareness, formulating legal tools for removing social inequalities and striking at the social institutions which create inequalities.

In sync with the above idea, National Judicature Report, 1978 also advocated a new philosophy of legal aid with 5 major components –

- Objective of legal services programme should not be merely amelioration of poverty but its removal
- Legal services programme should work towards helping the poor to come out of their condition of hopelessness and helplessness through Knowledge, Organization and Power
- Objective of legal services programme should be social and economic justice
- Legal service should recognize not only the economic problem/limitations of the poor but also the related social, legal educational and psychological problems of the poor
- Legal service programme should aim at the elimination of all those unjust institutions which generate and perpetuate poverty.

Significance of Legal Aid

In a poor country like India, the significance of legal aid increases immensely. It can, hardly, be denied that in the present set up of the society, corruption has not only become endemic but also epidemic. Therefore, easy and speedy access to Justice for a common man is imperative. Legal aid revives and rejuvenates values and ethos. It creates not only peace but a culture of compromise. It helps to create a renaissance of National legality and provides a rendezvous for social amity and affinity and social justice.

Constitutional status of Legal Aid

Legal Aid is not a charity or chance, but as stated, it is a constitutional mandate to state and right of the public which is not now an opinion but a constitutional obligation and compulsion.

Preamble: Preamble of the Constitution of India is a part which carries the objectives and the spirit of the Constitution. Underlining the importance of the Preamble, in *Re, Berubari Union* case, it was held by the Supreme Court that Preamble aids the legal interpretation of the Constitution where the language is found to be ambiguous.

A careful reading of the Preamble shows that the right to legal aid is implicit in the guarantee of a welfare state given to the citizens by the preamble of the Constitution. Preamble talks about securing Justice of all kinds, i.e., social economic and political to its citizens. This noble ideal would remain an idle formality unless and until each citizen of our country has reasonable access to law courts which are the primary dispensers of justice. Here, the words ‘reasonable access’ denotes an ability on part of a citizen to approach a court of law and this ability is possible only if there is a system of granting free legal aid to those who by reason of some disability cannot afford a lawyer. The preamble also talks about securing equality of status and opportunity to its citizens. However, this equality can be secured only through access to courts

and with the kind of illiteracy, ignorance and poverty that exists in India, it is an obvious corollary that there has to be a system for grant of free legal aid to the deserving persons. Further, the Preamble talks about assuring the dignity of the individual. This dignity is achievable only if citizens can have an assured system of recourse to courts, which is fundamentally the objective of free Legal aid.

Article – 14: Article 14 of the Constitution of India guarantees to its citizens equality before law and equal protection of law. The words “equal protection of laws” mean that persons who are similarly situated shall be treated similarly by law. This right to equal treatment is thus the basis of free legal aid since poor litigants who cannot approach the court for redressal of their grievances form a class of their own and hence differential treatment for them by way of free legal aid is fully justifiable under Article 14 also.

Article – 21: Article 21 has been expanded by the Hon’ble Supreme Court to include the right to free legal aid. In *Hussainara Khatun*⁶² case which was decided in 1979 the Hon’ble Court laid down that right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure and hence implicit in article 21 of the Constitution of India.

In *Sukh Das v. U.T. of Arunachal Pradesh*⁶³, The Hon’ble Supreme Court held that in a case where the accused did not make an application for free legal aid and the court also did not inform him of his right then it would clearly be a violation of the fundamental right under Article 21 and such a trial would be vitiated. In *M.H. Hoskat v. State of Maharashtra*⁶⁴, it was held by the Hon’ble Court that free legal aid to prisoners includes giving them a free copy of the judgment so as to enable them to file an appeal in addition to any ancillary facility required for effective exercise of the right to legal aid. In *Khudesar Dutta v. State of Assam*⁶⁵, the Hon’ble Apex Court set aside the conviction of the accused on the ground that no lawyer assisted the accused and the court also did not appoint any lawyer to assist him. In *Kishore Chand v. State of H.P.*⁶⁶, the Hon’ble Court relied on article 3 and 10 of the Universal Declaration of Human Rights to hold that accused has a right to meaningful and effective defence at the trial. Assigning young and inexperienced defence counsel against experienced protection would be violative of Article 14, 19 and 21 irrespective of the nature of crime. The court further observed that it is about time that senior counsels should volunteer to provide legal aid.

Article – 22: Article 22 of the Constitution of India is a significant part of the right to legal aid concept. Clause (i) Art. 22 says that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice.

Article – 32: Article 32 of the Constitution of India, which provides for approaching the Supreme Court directly in case of a violation of a fundamental right, is the most potent of all articles dealing with fundamental rights and their enforcement. In case of denial of free legal

⁶² (1980) 1 SCC 93

⁶³ 1986 (2) RCR Criminal 437

⁶⁴ (1978) 3 SCC 544 : AIR 1978 SC 1548

⁶⁵ 1998 (2) RCR (Criminal) 329 SC

⁶⁶ (1991) 1 SC 286

aid or a right to be defended by a counsel of choice, the Supreme Court can be approached directly as legal aid is considered to flow directly from the right to life.

Article - 39-A of Directive Principles of State Policy: Art.39-A lays down that ‘the 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 disabilities.’ Thus, Art. 39A gives a clear direction to the State that a system of equal access to legal aid for all should be put in place.

The judicial function of a court is in interpreting the Constitution and its provisions that requires building up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status and though Directive Principles are not justifiable in a court of law under article 32 or 226/227 like the fundamental rights, yet the Supreme Court has realized the immense significance of these principles in keeping the state governance on the right track. As such the court will not shy away from enforcing these principles merely on the ground that they have not been given the status of fundamental rights. In *Dinesh Dbemanrai v. State of Gujarat*⁶⁷, it was held by the Gujarat High Court that on a combined and conjoint reading of the provisions of Article 22(1) of the Constitution, Section 304 CrPC and the provisions of Article 39-A of the Constitution and the provisions of Legal Services Authorities Act 1987, the right of accused to enjoy the services of an advocate is unfettered and unqualified. It is not restricted to a particular kind or class of offences.

Legal aid provision under different Acts

Apart from the declaration by the Hon’ble Supreme Court of the Right to legal aid as a fundamental right, there are specific provisions also in procedural laws which give a right to poor litigants to defend themselves.

Code of Criminal Procedure Section 303 of the Criminal Procedure Code provides that any person accused of an offence before a criminal court or against whom proceedings are instituted under this code, may of right be defended by a pleader of his choice.

Section 304 of the Criminal Procedure Code provides that wherein a trial before the Court of Sessions, the accused is not represented by a pleader and where it appears to the court that the accused has not sufficient means to engage a pleader for his defence the court shall appoint a pleader at the expense of the state.

Code of Civil Procedure Order XXXIII of the Civil Procedure Code talks about suits by indigent persons. Rule 18 discusses in detail, the manner in which an indigent person can file a suit. It provides for who can sue as an indigent person, what is the form of application to sue as an indigent person and what kind of enquiry is to be made into such an application and so on.

⁶⁷ 2004 (2) RCR (Criminal) page 416

Rule 8 says that if the applicant is actually a pauper, he will be exempt from paying court fees and fees for service of process on defendants. Rule 9A provides that the Court may if the circumstances so require assign a pleader to a person who has been allowed to sue as an indigent and who is unrepresented. Rule 17 provides that any defendant, who desires to plead a set-off or counterclaim, may be allowed to set up such claim as an indigent person.

Order XLIV of the Civil Procedure Code talks about Appeals by indigent persons. It provides for who may appeal as an indigent without payment of requisite court fee; in case of rejection of an application for suing as an indigent, it also specifies the time for payment of court fee which will have the effect as if it was paid in the first instance. This order explains in detail the procedure to be followed for inquiry as to whether the applicant is an indigent person or not.

Civil services Rules The various Civil Services Rules which govern the conduct of disciplinary proceedings against Government officials specifically provides that in any enquiry proceeding initiated against an employee, the employee must be provided the assistance of a retired or serving Government employee to assist him in pleading his case.

The Legal Services Authorities Act, 1987 No discussion on legal aid can be complete without a special mention being made of the Legal Services Authorities Act, 1987. The act provides for setting up legal services authority at national, state and district level so as to provide legal aid to the poor litigants. The act is an exhaustive piece of welfare legislation and truly seeks to put into action the concept of legal aid. The act lays down in detail as to the eligibility criterion as well as the procedure for seeking legal aid from the Legal Services Authority.

Chapter IV - Entitlement to Legal Services

12. Criteria for giving legal services. — Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is—

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or begar as referred to in article 23 of the Constitution;
- (c) a woman or a child;
- [(d) a person with disability as defined in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]
- (e) a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic, violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956), or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986), or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or
- [(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the

Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.]

13. Entitlement of legal services.—(1) Persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend.

(2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

According to Justice S.S. Saron “Legal Services Authority enters into unchartered terrains by pro-actively reaching every strata of society,”⁶⁸

Legal Aid Status Globally

Every country in this world now recognizes the need and importance of legal aid. Legal aid is essential for guaranteeing equal access to justice, as provided for by Article 6.3 of the European Convention on Human rights regarding criminal law cases. Given below are some countries and the status of legal aid there:

Australia: Australia has a federal system of government comprising federal, state and territory jurisdictions. The Australian (Commonwealth) and state and territory governments are each responsible for the provision of legal aid for matters arising under their laws. In addition, there is a network of approximately 200 independent, not for profit, Community Legal Centers.

Legal aid for both Commonwealth and State matters is primarily delivered through state and territory Legal Aid Commissions (LACs), which are independent statutory agencies established under state and territory legislation. The Australian Government funds the provision of legal aid for Commonwealth family, civil and criminal law matters under agreements with state and territory governments and LACs. The majority of Commonwealth matters fall within the family law jurisdiction. The Australian Government and most State and territory governments also fund community legal centres, which are independent, non-profit organizations which provide referral, advice and assistance to people with legal problems. Additionally, the Australian Government funds financial assistance for legal services under certain statutory schemes and legal services for Indigenous Australians.

Canada: In Canada, the modern system of legal aid developed after the federal government instituted a system of cost-sharing between the federal and provincial governments in the early 1970s. The federal financial contribution was originally set at 50% of the cost of the legal aid system, but that level of funding has fluctuated over the years.

Europe: Article 47 of the Charter of Fundamental Rights of the European Union provides that legal aid will be made available to those who lack sufficient resources, in so far as such aid is necessary to ensure effective access to justice.

⁶⁸ Justice S.S. Saron said in his key note address Centre for Advanced Studies in Criminal Law (CASCL), Rajiv Gandhi National University of Law, Punjab in association with Punjab Legal Services Authority, Chandigarh organized National Seminar on “Access to Justice: Right to Legal Aid and Legal Services in India

Denmark: In Denmark, applicants must satisfy the following criteria to receive legal aid for civil cases: The applicant must not earn more than kr. 289,000 (\$50,000) a year and the claims of the party must seem reasonable. In respect to criminal cases, the convicted will only have to cover the costs if he or she has a considerable fixed income.

Germany: In civil assistance under the Legal Advice Scheme Act advice and, where necessary, representation is given. In criminal cases, the defendant has a right to counsel, and in certain cases when the penalty is at least one year of confinement, the defendant can be given counsel even against his or her wishes.

Hong Kong: A unitary jurisdiction, Hong Kong provides legal aid solely provided through the Legal Aid Department, which is in turn overseen by the Legal Aid Services Council. Administratively the Legal Aid Department is under the Home Affairs Bureau, which chiefly oversees cultural matters and local administration.

United States of America: A number of delivery models for legal aid have emerged. The Legal Services Corporation was authorized at the federal level to oversee these programs. In a "staff attorney" model, lawyers are employed by levels of government on salary solely to provide legal assistance to qualifying low-income clients, similar to staff doctors in a public hospital. In a "judicare" model, private lawyers and law firms are paid to handle cases from eligible clients alongside cases from fee-paying clients. The "community legal clinic" model comprises non-profit clinics serving a particular community through a broad range of legal services and provided by both lawyers and non-lawyers.

Issues and Challenges

Magna Carta in its most glorious enunciation in 40th para inscribed – “To no one will we sell, to no one will we refuse or delay right of justice.” Thus, the implication in the above pronouncement is that justice requires a level playing field and the levelling can only be achieved by legal aid. However, it must be remembered that the present system is diabolic and dilatory instead of dialectical and speedy and so for the full implementation of the scheme a modification of the traditional justice system along with the removal of a few obstructions is required. These obstacles are:-

Increasing cost of Litigation: it is an open secret that litigation has become an expensive affair over the years and as a country, India is too poor to afford the costs. Statistically, 34% of the world's poor populous is in India and within the country itself, over 50% of the population lives below the poverty line. Thus, in a scenario where millions starve, it is inhumane to ask them to cough up money.

Transport and Travelling Expense: One of the major expenses during the proceedings of a case is the transport and travel expenses incurred. One has to pay for the presence of the pleader along with the travelling cost from his own home to the court (mostly in appeal cases or in suits where the case is filed far away). This burns both the pocket and peace of mind. J. Chandrasekhar said, “Theoretically all are equal in the eyes of law and justice. But in reality economic inequalities has made justice beyond the reach of the weaker section of the people.

As the law has become so complicated and the procedure in courts is so technical that very rarely a litigant will be able to put forth his case before the court without the aid of an advocate. How many people in our country can afford to pay a fee for engaging the services of advocates? A litigant has also to incur expenses for the travel between his place of resident and the place where the court is situated and for bringing his witness to the court... ”

Lack of Public Legal education: The natural outcome that flows from being poor is that one is illiterate. And as a nation, India is at the starting point of legal literacy. The legal aid movement cannot achieve its goal so long as people are not aware of their basic rights. When the poor are not aware of their legal rights, they are subject to exploitation and ultimately deprived of the rights and benefits provided to them under law.

Perception that free service is incompatible with quality service: Over the decades the idea that “Cheap things are not good and good things are not cheap” has implanted itself firmly in the minds of people which is why there are not many takers of the Legal Aid services.

Imbalance in Advocate: People and Judge: People ratio: In India the ratio of advocates available is 4,50,000 advocates to 1 billion people. This lack of advocates results in a huge number of cases being handled by one advocate which in turn overburdens him/her. Furthermore, in India the number of judges per million is 9 only whereas in the USA, the no. of judges per million is more than 115.

Corruption and low remunerations: Moreover, too often lawyers assigned to provide legal aid and paid with public funds do not faithfully represent their clients, casting serious doubt on the credibility of the scheme of legal aid provided to weaker sections of society. Some lawyers engaged by legal aid committees hold their clients’ cases for ransom by employing delay tactics. These lawyers compel their clients, many innocent, to pay additional amounts of money to them, even though they are supposed to obtain their fee from the legal aid committee. One factor that may be contributing to this is that the remuneration paid to lawyers by the legal aid committee is very low and sometimes does not even meet the lawyer’s incidental expenses.

Inefficient Delivery System: Another major obstacle to the legal aid movement in India is that the delivery system for legal aid is far too inefficient. Also, there is an unexpected and unpredictable delay in disposal of cases which may range from 1-12 years.

Increasing workload on Courts: Pending workload of cases in Indian Courts has rapidly crossed 30 million as per latest survey and more are under enquiry/investigation stage. Roughly 91% of cases instituted in the courts go to trial and only 9% of cases are settled without judicial agitation which is the exact reverse of the USA trend. In the USA more than 90% of cases involving legal disputes are settled before they go to trial.

Solutions and Suggestions

Legal Aid becomes legal service in real sense when it becomes accessible to the subjects of its objects and when they get benefit by taking advantage of impartiality and integrity of the

system. Thus, following are some ways in which the state can make its machinery work alike for the rich and the poor:

Setting up HC and SC branches: To counter the problem of high travelling costs a high court branch should be set up in every district. If one high court requires three judges (including a judge as a replacement) then in a state like Odisha which comprises of 30 districts almost a 100 judges are required. Every state should have its own Supreme Court branch. One Supreme Court bench is headed by three judges. Our country will hence require 120 Supreme Court judges. The total cost is estimated to be 5000 crore rupees per annum. At a glance, this might seem a huge sum but it is not so. The time and money people spend in travelling through courts and paying the lawyers will be reduced. Farmers and businessmen can employ their time in productive work. This saves money and contributes to the productivity of our country. If required training can be imparted to the interested lawyers and judges. This creates employment and will ensure that a country of 2 billion people is delivered justice in time.

Abolish system of delaying cases: To resolve the problem of inefficient delivery system, corruption and increasing litigation cost the system of taking 'dates' must be looked into. In 2002 it has already been decided in courts that only three dates will be given. However, this decision has remained only on paper. It must be implemented also. At present criminals freely commit crimes because they have no fear of punishment. They think that a case will go long enough for them to die a natural death. The time span of dispensing a case should be 6 months. Any lawyer or judge exceeding the time limit should be penalized. If this is done the miscreants will fear the law and many heinous crimes can be prevented. It is not enough to set up a judiciary, it should also be monitored.

Legal aid programme and Legal education: Legal education must be upgraded if the grammar of anarchy is not to invade the Bar, the Bench and the constitutional order. And for this very purpose strict implementation of the below conceived Legal Aid Programme is required. The programme essentially has a two-pronged approach:

- a. *Litigative Legal Aid:* This pertains to the traditional concept of legal aid which is restricted to providing free legal services to deserving people.
- b. *Preventive or strategic Legal Aid:* This approach of legal aid is what is called the new school of thought which sees legal aid as a means of socio-economic reconstruction. It has five main components:
 - i. *Legal literacy as a mass movement:* Spreading awareness about the existence of rights and means to enforce them is at the heart of new school of thought. It conceives legal literacy as a sine qua non for effective implementation of the agenda of strategic legal aid. This is possible only if legal literacy is spread and taken to the grassroots.
 - ii. *Legal Aid Camps and Lok Adalats:* Resolution of legal disputes and making legal awareness available to the community at their doorsteps in the form of Legal Aid Camps and Lok Adalats. This is an effort to take justice to the citizens by adopting a proactive approach instead of the traditional passive approach.
 - iii. *Entitlement centres:* This is the most dynamic element of the New School of Thought. This approach emphasized the setting up of centers, especially in backward areas, where citizens are made aware of their rights and by encouraging to enforce them, not by filing an action in a law court but by grouping them together and encouraging them

- to create a strong public opinion so as to force the administration to give them their legitimate rights.
- iv. *Barefoot lawyer cadre or Legal Aid Clinic*: This pertains to that class of legal professionals who wish to work at the grass root level and be in touch with the target groups through direct contact programs. Such legal professionals provide support service to any kind of initiative, policy or scheme which is taken or formulated for implementing strategic legal aid, e.g., involvement of law students in legal aid activities.
 - v. *Public Interest Litigation (PIL)*: PIL is as much a part of Litigative legal aid as it is of strategic legal aid. PIL is a means not only for representing those groups who are unable to represent themselves before a law court for redressal of their grievance but it also means highlighting before the court the social inequalities, which then the courts try to remove through positive discrimination or remedial activation.

National and State Legal Service Authority: Along with the above provisions a nationwide network has been envisaged under the Legal Service Authority act for providing legal aid and assistance. National Legal Service Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. In every State, a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State.

Legal literacy mission: Like other countries, India can observe Legal Literacy and awareness events and celebrations as well as it can incorporate into its 5-year plan a legal literacy mission.

Selection of advocates: The National Legal Services Authority should become more selective in choosing advocates to deliver free legal aid.

Protective aspect: Legal aid must also aim at providing advice on protective as well as the preventive aspect of a suit as this assumes a higher degree of importance when there is an astronomical arrear in our courts at present.

Conclusion

Free legal aid to the needy is vital to the very survival of our social system and its denial implies a failure of the rule of law. But for the legal aid movement to be a success, there is a necessity to spread legal awareness and this promotion is not the exclusive duty of the legal fraternity. It is equally the concern and responsibility of the society at large. Constitutional commitment for legal aid can only be cherished if society comes forward to care for its vulnerable population. It is necessary to consider having National Legal Aid Corporation; National Equal Access to Justice Library for better monitoring and management of legal aid and providing competent legal aid to poor. Thus, it is no longer a plan but a pledge. It is no longer a chart but a charter. It is no longer a cry or call but a creed.

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Brief About Author



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3. Legal Literacy Mission and the Legal Aid

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“Literacy is a bridge from misery to hope.”

- Kofi Annan

Legal literacy is seen as a tool to bring about qualitative changes at the grass-root level in the society. With the overall literacy rate of 74.4%⁶⁹, most of the people in the country are still not aware of the rights conferred upon them by the law. Being literate is a crucial way in which an individual connects and interacts with the society around them. It is the absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits.⁷⁰ Without legal literacy people can become intimidated and alienated from law.

Originally, the term legal literacy was used to refer to an aspect of professional legal education. To be legally literate meant that you were capable of reading and writing the legal arguments, briefs, opinions, judgments and legislation that contribute to the body of law.⁷¹ Legal literacy was seen as a spectrum of functional skills related to the conduct of litigation.⁷² It was thought that a certain degree of legal literacy was required for effective participation in modern society, but it was not necessary for the average citizen to reach the professional standard of thinking and writing like a lawyer. It was considered as the ability to understand words used in a legal context, to draw conclusions from them, and then to use those conclusions to take action.⁷³ But later numerous broader definitions of legal literacy were advanced. Legal literacy was seen as a meeting point of law, education and gender, social and political action. It was the possession of information related with the law and Justice. It was seen as the combination of 4A's i.e., Awareness, Assertion, Attitudinal change and Action.⁷⁴

Laird Hunter, in reading the legal world registers following ideal operational definition of legal literacy.

“People using the legal system must be able to guide themselves through a process that they understand and at appropriate places along with the way,

- *Recognize they have a legal right or Responsibility, in order to exercise or assume it;*
- *Recognize when a problem or conflict is a legal conflict and when a legal solution is available;*

⁶⁹ As per the 2011 Census, http://censusindia.gov.in/2011-prov-results/data_files/india/Final_PPT_2011_chapter6.pdf (07/11/2017)

⁷⁰ National Legal Literacy Mission, http://www.bharatiyavidhisansthan.org/Legal_Litracy.aspx (20/01/2018)

⁷¹ Archie Zariski, What is legal literacy?, http://lgst.athabascau.ca/courses/documents/LGST249_sample.pdf (20/01/2018)

⁷² Bilder, Mary Sarah., The Lost Lawyers: Early American Legal Literates and Transatlantic Legal Culture. *Yale Journal of Law and the Humanities*, 11: 47-112 (1999)

⁷³ Canadian Bar Association, Report of the Canadian Bar Association Task Force on Legal Literacy. Ottawa: The Association (1992)

⁷⁴ S.S.Patil and Lavanya. C, A Study on Legal Literacy among Secondary School Students, *Indian Streams Research Journal*, 2(7) (2012)

- *know how to take necessary action to avoid problems and where this is not possible, how to help themselves appropriately;*
- *know how and where to find information on the law, and be able to find information that is accessible to them,*
- *know when and how to obtain suitable legal assistant ;*
- *have confidence that the legal system will provide a remedy, and*
- *Understand the process clearly enough to perceive that justice has been done.”⁷⁵*

Legal Literacy can be defined as the process of acquiring critical awareness about rights and the law, the ability to assert rights and the capacity to mobilize for change. As Freire puts it, “Reading the word and learning how to write the word so one can later read it are preceded by learning how to write the world, that is, having the experience of changing the world and touching the world.” Literacy can empower the individual to influence the society around them more effectively.⁷⁶

Organizations at all levels of society are engaged in education to increase literacy levels. However, even basic literacy may not be enough to allow effective participation in a legal system. Even if people with low literacy have found a way to cope with their daily routine, they find it very difficult to read, understand, and use material related to legal problems. They do not understand the concepts contained in the words, even if they understand the words themselves. Therefore, they cannot understand what is expected of them and often the implications of what is being said.⁷⁷ In modern societies with vast amounts of written law and complex legal systems it is necessary to go beyond basic literacy in order to understand and use law.

It has been witnessed that better awareness of both substantive and procedural laws helps people work more effectively in diverse spheres. The failure of execution of many laws has been attributed to the lack of awareness. Therefore an emergent need was felt for generating awareness of rights but such awareness must go hand-in-hand with awareness regarding the remedies, the relevant institutions and the procedure required to obtain that remedy.

The point of legal literacy is to familiarize the weaker sections of society with their rights, their scope and also provide them with information required for the assertion of such rights so that they may be able to take action and bring about a change in their circumstances. It is only when such comprehensive education is given, that legal literacy can be said to have been meaningful.⁷⁸ The lack of enforcement measures can be mainly attributed to the myth surrounding law, legal procedures and legal terminology and is perhaps the biggest reason for pending litigation in the country especially in rural areas.

⁷⁵ SRD Law Notes, Legal literacy and Objects of Legal literacy, <http://www.srdlawnotes.com/2016/03/legal-literary-and-objects-of-legal.html> (10/11/2017)

⁷⁶ Freire, Paulo, and Donaldo Macedo. *Literacy: Reading the Word & the World*. London: Routledge (1987)

⁷⁷ Canadian Bar Association, *Reading the Legal World: Literacy and Justice in Canada*. Report of the Canadian Bar Association Task Force on Legal Literacy (Ottawa, 1992)

⁷⁸ Interview with Y.K. Sabharwal, Chief Justice of India, Address on the occasion of National Legal Literacy Day, http://highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/legalliteracy.pdf (09/11/2017)

Law can be a powerful tool but only if it is understood well. Ours is a Welfare State, and every Law that has been enacted or Regulations framed are meant for the welfare of the people. Unless the people for whom the Law and Regulations have been made are made aware of them, the very purpose of enactment goes in vain and their objects cannot be achieved. National Legal Literacy Mission was launched to educate people, about law, legal terminology and legal rights.

From Ignorance to Legal Empowerment

To ensure justice for all, safeguard popular rights, and promote legal empowerment of the society, need is always felt for making the public aware about their rights and entitlements. The Legal Services Authorities Act was enacted by the Parliament to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity.⁷⁹ Section 4 of the Act⁸⁰ provide with function of Central Authorities to take up appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures.⁸¹

Launch of National Legal Literacy Mission

National Legal Services Authority constituted National Legal Literacy Mission with main object to empower the poor and disadvantaged persons, particularly woman and children through legal literacy by making them aware of their rights; to lead them to live their life with dignity and to enjoy equality before law, to ensure justice and further facilitating them in this respect through free legal Services programmes available under the Legal Services Authorities Act, 1987⁸².

The then Prime Minister Dr. Manmohan Singh launched the first National Legal Literacy Mission in India in the year 2005 to ensure legal empowerment of all sections of society. This Mission was aimed at educating minority communities, especially downtrodden citizens and women, through awareness and free legal aid. The Mission was established so that people could understand laws and judgments. Our Constitutional commitment to the Rule of Law becomes an empty dream when it is beyond the grasp of the common man. For effective and prosperous democracy, every individual must be aware of their rights and duties. The Prime Minister said that an attempt would be made to simplify the language of the law so that anyone would be able to comprehend it.⁸³ The complex legal language of our statutes acts as a hurdle to legal

⁷⁹ National Legal Services Authority (NALSA), <http://cyberadvocate.in/mod/page/view.php?id=1046> (21/01/2018)

⁸⁰ The Legal Services Authorities Act, 1987 (Act 39 of 1987), s. 4 (1)

⁸¹ Department of Justice, Government of India and UNDP India, Needs Assessment Study of the Legal Services Authorities in the States of Madhya Pradesh, Jharkhand, Bihar, Uttar Pradesh, Odisha, Rajasthan and Chhattisgarh (2012), <http://www.undp.org/content/dam/india/docs/DG/needs-assessment-study-of-selected-legal-services-authorities.pdf> (22/01/2018)

⁸² Milind Bhaskar Gawai, Colloquium For Legal Aid Functionaries In Judicial System (2015), <http://www.nja.nic.in/Concluded%20Programes%202015-16/P-961%20Reading%20Material.pdf> (22/01/2018)

⁸³ Prime Minister launches National Legal Literacy Mission New Delhi (2005), <http://archivepmo.nic.in/drmanmohansingh/speech-details.php?nodeid=75> (23/01/2018)

literacy. The first step towards knowledge of the law was legal literacy. However, there were issues in fund allocation for the mission and implementation of the same.⁸⁴

Law Commission Reports

266th Law Commission Report constituted under the chairmanship of DR. Justice BS Chauhan recommended amendment of section 7 of The Advocates Act, 1961 in order to inculcate within the Act provision of providing for legal services to the persons belonging to the Scheduled Castes and the Scheduled Tribes, Other Backward Classes, women, differently abled persons, victims of social unrest, natural calamities, victim of diseases impacting the social acceptability, and needy persons and for spreading legal literacy, legal awareness amongst the people.⁸⁵

Law commission had earlier also in its 222nd Report under the Chairmanship of Hon'ble Dr. Justice AR. Lakshmanan highlighted the importance of Legal Literacy in following manner:

"1.21 We firmly believe that the legal literacy and legal awareness are the principal means to achieve the objective of equality before the law for the citizens of our country. All efforts should be made to achieve the object of the Legal services Authorities Act and make the legal aid programmes meaningful and purposeful.

1.22 Legal aid without legal literacy is less meaningful and purposeful. So, it would be highly useful if some important legal topics are included as compulsory subjects from primary education stage itself. Such legal education would enable the people to settle several of their disputes outside the courts at the grass roots level without seeking help from legal experts who are generally expensive.

1.61 Legal literacy campaign, paralegal training programmes, mobilization of public opinion against injustice and exploitation, out-of-court settlement of disputes, etc. are some of the ways through which the poor and the underprivileged can be made to realize their rights and also learn about their own importance in shaping and rejuvenating this great nation."⁸⁶

Awareness Campaign by Legal Service Authorities

National Legal Service Authority along with other Legal Services Institutions undertakes various awareness activities in order to make people aware of their rights and about the role, activities and functioning of the legal service institutions. Specific issues are taken up for legal literacy programmes varying from place to place depending upon the needs of a locality and its people. And internship programmes are organized for law students to promote the role and importance of legal services activities.⁸⁷ Legal Services Authorities Act, 1987 was enacted by the Parliament to ensure that the legal system promotes justice on the basis of equal opportunity and to give effect to constitutional mandate under Article 39-A of extending free legal aid. It was reinstated by the Hon'ble Supreme Court of India in ***K.N. Govindan Kutty Menon vs C.D. Shajf***⁸⁸ that,

⁸⁴ Ibid

⁸⁵ Government of India, Law Commission of India Report, 266th Report on the Advocates Act, 1961 (March, 2017)

⁸⁶ Law Commission of India, 222nd Report on Need for Justice-dispensation through ADR etc. (2009), <http://lawcommissionofindia.nic.in/reports/report222.pdf> (23/01/2018)

⁸⁷ NALSA, Legal Awareness/Literacy, <http://nalsa.gov.in/content/legal-awarenessliteracy>, (12/11/2017)

⁸⁸ (2012) 2 SCC 51

“Promoting legal literacy and conducting legal awareness programmes are the functions of legal services institutions. The Act provides for a machinery to ensure access to justice to all through the institutions of legal services authorities and committees. These institutions are manned by Judges and judicial officers. Parliament entrusted the judiciary with the task of implementing the provisions of the Act.”

Devices used by the Authorities

A variety of tools are used in order to achieve this objective like conducting seminars, lectures; distribution of pamphlets; participation in Doordarshan programmes, broadcasting jingles, live phone-in programmes; floating mobile multi-utility vans for spreading awareness through public interactions; nukkad natak; short documentaries; cultural programmes by school children on legal issues; various competitions like painting, essay writing, debates and declamation etc. on legal issues. Legal Aid Clinics are also being run in law colleges to further the attainment of objectives of Legal Services.

Accreditation of Voluntary Social Service Institutions

National Legal Services Authority had formulated a scheme for accreditation of NGOs, Social Action Groups and Voluntary Social Service Institutions to establish a nationwide network of voluntary agencies in order to spread legal literacy, legal awareness and publicity for legal Services throughout the nook and corner of the country. All the State legal Services Authorities were also urged to identify Social Service Institutions in all Districts and give them accreditation.⁸⁹

Role of Para Legal Volunteers

The Para Legal Volunteers in consultation with the nearest legal services institutions organize micro-legal literacy camps in the area of their operation by organizing legal literacy classes for small groups of persons including laborers, women, children members of Schedule Caste/Schedule Tribes etc. It is their duty to distribute information booklets and other publications of the Legal Services Authorities during the legal literacy classes. Information is also disseminated through Doordarshan, All India Radio and Community Radio.⁹⁰ The Special Units organize regular Legal Literacy Camps for transporters and taxi operators for educating them about the consequences and ill effects of drugs. The Legal Services Institutions Special Units display sign boards, hoardings etc. about the stringent provisions of the NDPS Act and ill effects of drug abuse at public places such as Bus-Stands, Railway Stations, Airports, etc.

Humanizing the Prison System

To make legal aid efficient and easily available in the prison system, one must impart legal literacy with the aim of spreading awareness amongst prisoners about their rights and obligations and sensitizing the prison administration. It is necessary to keep identifying those who need and deserve legal aid.

Haryana State Legal Services Authority is implementing Prisoners Legal Literacy Mission with the main objective to provide access to justice and to eradicate the evils of exploitation and

⁸⁹ Vidhi Karya Vibhag (Department of Legal Affairs), http://lawmin.nic.in/an_rep/Chapter1.htm (25/10/2017)

⁹⁰ Compendium II, Compilation of NALSA Regulations along with Schemes of NALSA/HALSA, <http://hslsa.nic.in/Publications%20PDF/Compendium-II%20New%20Schemes.pdf> (26/10/2017)

inequality. The mission targets prisons and jails in a systematic manner by holding legal awareness camps, to organize skits and audio visual presentations, publishing legal literacy literature in local language and to circulate the same amongst the prisoners educating them about their rights, and to help improve prison conditions by coordinating with the prison authorities to ensure that freedoms belonging to the prisoners are made available and by setting up low cost programmes such as weaving, crafts and other workshops for the inmates.⁹¹

Hon'ble Supreme Court of India in *Sunil Batra Etc. vs Delhi Administration and Ors. Etc.*⁹² held that,

“Legal aid shall be given to prisoners to seek justice from prison authorities, and, if need be, to challenge the decision in court-in cases where they are too poor to secure on their own. If lawyer’s services are not given, the decisional process becomes unfair and unreasonable, especially because the rule of law perishes for a disabled prisoner if counsel is unapproachable and beyond purchase. By and large, prisoners are poor, lacking legal literacy, under the trembling control of the jailor, at his mercy as it were, and unable to meet relations or friends to take legal action.”

Both freedom of speech under Article 19 and right to life and personal liberty under Article 21 of the Constitution of India are violated in such cases.

In case of *Khatri and Others vs State of Bihar & Ors*⁹³ the judicial magistrates failed to discharge obligation of informing poor indigent accused including blinded prisoners of their right to free legal aid services at the cost of the State. It was observed by the hon'ble court that about 70 % of the people in the rural areas are illiterate and even more people are not aware of their legal rights. Due to lack of legal awareness promoting legal literacy is always regarded as principle item of the legal aid movement in India. It was held that it would be a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose.

Empowering the Underprivileged

Legal empowerment of the poor is central to efforts in legal literacy. The sphere of law in India has expanded to protect not just individual rights but to protect the rights of hitherto disadvantaged groups and communities living on the periphery of social inclusion. Villagers in rural India could be helped to access their rights with the aid of legal clinics. Case studies, in other parts of the world, demonstrate, without doubt, that legal literacy is known to obviate the alienation of the disadvantaged groups, including the poor, from the legal institutional processes and enhance peoples' capacity to mobilize for change. Recent statutes in India, such as Scheduled Tribes and other Forest Dwellers (Recognition of Forestry Rights Act 2006) are, in effect, State responses to struggles led by ordinary people.⁹⁴

⁹¹ Haryana State Legal Services Authority, Legal Literacy Programmes, <http://hslsa.nic.in/ll.htm> (12/11/2017)

⁹² 1978 AIR 1675, 1979 SCR (1) 392

⁹³ 1981 SCR (2) 408, 1981 SCC (1) 627

⁹⁴ Legal literacy and empowerment of the disadvantaged, <http://vle.du.ac.in/mod/book/view.php?id=8972&chapterid=12859> (10/11/2017)

Scheme for legal aid cum literacy clinic were passed to promote social welfare activities through awakening the people particularly illiterates and those living in backward areas of State of Uttar Pradesh about their legal rights and duties. The clinics were opened at tehsil, district and High court level to provide instant advice and information on legal aspects.⁹⁵

It was observed in *Suk Das & Anr vs Union Territory of Arunachal Pradesh*⁹⁶ by Justice Bhagwati that,

“Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies the impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant: they cannot even help themselves. The law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programme for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor finds themselves can be alleviating to some extent by creating legal awareness amongst the poor. That is why it has always been recognized as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy.”

Panchayati Shivirs are being set up in villages across India, designed to improve the participation of marginalized tribal people in debates about access to and use of natural resources. The Department of Justice, Ministry of Law and Justice, Government of India with the support of United Nations Development Programme is implementing a Project on Access to Justice for Marginalized People⁹⁷ including Women, Children, Backward Classes, and Tribal amongst others.

These Projects are using innovative strategies for creating legal awareness, creating curriculum and contents for legal literacy and building capacities of paralegal workers for providing legal aid to the marginalized groups. Covering a variety of rights and entitlements ranging from rights against domestic violence, women's rights, Right to Information and rights under the criminal laws. Seven project states including Uttar Pradesh, Bihar, Orissa, Madhya Pradesh, Chattisgarh, Jharkhand, Rajasthan, had been selected to know about the existing Legal Aid in the states and access legal literacy contents if available in these states. The group of about 60 Master Trainers trained for conducting Legal Literacy were associated with hundreds of field groups working in different social and rural development projects across the country.⁹⁸

⁹⁵ Scheme for Legal Aid-cum-Literacy Clinic at District Level & High Court Level, [http://upslsa.up.nic.in/legal%20aid%20cum%20literacy\(2\).pdf](http://upslsa.up.nic.in/legal%20aid%20cum%20literacy(2).pdf) (10/11/2017)

⁹⁶ 1986 AIR 991, 1986 SCR (1) 590

⁹⁷ Supra note 13

⁹⁸ Shilpi Varshney, Legal Literacy for Access to Justice An innovative approach towards achieving the Millennium Development Goal (2012), 22(1), <http://www.iimahd.emet.in/egov/ifip/feb2012/shilpi-varshney.htm> (11/11/2017)

Even the Human Development Report⁹⁹ suggested organization of Legal literacy campaigns for women to aware them of legal rights and to provide generous scholarships to women for studying law. Broad national supports are needed from government for attainment of these rights provided to women and assure legal redress is easily available.

Getting the Basics Right

A host of Legal literacy clubs were opened as part of Mass Legal literacy Campaign in schools and colleges by Delhi State Legal Services Authority in 2014.¹⁰⁰ The same provided awareness about issues such as Anti-Ragging Laws, Fundamental Rights and Duties, Legal Services Authorities Act, Protection of Women from Sexual Harassment at Workplace, Cyber Crime against Women and Children, Domestic Violence, Environmental Laws etc. Around 1040 Legal Literacy Clubs have been established by Delhi State Legal Services Authority with enrollment of 2.5 to 3 Lakhs students in which both Government and Government Aided Schools are included.

In Chandigarh, the legal literacy clubs that are established at school and colleges level organize at least six legal literacy classes per year. Around 1364 camps and seminars have been conducted so far. The classes are taken by the representatives or the advocates from the State Legal Service Authorities for briefing the members and the teachers about the modus operandi of legal services provided by state authorities, Pre-litigation settlements of disputes, Lok Adalats and Alternative Dispute Resolution.¹⁰¹

The guidance to the general public regarding legal services is the main objective of the legal literacy Clubs and assisting them in pre-litigation redressal of their grievances or through Courts. In State of Andhra Pradesh these services are provided free of cost to the general public and evaluation of work is done by the Legal Services Committees formulated by authorities from time to time.¹⁰²

The State of Punjab has also come up with certain innovative activities which each Club shall undertake on weekly or monthly bases for spreading Legal Literacy:

- Painting
- Slogan Making
- Poster Making
- Street Plays
- Debate and Declamation
- Paper Reading
- Legal Awareness Camps and
- Seminars.

⁹⁹ United Nations Development Programme (UNDP), Human Development Report, New York (1995)

¹⁰⁰ Delhi state Legal Services Authority, Opening Of Legal Literacy Clubs In Schools, <http://dlsa.org/wings/legal-literacy-wing/opening-and-functioning-of-legal-literacy-clubs-in-schools> (05/11/2017)

¹⁰¹ A Scheme For Students Legal Literacy Clubs, Chandigarh, http://chdlsa.gov.in/right_menu/schemes/pdffiles/legal_literacy_club.pdf (05/11/2017)

¹⁰² Andhra Pradesh State Legal Services Authority, legal literacy clubs, http://apslsa.ap.nic.in/legal_literacy.html (06/11/2017)

- Legal Literacy Classes for 9th Standard Students, undergraduates and Programmes for industrial workmen, tribal, villagers and other under privileged groups are provided in the Kerala State.¹⁰³

Law Schools can also play a major role in sensitizing the general public about their legal rights, remedies and duties. Legal Literacy Campaigns are suitable programs which can be organized by the Law Schools in India. They require neither large financial resources nor special expertise.¹⁰⁴ These programs help students in developing important organizational skills, research, oratory, public speaking and translation skills.

A Study on Legal Literacy among Secondary School Students conducted by S. S. Patil and Lavanya, Associate Professor, Kuvempu University on a sample of 150 students of IX standard in Chickmagalur Taluk, Karnataka State revealed the following major findings:

- In general, the secondary school students have sufficient Legal Literacy in certain areas. But they are unaware about the certain areas like DPSPs and laws against child labor.
- The study revealed that there is no significant difference between the awareness of legal literacy among boys and girls.
- There is a difference between Students Rural and Urban secondary schools regarding Legal Literacy. Rural schools students are better than Urban in Legal Literacy.
- There is no significant difference between the level of legal literacy among the students of Government, Aided, and Unaided schools.¹⁰⁵

The study brings into lime light that legal literacy is matter of great concern in the present day. Much is heard about child atrocity and juvenile crime; this should be curbed at the initial level itself. The legal awareness development among the children especially school going children should become an essential part of education.

Other Innovative Measures

The Micro Legal Literacy Camps are being hosted in state of Himachal Pradesh on weekend or Holidays at the following target places: Jails, Hospitals, Melas, Festival places, Religious places, Schools, Colleges, Labor colonies, Market places, Pilgrim places and tourist spot, Hutments and slums.¹⁰⁶ More than 7500 camps have been set up till now with thousands of people participating in them.

Karnataka state has come up with Legal literacy mobile chariot buses. In 2003 to attract large crowd in the State of Tamil Nadu the traditional and melodious folk-lore called Villuppattu by famous artist Kalaimamani Subbu Arumugam was performed as part of the legal awareness and literacy programme and was telecasted through electronic media and played in the legal

¹⁰³ KELSA, Programmes, Schemes and Services, <http://kelsa.nic.in/prog.htm> (29/10/2017)

¹⁰⁴ Milind Bhaskar Gawai, Colloquium for Legal Aid Functionaries in Judicial System (2015).

<http://www.nja.nic.in/Concluded%20Programes%202015-16/P-961%20Reading%20Material.pdf> (30/10/2017)

¹⁰⁵ S.S.Patil and Lavanya, C, A Study on Legal Literacy among Secondary School Students, Indian Streams Research Journal, 2(7) (2012)

¹⁰⁶ The Himachal Pradesh Legal Literacy Scheme, Legal Literacy Camp, <http://hpslsa.nic.in/LegalLiteracyCamps.html> (05/11/2017)

literacy camps. The public also purchased the cassettes at large. The folk songs carried the message of various Laws, schemes and enactments related to Lok Adalats in its lyrics and were sung by famous playback singers.¹⁰⁷

A short film by the Tamil Nadu State Legal Services Authority on Lok Adalats highlighting its benefits and need had also been released. The demand for dubbing the film in other vernacular languages was also seen. Around 58,365 legal literacy camps has been conducted in the state till 2014 with around 9, 60, 470 participation. A meeting with Press and Electronic Media was arranged in July 2004 by the Tamil Nadu State and the benefits of settlement of disputes through Lok Adalats, Conciliation and Mediation and importance of legal literacy camps were discussed.

The poor, marginalized and the disadvantaged sections of the society would take longer to reap the benefits of the beneficial legislation¹⁰⁸ unless the electronic media and the press involve themselves in the process of spreading the awareness about the ideals of Legal Services Authorities Act and the measures taken by the Authorities.

Documentary films on socially relevant issues, such as “*Nashakbori Sey Nashamukti Ki Aur*” dealing with evil of drug abuse, “*Beti*” dealing with evils of female foeticide, and “*Savera*” dealing with legal services and Lok Adalats have also been shown to the students through EDUSAT.¹⁰⁹ A regional initiative was organized in September, 2005 at Tirupathi Temple Town on challenges faced by the society in liberation of Devadasi from the Traditional bondage stigmas and the discrimination and significance of legal literacy and contribution of legal aid in empowerment of such vulnerable communities. Participation from the States of A.P. Tamil Nadu, Karnataka and Maharashtra was seen in the Summit.¹¹⁰ The major focus areas for the above said activities were Rights of Women, Cruelty against Women, Domestic Violence, and Harassment of Women at Work Places, Female Foeticide, Drug Addiction, Fundamental Rights and Duties, Human Rights, Consumer Rights, Bounded Labour, Menace of Dowry, Right to Information, Rights of Senior Citizens, Labour Rights, Right of Children to free and Compulsory Education amongst others.

Work Done So Far and the Road Ahead

Delhi State Legal Services Authority has conducted 1153 awareness camps and programmes in the year 2016 alone with a participation of 58869 persons.¹¹¹ The camps were conducted in schools, colleges, universities, village community centers, Jails, Custodial homes, slum and labor colonies, hospitals, court complexes, police stations, exhibitions, radio etc. to provide maximum coverage area and legal awareness to all social groups. The Law taught differed according to place, like, Fundamental Rights and Duties, Traffic Laws and Road Safety, Cyber

¹⁰⁷ Tamil Nadu State Legal Services Authority, Legal Literacy and Legal Awareness, http://www.tnlegalservices.tn.gov.in/prog_legal_lit.htm (06/11/2017)

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ Statutory Provisions Governing Legal Aid, http://shodhganga.inflibnet.ac.in/bitstream/10603/7785/12/12_chapter%205.pdf (10/11/2017)

¹¹¹ Statistical Information In Respect Of Legal Literacy/Legal Awareness Camps/Programmes (including Seminars, Workshops, debates etc.), <http://dlsia.org/wp-content/uploads/2016/05/Legal-Awareness-Programmes.pdf> (05/11/2017)

Laws, Sexual Harassment at Workplace, understanding distinct ethnic and regional cultural identities of people particularly from North-East, proceedings, Justice Dispensation System, Visit of Students to District Court Complexes to observe the Proceedings of Courts were subjects at education institutes and for Police Officers, safe guards to protect rights of accused during investigation was the major theme.¹¹²

Certain states such as Meghalaya, Mizoram, Sikkim and Goa do not provide for detailed schemes taken under legal literacy mission. The statistics provided are insufficient and not satisfactory. They confine themselves to setting up of legal literacy camps only. Large states such as Rajasthan have organized only 186417 literacy camps from 1985 till now.¹¹³ The last data available with Punjab Legal Services Authorities shows only 2258 legal literacy clubs being established in schools and colleges in the State till date.¹¹⁴

Proper survey, research, documentation and reporting should be done by concerned authorities. There should be a national level legal literacy campaign involving Government officials since most of the problems and issues raised by the villagers during the camp can be solved by them. Other resource persons trained in dealing with the community can also be involved.¹¹⁵

S.K. Keshote, J. held in *Pankaj Haribhai Sharma, Minor vs Alimamad Rahemtula Shekh*¹¹⁶ that the appellant was a poor minor in the case and a semi-literate person with meager means. It was observed that despite State holding 2000 legal literacy camps on Gandhi Jayanti and on regular intervals, they totally failed to literate the persons really in need of such legal services. It was observed that,

“The number of literacy camps held from time to time... provides good statistical figure to be placed in beautiful glass frames or carved on brass. If the number of legal literacy camps is the only consideration, then this programme maybe 100% successful... these are only shows which we organise, but substantially not doing anything to achieve the object and purpose behind these camps.”

Legal literacy camps are organized to give basic knowledge about the rights of the citizens but it need to be noted that the State has two categories of persons, one who are involved in some litigation and those who are not. The number of latter class of people may be large, but first and foremost steps should be taken to give former class the message about the free legal aid provided under constitutional obligation by the state and its availability in the High Courts. Litigants from poor class come to the courts through advocates and the payment of court fees is deferred through exercise of courts powers under Order 33 of Code of Civil procedure, 1908 which provides for institution of suits by indigent person. But substantial amount is already spent on engaging advocates. Legal literacy camps cannot be fruitful, effective and purposeful if this remains the scenario.

¹¹² Ibid

¹¹³ Statement Showing Legal Awareness/Literacy, available at: <http://www.rlsa.gov.in/legal-awareness.html>

¹¹⁴ Punjab Legal Services Authority, Student Legal Literacy Club, <http://pulsra.gov.in/PageContent.aspx?sts=21> (12/11/2017)

¹¹⁵ Supra note 81

¹¹⁶ In Gujarat High Court on October 16, 1998

The Legal Service Authorities have good standard legal literacy materials available on various topics with them but the same is usually not distributed among participants during legal literacy and awareness camps. All participants especially the marginalized categories as specified under Section 12 of the Legal Service Authorities Act, 1987 should have the access to same. Legal Service Authorities should also explore making legal literacy films of 15-20 minutes each to engage larger crowd and to inform the marginalized sections about their rights. The need is felt to sensitize advocates about spreading legal literacy and awareness especially amongst the under privileged and the weaker sections of the society about their rights, duties and remedies and also about the modes for enforcing those rights.

The Hon'ble Supreme Court of India in *C.I.T. Bombay vs Bar Council of Maharashtra*¹¹⁷ had observed that it is dominant purpose of a State Bar Council to spread legal literacy and promote law reforms along with ensuring quality service of competent lawyers to the litigating public and legal assistance to the poor as reflected by its various obligatory functions. United Nations has rightly stated in its report¹¹⁸ that a vast majority of the adult poor are women and legal empowerment efforts should also support awareness raising and legal literacy campaigns targeting women, including rural women, on gender equality to encourage and empower them to demand justice.

Growing legal literacy opens the gate for a transparent and accountable Government truly based on the 'Rule of Law'. It is the awareness about rights, governance and state obligations that has contributed to the changed attitude of the masses resulting in demand for justice and accountability from the government.¹¹⁹ The purpose of legal literacy mission is to help people resolve their problems and access justice having been empowered through awareness generation and capacity building. It aims at radical changes in society, enabling the individuals and societies to become aware of their inherent human rights and civil liberties so that people may live in dignity and freedom free from fear. The level and spread of legal education has not only been an important pre-condition for sustained economic growth but it has also played a critical facilitative role in the demographic, social and political transition of different societies. There are masses of the people who know nothing about the laws enacted for their benefits. It is evident that massive national programme of legal literacy has to be the basic and the most vital step in any scheme generally enacted to provide legal aid.

Conclusion and Suggestions

Legal Literacy is the core basis of the survival of our Constitutional Democracy. Our entire judicial set-up functions on the presumption that all people are aware of their rights and are able to approach the concerned institution¹²⁰ The process of educating the masses of their legal rights will necessary involve a gradual change and we must have belief in the cause as well as sufficient patience to be able to finally see the results.

¹¹⁷ 1981 AIR 1462, 1981 SCR (3) 542

¹¹⁸ United Nations, General Assembly, Legal Empowerment of the poor and eradication of poverty (2009), <http://www.un.org/esa/socdev/documents/reports/Legal%20empowerment%20of%20the%20poor.pdf> (10/10/2017)

¹¹⁹ Jananeethi, Legal Literacy: Cornerstone For A True Democracy, <http://www.grin.com/en/e-book/264802/legal-literacy-cornerstone-for-a-true-democracy> (12/11/2017)

¹²⁰ Press Trust of India, Ex-Chief Justice of India, P. Sathasivam, Right to legal literacy guaranteed under Constitution: CJI, Business Standard (2013)

Efforts at promoting legal literacy can even assist in easing other problems such as corruption as people would be able to take a stand against such immoral and illegal practices. Literacy is an important parameter to measure development. It promotes gender sensitivity. Law teaches you impartiality and unbiased reasoning to look at facts from different perspectives. It enhances objectivity and builds capacity for thinking and may finally also lead to compassion.¹²¹ The achievement of legal literacy is not an easy task, nor can it be accomplished by one or two institutions alone. It is absolutely essential that all three organs of the state along with the support of NGOs, particularly those which work at grassroots levels, anganwadi workers, individuals who have dedicated themselves to certain causes, international organizations, the media and the law schools work towards the legal literacy mission. For conducting legal awareness and legal literacy events, specialized organizations and individuals must be involved. Everyone must come together and work in harmony and thereby do their bit to serve the society.

It is necessary that people not only be aware of their rights and remedies, they must believe that the enforcement of such rights is possible and that they will get adequate remedies within a reasonable time and at a reasonable expense. The information about the law must be spread in a simplified form. Interactive legal awareness sessions and procedure for collection and evaluation of feedback from the participants should be established. The topic for such sessions should be on the basis of the needs of the local people. Dissemination of printed material in local languages with regard to legal literacy at legal awareness camps is another positive major that can be taken. The same should be easy to understand, and use of illustrations and audio visual material can also be made. Specific legislations should be made to make sure that all states work effectively toward the legal literacy mission. And the monitoring committees should work properly and report the progress made on regular basis.

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¹²¹ Anjoo Sharma, Law and the common Man, <http://vle.du.ac.in/mod/book/view.php?id=8972&chapterid=12855> (10/11/2017)

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4. Legal Aid, Challenges and Education: Where are the *Advocates for Justice*?

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“.....we educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all, both legal and economic justice”

-Associate U.S. Supreme Court Justice Sonia Sotomayor (November 2002)

Legal Aid

Legal Aid according to Black’s Dictionary¹²² is free or inexpensive advice, assistance or representation concerning the law, given to those who can’t afford it. In Indian situation, legal aid is free legal assistance to the poor and weaker sections of the society with the object to enable them to exercise the rights given to them by law. Right to free legal aid or free legal service is an essential fundamental right guaranteed by the Constitution, but in the complex Indian society, exercise of this right becomes very complicated. The need for legal aid has given rise to a greater emphasis on legal aid in legal education.

Legal Education

Legal Education¹²³ is the preparation for the practice of law. Instruction in the law has been offered in universities since medieval times, but over the years, legal education has understood the struggles of culminating the two paradigms of law as an academic discipline and law as a professional and social legal education with a goal to have socially enlightened lawyer. Legal education is becoming very specialized and thereby, the law schools try to provide a middle path between aims to earn and aims to serve society, largely tilting towards the lawyers aim to earn. This type of legal education is not practical enough to be genuinely useful in resolving day to day legal problems but not as rigorously theoretical as truly academic discipline ought to be.¹²⁴

Article 39-A ‘Equal Justice and Free Legal Aid’ of the Constitution of India states that

*“the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, provide free legal aid, by suitable legislation and scheme or in any other way to, to ensure the opportunities for securing justice is not to any citizen by reason of economic or other disabilities”.*¹²⁵

The above three points, clearly portray the complexities that legal aid faces in its theoretical and practical dimensions. While law may allow for equal justice and free legal aid, legal education may fail in its practical dissemination and ultimately, law and society face certain disconnect. The essay aims to study legal aid and its awareness through legal education as an

¹²² The Legal Dictionary, <http://thelawdictionary.org/legal-aid> (12/10/2017)

¹²³ Lionel Astor Sheridan, William P. Alford, Mary Ann Glendon, Legal Education, <https://www.britannica.com/topic/legal-education> (20/10/2017)

¹²⁴ Peter Smith, The legal education - legal practice relationship: a critical evaluation, Masters, Sheffield Hallam University, (2015)

¹²⁵ Mahendra Pal Singh, V.N. Shukla’s Constitution of India, (13th Edition) 378-379

aim to provide justice and promote and protect the rights of the needy as are enshrined in our stalwart Constitution.

Legal Education

Legal education¹²⁶ is an important pillar for establishing rule of law in the society. The legal education today does not give serious priority to imparting justice though through a jurisprudential analysis one can easily study the history of modern times which shows that lawyers are the social engineers who have been giving a pathway for reform and leadership to the nation. For instance, as we look back to the freedom fighters, most of them were lawyers like Sardar Vallabhbhai Patel, Dr. Rajendra Prasad, Rajaji, Pt. Jawahar Lal Nehru, etc. Even father of Nation i.e. Gandhiji himself was a student of law. Let us trace back the history of legal education to understand where we are today.

Historical Background

Ancient India: I would like to begin by stating the meaning of Shloka 3 of Chapter VIII of the Manusmriti that says:

“Daily (deciding) one after another (all cases) which fall under the eighteen titles (of the law) according to principles drawn from local usages, and from the Institutes of the sacred law.”¹²⁷

The above shloka shows the prevalence of law in the Vedic period.¹²⁸ The concept legal education was very old and can be traced way back in the Vedic era and its concept was based on the concept of Dharma. There wasn't any system of formal education to impart law and since self-training was the way of life as Karma and Dharma regulated the society and with the help of which the king used to dispense justice either themselves or appointed judges and ancestors. Scholarly literature also points to legal practitioners being called as 'Pleaders' or 'Niyogis' who argued for the parties. Since time of Manu Smritis the person well versed in Dharma Shastra and the procedure of law could be appointed as the representative. The authentic source of law are the Vedas while the Smritis conveyed the substance of the Vedas and Smriti Kars were the great jurists. Justice was also administered at that time by the king who worked through his appointed officers who were the persons of repute and excellence in their work.

Mughal India: The Mughal Period in India started with Babur in 1525 till the Britishers came into India. During this period the emperor was the judicial head. As the Quran is the source of Islamic Jurisprudence and thus it is treated to be immutable by any human agency. Further, the *Sunna*, the explanatory text of Quran was also very pertinent.¹²⁹ The Mughal era established the system of courts, following formal procedures and adjudication of civil and criminal cases. A system of evidence was also established by them. The above said changes necessitated the involvement of legal experts in the legal system and these experts were addressed as *Vakils*.

¹²⁶ Shreeya Maheshwari and Yashu Chandak, Legal Education System In India (2016),

<http://www.legalservicesindia.com/article/article/legal-education-system-in-india-1976-1.html> (12/10/2017)

¹²⁷ Manusmriti: The Laws of Manu, https://hindubooks.org/scriptures/manusmriti/ch8/ch8_1_10.htm (18/10/2017)

¹²⁸ Shodhganga, Chapter IV, Scenario of Legal Education in India,

http://shodhganga.inflibnet.ac.in/bitstream/10603/68186/13/13_chapter%204.pdf (18/10/2017)

¹²⁹ Bidyut Chakrabarty and Rajendra Kumar Pandey, Indian Government and Politics (SAGE Publications India, 2008)

The two Mughal codes the Figh-e-Firoz Shahai and the Fatwa-e-Alamgiri¹³⁰ Adopted were dealing with the duties of Vakils. The Legal education played a key role in the administration of justice. The Mughal legal system was extended to the town mostly but in religious matter disputed were settled in accordance to the religion, including Hindus. The panchayat also acted for setting the disputed at village level excluding the criminal cases.¹³¹ This led to concretization of third-party representation in the Mughal era, but the representatives could not function efficiently and there seems to be no formalized study of law, let along legal aid.

British India: The current vogue pattern of Legal Education was transplanted by the Britishers with introduction of the English legal system in India. A major step was taken in 1857 for imparting Legal Education by establishing three Universities in Calcutta, Madras and Bombay and in these universities Legal Education was formally introduced as a subject of teaching. This was the beginning of formal and legislative legal education in India. But back in 1774 when the Supreme Court in Calcutta came into existence, there was an acute need for trained lawyers. Sir William Jones, Supreme Court Judge took the initiative to form Asiatic Society¹³² that enhanced the legal education through several colleges and affiliations to prepare lawyers and judicial officers in British Courts in India. The purpose of these universities of Legal Education were just to impart knowledge of certain principles and provisions of law rather than teaching law as a science or an independent branch of learning. Thus, there was no emphasis on the existence of legal aid was done rather more emphasis was done on technicalities of law and there were no uniform education patterns. In fact, the aim was to equip law students for helping the Lower and High Courts by becoming Judicial Officer or enrolling themselves as Vakils. There was no tradition of Legal Research, Academic Legal Training and the system of teaching compulsory subjects under straight lecture method and this system of teaching was practiced for more than a century.

It was during the time frame of 1947 till 1960, i.e. post-independence that there was splurge of law colleges in India a tremendous growth of law colleges in India without any planning as to the direction of law schools and what they would cater to. These lacked even the basic amenities and academic vibrancy with lack of teachers and infrastructure being other factors.

Present Scenario: In free India, with some stabilization and opening of market, liberalization and globalization, legal education gathered momentum and acquired importance. This coupled with the adoption of democratic form of the government and a rights-based constitution made legal education a source of bringing the legal system in tune with the socio-economic and political needs of India. The following have played a significant role in the development of legal education in the present India.

Role of The Bar Council of India (BCI) BCI was established with The Advocate Act of 1961¹³³ that is a top national body for law. Section 49 of Advocate Act 1961 provides that the minimum qualification required for a student to get admission to a course leading to a degree in law in any recognized Law University is prescribed by the BCI and BCI also provides the standards

¹³⁰ Kiran Deshta, Uniform Civil Code: In Retrospect and Prospect, (Deep and Deep Publications, 1995) 16-18

¹³¹ Ibid

¹³² Asiatic Society, <http://asiaticsocietycal.com/history/index.htm> (01/11/2017)

¹³³ Advocates Act, 1961, <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Advocates-Act1961.pdf> (10/10/2017)

of legal Education and according to the Section 7 of the Advocate Act, the Functions of the BCI are decided namely:

- To promote the legal education and to lay down the standards of the Legal education in discussion and consultation with the Indian Law Universities.
- To recognize the Universities whose degree in law shall be qualified for the enrolments as an advocate and for that purpose to visit and inspect the Universities or else send the State Bar Council on their behalf to perform their task and report to them.

The BCI further established three additional organs to pursue its statutory aims and objectives namely:

- Legal Education Committee¹³⁴ makes suggestions and recommendations to the BCI on relevant matters concerning legal education in the country.
- Bar Council of India Trust¹³⁵: This Trust was created to maintain the professional standards and to effect improvement in the Legal Education and hence, established the Law School of excellence and promoted Legal Education.
- Directorate of Legal Education: It assists in conducting and administrating activities like: the Continuing Legal Education, teachers training, Advanced specialized Professional Courses, Education Program for Indian students who are seeking registration after obtaining Law Degree from a Foreign University, Seminars and Workshops, Legal Research and any other work that may be assigned to them by the Legal Education Committee and the Bar Council of India.¹³⁶

With the help from these three organs BCI opened the First Nation Law School of India University at Bangalore. Previously for many years Legal Education was through a three-year graduate degree (unitary) after acquiring a Bachelor's Degree and in this a student is eligible for enrolling a law degree and only Law subjects were taught to a student for 3 years this was introduced by the BCI in 1961 but in 1982 BCI introduce a dual degree course known as integrated Course. Basically, an integrated course is a dual degree course where a student after 12th class can enroll a dual degree in a time frame of 5 years. A student from any stream who secured 50% or above in his 10+2 examination is eligible for this course and in some universities for admission a student requires merit marks in the following examinations for admission such as All India Entrance Test, Common Law Admission Test and LSAT. The courses available are BALLB (Hons), BBALLB (Hons), BSc.LLB (Hons) and B. Tech LL.B.¹³⁷

Role of the University Grants Commission: The University Grants Act of 1956 led to the establishment of the University Grants Commission (UGC) in November 1956 under¹³⁸. The statutory body UGC has a unique funding and granting function coupled with two

¹³⁴ Committees, The Bar Council of India, <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/committees> (09/10/2017)

¹³⁵ Bar Council of India Trust, <http://www.barcouncilofindia.org/about/bar-council-of-india-trust> (09/10/2017)

¹³⁶ Directorate of Legal Education, <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/directorate-of-legal-education> (09/10/2017)

¹³⁷ Refer The Report of the Curriculum Development Committee Vol. 1, 2010, BCI, <http://www.barcouncilofindia.org/wp-content/uploads/2011/08/cdc-report-web.pdf> (09/10/2017)

¹³⁸ The University Grants Act of 1956, <https://www.ugc.ac.in/page/UGC-ACT-1956.aspx> (20/10/2017)

responsibilities; to provide funds and coordinate and maintain of education standard. It's also UGC which is mandated for the following aspects such as promoting and coordinating the University's education, determining and maintaining the standards of teaching, examination pattern and researches in the Universities, framing of the regulations on minimum standards of education, monitoring the developments in the field of collegiate and the University education and it also does the Disbursement of the grants to the Universities and the Colleges, serving as a vital link between the Union and the State governments and the institutions of higher learning and also advising the Central and the State governments on the necessary measures for the improvement of the University's education. It has also established a panel of the Legal Education and its purpose was to guide and standardize the Legal Education. But how far it has succeeded is still a question.

Role of the Supreme Court: The Apex court gave many judgments that have revolutionized the current state of Legal Education in India and have slowly garnered a direction towards pro-poor advocacy. In *Deepak Sibal vs Punjab University*¹³⁹ it was held that the legal education should be encourage without "any unreasonable intervention". In the case of *Bar Council of India vs Aparna Basu Mallick*¹⁴⁰ the apex court held that if the acquisition of a degree in law is essential for being qualified on a state roll then it is obvious that the Bar Council of India must have the authority to prescribe the standards of the Legal education which must be observed by the various Law Universities in the country. Conditions of standard laid down by the Bar Council of India as to attendance in the law classes, lectures, tutorials, moot courts, etc. must be fulfilled before enrolment as an advocate. In the case of *State of Maharashtra vs Manubhai Pragaji Vashi*¹⁴¹ which was essential in both context that is Legal Aid and Legal education, the Supreme Court termed a denial of grant-in-aid by the State of Maharashtra to be recognized by the private law colleges as was afforded to other faculties was unconstitutional as well as violation of the Articles 21 and 39-A of the Indian Constitution. It held that Article 21 read with Article 39-A of the constitution mandates or casts a duty on the State to afford grant-in-aid to be recognized by the private law colleges, similar to the other faculties, which qualify for the receipt of the grant. Thus, the function of BCI and UGC has always been scrutinized by the apex court. On several occasions, the Hon'ble Supreme Court of India has prevented the BCI from conduct of *ultra vires* act and directed the University Grants Commission to use its power to have uniformity of the standards.

The Mushrooming Challenge: The growth of those Private Legal Education Providers who do not provide adequate standard of legal training to the budding lawyer is tackled by the Bar Council of India¹⁴² by closing their college. This is because legal education devoid of social justice is of no use. There has been a tremendous increase in the number of law colleges and those whose standard was below par the licenses were revoked. That is, they were unable to provide adequate infrastructure to the students, not having proper books and some didn't have even qualified teacher. They were merely making money. How can the colleges with mere profit

¹³⁹ Deepak Sibal vs Punjab University AIR 1989 SC 493

¹⁴⁰ Bar Council of India vs Aparna Basu Mallick 1994 AIR 1334, 1994 SCC (2) 102

¹⁴¹ State of Maharashtra vs Manubhai Pragaji Vashi 1996 AIR 1, 1995 SCC (5) 730

¹⁴² Bar Council looks to shut down "mushrooming" law schools (LegallyIndia, 23 June 2009),

<https://www.legallyindia.com/lawschools/bar-council-looking-to-shut-down-qmushroomingq-law-schools-20090623-067> (01/11/2017)

intention, impact any legal aid based education? Sometimes even Government College end up being worst of the lot. Despite having good salary to the teachers, the infrastructure and facilities are improper. The Legal Education Committees are taking stands and cancelling the license of the colleges with improper infrastructure and they are also supporting the colleges who are having inadequate land and helping them to get so. They are making it mandatory to have a separate building for law colleges. Currently, the state with best quality of Legal Education is Kerala.¹⁴³ This is so because they have fixed a cap on Law Schools and Delhi has the worst condition which has caused them to shut down several schools pending further inspections.

Legal Profession

The Legal Profession could be traced back from the colonial era and it played an important role in the administration of justice at that period. Legal Profession had it some impact in the ancient era as there was absence in the need for a trained Legal Profession, the institutionalization of Legal Education could not be done. In the British India its History can be tracked way back when the First British court was established in Bombay in the year of 1672 by respective Governor Aungier. There were no Legal experts in India until and unless the establishment of Mayor's Court in 1726 in Madras and Calcutta. During this period of time several codifications governing the quality and the conditions of the Legal Practitioners were done. The first one being the Regulation Act 1772, which for the very first time recognized the legal practice in India. Thereafter, it was codified in the Bengal Regulation-VII of 1793, which prescribed the scale of fee that Vakils can charge. It was further modified in the Legal Practitioner Act of 1846¹⁴⁴, as a subject to regulate both Vakils and Barristers. The Bar Council Act of 1926, was passed to unify the Bar in India and to give the legal profession measure autonomy in its affairs where the regulation of the admissions and the way of Conduct of Advocate practicing in the Courts were authorized by the State Council and the High Courts. However, the Legal Practitioner Act of 1846 opened the Door of the Profession for all those who were duly qualified, certified and were of good character, irrespective of nationality and religion to practice law and pursue it although women were still excluded from the profession were admitted into this profession through the Legal Practitioner's (Women) Act, III of 1923¹⁴⁵ which allowed them to practice as lawyers. Since then though not in large number women have joined in the profession in all the States of India. The Advocate Act of 1961¹⁴⁶ regulates both practice of law as well as professional Legal Education in India and after its establishment all the old classes of Experts and Legal Practitioners like Vakils, barristers, pleaders of various grades and mukhtars were all abolished and were combined into single category known as 'Advocates' who enjoyed the privilege to practice in the courts throughout the India. The Bar Council of India is envisaged under the Advocate Act as the body for regulating the "minimum standards" to be maintained by the institution imparting Legal

¹⁴³ In two years, number of law schools increased from 800 to 1,200: Now BCI hopes to put brake on mushrooming epidemic (LegallyIndia 9 Dec. 2014), <https://www.legallyindia.com/lawschools/in-two-years-number-of-law-schools-increased-from-800-to-1-200-now-bci-hopes-to-put-brake-on-mushrooming-epidemic-20141209-5408> (01/11/2017)

¹⁴⁴ History of Legal Profession in India, <https://www.lawtopus.com/academike/history-legal-profession-india> (01/11/2017)

¹⁴⁵ Bar Council, 2013, <http://highcourt.cg.gov.in/artical/barcouncil2013.pdf> (01/11/2017)

¹⁴⁶ Palak, Legal Profession in India (13 Sep. 2016), <http://www.legalservicesindia.com/article/article/legal-profession-in-india-2192-1.html> (02/11/2017)

Education in India. India has the second largest population of lawyers in the world, second to the United States of America¹⁴⁷. The practice of law in India has gradually increased and has gradually increased from about 70,000 at time of Independence in 1947 to more than 1.25 million Lawyers in India at this point of time.

Legal Aid

Apart from Article 39-A¹⁴⁸ of the Constitution “which guarantees that the State shall secure the Legal System, promote justice on a basis of equal opportunity and shall provide free Legal Aid” Articles 14 and 22(1) of the Constitution also make the State obligatory to ensure Equality before Law and a Legal system which gives justice to all its subjects. Legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and the spirit and equal justice is made available to the poor, downtrodden and the weaker sections of the society.

Historical Background

Legal Aid concept emerged in India in 1952 when the government asked in various Law Conferences for the Legal help to the poor and in 1980, a committee was formed to supervise the Legal Aid program throughout the country under the chairmanship of the Hon. Mr. Justice. P.N. Bhagwati, who was at that time a judge of the Supreme Court of India and it was called the Committee for Implementing Legal Aid Schemes (CLIAS) and it started working to provide help to the needy. A big achievement in the field of Legal Aid for the citizen of India was achieved when the Lok Sabha was set up. These courts speeded up the trial process in our country and hence, the justice was given faster. In 1995 Hon. Mr. Justice R.N. Mishra enforced the Legal Service Authority Act of 1987, so that the concept of the Legal Aid Cells gains a statutory base and uniformity and in 1955 the National Legal Service Authority was constituted, and Hon. Dr. Justice A.S. Anand Judge of the Supreme Court became the Executive Chairman. There was an establishment of a national network with National Legal Service Authority as main body so that everyone should get justice and they laid down guidelines enshrined with constitutional values so that legal aid is available to all. Some of the measures that were implemented by the Legal Authority are like disposal of cases by Lok Adalat, publicity to the Legal Aid Schemes and programs to make the people aware about the Legal Aid facilities, Legal Aid facilities in jail and accrediting NGO's and organizations for spreading the Legal Awareness. The importance of Legal Aid was given and showed in the revolutionary case of *Madhav Hayawadanrao Hoskot vs State of Maharashtra*¹⁴⁹ because in this case only the right to free Legal Aid of an indigent and poor accused was first time considered by the Supreme Court in India and in this case His Lordship Krishna Iyer who delivered his judgment on the basis of a judgment of a division bench of the U.S Supreme Court, views of eminent jurists and also Article 14(3) of International Covenant on Civil and Political rights, 1966 pleasantly explained the importance of free legal aid of an indigent and poor accused. In this present case the petitioner preferred to argue himself and not the claimed any legal aid. Despite that the court considered the right to counsel under Article 22(1) in a directorial sense and not in permissive sense. In India because of poverty and illiteracy the

¹⁴⁷ Ibid

¹⁴⁸ Yashu Bansal, Legal Aid and Legal Schools (Academike, 4 April, 2015), <https://www.lawctopus.com/academike/legal-aid-and-legal-schools/02/11/2017>

¹⁴⁹ *Madhav Hayawadanrao Hoskot vs State of Maharashtra*, AIR 1978 SC 1548

people are unable to protect and defend their rights. The right to the legal aid was considered as an inalienable element of fair procedure and it was finally ruled out that free assistance must be provided to all poor accused irrespective of the severity of the crime attributed to them, at every stage of the 3-tier justice delivery system and that could not be restricted to the trial stage only.

Need for Free Legal Aid

Legal Aid to the poor and weak person is a must for preserving the rule of law which is a necessity for the existence of the society. The poor and the unaware people who are kept in the dark and not given the justice are equal to the law and rights and are being unfair to all its citizen and as per Legal Service Authority Act anyone who fits in the following criteria is entitled for free Legal Aid:

- A member of schedule class or tribe.
- A poor man- a man whose annual income is not more than 50,000 for the cases of Supreme Court and for other courts the amount is 25,000.
- A victim of Human Trafficking or a beggar.
- Mentally or physically disabled people.
- A woman or a child
- A victim of any disaster or unwanted accident.
- An industrial workman
- One in custody including protective custody.
- A person facing a charge which will lead to imprisonment.
- And anyone who's not able to hire a lawyer for the reasons like poverty.

Role of the Legal Schools

To enhance the role of Legal Aid in India all law schools are playing a key role being it of any scale small or large. Some are not at all satisfactory but then there are some who if given a little support may become an immense help to the society. Law schools could be a great help to the society since being a student they all will gain experience and they would have all the resources like time and a nominal amount money to invest in doing good deeds like this and serving free justice will give them good confidence and manner to conduct and proper understanding of both law and need of justice. Setting up seminars, going to the masses, visiting the jails and doing the other activities which can help to bring a big change in the society and understanding its people. All the new institutions can learn from this initiative and set up free Legal Aid cells and students there are doing something for the society and its people. The Name of the institution are as follows:

- Nalsar Law University, Hyderabad- Nalsar Legal Aid Cell
- Nation Law University of India, Bangalore- Legal Service Clinic
- Chanakya National Law University, Patna- CNLU Legal Aid Society
- National Law University, Jodhpur- Centre for Legal Aid and Support Service
- National Law University, Delhi- Community for Service and Legal Aid
- Gujarat National Law University, Gandhinagar- GNLU Legal Service Committee
- West Bengal National University of Juridical Sciences, Kolkata- NUJS Legal Aid Society

Problem Faced by the Universities: The problem that are being faced by the universities are as follows:

- Lack of Participation by Students.
- The institutions, that are aware of the importance of Legal Aid Cells can motivate students that is currently lacking at the broader level.
- The major problem faced is that in majority of institutions is that the legal aid cells are given very less importance and even at some places no importance has been given to inform the community of its existence. “Some clinics do not have proper structure, place, no policy on the number of students, no workload credit given to the faculty, no academic credit given to the students and most of the activities of the cells are restricted a few literacy camps.”¹⁵⁰ One of the major reason to less growth of legal cell is that student like to create legal awareness though holding “sabhas (meetings), pamphlets, legal camps or inviting lawyers as speakers.”
- Law does not allow law students to engage in legal representation at all.

What could be done is we can initiate certain steps that could be beneficial at multiple levels:

- Legal Aid could be put as a mandatory subject for at least two years in the integrated course. It will be helpful as students would be fresh, tension free and if it’s mandatory then participation will be hundred percent.
- For Increasing participation of the students in working for the legal aid cell a high level of motivation is needed on the part of the institution. Motivation can come in the form of rewarding and recognizing their work, providing them with the facilities like proper transportation and giving them attendance on the visits regarding the Legal Aid cells. There should be a panel of approachable faculty and credits should be given to these faculties as well. They should motivate their students to participate and at times should accompany them as well but the faculty must play a nominal role but should never take the entire control in their hands. Students if not all should be given at least some authority as it is correctly said that with great authority comes the responsibility and once students realize that they are working for their nation, their university, for themselves and specially when they realize that they are working for someone who deserve justice but cannot afford justice their motivation, dedication and participation will increase.
- If all the different national law universities can come together in a single Legal aid cell clinic in which participation by universities made mandatory by CLAT committee which would result in a momentous change for Legal Aid in India with more university participation.

What can be learned from USA: I chose this country as this is one of the super powers and the major reason is that we stand next to this country that is at the second place when it comes to the number of Legal Practitioners globally. Law Schools¹⁵¹ in the United States had established Legal Aid Clinics as early as 1920 but Clinical Legal Education Gained momentum

¹⁵⁰ Avani Bansal, Clinical Legal Education As A Means To Advance Access To Justice In India (July 4, 2017), <http://www.livelaw.in/clinical-legal-education-means-advance-access-justice-india>, (15/1/2017)

¹⁵¹ Access to Justice for Marginalised People, A Study of Law School Based Legal Services Clinics (GOI and UNDP India) 2011, http://www.in.undp.org/content/dam/india/docs/a_study_of_law_school_based_legal_services_clinics.pdf (09/10/2017)

in the United States after the Civil Rights Movement and President Lyndon Johnson's war on poverty which raised National Conscience in mid-1960. Clinical Legal Education not only came onto the scenes only on the heels of the Civil Rights Movement and the war of poverty but also at the time of increasing National funding for the Legal services for the poor, virtually all of the early clinical programs in the United States operated out of Legal Aid Offices. Clinical Legal Education's primarily focused on Legal Aid, social justice, and professional responsibility began to lose some ground in the United States in the 1980s, with a fading of student interest in the public interest work. Clinical programs started providing a wide range of skills of lawyering, gained momentum and the Clinics started focusing more on skills development. However, social justice and professional responsibility remain at the heart of Clinical education in the United States. Majority of the Law schools in the United States offer Clinical Courses offering free Legal Aid to the Different Section of the society. These Clinics operates on diversified fields such as criminal defense, civil litigation, death penalty and many more. The notable feature of the Civil Clinical Program in the United States of America is that the support it received from the American Bar Association. The American Bar Association (ABA) while accrediting the Law schools, gives considerable importance to the running of the Legal Aid Clinics. American Bar Association's preference to the in-house over the externships also help them in the growth of the Legal Aid Clinics in the United States of America.

Conclusion

Considering all the presented information, I would like to conclude that legal aid in India is in a very difficult status. The urgency for a Legal Aid Department in every court cannot be stressed more. The advocates working for legal aid "**Aidvocates**" are paid by government and must be in surveillance of the court and be recognized and appreciated by everyone. They must have a decent salary which must be given to them by the government as they are working for people who can't afford advocate. Also, these Aidvocates working for the social cause must be qualified for the job and not those with a poor legal education and no adequate experience. Legal Education has improved a lot in the modern times with the Bar Council of India setting the bars high which is giving Legal Education some standards. The concept of integrated course has revolutionized the Legal Education opening the doors of Legal Education for the students of all the streams. The bar of having a cut off for admission to law colleges and entrance exams is also a good initiative. CLAT, LSAT or All India Entrance Test are such examples. In addition, all the law colleges must have a legal cell as a complimentary criterion for operating of a college and like the American Bar Association in the United States, the Bar Council of India should also have a control over the Legal Aid clinic and they should survey these Legal Aid Cells and Clinics. These clinics should have a clear policy supervised by the Bar Council of India for their operation and students as well as teachers should be given some credits for their participation in the cell. In fact, like other countries there should be professional advocates assisting the cells and clinics with full expenses covered. Legal Aid should be made a compulsory subject at least for the first two years of the college. Once it is made as a compulsory subject, students will engage with it more vigorously. Since the first year and second year students have resources like time and creativity, they are more relaxed so the dedication will be more and if some authority is given to student they would be more responsible as it is correctly said that "with great power comes great responsibility". When they are responsible their dedication towards the Legal Aid cell would increase and apart from

credit, they should be given attendance too for different activities. Legal Aid cells should be open daily and not merely on certain days covering several laws and issues. This awareness need to be done because there are still people who are not aware of their basic rights and are not given proper justice because they can't afford lawyers and therefore, *Advocates and Legal Aid cells* need to be created and Universities need to come forward with full fervor with BCI supervision and inspection annually. Such cells and clinics must be from the initiation of the University itself like at Bennett University which has its legal aid cell by the name of Bennett University Legal Aid Clinic. Law without its implementation becomes mere words. If legal aid is not incorporated in legal education and profession, then the concept of Article 39-A of Indian Constitution would be nothing more than a theory that will be hidden in the books and be of no use to those who need it. The concept of Legal Aid will exist but it won't be for any good.

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5. Legal Aid, Awareness and Education: Issues, Challenges and Solutions

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‘To mould the nation of pinnacle of best administration of justice we need to educate and makeover the best lawyers’

–Carl Jung

Introduction

‘Legal aid, awareness and education are the pillars of success of any judicial system of a State’ is a rightly said line by a lawman. It is only through the education of Law to the public and awareness of Law that the people of a State can be aided to sustain and develop the State in its true essence. Legal aid is nothing less than a provision to the people of the State for their assistance who otherwise would not afford legal service, legal representation and legal access to justice. This is just a textbook definition of legal aid and legal aid doesn’t limit itself to people who cannot afford legal services extends to various aspects like legal awareness, which is also inclusive of legal education to the people of the State. Legal awareness, in turn includes tools like Pro-bono services, ADR (Alternative Dispute Resolution) and Lok Adalat to impart the education of laws and alternative theories to justice system (other than litigation) to the people of the State. Thus legal aid is not a small subject but is indeed ‘a branch of various other leaves which connects itself to make a tree out for the people.’

Legal aid according to Just. PN Bhagwati, ‘means providing for an arrangement in society which makes the machinery of administration of justice easily accessible to people’.¹⁵² This statement by Just. Bhagwati is inclusive of the fact that the State shall promote the welfare of the public by protecting the social order justice secured in Art. 21 of the Indian Constitution, which provides for life and personal liberty to the people.

Art. 39 (A) of the Constitution also provides for free legal aid and equal justice to the people, even to the accused or prisoners as mentioned in Hussainara Khattoon vs State of Bihar, ‘if any accused or even criminal is unable to afford legal services then he a right to have free legal aid at the cost of the State and it is the utmost duty of the State to watch that the legal system promotes justice on basis of equity.’¹⁵³ Sec. 304 of the Criminal Procedure Code, 1973 also provides for the legal aid to the accused at the expense of the State if the accused is unable to afford legal aid.

Legal awareness or Public Legal Awareness (PLA) is the education or knowledge provided to people regarding issues involving Law. PLA helps to imbibe in a culture of legal consciousness and civic education among the people of the State. Professional movements were the primary source of origin through which the PLA developed. It is the people who themselves need to take the initiative of making their fellow people aware of their rights and duties through

¹⁵² Just. PN Bhagwati, <http://www.legalservicesindia.com> (01/11/2017)

¹⁵³ Hussainara Khattoon vs State of Bihar, 1979 SCR (3) 532

education of laws, as Anna-Marie Marshall rightly said, '*in order to realize their rights, people need to take the initiative to articulate them*'.¹⁵⁴ 'Legal aid works not only as an instrument of social control but also as instrument of social change which is necessary to create enlightened law abiding citizens, who are inculcated with the concept of human rights and values which is an essential intermediate for the change'.¹⁵⁵

Historical Background

Historically, legal aid has always been a neglected area in the Indian justice system, yet there have been some powerful movements and persons who have contributed immensely for the social welfare of the people at large in terms of legal aid and education. From a global perspective, legal aid has played a significant role in field of social and cultural rights with regard to social, economic and personal autonomy and dignity. Jurists like Mauro Cappelletti have always spoken in favor of legal enforcement of cultural and social rights for the welfare of the people. The views of people during that period of time (second half of 20th century) were developed majorly with respect to capitalist democracies and thus established a liberal welfare state that by and large focused on individual and not on community or collective growth.

Prior to the 20th century, this wasn't the case, people emphasized on collective enforcement of cultural and social rights. The classic welfare states were built on an underlying principle which states that people had collective and social responsibility for the enforcement of cultural and economic rights and the State assumed the duty for the people who were unable to afford the enforcement of these cultural rights, which were inclusive of concepts like legal aid and education. This collective enforcement resulted in enactment of laws through policies and not through individual personal action. Though the State assumed the obligation of educating people upon themselves, on a primary stage it was restricted only towards personal and family laws.

By the 1960's the role of welfare state changed to individualism rather than the conventional ideology of collectivism and collective goal, as individuals were allowed to pursue their own goals. By the 70's the demand for the social and economic rights rose drastically and mechanisms started developing through which people could enforce their social rights and jurists who believed in welfare state started applying the concepts of legal aid to advise people who could not afford the same and thus legal aid and education was extended from family and personal laws two wide number of other subjects.

By the 90's people discarded the concept of welfare state as positive and replaced that with private entities. Legal aid was provided only by way of the private entities to the people where they must choose among the facilities provided to them by the corporations rather than the concept of collective good used by the welfare state during the 19th century, which is still regarded as the Golden Period for the progress of legal education in the world. The people by the end of 20th century were dissatisfied by the 'services' provided by the private corporations

¹⁵⁴ Marshall, Anna-Marie, 'Idle Rights: Employees' Right Consciousness and the Construction of Sexual Harassment Policies', *Law and Society Review*, 39(1): pp.83-124

¹⁵⁵ S. Sethiya, "Legal Education: A Need for Streamlining", *1 AIR (Journal) 1* (2008)

as they believed in providing advice to the people of the State whereas the expectation of people was to get justice and knowledge. States again began to emphasize more on private enforcement of social and cultural rights, rather than collective enforcement which led to tension among the people as private corporations did not provide the services free of cost to people, they in fact charged a specific amount of people from the people of the State to provide for such service. The private corporations started creating a business out of the enforcement of social rights in ambush of 'service' and people who could not afford such services were left stranded as they had no option but to succumb to injustice being prevailed upon them.

The earliest source of legal aid movement can be traced back to 1851 in France when some enactment was introduced in the country for providing legal assistance to the indigent. The movement for Great Britain can be tracked back down to 1944 when Lord Viscount appointed the Rushcliffe Committee to enquire about the facilities in England for providing legal aid to the poor.

Gradually, by the start of 21st century, the situation eased up and the State started recognizing legal aid and education as important requirements of the citizens and again started providing it free of cost through different social means. Also the concept was changed from social service to social aid as it was provided free of cost to the people who couldn't afford it.

Current Indian Scenario

Art. 39 (A) of the Indian Constitution provides for equal justice and free legal aid to its citizens who cannot afford such aid. The Article states that it is an 'inalienable' element of 'reasonable' and 'just' procedure which cannot deprive people of the basic opportunity of securing social justice. The Code for Civil Procedure 1908 in Order XXXIII. R.18 states that '*the state and the central government 'may' make supplementary provision for providing legal service to those permitted as indigent person.*'¹⁵⁶ It is through the amendment in the Civil Procedure Code that the concept of Lok Adalats have been introduced (which will be discussed later in the essay).

Since 1952, the GOI has started addressing the dire need of free legal aid for the poor in various Law Commissions and conferences. Different legal aid boards, societies and departments played a crucial role in enforcement of these social rights to the poor people of the nation. The Chairmanship under Honorable Just. PN Bhagwati supervised the legal aid programs throughout the country for the efficient allocation of these rights. Just. VR Krishna Iyer too plays a crucial role in enactment of these rights and providing legal aid to the poor and the needy. Iyer believed, '*people in need must be provided the legal aid to them in any dire situation at the expense of the state*'¹⁵⁷ and was also in favor of the collective good system prevalent earlier. The judiciary has played a great role in securing the legal aid enforcement for the people who cannot afford. It has given some landmark judgments regarding legal aid and education for the people. In the landmark case of Hussainara Khatoon vs Home Secretary, State of Bihar, the judgment stated that the GOI should start framing appropriate schemes and policies for providing legal aid and education to the poor as these people don't have the knowledge nor

¹⁵⁶ Bare Act, Code for Civil Procedure, 1908

¹⁵⁷ Just, VR Krishna Iyer, 'Processional Justice to Poor', Indian Law Review

the resources to approach the Court. The observations made by the Court were, *'there is a dire need to introduce a dynamic and comprehensive legal aid mechanism. The poor, since Independence, have been on the other side of the law. The law is regarded as mysterious and not as an assertive and assistive social device to them. It has always come across as 'law for the poor' than 'law of the poor'. It is thus necessary that we inculcate equality of justice into legality and it can be done only by introducing a dynamic legal scheme.'*¹⁵⁸

In another SC case of State of Haryana vs Smt. Darshana Devi, it was observed that there is still no proper enforcement of the law regarding the legal aid to the poor even after several years of the enactment of law, as mentioned in the judgment, *'it seems as yet framed rules in Order XXXIII Rule 9-A of the Civil Procedure Code, haven't been given enforcement by the authorities, although several years have passed since the enactment. The Parliament is stultified and the people are frustrated. Even after a law has been passed and the State does not bring that into effect and force, it is a willful default on the part of the Government It is the duty of every department of Government to obey the Rule of Law and uphold the trust of the citizens with the law.'*¹⁵⁹

Legal and Constitutional Recognition

The provisions regarding the legal aid, education and awareness for the poor have been recognized both legally and constitutionally by the Indian State. Art. 21 and 39A provide for free legal aid to the poor and needy. Art 21 of the Indian Constitution deals with the protection of life and personal liberty, which any person cannot be deprived of except according to the procedure established by law. Art. 21 also regards legal aid as a constitutional right in some of its aspects. Art 39A provides for equal justice and free legal aid. It states that no person shall be denied of Justice or legal aid, even by reason of economic or other disabilities.

*'Art.21 of Indian Constitution is a fundamental right conferred upon under Part III whereas Art. 39A is a Directive Principle of State Policy conferred upon on the people under Part IV of the Constitution'*¹⁶⁰ as held in the SC case of Chandra Bhawan Boarding and Lodging, Bangalore vs. State of Mysore. Sec. 2 (1) (c) of the Legal Services Authority Act, 1987, also provides for *'legal service which includes affordable legal services to the lower sections of the society.'*¹⁶¹

The Legal Services Authority Act, 1987 also defines the category of person who are eligible for legal aid under the said act under Sec. 12 of the act:-

'Every person who has to file or defend a case shall be entitled to legal service under the Act if that person is-

- a) Member of SC and ST,*
- b) A women or a child,*
- c) A victim of trafficking or a beggar as defined under Art. 23 of the Indian Constitution,*
- d) A person with disability as defined in Clause (i) of Sec. 2 of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.*

¹⁵⁸ Supra Note 153

¹⁵⁹ State of Haryana vs Smt. Darshana Devi, AIR 1979 SC 855

¹⁶⁰ Chandra Bhawan Boarding and Lodging, Bangalore vs. State of Mysore, AIR 1970 SC 2042

¹⁶¹ Legal services India, <http://www.legalservicesindia.com/article/article/right-to-free-legal-aid-1176-1.html> (02/11/2017)

- e) *a person under circumstances to the underserved want such as being a victim of mass disaster, ethnic violence, flood, drought, earthquake or industrial disaster; or in custody including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a juvenile home in accordance with the meaning of clause (j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986), or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987; and in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government.*¹⁶²

According to Sec. 304 of the Civil Procedure Code, 1973, *'there is a 'constitutional' duty to provide legal aid to the accused, if he can't afford before, he is produced before the Magistrate for the first time.*¹⁶³

As for the global world, provision of legal aid is reserved under Art. 6.3 of the European Convention on Human Rights for the citizens who can't afford such services. Such citizens will be assisted by legal associates for free or at a nominal cost.

Efforts made by the State

The State, Government and Private entities have made a huge and significant contribution for the successful implementation, enforcement and improvement of legal aid, awareness and education towards needy and poor people. All these entities believe that it is not only through their intervention that the scenario can be changed but there has to be intervention and help from the people itself, so it is because of this reason that students, universities, jurists, lawyers, legal associates and other people have intervened and mingled with the State to provide legal aid, education and awareness to the people through their efforts for their own people.

The below addressed methods through which legal aid and awareness can be passed onto people have been described by the people as tools for the successful implementation of the laws and acts for the legal aid and awareness among people. The tools for the successful implementation of legal awareness are as follows:-

Pro Bono Help

This is possibly the cheapest and the most effective way through which people can be made aware of their rights and be provided with legal aid. Pro Bono comes from a Latin expression '*publico*' which means '*for the public good*'. This is a system where lawyers and legal professionals provide their advice and professional support to the poor and underprivileged who cannot afford their services for free of cost. Objective of such Pro Bono legal service is to encourage people to participate in the process of law and it is only through their intervention that laws can be changed or amended. The subsidiary goal of such organizations which provide pro bono service is also to make people aware of laws and provide them legal awareness. Pro Bono India is one such organization which does these stuffs to keep the people activated to participate in the process of law.

¹⁶² Ibid

¹⁶³ *Khatri II v State of Bihar*, (1981) 1 SCC

Tele Law

Tele Law is one such initiative started by the State Legal Services Authorities (SLSA) which aims at facilitating legal advice through an expert of panel. The project connect lawyers with its clients through video conferencing as for people who cannot afford to go the chambers to seek help from lawyers. This is such an initiative that basically helps to connect clients from different areas to lawyers to provide them with justice and equality from any corner of the country. The also provide free legal help to people who cannot afford such services though the fees for such service is also very nominal.

Nyaya Mitra Scheme

The Nyaya Mitra Scheme is another initiative which aims at reducing the pendency of cases in the Indian courts with a special focus of cases extending more than 10 years. This kind of aid helps people to trust judiciary in imparting justice through speedy trial and can help people gain the old trust that is somewhere lost in the hustle-bustle of cases. Another aim of this scheme is to provide free service to people who cannot afford this service as it is started by the Government of India and is sponsored by the same.

Lok Adalat

As discussed earlier, legal aid does not only include legal education but also legal awareness and the tools of legal awareness also helps to attain legal aid for the people of the State. 'Legal aid has manifold facets.'¹⁶⁴ Lok Adalats are bodies set up the GOI under the National Legal Services Authority Act, 1987 for the peaceful resolution of disputes or settling up of disputes between the litigating parties. The Lok Adalat can solve all matters except the criminal matters, which are non-compoundable. It has powers just like an ordinary civil court of a nation, yet the parties cannot appeal against such other, unlike an ordinary civil court. The most important objective for setting up of a Lok Adalat is to provide fair justice and legal aid to the people as it does not charge fees from the clients and discourages the same.

A Delhi High Court case of Abdul Hassan Vs. Delhi Vidyut Board emphasized on the fact that, '*Article 39A states that the system should provide free legal aid to ensure such that equitable justice is not denied to any citizen of the nation by means of financial or other disabilities. It is in regards to this context that the Parliament enacted the Legal Services Authority (LSA) Act, 1987. Of all the aims of the Act, one such is to organize Lok Adalat to secure that the operation and administration of legal system promotes justice on the basis of an equal opportunities. Such institutions go a mile in resolving the dispute at almost no litigation cost (transaction cost in terms of Coase) and with minimum delay. The LSA Act is a legislative attempt to reduce the burden of backlog of cases*'¹⁶⁵

The concept of Lok Adalats are thus very helpful for people who crave for legal aid as it aims to provide legal aid and awareness through it objectives and also helps in resolving disputes in a situation where the Indian Courts are filled with cases and there is no other solution that '*alternative dispute resolution*' for the settling of these claims.

¹⁶⁴ Supra Note 161

¹⁶⁵ Abdul Hassan Vs. Delhi Vidyut Board, AIR 1999 Del 88

Alternative Dispute Resolution

The ADR (Alternative Dispute Resolution) movement goes a long way to ensure legal aid and awareness among people by addressing litigation disputes from an alternative method. It is a method through which parties settle dispute with the help of a third party. The existence of ADR in India can be traced back to the Arbitration Act, 1940. *'The Sec. 89 (1) of the Civil Procedure Code also provides for an option of settlement of disputes outside the judicial courts.'*¹⁶⁶ The ADR movement has broadly three facets, namely Arbitration, Mediation and Conciliation.

Arbitration	Mediation	Conciliation
a) Arbitration is a dispute resolution process wherein a third impartial party is allotted to study and examine the dispute and hear both the parties to arrive at a binding decision.	a) Mediation is voluntary, structure and short term process wherein a mediator helps to settle disputes through negotiations and agreements.	a) Conciliation is a method of ADR wherein settlement is arrived at by negotiations with the help of an independent person known as the conciliator.
b) An arbitrator has the power and authority to enforce or bind his decision at the disputing parties.	b) A mediator, though strong enough than a conciliator, still doesn't have the authority or power to enforce a decision at the disputing parties.	b) A conciliator, is the weakest among the three negotiators and doesn't have the power to enforce his decision at the parties. His decision can be only be implemented at the will of the parties.
c) An arbitrator helps to settle not only the existing disputes between the parties but also helps to come to a solution for a potential dispute.	c) A mediator, just like a conciliator just helps to settle existing disputes and not potential disputes.	c) A conciliator, helps to settle only the existing disputes and not the future inaccuracies that might arrive because of the decision agreed upon.
d) The decision of an arbitrator is known as an ' <i>award</i> '.	d) The decision of a mediator is known as a ' <i>settlement</i> '.	d) The decision of a conciliator is known as a ' <i>negotiation</i> '.
e) There has to be a pre-agreement in writing in case of arbitration with the consent of parties so that the decision is	e) There is no need for a pre-written agreement form as	e) In the case of conciliation as well there is no need for

¹⁶⁶ Ibid

<p>enforced at the disputing parties with the help of expertise of the arbitrator and his intermediary team.</p> <p>f) An arbitrator helps to come at a potential solution of an existing problem with the help of his expertise and tries to bridge the gap between the disputing parties that has been created due to the dispute.</p>	<p>the decision of a mediator is not binding over the parties and the parties can ahead with their own solution for the problem as well.</p> <p>f) A mediator generally acts as neutral and works out to compromise formulae and generally doesn't help a lot in bridging gap between the disputing parties as his sole job is to act as a mediator and help settle the job.</p>	<p>pre-agreement as the decision of a conciliator is also not binding at the disputing parties.</p> <p>f) A conciliator, on the other hand, plays an active part in bridging the gulf between the parties as he tries to come at a compromise by allowing the parties to forget the animosities between them and work out at peaceful solution</p>
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Clinical Legal Education (CLE)

CLE is a progressive educational pedagogy implemented by schools and law universities which involve real-life interactions with the poor people, understanding their problem and providing pro-bono services to the people in need. It is through this method that different law schools like NLSIU Bangalore, NLIU Bhopal, NALSAR Hyderabad, RGNUL Punjab, Auro University, OP Jindal Global Law School, ICAFI Dehradun conduct different activities like conferences on legal aid, legal training and also have their own legal aid and community development cell. The Legal Aid and Community Development Cell (LACD) at the Auro University, Surat is an interesting approach towards legal aid to people in village and needy people as the Cell helps the people in the village of Bhatpore to file cases against domestic violence at the district level courts and also helps them to get aware of their rights. The LACD also helps such people get legal education and awareness at free of cost which helps them to develop the legal network among people because they believe in the ideology, '*legal awareness among students is the need of the hour*'.¹⁶⁷

Comparison of Legal Aid Progress in India with Foreign Countries

Though the concept of legal aid and awareness was implemented and understood in India some 150 years ago, way before its foreign allies have understood them, yet India hasn't been able to enforce and execute the same well as have by her foreign counterparts. The major reason for this is that major foreign countries like US, Australia or UK don't have a major

¹⁶⁷ The Hindu, <http://www.thehindu.com/news/national/andhra-pradesh/legal-awareness-among-students-need-of-the-hour/article8328928.ece> (05/11/2017)

backlog of court cases as in India as it is therefore of this reason that ADR movements have been introduced in India.

‘The Australian ADR movement a lot in the last 30 year inspired by luminaries such as Sir Laurence Street and many other great leaders in the field. It has received the support of Attorneys-General from both sides of politics such as Lavarch and Ruddock. The shift towards ADR has been like an ongoing wave, not just in family law and workplace disputes but also within industries like franchising, horticulture, banking and insurance, telecommunications, retail and residential tenancies. Lawyers are undertaking mediation training in increasing numbers than in other countries.’¹⁶⁸

In countries like France, *‘the first manifestation of legal aid was provided way back in 1851 when legislation was passed for providing free legal aid and has since then has been successfully implemented. Free legal aid in France is provided through the principle of ‘avocat commis d office’ or court appointed lawyer¹⁶⁹ which has the power equivalent to an American lawyer.*

The concept of legal aid was introduced in the United States due to the landmark judgment of Gideon v. Wainwright. A public defender is employed by the State in US, to represent those with a charge of crime and who cannot afford to pay. This office of work is maintained by the State and the Federal Government. The remuneration to the lawyers provided is also adequate enough for them. Under Art. 6 of the Human Rights European Convention, as discussed earlier, *‘every accused has right to defend himself with assistance of a lawyer, for free if he cannot afford.’¹⁷⁰*

The ADR and other legal aid and awareness movements has really come a long way in countries like US, UK and Australia whereas India still need to come to terms with some long-term issues so that the programs can be successfully implemented and the success can be reaped through those efforts.

Issues and Challenges with the Legal Aid Movement in India

The Indian movement of the legal aid, education and awareness hasn’t come a long way just like the Australian or American movements have over the decades because of the issues lingering with the movements.

General lack of awareness: The masses in India are generally lacking in the concept of legal awareness and legal education and some of the people are not even interested in getting some. The fundamental reason behind this general lack of awareness regarding legal aid and awareness is because the education regarding laws is rarely given at school level (secondary or higher secondary) in India. The only form of education regarding legal awareness is given only at a formal level during professional level graduate courses like LLB or LL.M. It is majorly because of this lack of general awareness regarding laws that people are being exploited in the nation and they don’t have the weapons (in laws) to fight the people who are exploiting them. It is not that the State hasn’t started a drive regarding the awareness of laws but the people

¹⁶⁸ Karl Manning, Tom Stodulka, ‘ADR Challenges for the Legal Profession’

¹⁶⁹ Ajay Verma, ‘India’s Legal Aid System: Issues and Challenges’, <https://indialawnews.org/2010/03/01/indias-legal-aid-system-issues-and-challenges-2> (08/11/2017)

¹⁷⁰ Ibid

themselves are least interested in knowing or participating for the same. It is up to the people to participate in drives such as Lok Adalats, university conferences regarding legal aid etc. to make this movement a strong one in the nation. It is only through the people that the real change will be brought forth regarding the condition of legal aid movement in the country. It is therefore right said that, *'people at war with themselves will always cause damage in lives of people around them.'*¹⁷¹

No proper enforcement of cultural and social rights: Though the law regarding legal aid and awareness for the poor has been established since 150 years in India yet there has been no proper enforcement, implementation or follow-up of the social and cultural rights, which contains provisions regarding legal aid and education for the people who cannot afford the same. There have been several amendments passed in some landmark cases regarding the follow-up of law for the legal aid of the poor, yet the poor people strive to get an opportunity to fair justice, which is their basic fundamental principle of justice. Justices like PN Bhagwati and VR Krishna Iyer played an incredible role in raising awareness among people about legal aid through their judgments yet there has been some shortcoming as a movement can't be sustained with the help of just or two persons, there has to be a collective effort from the people of the nation themselves to enforce the proper implementation of the laws. As mentioned in the historical background of the movement, there has to be a collective or group enforcement of laws and acts regarding legal aid for the poor as it can help them get those people attain their basic principle of justice.

Incompetent judicial system: It may not be wrong to state that the Indian judicial system consisting of jurists like lawyers and judges is incompetent to deliver justice to the people who cannot afford to have legal aid. The major flaw of the Indian judicial system is that they are lacking in obtaining required number of lawyers and judges to clear the backlog of cases, such that the people have to resolve to the ADR movements to help them get justice. Such people have started to lose trust in the Indian judicial body and it is the duty of a lawmen to regain that trust back into people's heart that the judiciary can still successfully provide justice to the people. The Indian judiciary must set an example (as a precedent) to show to its people that the judiciary is still out there to deliver justice to its people, the sole function for which it was construed, and that people can regain their trust back to their judiciary. It is because of this reason that in India, *'the poor man looks at law as a foe, rather than a friend.'*¹⁷²

Lack of motivation among jurists: There is clearly a lack of motivation among the lawyers and judges in the nation to deliver justice to the poor people who cannot afford the same. *'The amount of remuneration paid to the lawyers is far less than paid to their foreign counterparts for fighting cases for the poor people (as pro bono's). Sometimes, the remuneration is low that the lawyers are not even able to meet their incidental expenses.'*¹⁷³ There is surely a lack of motivation in the form of monetary remuneration for lawyers and judges that even if they want to fight for the justice of the poor people and they cannot because they themselves cannot afford it. In such a situation, it is the role of the State to intervene and see to it that the jurists are satisfied or not as, 'both advocates

¹⁷¹ John Mark Green, https://www.goodreads.com/author/quotes/14757808.John_Mark_Green (05/11/2017)

¹⁷² Robert Kennedy, Attorney General, Law Day Speech, May 1, 1964

¹⁷³ Supra Note 169

and judges have an equal responsibility towards the society.¹⁷⁴ The American and French Government have done the participation of motivation very well for their countries and as result these countries are far-fetched to provide for legal aid of the poor people when compared to India.

Confidentiality, Privacy and Power Imbalances: The issues of legal aid and awareness movement are not restricted to just fundamental or structural flaws but also to supplementary flaws as well. There is a lot of hue and cry regarding maintaining confidentiality and privacy when to it comes to Alternative Dispute Resolution. As the ADR movement is still growing, there are a lot of providers which provide fraudulent services and leak privacy details of the person in the public or misuse them. There are also claims for power imbalances within the ADR system as sometimes, arbitrators or mediators claim to be process managers and then act as tyrants and try to enforce their decision over the parties. People claim that mediators do not be ‘neutral in process of mediation and claim to be autocrats and influence their personal decision which is full of prejudice over the efficient decision.’¹⁷⁵

Solution for the Issues

There can be end number of different and alternative solutions for the above mentioned problems (like ADR) but the most basic and fundamental solution towards these problems would be a successful implementation and enforcement of the law regarding the legal aid for the poor in India. There has to be a ‘collective-good’ enforcement of the social and cultural rights regarding the poor in India. The concept has to be based on the principle of ‘collective good’. As seen through the historical portfolio of the legal aid movement, whenever the enforcement of social and cultural rights is based on the ‘collective-good’ theory, i.e. for the collective welfare of all the poor and needy people, the movements have made a lasting effect. But currently in India the movement is by and large based either on profit-motive or isn’t progressed all along due to a lack of motivation in the form of monetary remuneration for the jurists.

After solving the fundamental issue of proper enforcement of the social and cultural rights for the legal aid of the poor, the next step comes is to increase the motivation among jurists by providing them an increase in their monetary remuneration for fighting pro-bono cases by the State. The State has to play an increasing role in the process for revival of the legal aid movement in India. The State must introduce schemes or some other kind of incentive motivation to attract people (lawmen) to participate in the process of legal aid movement so as to clear the backlog of cases pending in the Indian judiciary as well as to provide competence to the judiciary by regaining trust among the people with the help of participation.

The State must again intervene to see to the issues regarding confidentiality and privacy of the ADR movements as ADR movements in India play a great role because the Indian judiciary hasn’t been able to give the desired result to the people by solving or clearing the backlog of cases pending the courts. Also, there is a need to focus on the fact that the cases that have to

¹⁷⁴ Just. KG Balakrishnan, <http://www.legalservicesindia.com/article/article/right-to-free-legal-aid-1176-1.html> (10/11/2017)

¹⁷⁵ Dianne Murphy, ‘Raising Awareness of Regulatory, Legal and Ethical Issues’, US Food and Drug Administration

be solved must be done with the motive providing justice to the poor people who don't necessarily get justice at the hands of the judiciary in the nation.

All-in-all, it is only through the State's intervention that the country can revive its already downtrodden legal aid, education and awareness movement as, *'it is the duty of every department of Government to obey the rule of law and regain the trust of the citizens with the Constitution by making rules to effectuate the legislation of those who cannot afford such services.'*¹⁷⁶

Conclusion

Legal aid, awareness and education, is the most fundamental and important part of a person's life and if he is deprived of it then there is no worth in creating a successful judiciary for any nation. Each and every person in this country, not only deserves but also has the right to claim for legal aid and awareness from the State and if State doesn't provide for that then the State is not performing its obligation well towards its citizens. Poor people, though don't have money, but one thing that they have is the right to have free legal aid, education and awareness and not to be treated as denizens, as described by Aristotle in his famous political works. For the rights of these people, who are not denizens but citizens of our nation, it is the now not only the duty of the people to ensure them the status of a citizen, but also of the State to provide them with the right of being a citizen by proper and structural enforcement of social and cultural rights regarding legal aid, awareness and education in India. As said by Aristotle in one of his Greek works, *'poverty is the parent of revolution and crime'*, the burden is now upon the State to see to it that this legal aid movement for the people lands up as a crime for the nation or a revolution.

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Brief About Author



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6. Legal Aid: Challenges and Recommendations

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“The poor man looks upon the law as an enemy, not as a friend. For him, the law is always taking something away.”

-Robert Kennedy

Introduction: From Legal Aid to Legal Resources

During the 1960s and 1970s, Asia witnessed a significant expansion of legal aid programs sponsored by government, professional or social work agencies. Legal aid in developing countries has had its roots in the tradition that it is the responsibility of the legal profession to provide legal services to all, regardless of financial position. In most Asian countries during the years after independence there began to emerge a new interest in legal aid as an instrument for achieving distributive justice. This interest responded to growing political and social pressures within these countries for a more egalitarian as well as a more prosperous society. However, legal aid movements in Asia seemed, initially, unwilling to shift from a conventional jurisprudential rationale based on ‘equality’ to a more socially significant and more radical in terms of political economy.¹⁷⁷

In India, legal activists have moved from a concept of legal aid through a concept of legal services (emphasizing law and lawyers as needing to be in the service of the poor) to a concept of legal resources (emphasizing law as a resource in the empowerment of the impoverished). The legal resources approach differs in many ways from conventional notions of legal aid delivered by professionals.

Legal aid programs designed and operated entirely by professional lawyers are limited to the provision of a narrow range of largely court-centered services to individuals (rather than to groups and collective needs). These programs (created and managed *ex parte* by elites) usually ‘deliver legal aid’ on a charitable, handout basis. Where legal services are controlled and allocated by legal professionals, programs to provide this help typically reflect ‘top-down’ efforts, managed by elites, to help the poor for purposes and by means which are defined by the professionals-to meet needs to be prioritized by those who control the program. The legal aid approach may provide access to the law but it seldom encourages people to seek access to justice through law. The legal resources approach encourages people to seek both, if necessary, by helping them to understand their existing rights under the law and by helping them to devise their own strategies to bring about reform of unjust or inadequate laws. The legal resources approach emphasizes concepts of legal self-reliance, de-professionalization, and interest-group advocacy.

¹⁷⁷ J. Clarence Dias, *Legal Aid in Asia: A Basic Human Right*, 1985 *Third World Legal Stud.* 89, 90 (1985)

In India, legal aid has come to be viewed as providing much more than just one's day in court. We, in India, have been developing unique approaches to legal aid which link legal aid intimately with both justice and human development. Legal aid is no longer a matter of benign paternalism in India; it has emerged as a human right and as well as a fundamental right which is not only being increasingly claimed and asserted but also increasingly realized. Indeed, legal aid may well prove to be the harbinger of a legal revolution accompanying and assisting major social transformation towards a just and humane society.¹⁷⁸

Keeping this in view the essay shall discuss the concept of legal aid, the need for legal awareness, issues, and challenges in providing legal aid along with recommendations and suggestions of various authorities. In between, the essay shall discuss the development of the concept of legal aid in India.

Legal Aid: The Concept

Legal Aid implies providing free legal services to the needy and poor who cannot afford the lawyer's services for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. "Court fees if seriously restricts the right of a person to seek his remedies in courts of justice should be strictly construed...where there is doubt, reasonable of course, the benefit must go to him who says that, 'lesser court fee alone needs to be paid'."¹⁷⁹ Legal Aid is the method adopted to ensure that no one is deprived of professional advice and help because of lack of funds. The expression 'legal aid' has not been defined anywhere in Legal Services Authorities Act, 1987 but it is defined that; "Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system."

Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. Therefore, the central object is to provide equal justice made available to the downtrodden, poor and weaker section of society. Legal aid includes legal advice, assistance, education, representation, and mechanisms for alternate dispute resolutions so as to develop and maintain a just and fair legal system. The real question is how to make legal aid more responsive to the needs of the poor and ensure adequate protection of their rights.¹⁸⁰ It requires concerted efforts at several levels by the media, government, civil society, judiciary and legal academia to promote legal awareness as a vehicle for the promotion of justice.¹⁸¹

Legal Awareness: The Need

Ignorance of the law is a major cause of perpetuation of injustice. Citizens are subjected to exploitation due to their lack of knowledge about the law and their legal rights. Additionally, the poor and down-trodden are largely excluded from the legal system as they have no means to secure the help of lawyers and access legal institutions.

¹⁷⁸ Ibid

¹⁷⁹ D.D. Basu, *Commentary on the Constitution of India*, 4098, (8th ed.2008)

¹⁸⁰ Srikrishna Deva Rao, *Paralegal Education in India: Problems and Prospects*, J. Nat'l L. U. Delhi 94, 98 (2013)

¹⁸¹ Ibid

Anoop Kumar, a researcher of Legal Literacy Mission, stated in his study¹⁸²,

The legislature of the state and the parliament, while enacting the legislation, consider the objectives of it. But due to lack of awareness of beneficiaries, most of the legislation are ineffective at the stage of their execution.

This situation is made even worse by the fact that the traditional forms of dispute settlement by caste *panchayats* and the like tend to systematically disadvantage vulnerable groups. At the same time, the privileged sections of society use the law to their own advantage and in many instances stall the implementation of the spirit of the law.¹⁸³ This brings to light the need for legal awareness. Legal awareness is Public legal education. It is the empowerment of individuals regarding issues involving the law.¹⁸⁴ It also helps in promoting consciousness of legal culture, participation in the formation of laws and the rule of law.¹⁸⁵ Awareness activities in order to make people aware of their rights and about the role, activities and functioning of the legal services institutions are made by NALSA along with other Legal Services Institutions.

Evolution of Legal Aid Movement in India

Before we towards the evolution of Legal Aid Movement in India, it may be more relevant to refer the decision of U.S. Supreme Court in *Raymond Hami*¹⁸⁶, which has extended the processual facet of poverty jurisprudence, J. Douglas., has explicated as under the right to be heard, if it did not comprehend the right to be heard by counsel would be, in many cases be of little avail. Also, everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted by the Constitution or by law.¹⁸⁷ Article 8 of the International Covenant on Civil and Political Rights guarantees to everyone the right to be tried in his presence, to defend himself in person or through legal assistance of his own choosing, to be informed if he does not have legal assistance, etc. without payment by him. Legal aid is a basic human right and integral to the ‘right to life and personal liberty’ provided in the Indian Constitution.¹⁸⁸ However, the genesis of free legal aid in India could be traced back to 42nd Constitutional Amendment Act, 1976, which introduced Art. 39A¹⁸⁹ to the Indian Constitution. The framers of the Constitution elaborated this guarantee in the body of their Work that the State shall not deny to any person equality before the law and the equal protection of the laws within the territory of India,¹⁹⁰ and also no arrested person shall be denied the right to consult, and be defended by, a legal practitioner of his choice¹⁹¹.

¹⁸² Anoop Kumar, Social science research network National Legal Literacy Mission - An Evaluative Analysis, S.S.R.N., doi:10.2139/ssrn.2240008

¹⁸³ Srikrishna Deva Rao, Paralegal Education in India: Problems and Prospects, J. Nat'l L. U. Delhi 94, 95 (2013)

¹⁸⁴ Archie Zariski, What is legal literacy? Examining the concept and objectives of legal literacy 5 (2011)

¹⁸⁵ Ashok Swain & Ramses Amer Globalization and Challenges to Building Peace 3 (2007)

¹⁸⁶ 32 Led. 2d. 530 (535)

¹⁸⁷ International Covenant on Civil and Political Rights, art. 8 (1966)

¹⁸⁸ Constitution of India, art. 21 (1950)

¹⁸⁹ Equal Justice And Free Legal Aid - The 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 disabilities

¹⁹⁰ Constitution of India, art. 12 (1950)

¹⁹¹ Constitution of India, art. 22 (1950)

This was the position prior to the enactment of Article 39A in 1976. Article 39A was introduced in the constitution of India as a result of deep concern shown by the Prime Minister, *Mrs. Indira Gandhi* when she made legal aid one of the signal programmes in her anti-poverty campaign.¹⁹² Thus was legislatively formalized a humanitarian concept that has long underlaid the theory, but not the practice of the administration of justice in India.¹⁹³ The country has a long tradition of expressed, but not demonstrated, concern for the legal needs of its sizeable indigent population, according to *Stuart Lemle* in his study on '*The Indian War on Poverty through Legal Action: The Legal Aid Experience*'.¹⁹⁴

The Code of Criminal Procedure and the Code of Civil Procedure also contain provisions in relation to the free legal aid. Order 33 of the Civil Procedure Code provides in respect of the suit by an indigent person. On the application to sue as an indigent person is being granted the plaintiff shall not be liable to pay court fee and in case he is not represented by a pleader, the Court may, as per the circumstances, assign a pleader to him.¹⁹⁵ This benefit has now been extended to the dependent of such person also. As per Section 304 of the Criminal Procedure Code, wherein a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader; the Court shall assign a pleader for his defense at the expense of the State.¹⁹⁶

It is revealed from the year 1952; the Indian Government had started addressing the question of legal aid for the poor in various Conferences of Law Ministers and Law Commissions.¹⁹⁷ In 1960, certain guidelines were issued by the Government in regard to legal aid schemes. In many States, legal aid sachems were floated through Legal Aid Boards, Societies and Law Departments.

In 1980, a national level Committee under the Chairmanship of *Mr. Justice P.N. Bhagwati*, was constituted to oversee and supervise legal aid programmes throughout the country. This committee came to be known as *Committee for Implementing Legal Aid Schemes* (CILAS) and started monitoring legal aid activities throughout the country. Subsequently, on a review of the working of the Committee, certain deficiencies were noticed and it was thought to constitute statutory legal services authorities at the National, State and District levels so as to provide for the effective monitoring of legal aid programmes.¹⁹⁸

Legal Services Authorities Act was enacted in 1987 and successfully gave a statutory base to legal aid programmes throughout the country on a uniform pattern. It gave effective shape to Article 39-A of the Constitution. *Mr. Justice R .N. Misra*, the then Chief Justice of India, had played a key role in the enforcement of the Act. The Patron-in-Chief is the Chief Justice of India and Executive Chairman of the Authority is the senior most Hon'ble Judge of Supreme Court of India. In carrying out its responsibilities, NALSA works in close coordination with

¹⁹² Lalit Bhasin, Legal Aid in the Eighties – What Priorities - The Indian Scene, 9 Int'l Legal Prac. 102, 102 (1984)

¹⁹³ Lalit Bhasin, Legal Aid in the Eighties – What Priorities - The Indian Scene, 6 Int'l Legal Prac. 47, 47 (1981)

¹⁹⁴ Ibid

¹⁹⁵ Civil Procedure Code, Order 33 (1908)

¹⁹⁶ Criminal Procedure Code, Section 304 (1973)

¹⁹⁷ Justice T.Mathivanan, Legal Aid Issues, Challenges And Solutions- An Empirical Study 31

¹⁹⁸ Ibid

the various State Legal Services Authorities, District Legal Services Authorities and other agencies.

Although the free legal aid was recognized by the Court as a fundamental right under Article 21, the scope and ambit of the right were not made clear. This left out was filled in *Sunil Batra v. Delhi Administration*¹⁹⁹ It was held that; the legal aid shall be available to the prisoner in two situations: to seek justice from prison the authorities, and to challenge the decision of such authorities before the Court.

The introduction of *Lok Adalats* added new pages to the justice dispensation system of this country and succeeded in providing a supplementary forum of the litigants to the conciliatory settlement of their disputes. The Committee so appointed has also evolved a model scheme for legal aid programmes.

Though legal aid and support was declared as an aspiration of the Indian Constitution but was given a statutory footing only in 1987. The emphasis on 'court-centered legal services' can be traced back to 1958 when the Law Commission of India recommended that courts should enact rules to render legal aid.²⁰⁰ As a consequence, important provisions were added to procedural laws.

The legal aid movement in India received a great fillip due to two reports. The first report by the Expert Committee on Legal Aid under the chairmanship of *Justice V R Krishna Iyer* recommended creating legal aid programmes through a network of legal aid groups including law schools.²⁰¹ The 1977 report by *Justice P N Bhagwati* urged law schools to participate in building legal aid clinics and recommended the introduction of legal aid related subjects, such as law and poverty and law and society, into the curriculum. The report also recommended the provision of academic support to law school clinics.²⁰²

India witnessed its first real upsurge of legal activism in 1977 after the resurgence of democratic liberalism in order to “regain the legitimacy forfeited partially during the emergency”.²⁰³ This activism was also based on the principle of equal justice which requires that the State has the responsibility to provide access to legal advice and assistance in case of poor and indigent people.²⁰⁴ The real emergence of legal activism was initiated through 'social action litigation' which inaugurated a new range of themes on which public discourse on the ethics of practices of power emerged.²⁰⁵ Social action litigation is itself an extension of human rights and popular movements in a state's formative practices.²⁰⁶ This new era of legal activism for social action

¹⁹⁹ AIR 1978 SC 1675

²⁰⁰ See Law Commission Of India, Fourteenth Report Of The Law Commission Of India: Reforms Of The Judicial Administration (1958)

²⁰¹ Expert Committee on Legal Aid, Ministry of Law & Justice, Govt. of India, Processual Justice to the People (1973)

²⁰² Committee on National Judicare, Ministry of Law & Justice, Govt. of India, Equal Justice; Social Justice (1977)

²⁰³ Upendra Baxi, Taking Suffering Seriously: Social action Litigation In India in Law And Poverty: Critical Essays (1992)

²⁰⁴ Ibid

²⁰⁵ Ibid

²⁰⁶ Ibid

expanded the regime of rights, converting the Supreme Court of India into a permanent Constituent Assembly of India, sculpting the nature and future of the rights movement.²⁰⁷

Legal Aid by NALSA, SALSA and DLSA: To Whom and When

Who is entitled to Free Legal Aid?

Any person, who is:

- a member of the scheduled castes or tribes;
- any person belonging to the Schedule caste/tribe, persons suffering from natural calamity, industrial worker, children, insane person, handicap, persons in custody and those having an annual income less than Rs 1 lakh were entitled to avail free legal aid;
- a victim of trafficking in human beings or beggar;
- facing a charge which might result in imprisonment²⁰⁸; and
- unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence, and incommunicado situation;
- in cases of great public importance;
- disabled, including mentally disabled;
- a woman or child;
- a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake, industrial disaster and other cases of undeserved want;
- an industrial workman;
- in custody, including protective custody;
- deserving of legal services.²⁰⁹

When can Legal services be rejected?

If the applicant:

- does not fulfill the eligibility criteria;
- has adequate means to access justice;
- has no merits in his application requiring legal action.²¹⁰

Cases for which legal aid is not available:

- Proceedings relating to election;
- Cases in respect of defamation, malicious prosecution, contempt of court, perjury etc.;
- Economic offences and offences against social laws;
- Cases, where the fine imposed, is not more than Rs.50/-;

²⁰⁷ Ibid

²⁰⁸ Khatri II v. State of Bihar, (1981) 1 (SCC)

²⁰⁹ Y. Srinivasa Rao, Right To Free Legal Aid, Legal Services India,

<http://www.legalservicesindia.com/article/article/right-to-free-legal-aid-1176-1.html> (10/11/2017)

²¹⁰ Ibid

- Cases where the person seeking legal aid is not directly concerned with the proceedings and whose interests will not be affected.²¹¹

When can the legal services be withdrawn?

The legal services committee can withdraw the services if,

- the aided person dies, except in civil cases;
- the aid is obtained through misrepresentation or fraud;
- any material change occurs in the circumstances of the aided person;
- there is misconduct, misbehavior or negligence on the part of the aided person;
- the aided persons appoint another legal practitioner;
- the aided person does not cooperate with the allotted advocate;
- the proceedings amount to misusing the process of law or of legal service.²¹²

Issues and Challenges:

“Legal Aid became a statutory right in the 1990s, but the government established legal aid agency is financially undernourished.”²¹³ -*Granville Austin*

Though Indian Model has transposed from a charity based model to a utilitarian model on legal aid with Rawlsian remnants, it still falls short of crease in realizing Rawlsian principles. It is also argued that liberty of ‘access to justice’ is offered an inferior position under the wide array of liberties entrenched under the Indian Constitution. The empathetic expressions of the Indian Supreme Court haven't found adequate space under the statutory scheme conceived by the Parliament. The Indian story fails to narrate effective discourses on equality principle as well as difference principle. This can be highlighted as:

Firstly, Indian model fails to fine tune an effective balance between values of efficiency and quality disposal. It appears ‘justice’ has been forsaken from ‘access to justice’: This could be illustrated through the functioning of the Lok Adalats.²¹⁴ They have emerged as case disposal mechanism, entirely inconsistent with the purpose for which they were created - which was the speedy delivery of justice.²¹⁵ In its pursuit of speedy disposal of cases some serious compromise in quality disposal and unsolicited matters being dealt by Lok Adalats is not unknown.²¹⁶

Secondly, to realize Rawls’ difference principle a more equitable scheme of incentives for lawyers needs to be implemented. Individual liberty of ‘access to justice’²¹⁷ is likely to be significantly compromised in absence of adequate incentives for lawyers to take up briefs of people from the vulnerable section.

²¹¹ Ibid

²¹² Ibid

²¹³ Per G. Williams as cited in D.D.Basu, Commentary on the Constitution of India, 4100, (8th ed.2008)

²¹⁴ Institutions created under the Legal Services Authorities Act, 1987, for speedy disposal of compoundable cases

²¹⁵ Report on the Study of Notional Legal Services Authorities Act in the State of Gujarat

²¹⁶ Ibid

²¹⁷ Ibid

Thirdly, paralegals are placed at the heart of legal aid scheme under the Legal Services Authorities Act, 1987. 'Paralegal volunteer' means a paralegal volunteer trained as such by a Legal Services Institution.²¹⁸ The irony is, the eligibility criterions, responsibilities, training and remuneration of paralegals are either not provided in the Act / Regulations or provided extremely poorly. Indian Institute of Paralegal Studies attempted to define the functions of paralegals which go on to show their greater significance in the entire functioning of legal aid in the country.²¹⁹

The legal aid system in India has proven ineffective to provide and avail the free legal assistance certain difficulties and challenges are being experienced in our nation. The issues with regard to the provisions of free legal assistance to the needy people getting increased day-by-day and the challenges have also been taking its growing rapidly. Under these circumstances, the National Legal Services Authority, being the Strewed, with the strength of the State Legal Services Authorities, being its forefront warriors, is taking the relentless effort to find out solutions with the active assistance of the Government both Central and State to tackle the situation. Given below is the analysis of the difficulties (issues) and challenges in providing free legal assistance to the poor and marginalized people and also reach out the solutions.

Children and their rights are neglected. The problems of children are often seen through the spectacles of an adult. Consequently, the rights of children who are orphaned abandoned and in conflict with the law are not properly handled by government officials and juvenile justice institutions.²²⁰

The right to legal aid is not always freely available, restrictions and regulations while exercising this right is always there. To this, the apex court has held that when on a non-evidential basis a party to a dispute keeps insisting that the amicus curiae hasn't performed his role effectively, the court should disband the counsel and look for another one with proper judicial scrutiny.²²¹ The purpose of the Article 39A is also defeated when an inexperienced young lawyer would be appointed to defend the accused²²². But to deal with this issue, the court has observed that since international charters provide for adequate and effective defence, it can be construed that Legal aid was given under Article 39A also implies that the counsel appointed by the State should also be competent to defend the accused.²²³ Where the counsel provided by the state failed to appear for the hearing of the case on the fixed date and the case was decided against the interest of the accused, the Supreme Court did intervene in such a case in *Jainendrakumar v. State of Maharashtra*²²⁴ and set aside the High Court's verdict and issued instructions for a fresh hearing.²²⁵

²¹⁸ National Legal Services Authority (Free and Competent Legal Services) Regulations, Regulation 2(f) (2010)

²¹⁹ Supra Note 40

²²⁰ U. Sarathchandran, Bringing legal aid a step closer home, The Hindu, <http://www.thehindu.com/todays-paper/tp-opinion/bringing-legal-aid-a-step-closer-home/article2610220.ece>. (09/11/2017)

²²¹ State NCT of Delhi v. Navjot Sandhu (2005) 11 SCC 600

²²² State of Haryana v. Darshana 1979 AIR 855

²²³ Sheela v. State of Maharashtra, AIR 1983 SC 378

²²⁴ Jainendra kumar v. State of Maharashtra (1990) Supp SCC 777

²²⁵ Defending the Right to Legal Aid, India Together, <http://www.indiatogether.org/2008/apr/hrt-legalaid.htm> (09/11/2017)

It has also been observed that despite a decent budget that has been set aside for the purpose of rendering legal services, a large amount remains unused and the money that is spent is sometimes unaccounted for. This reflects a lack of awareness about the right to free legal service, there is still some bribe that is paid to legal aid counsel, the court staff, the policemen for recovering relevant documents, to prison officers, lack of an expert to oversee the finances of the legal services, excessive roles and large funds at disposal and hence the purpose of free legal aid is defeated.²²⁶

The infrastructure in the legal aid committee and centres is outdated. There is no electronic provision for filing of complaints or tracking progress of cases; there is a general lack of awareness of the availability of legal aid; there are not enough lawyers delivered by the legal services authorities, and; there is a perception that free service is incompatible with quality service; no special arrangements have been made for the disabled to have access to the legal aid system. The system lacks transparency and doesn't assign adequate answers to the applications filed under the Right to Information Act. Further, certain literacy materials are hard to comprehend because of complex language.²²⁷

There exist some deficiencies in the legal service programme. Lawyers engaged in free legal aid are not given adequate training on legal aid nor is there any special provision for recruiting lawyers from marginalized groups like the disabled, women, and scheduled castes.²²⁸ The clients are not asked for feedback on their experience with the legal services authority, there is no effective complaint mechanism against deficient quality of legal aid provided, there is no record of progress of cases as they are left to the legal aid panel lawyer to deal with in its entirety, there is no method to evaluate or follow up the lawyer's performance or ensure timely payment of fees which itself is inadequate.²²⁹ Paralegals are inexperienced amateurs, have ambiguous roles, are not trained sufficiently, they have uncertain remuneration.²³⁰

State institutions such as legal authorities and NGOs are not proactive in nature and do not extend support to the minority and disability institutions that are not well aware of the legal services authority and engage private lawyers instead.²³¹ Legal camps, though held, are not efficiently organized and the audience is not intimated of a program that is going to be held for them, the sessions are monotonous, lengthy and instructive rather than interactive and are carried on by untrained personnel which only adds to the lack of awareness about legal services.²³² Also, the lawyers generally are least interested in providing competent legal assistance due to financial constraints. They at times ask clients to pay additional amounts of money to them, which they are supposed to obtain their fee from the legal aid committee. Moreover, too often lawyers assigned to provide legal aid and paid with public funds do not

²²⁶ See Venkatesan, Dimensions of Legal Aid, The Hindu, <http://www.hindu.com/fline/fl2218/stories/20050909000907500.htm> (09/11/2017)

²²⁷ Multiple Action Research Group (MARG), Needs Assessment Study of Legal Services Authorities, 2012, <http://www.undp.org/content/dam/india/docs/DG/needs-assessment-study-of-selected-legal-services-authorities.pdf> (06/11/2017)

²²⁸ Supra Note 180

²²⁹ Supra Note 180

²³⁰ Supra Note 180

²³¹ Supra Note 180

²³² Supra Note 181

faithfully represent their clients and cast serious doubt on the credibility of the scheme of legal aid provided to weaker sections of society. Another major obstacle to the legal aid movement is the delivery system for legal aid which is far too inefficient.

Suggestions and Recommendations:

A Review of the Study Conducted By MARG:

Multiple Action Research Group on Needs Assessment Study of Selected Legal Services Authorities has analyzed not only various issues involved but also gave recommendations. Some recommendations made include-

- Empanelling lawyers based on proper selection criteria- emphasizing on experience in related fields, commitment to justice, pro bono experience, and preference to those from marginalized groups; quick selection process; revising the panel regularly based on satisfaction of services extended.²³³
- Monitoring the counsels appointed through feedback approach, a regular progress report of cases undertaken by the lawyer, putting in place a monitoring committee, etc.²³⁴
- Training of lawyers in legal developments and also in shaping their attitude to a different section of the society they may have to engage with and also regular compensation of lawyers appointed.²³⁵
- Paralegal training to encompass an understanding of their functions, legal processes to be undertaken by them, how to handle possible issues, rights of the marginalized, redressal mechanism, etc.²³⁶
- Improved and efficient coordinating mechanisms to be set up with state and non-state voluntary organizations dealing with rights of women, children, scheduled castes/ tribes, disabled, minority sections, prisoners, etc.²³⁷
- Efficient organization of legal awareness camps, schemes and further expansion of legal literacy.²³⁸
- Spreading awareness of Lok adalats, training the personnel and encouraging people to settle disputes in Lok adalats.²³⁹
- Upgrading the infrastructure at the legal service centres, updating the website, appointing more accounting and budgeting related staff with financial experience.²⁴⁰
- Increasing the role of NGOs and empowering them further helps in establishing and preserving the contact between the accused and their friends and families.

Recommendations made by the Courts:

In *Ranjan Dwivedi v. Union of India*²⁴¹, the Supreme Court declared that a writ of mandamus cannot be issued to implement Article 39A but the social goal of free legal service and equal justice can be secured only by means of appropriate legislation or schemes.

²³³ Supra Note 182

²³⁴ Supra Note 182

²³⁵ Supra Note 183

²³⁶ Supra Note 183

²³⁷ Supra Note 184

²³⁸ Supra Note 185

²³⁹ Supra Note 185

²⁴⁰ Supra Note 185

²⁴¹ AIR 1983 SC 224

The mandate of Article 39A though directed at the legislature and executive can also extend to the courts since the judiciary is also enabled to do some lawmaking within the boundaries of the constitution.²⁴²

The Court in *Centre for Legal Research v State of Kerala*²⁴³, observed that to ensure that these programmes are successful the state should extend its support to voluntary organisations to encourage public participation in this endeavor of providing free legal aid and the court also said that these programmes are needed to ensure that social justice reaches the people, hence it cannot be restricted to the traditional means of extending legal aid through litigation and it should keep the changing socio economic situations in mind and adopt a dynamic method involving legal literacy, setting legal service camps, promoting public interest litigations, introducing Lok Adalats, etc.²⁴⁴ Also, these social groups and voluntary organizations should be completely free from the control of the state with respect to the implementation of schemes furthering legal aid.²⁴⁵

The Legal Aid Committees that have been set up by the High Courts and Subordinate Courts in pursuance of the goals of Article 39A not only ensure quick and affordable justice but also decrease the burden of arrears of cases.²⁴⁶ Courts also have the power to issue instructions that a prisoner is given legal aid by providing him with contact to voluntary legal assistance centres.

Other compilations of the suggestive measures in this area are:

It is suggested that it is the need of the hour that the poor and illiterate people should be imparted with legal knowledge and should be educated on their basic rights. Efforts have to be made to inform the public about the existence of these services, especially by using electronic media and aggressive campaigns. The law ministry should ensure the lawyers on the panel should be experienced. The inclusion of law students and legal academicians in the implementation of the legal aid programmes. Various forms of Alternate Dispute Resolutions like Arbitration, Conciliation, Negotiation, and Mediation shall be used in the settling of disputes especially those involving matrimonial problems can prove to be an effective legal aid tool providing quick and inexpensive justice to the masses.

A master plan for juridicare is not possible to succeed with insufficient financial resources. An annual amount of 6 crore rupees is being allocated to NALSA for the execution of its policies. The Committee has opined that this amount is not adequate for such an important scheme and strongly recommends that substantial allocation should be made at Revised Estimate stage to make the functioning of NALSA more effective.²⁴⁷

Lok Adalats, a permanent feature of the functioning of legal services authorities is largely being used as a tool of case management to help the overburdened judiciary and not so much as an instrument of the justice delivery to the litigant. If the 'success' of the *lok Adalat* stems from

²⁴² M.P. Jain, *Indian Constitutional Law*, Lexis Nexis 1616 (2014)

²⁴³ AIR 1986 SC 2195

²⁴⁴ Arvind P Datar, *Datar Commentary on Constitution of India*, Lexis Nexis 585 (2010)

²⁴⁵ D.D. Basu, *supra* note 3, at 4099

²⁴⁶ D.D. Basu, *supra* note 3, at 1157

²⁴⁷ 61st Report on the Demand for Grants, Department of the Ministry of Law, Justice & Company Affairs (2000-2001)

negative reasons attributable to the failures of the formal legal system, the utility of this mechanism may also be short-lived.²⁴⁸ Further, the government shall employ more efficient processes so as to improve legal aid delivery, including but which shall not be limited to increased compensation for legal aid lawyers else, the constitutional right to free legal aid rings hollow.²⁴⁹

Finally, a reverse osmosis approach is needed to be followed where rather than to wait for the poor to come and approach for legal aid a system with the help of NGOs to identify people in need of these services shall be developed, more so because people are ignorant both of their rights and also the availability of legal aid. The culture of donations by the privileged sections of the society has to be encouraged.²⁵⁰

Lessons Learned For The Indian Legal Aid System:

India should incorporate certain parts of the French and American systems. The French's easy access to counsel and the American's concept of a well-paid advocate are key ingredients to a successful legal aid system in India.

Conclusion

Narrowly, access to justice can be described as providing legal aid which makes judicial remedies available to those without adequate financial resources by meeting the cost of lawyers and other incidental expenses for the administration of justice.²⁵¹ Therefore, legal aid serves as the contact point between the law and people who are living in poverty.²⁵² The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems²⁵³ provides the internationally agreed definition of the term 'legal aid'²⁵⁴ requires that states should establish a nationwide legal aid system involving a wide range of stakeholders as legal aid service providers so as to increase outreach, quality and impact, and facilitate access to legal aid in all parts of the country.²⁵⁵ However, in India, providing legal aid is faced with a chunk of issues and challenges. To achieve its purpose one the government, lawyers, judiciary and other concerned authorities have contributed but still, more has to be achieved. The legal aid movement cannot achieve its goal so long as people are not aware of their basic rights. When the poor are not aware of their legal rights, they are subject to exploitation and ultimately deprived of the rights

²⁴⁸ S. Murlidhar, International Conference on ADR, Conciliation, Mediation and Case Management Organized By the Law Commission of India (2003)

²⁴⁹ Ajay Verma, India's Legal Aid System: Issues and Challenges, India Law News, <https://indialawnews.org/2010/03/01/indias-legal-aid-system-issues-and-challenges-2> (10/11/2017)

²⁵⁰ Legal Service India, <http://www.legalserviceindia.com/article/I240-Legal-Aid.html> (10/11/2017)

²⁵¹ F. Francioni, The Development of Access to Justice in Customary Law, in: F. Francioni (ed.), Access to Justice as Human Right I (Oxford, Oxford University Press, 2007)

²⁵² G. Knaul, Report of the Special Rapporteur on the Independence of Judges and Lawyers, A/HRC/23/43 (Nov. 6, 2017), para. 27 and 35

²⁵³ General Assembly Resolution, A/RES/67/187, <http://www.un.org/en/ga/search/view-doc.asp?symbol=A/RES/67/187> (09/11/2017)

²⁵⁴ Supra, note 77 at para. 26. The Principles and Guidelines construes the term 'legal aid' to include "legal advice, assistance and representation for victims and for arrested, prosecuted and detained persons in the criminal justice process, provided free of charge for those without means or when the interests of justice so require". Furthermore, "legal aid is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes". United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Annex, Introduction, para. 8 (2012)

²⁵⁵ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Annex, Introduction, paras. 9-10; Guideline 12 (2012)

and benefits provided to them under the law. Thus, the key to a successful free legal aid system is increased awareness among the populace and more efficient delivery processes.²⁵⁶

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Brief About Author



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7. Access to Justice in India: Right of All Or Privilege of Some

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“Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But, injustice makes us want to pull things down. When, only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it, because, its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy’s very life depends upon making the machinery of justice so effective that every citizen shall believe and benefit its impartiality and fairness.”

- Mr. Justice Brennan

Access to justice in India still remains a dream for many. The ability of legal system and judicial process to deliver justice is always questioned. The cumbersome legal process makes it more difficult for people to access justice mainly for poor and downtrodden classes of society who neither have knowledge about the judicial process nor enough resources to afford it. The present legal mechanism established to increase the access to justice is not adequate. Though there are Fast track Courts and tribunals, though there are provisions of right to be represented, there are provisions for legal aid to all, there are amendments brought in many laws to make justice accessible to all but still it remains the privilege of some. There are different problems in our justice system like the delivery of justice takes more time than it should, it is expensive and yes, the omnipresent corruption is present here too. Due to all these reasons Indian citizenry is losing faith in the judicial machinery and the legal system.

Part I: The Anatomy of Justice System in India

The present Indian Justice System finds its roots in common law system and this is a legacy of years of British rule in India. At the apex of the Indian Judiciary is the Supreme Court of India which enjoys supremacy over all other Courts in India. In the states we have High Courts as the highest judicial authorities which are responsible for delivering justice in the states they have jurisdiction. Below the High Court’s lies a hierarchy of Subordinate Courts which are meant to help people to access justice and plays a crucial role in building faith of people in Indian judiciary because not everybody has access to High Courts or the Supreme Court reasons can be many and would be discussed further but lower judiciaries are accessible to all and almost everyone who is aggrieved and wants to get justice knocks its doors. Also with time there are different Forums, Tribunals and Centers established to make justice accessible to each and every one who is aggrieved and who has suffered the violation of his rights and I shall further be giving a brief description of all the institutions I mentioned above.

The Supreme Court

Article 124(1)²⁵⁷ of The Constitution of India provides for the establishment and constitution of Supreme Court. The constitution provides for the number of Supreme Court Judges to be

²⁵⁷ Article 124(1), The Constitution of India: Establishment and Constitution of Supreme Court-There shall be a Supreme Court of India constituting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges [now 30 vide the Supreme Court (Number of Judges) Amendment Act, 2008]

7 but according to the amendment made in 2008 the number of Judges to be appointed in Supreme Court is 30 at present along with a Chief Justice to be called the Chief Justice of India. As mentioned earlier the Supreme Court of India enjoys supremacy over all other Courts in India and this is backed by Article 141²⁵⁸ of The Indian Constitution. Supreme Court Rules, 1966 are framed under Article 145 of the Constitution to regulate the practice and procedure of the Supreme Court. The Constitution²⁵⁹ of Supreme Court of India gives three categories of Advocates who are entitled to practice law before the Supreme Court of India which includes the Senior Advocates, the Advocates-on-Record and the other Advocates.

The Supreme Court also has the powers to strike down any legislation or any of its provisions if it aims to repugnant the basic structure of our Constitution. In this way Supreme Court also acts as a watchdog of the Indian Constitution as it keeps a check on other limbs of the state and their working. Further, the Supreme Court of India also articulated the concept of Public Interest Litigation (PIL) in the case of Hussainra Khatoon vs State of Bihar²⁶⁰ which was filed by the under trial prisoners of Bihar through an Advocate named Kapila Hingorani. In this case the Supreme Court recognized the right of people to get speedy trial and justice. According to the concept of PIL any citizen can bring any matter of general importance to the general public before the Supreme Court so that justice can be accessed by such public. Supreme Court under Article 32 also exercises writ jurisdiction which provide for remedies whenever there is any violation of Fundamental Rights of the People provided by Part III of the Constitution. In this way Constitution of India provides a wide range of power to the Supreme Court so that the ends of justice can be met with and it can become accessible to more and more people.

High Courts in India

High Court is the highest judicial body in a state in India. The institution of High Courts date back to 1862 when three High Courts namely the High Courts of Madras, Calcutta and Bombay were established under the Indian High Courts Act, 1861 and at present there are 24 High Courts In India. Article 214²⁶¹ provides for the establishment of High Courts and Article 227²⁶² provides them with Supervisory Jurisdiction over all other Subordinate Courts. Every High Court consists of a Chief Justice and as many other judges as the President of India may sanction. Like Supreme Court High Courts also possess power to issue writs under Article 226 of the constitution whenever there is an infringement of a citizen's fundamental rights or any other rights and in this way enable people to access justice on violation of their rights.

Subordinate Courts in India

The District Courts are at the top of the hierarchy of lower Courts and as discussed earlier they are under the administrative control of High Courts which exercise superintendence over

²⁵⁸ Article 141, The Constitution of India: Law declared by Supreme Court to be binding on all courts- The law declared by the Supreme Court shall be binding on all courts within the territory of India

²⁵⁹ Supreme Court of India, <http://supremecourtsofindia.nic.in/constitution.htm> (11/08/2017)

²⁶⁰ AIR 1979 SC 1377

²⁶¹ Article 214, The Constitution of India: High Courts for States- There shall be a High Court for each State

²⁶² Article 227, The Constitution of India: Power of superintendence over all courts by the High Court- Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction

the District Courts falling under their jurisdiction. The jurisdiction of District Courts in Civil matters is subject to territorial and pecuniary limits and in criminal matters the jurisdiction of Courts is governed by different Legislations laid down by the Parliament.

Tribunals and Other Quasi-Judicial Bodies

Apart from the judicial bodies discussed earlier there are also certain Tribunals and other quasi-judicial bodies who help in the administration of justice. These bodies find their sanction in some special Central Acts. Some of the important tribunals are, Central Administrative Tribunal (CAT), Telecom Disputes Settlement Appellate Tribunal (TDSAT), and Competition Appellate Tribunal (COMPAT) etc. The Tribunals deal in specific areas and matters depending upon the provisions of the statute by which they are formed.

Thus, in conclusion it can be said that the Indian Judicial System is a mixture of Courts, Tribunals and other Regulators which work towards the common goal of making justice accessible to people.

Part II: Failures Of Indian Legal System: The Causes

To quote Dr. Cyrus Das: *‘Justice is a consumer product and must therefore meet the test of confidence, reliability and dependability like any other product if it is to survive market scrutiny. It exists for the citizenry ‘at whose service only the system of justice must work.’ Judicial responsibility, accountability and independence are in every sense inseparable. They are, and must be, embodied in the institution of the judiciary.’*²⁶³

But it is a matter of fact that the hindrances in administration of and access to justice in India are created not only by the inefficiency of judicial system but each and every body responsible to make justice accessible to the masses including the administrative bodies, the police system, the judicial system which includes both bar and the bench. It is the failure of all these bodies responsible for the failure of Indian legal system which takes away justice far from people and ultimately they lose their faith in the legal system of the country. I shall further be discussing the reasons for the failure of Indian legal system which ultimately takes justice away from the reach of common man.

Lack of Legal Awareness

The general lack of awareness is one of the main causes why justice cannot be delivered to one who is aggrieved. In a country like India where most of its population still lives in poverty and has to struggle day and night to meet its basic needs where they are not aware of their legal rights, justice cannot be served if everyone is expected to know the law and follow the principle of *ignorantia juris non excusat* i.e. ignorance of law is no excuse strictly. At times it becomes very difficult and complicated even to the literate or educated person to understand the legal language. It is very much wrong to expect from a street vendor to know the acidity level of a

²⁶³ Dr. Cyrus Das, K.Chandra: Judges and Judicial Accountability, Second Indian Reprint (2005), Universal Law Publishing Co. Pvt. Ltd. Delhi. Pg. 130

vegetable sauce which he is using to make the food products and then declare him liable of food adulteration.

Delay in Providing Justice

Though the principle of 'justice delayed is justice denied' is very popular in Indian legal system but it is very seldom used in practice. In many a circumstances it was found that the litigant who has had access to the court failed to obtain quick relief and for some never have the opportunity even to knock the doors of the court due to ignorance and poverty. Every year the database of different courts show a lot of pending cases which are there in the court for years and even after that there are very less chances of justice being done because of the various reasons to be discussed later on. This delay in the justice delivery is due to various reasons. It can be due to the long procedural model which the Indian legal system follows. It can be due to the non-accountability of the advocates who focus on seizing more money from their clients and hence delay the case for a longer duration. It can be due to the non-responsibility of judges who do not dispose off cases as fast as possible. In this regards, the remarks of eminent jurist, Nani A. Palkiwala can be referred-

"Legal redress is time consuming enough to make infinity, intelligible. A lawsuit once started in India is the nearest thing to eternal life ever seen on this earth..... I am not aware of any country in the world where litigation goes on for as long a period as in India. Our cases drag over a length of time which makes eternity intelligible. The law may or may not be an ass, but in India it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in a community of snails. Justice has to be blind, but I see no reason why it should be also lame: here it just hobbles along, barely able to walk."²⁶⁴

"In Pune, on April 28, 1966, Balasaheb Patloji Thorat received a favourable judgment in a suit filed by his ancestor, Maloji Thorat, 761 years earlier, in 1205 CE. The issue was the right of presiding over public functions and precedence at religious festivals. A case filed in Kolkata in 1833 is yet to be decided. In the late 18th century, Governor- General Robert Clive ruled thousands of acres of land, historic buildings and temples spread across Kolkata remain in the custody of Raja Naba Kridhna Deb, a royal of the Sovabazar Court. The case still drags 2,000 scions of the royal family continue to fight."²⁶⁵

Now when we know that the delay in deciding cases is one of the major causes which makes justice inaccessible to people let us also know the reasons behind this delay. The reasons for such delay are many and they come from each and every body having a role to play in the country's legal system. If we talk specifically about the criminal matters then there is delay caused from the inception, right from lodging an F.I.R by the police authorities to the Investigating authorities to the defense counsel and public prosecutors appointed and to the Judge delivering the judgment. There is hopelessly inadequate number of judges in Indian Judiciary as pointed out by the Chief Justice T.S. Thakur recently. He said that Indian Judiciary is in desperate need of more number of competent judges and Courts to avoid the delay in

²⁶⁴ Palkhivala Nani A., We the nation – lost decade, New Delhi, UBS Publications 1994, at 215

²⁶⁵ Deccan Chronicle, <http://www.deccanchronicle.com/opinion/op-ed/290416/t-s-thakur.html> (12/08/2017)

deciding cases. But what Justice V.R. Krishna Iyer said in this regard is of great importance before reaching at any conclusion. He said, *“The truth is more courts, more arrears, more lazy judges, more examples of Parkinson’s Law and Peter Principle. The real cause of the escalating arrears is the absence of accountability and transparency... For more disposals and inexpensive justice, the purposeful therapy is not the arithmetical illusion of judicial numbers but intelligent selection of robed brethren, of result-oriented technology, and summary procedure.”*²⁶⁶

Also the investigating authorities do not seem to be very serious in their work of investigating a case and bring out the truth before the court. Further the advocates are equally responsible for causing such delay, many a times it seems as if the advocate want it intentionally to delay a case by taking adjournment unnecessarily the reasons for which can be many.

The problem of delay in justice delivery has assumed such a gigantic proportion that unless it is solved speedily and effectively, it will in the near future crush completely the edifice of our judicial system.²⁶⁷ Due to the delay in disposal if cases people lose faith in the legal system and the most affected ones are the poor and the downtrodden who neither have money nor time to engage in the resolution of a legal dispute for a long time. They rather prefer to drop down their case and move on with what is left with them after fighting a long legal battle. The delay in delivering justice does not only affect the rights of the victim but also of the accused and if he is acquitted after spending an important period of his life which can range even up to 14 years in prison then what justice are we talking about? The delay in justice delivery poses a lot of such questions on the Indian legal system and the answer to these are still to be found.

High Cost of Litigation

High cost of justice keeps justice inaccessible to poor and the downtrodden classes. The day when a person decides not to knock the doors of courts not because he doesn’t have a case in his favor but merely because he can’t afford to bear the expenses he has to bear once the door of the court he is knocking opens. From the Court Fees to the advocate’s fees he has to go through a large financial burden. Though there is provision of *equal justice and free legal aid*²⁶⁸ in The Indian Constitution but what is observed is that the cases which the advocates are given with an objective to provide free legal aid to the one who needs it are not given due consideration as is received by their private cases in return of which they get a huge amount of money. This frustrates the whole objective of making justice accessible to everyone by providing legal aid to people.

Corruption in the Legal System

When the fence itself eats into the crop which it has to protect, when the doctor himself kills the patient he is to treat, when the legal system which is to bring out the justice, itself brings

²⁶⁶ Sudhanshu Ranjan, Small can be beautiful, <http://www.deccanchronicle.com/opinion/op-ed/290416/t-s-thakur.html> (04/02/2018)

²⁶⁷ C.L. Aggawwal, “Laws’ Delay and Accumulation of arrears in the High Courts” The Journal of Bar Council of India, Vol. 7(1): 1978 p 41

²⁶⁸ Article 39A, The Indian Constitution: Equal Justice and Free Legal Aid- The 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 disabilities

injustice, then there the democracy breathes its last breath. Corruption in other branches of the legal system from Police system to the Ministers is well known to everyone but what still remains unveiled is corruption in the judiciary. When whole of the legal system is entangled in the cobweb of corruption then how can judiciary remain untouched by it and it was also once admitted by the former CJI P Sathasivam when he said while a question in an interview by The Hindu, “I should fairly admit that the judiciary is not untouched by corruption. When we take the oath as judge, we swear to be fair and impartial in all our judicial functions. However, on some occasions in the past, few judges have willfully dishonored the oath by adopting corrupt practices.”²⁶⁹ The sadder fact than the existence of corruption in the judiciary is that there not many ways to fight such corruption. The questions who judges the judge? Or who watches the watch-dog? Still remains unanswered or vaguely answered. And until and unless these questions are answered the access to justice will remain unattainable especially for those who can't take part in these corrupt practices who are again the people from poor or marginalized classes. The reasons for why justice remains inaccessible to a large mass can be many and can be discussed in length, there is no end to it but what is more important is to find solutions to these problems which I shall be discussing further in part III.

Part III: Access to Justice: Accountability of Bar and Bench

Dr. Barrack in his book ‘*The Judge in a Democracy*’ has very eloquently described the role and function of a judge:

“As a judge, I do not have a political platform. I am not a political person. Right and left, religious and secular, rich and poor, man and woman, disabled and nondisabled, all are equal in my eyes. All are human beings, created in the image of the Creator. I will protect the human dignity of each. I do not aspire to power. I do not seek to rule. I am aware of the chains that bind me as a judge and as the president of the Supreme Court. I have repeatedly emphasized the rule of law and not of the judge. I am aware of the importance of the other branches of government – legislative and executive – which give expression to democracy. Between those two branches are connecting bridges and checks and balances. I view my office as a mission. Judging is not a job. It is a way of life. Whenever I enter the courtroom, I do so with the deep sense that, as I sit at trial, I stand on trial.”

On the basis of above statement it can be said that the judiciary plays the most important role in making justice accessible to people. When there is such high level of accountability on the shoulders of the judiciary then there needs to be a much higher level of transparency in the working of judiciary so that justice does not remain a fruit which falls in the basket of few selected people. Now the question before us is that what measures have to be taken and what reforms have to be made to make justice accessible to the last person sitting in any corner of the country. Let us discuss some measures.

Accountability of Judiciary

There is no transparency in justice delivery and it is always presumed that judges are infallible put the parties to heavy loss whenever the judge fails in his duty to give a judgment which is

²⁶⁹ The Hindu, <http://www.thehindu.com/opinion/interview/judiciary-not-untouched-by-corruption/article4866406.ece> (12/08/2017)

not biased and is based on merits. According to present provisions of law an RTI cannot be filed against the judiciary nor an FIR be launched without the permission of the Chief Justice of that court. As discussed earlier Indian judiciary is in desperate need of judges but efforts should be made not only to increase the quantity of judges but also the quality of judges by laying down a proper mechanism for the appointment of judges. As held by the Hon'ble Supreme Court in the case of A.K. Roy vs Union of India²⁷⁰ that- "judiciary ought to have such qualities like knowledge, conscience, insight, a sense of balance and proportion with the view if rendering honest and impartial decision on law and facts."

There is not much left to say about the accountability of the Judiciary after what was said by the Supreme Court in above mentioned case. First of all judiciary in consultation with other bodies of the legal system need to make justice physically accessible to the common masses by increasing number of courts in the areas where the institutions of justice system do not exist or have ceased to exist. Also what the judiciary urgently needs to do is that solve the problem of inadequacy of quality judges in the Indian Judiciary because it is one of the reasons for piling up of cases in the Courts and also it should support the demand of bringing judiciary under the purview of RTI without hindering the independence of judiciary.

Accountability of Bar

As expressed by Mathew, J., "*A Counsel has a tripartite relationship: one with the public, another with the court, and the third with his client. That is a unique feature. Other professions or callings may include one or two of these relationships but no other has the triple duty.*" Owing to these relationships lawyers also have three fold duties towards each of them.

A sound judiciary cannot alone be held accountable for upholding justice; lawyers have equal part to play. They both are two wheels of the same carriage and they both have to maintain a balance for smooth running of the legal system. The administration of justice and the part to be played by the advocates in the system must be looked into from the point of view of litigant public and the right to life and liberty guaranteed under Article 21 and right to grant legal aid as contemplated under Article 39A of the Constitution. The aspect of the advocate as a public servant is closely tied to the fact key role he plays in the developmental and dispute-processing activities and, above all, "in the building up of a just society and constitutional order."²⁷¹

The members of the Bar should rise upon their personal gains and interests and should fulfill their obligations towards society at large. They can do so by avoiding the delay they cause in the disposal of the cases by taking many adjournments without any reason. It is observed many a times that the advocates keep on confusing their clients on the point of law who already know nothing or very little about the law and legal procedure and are fully dependent on their counsel for any legal advice and bestow all their faith in them. Further they should pay equal attention to the cases referred to them for legal aid as they pay to their private cases without taking into consideration the difference in money they receive in both the cases. They should always keep in mind that the advocacy is a noble profession meant for the welfare of the people

²⁷⁰ AIR 1982 SC 710

²⁷¹ Preeta, Role of lawyers in the legal system, <https://blog.ipleaders.in/role-of-lawyers-in-the-legal> (12/08/2017)

and once there was a time when lawyers didn't even used to take fees for arguing cases before the court as suggested by the small pocket in their gowns in which people used to give money as per their capacity unlike today when some of the lawyers charge huge amount of money per hearing from their clients making it difficult for a large mass to access such lawyers who can argue their case efficiently. Advocates also owe the duty to prevent corruption prevailing in Indian judiciary. They owe a duty to stand against the concept of 'uncle judges'. They should always remember that they are actually the channels, the elements of gap bridging between the general public and the legal system and their actions play a vital role in maintaining the faith of people in the legal system and making justice available to everyone who deserves it.

Conclusion

On account of the above discussion what can be concluded is that in order to make justice accessible to all, in order to make it right of all instead of privilege of some everyone in the legal system has to contribute in his or her personal capacity. And by legal system I mean not only the Bar and the Bench. But, other authorities involved in the administration of justice and also the general public which cannot be exempted from the duty of uplifting the justice and making it accessible to everyone irrespective of their status and other constraints.

Brief About Author



Ayushi is a student of B.A.LL.B (H)-5th year at Amity University Rajasthan. She has an appetite for books and loves reading and writing. She has written and presented papers on various substantial topics with an aim to bring a change in the thought process of the society and build an attitude of acceptance towards things which are considered as taboo in the society. She is presently associated with different organizations as student ambassador, editor or content writer. She also loves to write poems and has a list of beautiful poems as feather in her cap. She is also a member of an NGO, Umeed-Rajasthan which strives to make a better world to live in.

8. Legal Aid & Awareness in India: The dawn of justice to reach the unreached

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“...the spiritual essence of legal aid movement consists in investing law within a human soul...”

Justice. DR. V.R. Krishna Iyer²⁷²

Introduction

In a vibrant democracy equal justice and rule of law constitute important part of life. The equality before law and equal protection of law are the hall marks of the modern society. The access to justice and provision for free legal aid is a common Para-phrase used in the U.N. charter. The founding father of Indian constitution designed in the part III of the constitution. The constitutional courts are empowered to render justice and find the ways to dispense justice in the effective manner. The need for affordable justice with less expense was felt since some decades of freedom movement. Attempts were made to provide easy delivery of justice to the vulnerable class of people, those are often stay back to secure due to disadvantageous condition of life. The issue to secure justice to the poor, deprived and disadvantaged was realized and resolved to provide free legal aid at the state cost. The term legal aid refers to the aid or help rendered to the people those are unable to get justice or failed to engage lawyer for the protection of their own right.²⁷³The Encyclopedia Britannica defines legal aid as a ‘phrase which is acquired by usage and court decisions, a specific meaning of giving to person of limited means, any grants or nominal fees, advice or counsel to represent them in the court in civil and criminal matter’ and Lord Denning states that, “the greatest evolution in the law since post-second world war has been the evolution of the mechanism of the system for legal aid. It means that in many cases the lower fees and expenses are paid for by the state and not by the party concern”.

The object of legal aid is to ensure that the opportunity for securing justice are not denied to any person by reason of poverty, illiteracy etc. 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 obtaining justice from the court.²⁷⁴Thus the legal aid and awareness was an initiative to secure justice to the poor and disadvantage classes of people to get an opportunity to secure justice in the justice delivery system. The plaintiff is provided free legal assistance and counseling by the state if his matter falls within the eligibility criteria adopted by the state for civil and criminal liabilities respectively. In the process state provide legal assistance to the poor, needy and weaker section of the people not as a charity, but as a constitutional obligation.²⁷⁵

²⁷² P. Krishnaswamy, ‘V.R.Krishna Iyer A Living Legend’

²⁷³ Dr. Bikram Kumar Das, ‘Right to Legal Aid –Some Truth, Some Myth’ Indian Bar Review Vol.XLIV (1)2017

²⁷⁴ Dr. S.R.Myneni, ‘Public Interest Lawyering, Legal Aid and Para Legal Services’

²⁷⁵ H.M Hoskot V. State of Maharashtra AIR 1978 SC 1548

Legal Aid and Awareness - The Indian Tale

The Indian legal system is the world's oldest legal system in the world. So for studying the history of the Indian legal system which is too old in the world, a classification is essential, so we classified the history of the Indian legal system into four stages as the Vedic period, the Islamic period, the British period and the post-independence period²⁷⁶ and in the same way the voyage of the legal aid and awareness in India also sprouted in the Vedic period but that refreshed path of justice to reach the unreached was not too easy as the path was like trouble deaf heaven with bootless cries,²⁷⁷ so that refreshed feeling to bloom like a blossom bud took years longer and the voyage which echoed and proved the fact said by Martin Luther King that 'injustice is a threat to justice everywhere'²⁷⁸ can be narrated by classifying the history of the legal aid and awareness in India into five stages as the Vedic period, the Muslim period, the Vikramaditya period, the British period and the post-independence period.²⁷⁹

The Vedic Period

Vedas is a Sanskrit word which means knowledge and in early years it was the ultimate source of knowledge for the Indians and Vedas was also called as apaurushey as it was not created by man but given by god so there is no agreement on the chronology of this period some agrees to its existence around 6000 years back and some agrees to the 18th century BC. Rig-Veda is the earliest of the four Vedas contain elements of legal aid or social aid as we may name it. The slokas in Vedas refer to the need for saving people from 'rakshas' and violent people, procuring strength for such protection alongside praying the almighty to bless those who donate.²⁸⁰ Rig Veda provides for mustering strength, including monetary assistance, i.e. 'Daan' for extending aid and assistance to those fearing or facing the attacks. And even the Veda clarifies that a king, who gives money to one in such need, is the winner of the wealth of opponents and that Devtas always protect him We therefore, can infer from such references in the Rig-Veda that, providing social aid and king's (state) assistance is one's dharma.

The Muslim Period

During the reign of Shahjahan and Aurangzeb, the state vakils were directed to give advice free of charge to the poor. Such state lawyer known as vakil - e - sarkar or vakil - e - sharai were whole time and appointed by Chief Qazi of the province or sometimes by the Chief Justice, the Qazi-ul-Quzat.²⁸¹

The Vikramaditya Period

During the time of Vikramaditya period a judge of the highest court was paid five thousand silver coins and was provided with a free furnished home. There was an evolved law of pleadings very similar to the present one. Jurists of the Stature of Manu, Yagnyavalk, Jairnini, Brahaspati and Narad did adorn the legal panorama of this country in its golden age of history

²⁷⁶ Historical Evolution of the Indian Legal System, http://www.cbseacademic.in>XL_U3_Legal_Studies (25/07/2017)

²⁷⁷ Cengage Learning Gale 'A Study Guide for William Shakespeare's 'Sonnet 29' (Poetry for Students)

²⁷⁸ Oxford Dictionary of Quotations and Proverbs, Oxford University Press (2001)153

²⁷⁹ Evolution, Growth and Development of the Legal Aid and System in India, <http://www.wepdf.com/le/legal> (21/10/2017)

²⁸⁰ Evolution, Growth and Development of the Legal Aid and System in India, <http://www.wepdf.com/le/legal> (21/10/2017)

²⁸¹ Report of Expert Committee on Legal Aid, ProceSSION Justice to the People May (1973) 43

but the common man was not required to spend even a pittance for seeking justice. Through the village and community panchayat's justice reached the doors of the poorest sufferers.²⁸²

The British Period

Pre- British India had practiced "Constitutional monarchy" and the days of the Hindu and Muslim rulers had witnessed unsophisticated methodology of dispensing justice to the poor, inexpensively and immediately. In short, justice to the citizens, high and low has been an Indian creed of long ago. British brought with them an expensive system of administration of justice, which has made legal aid to poor an obvious necessity through the Civil Procedure Code, 1908 which enabled the persons who are too poor to pay court fees to institute suits without payment of requisite court fees and the Bombay Legal Aid Society, 1924 which was providing lawyers to the poor on the basis of need, rendering legal aid gratuitously and to make provision for payment of court fees.²⁸³

The Post-Independence Period

1947 at the stroke of midnight hour when the world slept India awakened to life and freedom²⁸⁴ but still then the roads were not smooth as it was comprised of religious violence, population growth, poverty, illiteracy and the endless list goes on like an eternal river. In a nation of diverse religion ,caste, creed , language and culture when challenges poured down like a heavy downpour it made as more responsible, we held our arms to unite together and in the history of the world it got written ,India the land of unity in diversity²⁸⁵ and with no fear of doubt it could be proclaimed that this unity resulted in the formation of the world's largest written constitution of the world i.e. the Indian constitution which stood up as the mother of all Indian laws and of all the gifts that life has to offer a loving mother is greatest of all of them and it is so remarked because she is the ultimate symbol of love and equality and similarly the mother of all Indian laws also consider all its citizen equally and through the article 39A²⁸⁶ it provides free legal aid to every citizen of India their by guarantying all its citizens equal opportunities and justice which in turn made her children trust her and provided them with the utmost strength , determination and work ethnic to move forward in life and it was placed before the heart of the nation in 26 November 1950.²⁸⁷

As time passed India became one of the most prominent democratic nations of the world with an extraordinary judicial system which stood up as the backbone of the entire nation of varied color, language, and culture but it lacked behind in reaching the poor hands for providing free legal aid service and it remained as a black spot to the pride of our nation. Thus in 1952 the government of India started addressing the question of free legal aid for the poor in various conference of law of ministers and commissions. Subsequently a law commission was set up under the chairmanship of jurist M.C. Setalvad to meet recommendation of making legal Aid. The law commission emphasis to provide free legal aid to the poor and also recommended the substitution in order XXXIII of Civil Procedure Code (C.P.C). In 1960 legal Aid was provided

²⁸² Johari S.N, "Programme and Movement of Legal Aid to Poor", AIR 1981 Jour.28

²⁸³ 14th Report of the Law Commission of India, Reforms in the Administration of Justice (1958, Appendix IV) 621

²⁸⁴ Speech by Jawaharlal Nehru 'Tryst With Destiny' accessed from the novel 'Midnight Children' by Salman Rushdie

²⁸⁵ Jawaharlal Nehru 'The Discovery of India'

²⁸⁶ Art 39A ,The Constitution Of India, 1950

²⁸⁷ Preamble of Indian Constitution

to all courts and turbulence. Followed by establishing various committees at the state, district and tehsil.²⁸⁸ But the corner stone of legal aid development in India emerged when the committee formulated on 22nd October 1972 under the chairmanship of Justice. V. R. Krishna Iyer on May 1973 recommended for free legal aid through the three fold test and the committee also recommended for setting of legal Aid committees in each district at different levels that is at the center, state and district. The government accepted the recommendation in 1976 and the 42nd constitution abetment adopted the article 39A in the Directive Principle of state policy (DPSP). In 1980 the Committee for Implementing Legal Aid Scheme (CILAS) was constituted under the chairmanship of Justice P.N. Bhagawati.²⁸⁹ CILAS developed a modern skill for legal Aid programme throughout the country and in 1987 Legal Service Authority Act came into existence to provide free legal Aid.²⁹⁰

Present Scenario of Legal Aid and Awareness in India

The idea of legal aid and awareness in India find its root in the idea of²⁹¹ reducing the justice gap between the poor and the rich, so for understanding and analyzing how effective the legal aid system is in the country in its core way the legal aid system in India can be taken into two phases as:

Pre-Litigation Legal Aid Phase: According to the recent statistical reports by the different social agencies including the Report of Crime in India one fact could clearly be concluded that the rate of litigation in India is rising day by day which would surely in one way or the other would result in the smooth and fluent administration of justice in the nation. So for deriving out of this problem we must adopt a better and an advanced system in India so we gave establishment for the pre-litigation legal aid phase placing legal education, legal awareness, legal service and pre-litigation settlement as its main features.

Post-Litigation Legal Aid Phase: Traditionally legal aid has been provided at post-litigation stage. Post- litigation legal phase include appointment of lawyer for indigent, reimbursement of process fee, witness's expenditure, court fee etc. by the State. So for understanding and analyzing how effective is the legal aid system of the nation in its core way we could individually take the each planted seed of the two phases to have an inner view of how far we have achieved in reaching justice to the unreached.

Legal Education-The Light in the Dark

For any lasting change to happen in the country, society has to change in terms of its behavior, attitudes and values²⁹² which can be made possible through the most powerful weapon on the world that is education. Even Nelson Mandela remarks that 'education is the most powerful weapon to change the world'. So in the same way the legal education remain to be the well molded skeleton of the legal aid in India and it also plays a dynamic role in molding and envisioning the legal system of the country, thus it is being an instrumental in the

²⁸⁸ Dr. Vandana Singh 'Role of justice P.N. Bhagwati In Shaping Up Legal Aid in India', International Journal of Advanced Research

²⁸⁹ Dr. Bikram Kumar Das 'Right to Legal Aid –Some Truth, Some Myth' Indian Bar Review Vol. XLIV (1) 2017

²⁹⁰ Dr. Bikram Kumar Das 'Right to Legal Aid –Some Truth, Some Myth' Indian Bar Review Vol. XLIV (1) 2017

²⁹¹ Retrieved from Narendra Modi's speech on Legal Service Day (19 November 2015)

²⁹² Chetan Bhagat 'What Young India Wants'

accomplishment of the encouraged objectives of justice, liberty, equality and fraternity of a sovereign, socialist, secular, democratic republic²⁹³ and Blackstone even says that legal education aims at communicating knowledge of the country as part of necessary culture of a gentleman, nobleman and common man committed in a learned profession. In the past few years due to the growth of multi-national corporations and the growing importance of international trade relationships, and developed interdependence among states in international relations have created requirement of legal professionals who can think globally while acting in a local situation so as a result of this the Bar Council of India became the regulatory body for making rules and regulation for the protection for the promotion of legal education in India. Law degrees were given and conferred in terms of Advocates Act, 1961 under which BCI was formed as a statutory body and given regulating power to control both legal education and profession.²⁹⁴

Under Section 7 of the Advocates Act, 1961 the Bar Council of India has capacity to fix a minimum academic standard as a requirement for commencement of studies in law²⁹⁵ which was followed up by the establishment of National Law Universities(NLU)which gave for an evergreen thoroughfare for the legal education in India and by implementing acts, rules and regulations BCI assured that the budding lawyers were sprouted with an extraordinary skill to communicate with other professions on an equal footing and be able to absorb scientific and high tech knowledge. Their by the basement of the legal aid system in India was established through the implementation of the spread of legal knowledge but the flame of the legal knowledge lighted like a flame without much fuel as there are an endless list of reasons which pulls back the legal education in India in not reaching the heights and status associated with the same as compared with the abroad. The first and foremost among this fact is the poor infrastructure in the law schools, the place where the legal knowledge imparted itself is left behind means it not only results in the poor legal scenario of the nation but it also ultimately results in the poor legal aid system of the country. Then this is followed by the problem of poor faculties and teaching techniques in the law schools, uninterested candidates acquiring the law school seats when they failed to acquire seats in their interested field, outdated curriculum and syllabus, poor medium of instruction in law schools, drastic difference among law schools etc. were the most important problems faced by the legal education field of the nation. So analyzing all this the question arises is, if the weapon in the hand itself is demolished then how we win the war of justice? and this question is easily answered by the experienced, passionate and clean lawyer's²⁹⁶ that a better and rigid examination process has to be made for the law graduates, then the universities should include more practical training programs, regular updates of syllabus, retain talented faculties, internationalization and merging of the technology in an well advanced way in the legal education field can retain a greater uprising in the field of legal education even if the challenges of the twenty first century are daunting for humankind.²⁹⁷ So the seed of the legal aid system of India that is the legal education in India has improved to a greater extend after the implementation of the recommendations made even still some hands

²⁹³ Memorial lecture, 'Legal education in India- past, present and future'

²⁹⁴ Abhishhek Aanand, 'Legal Education and its Challenges', <http://www.legalservicesindia.com> (01/10/2017)

²⁹⁵ Bharti, 'Legal Education-Some Critical Issue', 1999

²⁹⁶ N.K. Indrayan, 'The Challenge of Legal Education: The Current Scenario', 28(4) Indian Bar Review 107 (2001)

²⁹⁷ A Lakshmi Nath 'Legal Education, Research and Pedagogy-Ideological Perceptions', JILI Vol. 50; 4 Oct

are left behind and there is a long way to go but now when the seed of knowledge is sprouted the next step is to make sure that the sprouted seed is looked after and nurtured well in its best way so that it becomes a shade for tomorrow so legal knowledge gained should be spreaded so in the same way the beginning of the legal aid begins from first imparting the legal knowledge and then spreading the legal knowledge so attained which in other sense can be called as the legal awareness which forms the second core part of the legal aid scenario of the pre-litigation legal phase in the legal aid system.

Legal Awareness– The Strength in Weakness

Louis D Branders says that ‘if we desire respect for the law, we must first make the law respect’ and as far as considered respecting law is an essential thing as it plays a major role in the legal aid system of the country. So for respecting the law, first and foremost the people must know really what the law is and making the people aware about the law, their rights and duties we call in simple words as legal awareness. The importance of legal awareness in the legal aid system sprouted when the bar, bench and law reformers recommended for it during the post-independence period to use it as a tool in bringing equal and speedy justice to all. So to a greater part the legal awareness also plays a major role in curing this and therefore the people should be legally made aware about their rights and duties and as part legal aid system is considered it remains as the cutting edge in the pre-litigation legal aid phase.

Legal Aid and Awareness in India: The Statutory Recognition

In the traditional way legal aid and awareness in India referred in providing free legal aid for defending criminal cases and by exempting court fees in civil cases but this method did not made any progressive change in reaching justice to the downtrodden of the society. So by realizing this fact and as per the suggestions given by the Supreme Court of India the parliament of India passed the Legal Services Authorities Act, 1987 with an object in providing free legal and competent legal services to the weaker sections of the society under the prescribed criteria’s as

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a mentally ill or otherwise disabled person;
- (e) 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
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home or in a juvenile home
- (h) 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
- (i) A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government.²⁹⁸

So after examining the eligibility criteria the applicant is provided with free legal service at the state cost. Their by the Legal Services Authorities Act) and even the National Legal Literacy

²⁹⁸ Section 12 of the Legal Services Authorities Act, 1987

Mission (NLLM) was set up with an main object of empowering the poor and disadvantaged persons, particularly the woman and the children through legal literacy²⁹⁹ became a milestone in the legal aid system of the nation as it succeeded in bringing justice closer to the underprivileged sections of the society. It is said that the knowledge gained should be spreader otherwise it is like a flame without a fuel so the information about this acts and the relevance it have in the life of the unreached part of the society has to be made aware to them and this forms the raw material or the backbone of the legal awareness in India which can be implemented through various legal awareness camps, classes etc. so through these we could reveal out the importance the legal awareness plays in the legal aid system of the nation. So after providing legal awareness the action plan should be initiated and implemented which in words can be echoed as the legal service.

Legal Service –Not a Favor but a Right

The provision of legal service to the poor and the disadvantaged exists in all civilized countries, often guided by charitable and philanthropic concerns. In a democratic set-up, the philosophy of legal service has acquired a new meaning, with an emphasis on the concept of equality of all human beings, increasingly drawn from the universal principles of human rights. Free legal service to the poor and marginalized members of society is now viewed as a tool to empower them to use the power of the law to advance their rights and interests as citizens, and as economic actors. Such a paradigm shift in the concept of legal service gains greater importance when India is viewed as a growing economic power. But India steps behind in the legal service scenario which directly results in the formation of a black spot in the legal aid system of the country due to illiteracy, lack of financial resources and social backwardness are the major factors that hinder the common person from accessing the justice and other invisible barriers like lack of courage to exercise legal rights, the proclivity to suffer silently the denial of rights, and geographical and spatial barriers are examples. Such barriers keep people disempowered and subjected to exploitation by powerful people.³⁰⁰ But this scenario changed when the hard ironed words said 'we felt that if we really wanted to reach the people then we had to work through social action groups'³⁰¹ the evergreen echoing words of Justice P. N. Bhagwati opened a new fruitful door to the legal aid system of the country that is the legal services by giving establishment for the National Legal Services Authority(NALSA) to regulate legal services throughout the country having Chief Justice of India as the Patron-in-Chief, to be nominated by the President, who shall be the executive Chairman, ex –officio members and nominated members.

The National Legal Services Authority in pursuance of its functions NALSA formulated Schemes, Regulations and Plan of Action to render free and competent legal Services. As a first step NALSA gave way for legal awareness by giving way for the official newsletter of NALSA that is the Nyaya Deep and even the more measures undertaken by the NALSA makes it more unique as it even raised its hand even for the trans genders who is treated as the objects of ridicule and aversion by organizing conference in Chennai on 14 August 2010 and this even resulted in Haryana government declaring trans genders as persons eligible for

²⁹⁹ Mukul National Legal Literacy Mission-Implementation strategies, Nyaya Deep vol v1 Issue 4 Oct 2005

³⁰⁰ U. Sarathchandran, Bringing Legal Aid A Step Closer Home, <http://www.thehindu.com/todays> (27/10/2017)

³⁰¹ Ram Kishore Choudary and Tapash Gan Choudary, 'Judicial Reflections of Justice Bhagwati'

free legal aid services and the next turnover part of the NALSA were the various implementation of the of legal aid schemes which led the suffering majority to the door of equality. The various schemes include Permanent Lok Adalat Scheme, Legal Aid Counsel Scheme for the project of para-legal volunteers, National Legal Services Authority Scheme, 2010 etc.³⁰² After the implementation of these schemes Hon. Mr. Justice S. P. Bharucha said that Legal Services Authorities must ensure that judicial officers are duly sensitized about the work NALSA is doing and its importance for the poor and illiterate. In the last Chief Justices Conference held at New Delhi, a resolution was passed to say that in the service records of the judicial officers, their interest in legal aid programs should be reflected and all the High Courts should take steps for sensitizing the judicial officers in regard to legal aid programs and schemes.³⁰³ Then NALSA gave way for Plan of Action for ensuring the effective implementation of the legal aid schemes and service programs in accordance with the object of the Legal Services Authorities Act, 1987. As part of this NALSA brought out its vision document titled 'NALSA-A Quinn quintal Vision & Strategy Document' containing the actions of the vision in abroad manner then after this as the actions of NALSA³⁰⁴ began by distributing the budgetary allocations by the union government to the state authorities and even NALSA reached the sprouting hands of the future by giving way for juvenile justice board, then later legal service committee was set up at Supreme court. Then various modes such as phone through toll-free numbers then through post, legal counseling, Para legal volunteers and legal aid in magistrate courts etc. were implemented to reach every unreached hand. Then NALSA also gave way for public campaigns of legal aid schemes through media, then by issuing different legal journals by different states such as Nyaya Seva by Andra Pradesh state government keeping 'Let noble thoughts come to us from all sides' as its main theme. Their by after the regular and collective efforts of NALSA the legal aid system of the nation began to glow like the igniting rays of the sun and it came out with flying colors in making the people realize that the legal service is not a favor but a right of every citizen of the India.

Pre-Litigation and Post-Litigation Settlement

In India the judiciary is the third vital organ which has withstood many challenges in the present scenario to retain its integrity. But with the mounting of pressure with cases of civil, criminal, industrial and others areas workload of judiciary has been increased leaps and bound and it has now reached a stage of unmanageable magnitude and the cases remain undecided for years together for one reason or the other.³⁰⁵ So in order to unlock this problem the post-litigation legal aid phase has been introduced as part of the legal aid system of the nation and on advent of this system it gave a paradigm shift in the entire dispute resolution mechanism from archaic, rig morale and antiquated to modern, dynamic and activist system by paving way for the Alternate Dispute Resolution (ADR) for the speedy pace of disposal of cases, a sino quo none of any system of jurisprudence by placing mediation, conciliation, counseling and Lok Adalat as the building stones of the Alternate Dispute Resolution (ADR) mechanism.

³⁰² Legal Aid Schemes, <http://nalsa.gov.in> (15/10/2017)

³⁰³ Retrieved from the article named, 'Statutory Provisions Governing the Legal Aid'

³⁰⁴ Executive Chairman, NALSA while writing from the Desk of the Executive Chairman in Jan.,99 Issue of 'Nyaya Deep'

³⁰⁵ Dr. N. V. Parangapee, 'Law Relating To Arbitration and Conciliation'

Mediation

Mediation is the most popular technique which is being employed in resolving the disputes and is a part of legal aid. Mediation is a process by which disputing parties seek the intervention and assistance of a neutral third party to act as a mediator and to reduce their differences. He is a facilitator, who helps the parties to reach a negotiated settlement. Mediation, as a method of dispute resolution is no new phenomenon, rather one that has for long existed in our tradition. In most of the cases the disputants desire for an amicable solution. Mediation has been employed by various tribes of our country by way of a village council, usually consisting of certain village elders. Today, mediation is perhaps the fastest growing form of alternative dispute resolution. In the process of mediation, the mediator or the impartial neutral plays an important role and the success of mediation depends upon his ability and experience.³⁰⁶

Conciliation

The technique of ADR is conciliation .Conciliation means “The settling of disputes without litigation”. Conciliation is the act of bringing into harmony, harmonizing reconciliation. It is the adjustment and settlement of a dispute in a friendly and antagonistic manner. It is a voluntary non-binding technique utilizing an impartial third party to assist in settling disputes between parties which may, by agreement, become binding on the parties. Conciliation is statutorily regulated by the Arbitration & Conciliation Act, 1996 but not defined by that statute Sec 67(1) of the act however, impliedly defines conciliation as the assistance rendered by a conciliator to the parties to a dispute, in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. There is no set formula for conducting conciliation .The conciliator should adopt a flexible approach to the procedure. He holds private meetings with each party separately. There may be several rounds of such separate meeting to bring the parties closer to an agreement. There may be joint sessions to address specific matters. The conciliator and the parties keep confidential all matters relating to conciliation proceedings. He should take positive action to help the parties reconcile their interests and concerns and try to find an acceptable compromise. If the conciliation succeeds, the conciliator can draw an award and if needed report to the Court.³⁰⁷

Counseling

Counseling is an assistance or advice. The preventive Legal Aid strategy emphasizes, to constitute "Counseling Centre" to avoid litigation at the initial stage itself. It is natural that litigants complain under certain stress or emotional disturbances, if properly advised by counselors they may lead a happy social life. NALSA constituted counseling center to advice parties, similarly counseling centers were also set up at police station and at women and child welfare departments, national commission for women etc. The object of the judiciary and government departments is to prevent litigations. In modern times these centers are trying at best level to settle some disputes amicably. Family counseling centers tries resolving family disputes with help of advocate, psychologist and social workers. Counseling has been practiced in one or other since the evolution of mankind. In every field which requires dealing with

³⁰⁶ H.R Khanna, 'Indian judicial system '

³⁰⁷ Dr. Avatar Singh,' Law of Arbitration and conciliation Act'

people, counseling is essential “counseling” is a relationship between two persons, counselor who is offering help and counselee to whom such help is given it may be formal.³⁰⁸

Lok Adalat

The committee for implementing Legal Aid Schemes (CILAS) constituted by the Ministry of Law and Justice, Government of India in 1980 recommended the establishment of Lok Adalat. Consequently, it has assumed great importance and attained a statutory reorganization under the Legal Services Authorities Act, 1987, and was first, held at Chennai in 1986. In the case of Lok Adalat, however, the criteria for eligibility for legal aid are not applicable for the good reason that it should be available in all cases irrespective of income of the parties its object being speedier justice at less expense to all parties to litigation actual and potential. The Act 1987 makes provisions in relation to the establishment, power and functions etc. of Lok Adalats. Lok Adalats are organized to promote justice on a basis of equal opportunity and not to deny the justice to any citizen by reason of economic or other disabilities and Legal Services Authorities were given the responsibility of organizing Lok Adalats to take cognizance of matters involving not only those persons who are entitled to avail free legal Services but of all other persons also, be they women, men, or children and even institutions. A Lok Adalat has the jurisdiction to settle, by way of effecting compromise between the parties, any matter which may be pending before any court, as well as matters at pre-litigative stage i.e. disputes which have not yet been formally instituted in any court of Law. However, criminal offences which are non-compoundable under any law are beyond the ambit of the Lok Adalat. The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually lawyer and a social worker, it evokes instant acceptability and credibility. Therefore, the members of Lok Adalat should have judicial independence in discharge of his duties. Supreme Court of India in the case of *Subhash Sharma v. Union of India* and *Supreme Court Advocates-on-record v. Union of India*. Highlighting the importance of Lok Adalats, observed that no doubt that dispensation of justice by Lok Adalats would be less expensive, less technical, less formal, cheap and relatively quick and it is this sort of justice which a common man looks for. Necessary help from publicity media like press, Radio and television are taken in giving publicity of the proposed Lok Adalat. Nonpolitical and voluntary services institutions may take part in organizing Lok Adalats by arranging free distribution of food packets to the public gathered at the Lok Adalat. Every Bench of the Lok Adalat shall make sincere efforts to bring about a conciliatory settlement in every case put before it without bringing about any kind of coercion, threat or undue influence, allurement or mis-representation. Lok Adalats are having a statutory foundation it is easy to visualize a constitutional foundation for Lok Adalat especially in criminal matters.

The major defect of the mechanism of pre-litigation legal aid phase is that it cannot take a decision, if one of the parties, is not willing for a settlement, though the case involves an element of settlement. The adamant attitude shown by one among the parties will render the entire process futile. Even if all the members are of the opinion that the case is a fit one for settlement, under the present set-up, they cannot take a decision unless all the parties consent. If the parties do not arrive at any compromise or settlement, the cases either returned to the

³⁰⁸ P. Subba Rao, ‘Essential Of Human Resource And Industrial Relation’

court of law of the parties are advised to seek remedy in a court of law.³⁰⁹ So from here onwards the role of the post-litigation begins and in the traditional way itself is done by appointing a lawyer for indigent, reimbursement of process fee, witness's expenditure, court fee etc. by the State. So hereby the door of the legal aid system of India opens an evergreen and transparent legal world of justice and peace.

Conclusion and Suggestions

*May I be a protector for those without one, a guide for all travelers on the way;
May I be a bridge, a boat and a ship, For all who wish to cross (the water)
-Acharya Shantideva (An 8th century Buddhist Master)*

So for our legal aid system of our nation to be a protector of the judicial system of the nation there is a more way we have to hurdle through from time of the origin of mother of the Indian laws of the nation. Even though the original constitution did not contain any right or remedy to receive state aid by indigenous critical citizens but from that the nation arose and united to reach the innocent hands which remain unreached and suffers injustice on account of poverty, ignorance and other disabilities and the spirit of the ignited rays of the sun sparked more when the Legal Services Authorities Act came into force and followed up by the establishment of the NALSA whose actions continuously echoed the words of the father of the nation that 'The village movement is an attempt to establish healthy contact with the villagers by inducing those who are the friend with the spirit of service to settle in them and find self-expression in the service of villagers.' and its constant effort marked a great progress of the nation in the legal aid scenario of the nation as it introduced various legal aid schemes, institutions, plan of action etc. 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 law, 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. So it is suggested that it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. For that judiciary needs the support from state administration to conduct legal literacy programs. The judiciary should focus more on legal aid because it is essential in this present scenario where gulf between haves and have-nots is increasing day by day. And elimination of social and structural discrimination against the poor will be achieved when free legal aid is used as an important tool in bringing about distributive justice. There are number of precedents as well as legislations to uphold the right to free legal aid but they have just proven to be a myth for the masses due to their ineffective implementation. Thus the need of the hour is that one should need to focus on effective and proper implementation of the laws which are already in place instead of passing new legislations to make legal aid in the country a reality instead of

³⁰⁹ J.P. Singh, Public Interest Lawyering, Legal Aid & Para Legal Services'

just a myth in the minds of the countrymen. In providing legal aid, the legal aid institutions at all level should use proper ADR methods so as to speed up the process of compromise between parties to the case and with that matter will be settled without further appeal.³¹⁰ Their by the people's trust on the judiciary and the judicial system would be protected and as there is no walls to confine joy or sorrow, to sacrifice or to achieve, gain or lose the molding iron words of the Supreme court of India that 'where there is dharma ,there is victory ' would prevail over and over forever.

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Brief About Author



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9. Legal Aid & Awareness in India

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Introduction

In today's era of globalisation, India is a developing country. The development in the industrial sector is very much appreciable, but still this progress in the field of industrialization, marketing, finance etc. cannot hide the indispensable drawbacks of our society like population explosion and illiteracy. These drawbacks coupled with environmental and social hinges results in increase in poverty and lack of food for people. Our country is going through the phase of development but all the fruits of this tree are being encased by those who stay in the upper half of the society. The poor resides in their own world of darkness. But those who are still neglected are the main foundation of the society that is to be remembered. So, misusing their ignorance and encasing the fruits for the benefit of the upper half of our society is not at all good for the future of the country. Nowadays, the government has taken up policies to spread awareness to the common mass through organizing different programmes held by different authorities - governmental or non-governmental. As the people of this country becomes aware about their legal rights, duties and liabilities they themselves will understand how much better their lives can become. Spreading the awareness about the rights of the people and how they are or can be infringed is the primary target of these authorities, so that the one whose rights are infringed can himself realize that his rights has been violated.

A just society is the one where justice prevails throughout alike. To have equal right to approach the court is rendered unless if the right cannot be exercised. The rich and influential persons can approach the courts because they have means but the poor always faces injustice simply because they have no money to hire a lawyer. It is therefore in the interest of justice to establish a social order where the poor not only have the right but also the means to seek justice. The idea of legal aid is thus a step in this direction. Article 39A of the Constitution of India provided for free legal aid for poor citizens. It is the constitutional obligation of the state to ensure that poor citizens are provided free legal aid so that they are not deprived of justice for want of money.

The Central government has developed a plan and has also started to apply it with the help of Legal Services and Authorities. These authorities spread legal awareness amongst the citizens of our country and provides legal assistance like appointing advocates and giving advices to the people and to suggest the government about other different plans relating to this noble cause.

Meaning of Legal Aid

Legal aid means extending legal assistance free of cost to the poor and needy i.e. to those who do not have the resources to engage a lawyer to represent them in legal proceedings in a tribunal, court or before any other authority. The poor or marginally usually have very little or absolutely no knowledge about their rights and the legal services act seeks to ameliorate this

situation and increase awareness of legal aid. Poverty leads to disempowerment and socio-economic deprivation, thus disables people from accessing courts for securing legal assistance to protect their rights. Without giving the poor equal opportunity to access law, it deprives them of legal protection and gives excessive powers to the powerful to exploit them. Legal aid is a gift to all individuals who may have been denied access to justice and were victims of atrocities. It is a means of removing inequalities existing in the society in terms of access to legal aid and the abuse of power by the higher sections of society.

According to the Constitutional provision, “The State shall secure that the operation of the legal system promotes justice, on the 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 disabilities.”³¹¹ Article 39A, forms a part of the Directive Principles of State Policy, and is given under Part V of The Constitution of India, 1950. It was inserted by the Constitution (42nd Amendment) Act, 1976. It essentially imposes a duty on the state to ensure that the legal system functions in a manner that furthers justice, provides equal opportunity and more importantly, devises appropriate mechanisms or legislations so that it can extend legal aid free of cost. The purpose of this is to promote equality so that any citizen is not denied the right to seek justice because of economic incapacity to bear the cost of legal aid. The article orders the State to give free legal aid to promote the goals of equal opportunity and justice as envisaged in the Preamble.

History of Legal Aid

The earliest legal aid movement appears to be of the year 1851 when some enactment was introduced in France for providing legal assistance to the indigent. In Britain, the history of the organized efforts on the part of the State to provide legal services to the poor and needy dates back to 1944 when Lord Chancellor, Viscount Simon appointed Rushcliffe Committee to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that persons in need of legal advice are provided the same by the State. One need not be a litigant to seek aid by means of legal aid. Justice Blackmun in *Jackson v. Bishop*³¹² says that, “The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice.” Since 1952, the Government of India had started addressing to the question of legal aid for the poor in various conferences of Law Commissions. In 1960, some guidelines were drawn by the Government for legal aid schemes. In different states, legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. In 1980, a committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Hon. Justice P.N. Bhagwati then a judge of the 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. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of

³¹¹ Article 39a, The Constitution of India, 1950

³¹² 404 F 2d 571

their disputes. In 1987, Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern.³¹³

Applicability of Article 39A of the Constitution

The Parliament in furtherance of the objective of this Article attempted at reducing the work load on the courts by enacting the Legal Services Authority Act, 1987 that provide for setting up of Lok Adalats that serve as an alternate dispute resolution system. This initiative was welcomed by the Supreme Court which has urged other authorities to follow this model and set up Adalats on similar lines. Request for legal services can be denied if the applicant has sufficient resources to seek justice, doesn't satisfy the given eligibility criteria or when his application has no merits. The legal assistance provided may also be withdrawn in case it is found that the legal aid has been obtained fraudulently or by misrepresentation, if there is a significant change in the circumstances of the accused, on account of another counsel being appointed to assist the accused, because of misconduct or non-cooperation or death of the aided individual, etc. The legal services authority undertakes to pay the cost of court fees, charges for drafting and preparing legal proceedings, charges of legal counsel, practitioner or advisor, costs of other related paper work, etc. Legal services authorities are significant to the development of legal aid programmes because they can expand the right to justice for the poor and discriminated sections of society.

Under Section 2(1) (c) of this Act³¹⁴, "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; to provide free and competent legal services to the weaker section of the society was the basic object of enacting the aforesaid act. Justice whether it is social, economic or political is our constitutional pledge enshrined in the preamble of our Constitution. The assumption of our legal system is that all citizens have equal access to means of legal redress. Access to inexpensive and expeditious justice is a basic human right. Wealthy persons and large corporations receive the highest quality advice. There should be a system of administration of justice of which the poorest are able to take advantage. Equal access to the law for the rich and the poor alike is essential for the maintenance of the rule of law. It is therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation who are not able to pay for it. Legal aid is required in many forms and at various stages for obtaining guidance for resolving disputes in courts, tribunals or other authorities.

The criteria for the persons who are entitled to get free legal aid is given under Section 12 of the said Act. Every person who has to file or defend a case shall be entitled to legal services under this act if that person is –

- a) A member of a Scheduled Caste or Scheduled Tribe;
- b) A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- c) A woman or a child;

³¹³ Varun Pathak, A Brief History of Legal Aid, available at <http://www.legalserviceindia.com/articles/laid.htm>

³¹⁴ Legal Services Authorities Act, 1987

- d) A person with disability as defined in Section 2(i) of the person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
- e) A person under circumstances to the underserved want such as being a victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster.

Constitutional Provisions

Total freedom and emancipation of all citizens of India from all kinds of deprivation is the avowed object of the nation and its Constitution. Dispensation of justice equally to all through the means of “reasonable, fair and just” judicial process established by law which is also known as procedural justice, is one of the very essential means to achieve the said object. Dispensation of such justice needs and as such demands as its accessory dispensation of reasonable, fair and just procedural justice. To make available such procedural justice equally to each and all and particularly to the weaker section of the society is a *sine qua non* of securing equality before law. Making available free legal aid to the weaker section and needy is an equalizing mechanism and part and parcel of establishment of reasonable, fair and just procedure and dispensation of such procedural justice. In an adversarial judicial process, any kind of disability of one against his adversary is likely to adversely affect the doctrine of equality in the matter of dispensation of justice tilting the balance. Inequality will create imbalance in the scale of adversarial judicial process in favor of strong and against the weak. Hence is the need for legal aid either fully or partly to remove the said imbalance in the scale as an effective balancing factor to enable the judiciary to make its own contribution to the nation’s overall effort to free and emancipate the people from deprivation.

Although at the time of adoption of the Constitution by the Constituent Assembly its distinguished members felt the necessity of providing -

- i) The Preamble of the Constitution seeks to promote Republic, Socialist, Democratic, Secular and Sovereign;
- ii) Article 14 of the Constitution is a fundamental right of every citizen which states that state can never deny to any person equality before law or equal protection of laws;
- iii) Article 21 of the Constitution provides that “No person can be deprived of life or personal liberty except according to the procedure established by law.” Before 1976, there was no constitutional provision for free legal aid but after 42nd Amendment a new article was added i.e. Article 39A (Directive Principles of State Policy) under Part IV of the Constitution. Article 39A lays down certain principles which requires the state to promote justice and equality of status and opportunity.

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. Almost simultaneously with the incorporation of Article 39A in the Constitution, Order 33 of the Code of Civil Procedure³¹⁵ (Suits by indigent persons) and Section 304(1) of the Code of Criminal Procedure³¹⁶ states that, “The Constitutional duty to provide legal aid arises from the time the accused is produced before the magistrate for the first time and continues whenever

³¹⁵ The Code of Civil Procedure, 1908

³¹⁶ Code of Criminal Procedure, 1973

he is produced for remand.” Both were introduced with the object of providing free legal assistance to the indigent persons.

Judicial Interpretation and Interventions

Almost after two years of the introduction of Article 39A of the Constitution of India, the Supreme Court of India expressly opined that since the judgment in *Smt. Maneka Gandhi v. Union of India*³¹⁷, “speedy trial” had been recognized as implicit in the broad sweep and contents of Article 21³¹⁸ and the said Article also conferred a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure established by law and further that procedure established by law should be reasonable, fair and just. In the same year, the Supreme Court in *Madhav H. Hoscot v. State of Maharashtra*³¹⁹, was pleased to hold that Article 39A of the Constitution was an interpretative tool for Article 21 and that if a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the court under Article 142 read with Article 21 and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice.

A year later, in 1979 the three separate judgments were delivered in the matter of *Hussainara Khatoon v. State of Bihar*³²⁰. In the first judgment, the principle laid down in *Maneka Gandhi*'s case³²¹ was reiterated while in the second judgment the Supreme Court explained that reasonable, fair and just procedure would remain a far cry unless an adequate and comprehensive nationwide legal service programme was introduced to provide free legal services to the poor and the needy. Looking at the Article 14, 21 and 39A of the Constitution, the Supreme Court held that the right to free legal service is an inalienable essential element of the said reasonable, fair and just procedure and the State was under a “mandate” to provide such free legal services wherever the same was needed. The Supreme Court observed that it was not possible to reach the benefits of the legal process to the poor to protect them from injustice and to secure them with their constitutional and statutory rights unless equal justice was injected into legality by dynamic and activist schemes of legal services. The Supreme Court recommended to the Governments at all levels, e.g. Central and State that it was high time that a comprehensive legal service programme was introduced in the country. In this judgment recommendation was made for a “comprehensive” legal service programme meaning thereby to cover and include both criminal and civil and other judicial processes as also all categories of weaker sections of the society. In the third judgment, the Supreme Court went a step further and said that it was a “constitutional right” of every citizen who was unable to engage a lawyer and who sought legal services on account of reasons such as poverty, indigent or in solitary situation to have free legal services provided to him by the State and the State was under a “constitutional mandate” to provide such services including making provisions for a lawyer and such legal aid was an absolute imperative. All the three judgments taken together can be considered to be as a distinct milestone in the history of judicial activism.

Judicial intervention through its activism continued to prick the inactivism of the executive and legislature. For example, the Supreme Court of India in the case of *Gopalanachari v. State*

³¹⁷ AIR 1978 SC 597

³¹⁸ Article 21, The Constitution of India, 1950

³¹⁹ AIR 1978 SC 1548

³²⁰ AIR 1979 SC 1369

³²¹ *Maneka Gandhi V. Union of India* AIR 1978 SC 597

of Kerala³²², following Hoscot's case³²³ enunciated that a person in prison should be given legal aid by the court at the expenses of the State by assigning a counsel. The Supreme Court was of the opinion that in the absence of such legal aid the procedure could not be right, just and fair and further that no procedure should be arbitrary, fanciful or oppressive. In the same year, in the case of Khatri v. State of Bihar³²⁴, the Supreme Court reiterated its views expressed in Hussinara's case³²⁵ as a reminder to the State by referring to an observation made in Jackson v. Bishop³²⁶, to the effect that human considerations and constitutional requirements were not to be measured by dollar consideration and as such no law should permit and government to deprive its citizens of their constitutional rights on a plea of poverty.

The trend and tirade of the judicial conscience of the court was evident further in Sheela Barse v. State of Maharashtra³²⁷, when the Supreme Court said that legal assistance must be made available to prisoners in jails whether they were under trials or convicted. In the same year, the Supreme Court in Ranjan Dwivedi v. Union of India³²⁸, although dismissed the writ petition to enforce Article 39A but came to some assistance of a needy lawyer who had been arraigned along with four others on a charge of murder by opining that the petitioner should apply under Section 304(1) of the Code of Criminal Procedure, 1973 for obtaining his desired legal assistance. In the said judgment, the Supreme Court was pleased to opine that there is no disharmony between the Directive Principles of State Policy and Fundamental Rights because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare State. It further said that primarily the mandate in Article 39A was addressed to the legislature and the executive but in so far the courts of justice could indulge in some judicial law making within the interstices of the Constitution or in a statute before them for construction 'the courts were bound by the same mandate'.

In Sukhdas v. Union Territory of Arunachal Pradesh³²⁹, the Supreme Court once again reiterated its view expressed in Hussinara Khatoon's case³³⁰ by saying that it was settled law that free legal assistance by the State is a fundamental right of an accused person as it relates to the deprivation of life and personal liberty as given under Article 21 of the Constitution of India. The Supreme Court further went on to say that the aforesaid fundamental right could not be lawfully denied in the absence of an application therefore, otherwise legal aid would become merely a paper promise and it would fail of its purpose if it were to be left to a poor ignorant and illiterate to ask for free legal service when it is a common knowledge that about 70% of the population in the country living in rural areas are illiterate and even more than that percentage of the people were not aware of the rights conferred upon them by law. Absence of legal awareness is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffers in the country. The Supreme Court was pleased to hold that it is the duty of the adjudicating authority to inform the indigents that they were entitled

³²² AIR 1981 SC 674

³²³ Madhav H. Hoscot V. State of Maharashtra AIR 1978 SC 1548

³²⁴ AIR 1981 SC 928

³²⁵ Hussainara Khatoon V. State of Bihar AIR 1979 SC 1369

³²⁶ 404 F 2d 571

³²⁷ AIR 1983 SC 378

³²⁸ AIR 1983 SC 624

³²⁹ AIR 1986 SC 991

³³⁰ Hussainara Khatoon V. State of Bihar AIR 1979 SC 1369

to free legal assistance and also enquire from them whether they wanted lawyer to be provided to them at State costs. To supplement this legal duty and with a view to encourage legal awareness in the society the Supreme Court in *Centre for Legal Research v. State of Kerala*³³¹, was pleased to opine that voluntary organisations and social action groups must be encouraged and supported by the State in operating legal aid programmes and such voluntary organisations and social action groups must not be under the control or direction of supervision of the State Government or the State Legal Aid and Advice Board. Voluntary organisations and social action groups operating these programmes should be totally free from any government control.

Article 39A of the Constitution and the recommendations of the Supreme Court of India in the case of *Hussinara Khatoun v. State of Bihar*³³² inspired and impressed the Central Government to set up a committee for implementing Legal Aid Scheme in the States and Union Territories in 1980. Since the awards of the Legal Aid Committee could not be carried out independently in view of the lack of statutory authority, establishment of various Legal Services Authorities at the national, state and district level was nowadays a necessity in order to achieve the principles of justice and free legal aid. Hence, the policy conceived under Article 39A of the Constitution as further explained and interpreted by the intervention of judicial opinions could be brought within a statutory framework by enacting Legal Services Authorities Act, 1987 to provide free and competent legal services to the weaker section of the society to ensure that the opportunities for securing justice is not denied to any citizen by reason of economic or other disabilities. The Act came into force on 9th November 1995. The said act has also made provisions for organizing Lok Adalats to secure the operation of a legal system promoting speedy justice on the basis of equal opportunity through the process of conciliation both at pre and post litigation stages.

Issues Regarding Legal Aid in India

The right to legal aid is available there are some restrictions and regulations that have to be followed while exercising this right. In *State NCT of Delhi v. Navjot Sandhu*³³³, the court held that if a party fails to give evidences in a dispute and alleges that their counsel has not performed effectively then the court should not rely merely on this fact and remove the counsel but ties to investigate the fact. It should be remembered that the verdict should be made with proper judicial scrutiny in order to follow the principles of natural justice.

The legal system was reluctant to comply with the directives issued under Article 39A of the Constitution. The purpose of the provision was also defeated when an inexperienced young lawyer would be appointed to defend the accused. But to deal with this issue, the court has observed that since international charters provide for adequate and effective defense, it can be construed that Legal aid given under Article 39A also implies that the counsel appointed by the State should also be competent to defend the accused.³³⁴

³³¹ AIR 1986 SC 1322

³³² AIR 1979 SC 1369

³³³ (2005) 11 SCC 600

³³⁴ Access to Justice- Right to Legal Aid in India, http://www.nilsindia.org/uploads/1/2/0/8/12081957/access_tojustice-right_to_legal_aid.pdf (25/10/2017)

Every year, a nominal amount of funds is being kept from the budget by the government for rendering free legal services to the people, but this money remains unused as most of the people don't have the knowledge regarding the free legal aid services. Also, even though the legal aid programmes undertake the responsibility of meeting most of the expenditure in defending the accused, what is ignored is that all members including legal aid counsel, staff or the police usually adopts corrupt practices to gain undue advantage by hiding relevant documents or instruments relevant to a case. Thus, this leads to the forfeiture of the purpose of establishing legal aid service.

The finance experts who are appointed to manage the finance of legal service authorities underestimate their role and the huge amounts which comes in the form of funds goes in vain. The physical structure of the buildings of these authorities are not modernized with adequate facilities. The whole work is done through paper only, there is no facility for filing any complaint electronically. There is no specialized system so that the disabled one can have access to free legal aid. Our whole system lacks transparency and tries to hide the procedure which is actually done and makes illusion that something else has been done. The applicants who filed their applications under the Right to Information Act³³⁵ are also not been entertained by the system timely.

The fact that there are still many sex workers, the mentally disabled, etc. who are labelled as criminals by the system and have to rot in the prisons is an example of how the right to legal assistance is crucial to protect their right to life and self-respect so that by criminalizing them, they are not made to go back to their miserable state of poverty and crime. A recent research was made and it was found that the lawyers who are engaged or hired in giving free legal aid to the indigent people are not adequately trained and also there is no statute or provision relating to the recruitment of lawyers from backward classes such as SCs, STs. The main loophole is that this problem is not easily recognized by the system and will not come in the eyes of the law in future also as there is no settled complaint mechanism which can deal with deficient quality of legal aid. Another notable point is that there is no committee who use to compare the ratios of legal aid cases from the previous years to the current year or to check out the capability of lawyers in order to know the progress in this field. The various institutions of the state are not timely active and don't want to support the minority or the disabled classes who are not yet being aware of legal aid and waste their time in engaging private lawyers.

Legal camps, though held, are not efficiently organized and the audience is not intimated of a program that is going to be held for them, the sessions are monotonous, lengthy and instructive rather than interactive and is carried on by untrained personnel which only adds to the lack of awareness about legal services.³³⁶

Conclusion

The concept of legal services has been imbibed in the working of the judiciary to secure and promote justice in the society. It's the duty imposed on the government to grant legal

³³⁵ Right To Information Act, 2005

³³⁶ Access to Justice- Right to Legal Aid in India, http://www.nilsindia.org/uploads/1/2/0/8/12081957/access_tojustice-right_to_legal_aid.pdf (25/10/2017)

assistance. Given the lack of awareness in the country, expensive counsels, uncertain and time consuming judicial proceedings and the menace of corruption in the judiciary, it is imperative to refine the process of accessing justice in order to assure justice to the needy. Overall, it can be said that India has performed decently in establishing mechanisms to dispense legal aid efficiently. By instituting Lok Adalats, Public Interest Litigation, Nyay Adalat, etc. it has only furthered the cause of legal services. However, like all policy programmes, legal aid also suffers from some inefficiencies such as access and awareness of legal to a small section of the population, and this may be overcome by expanding legal literacy to the marginalized groups as well. Also, if a proper institution is put in place to organise and check the affairs relating to legal aid, the programme would be able to do better. Other voluntary and non-state organisations should also be encouraged to engage themselves in the granting free legal help so that more people can have access to justice. Legal aid institutions should also be made more accountable to some autonomous external agency supervising the working of these programmes. Legal help initiatives must also make use of alternative dispute resolution mechanisms such as conciliation, client counselling, mediation. Etc. also, the benefits of legal services should not only be directed to the poor sections of society but also to those suffering from disability and discrimination such as prostitutes, the mentally challenged, etc. the role of law schools in promoting legal aid should also be emphasized, more legal aid centres should be set up and clinical education and pro bono work by students and by law firms should be encouraged.

Legal aid like any other welfare measure is aimed to benefit a particular section or sections of community who continue to suffer from one or the other kind of disability and consequential deprivation. Free legal aid is not a State charity but a State legal subsidy although when the State makes any provision for only weaker sections of the community there is a strong reflection on the inabilities and disabilities of the State itself. Such reflection does not get erased or obliterated however one may be inclined to describe legal aid by whatever name either as a privilege or as a legal right or as a statutory right or as a fundamental right or as a human right. The reflection is that the State resources and power has not been able to eradicate the conditions which subscribe to creation and continuation of the existence of the weaker section of the society. Hence, eradication of deprivation should be the State's object. Weaker sections of the society are deprived more because of their various disabilities to fight against social, economic and political deprivation. State's duty and responsibility to create conditions which will prevent occurrence or incidence of deprivation cannot be underplayed. So long weaker section will remain weak, free legal aid will remain a *sine qua non* as an equalizing and balancing tool of our object to make all citizens equal before law affording equal opportunity.

Brief About Author



I am Divya Bansal, a third year student of B.A.L.L.B pursuing the education from Geeta Institute of Law affiliated to Kurukshetra University. My area of interest is criminal law and environmental law. I always keen to present my views on crucial topics related to legal aid, environmental issues and ADR.

10. Legal Aid: Exploring its Boundaries

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“Injustice anywhere is a threat to justice everywhere”

— Martin Luther King.

Introduction

Access to justice is a cardinal principle underlying the effective justice rendering system. Any impediment to such access would threaten the well-knit justice fabric of the society. In today's dynamic world, the aspect of law covers every iota of details; especially the paraphrase ‘womb to tomb’ can be attributed to law. Right from one's birth till his death every individual goes through various paradigms of law. Irrespective of one's social, economic or political status, when everyone is treated equally in the eyes of law, the access to justice in spite of such indifferences is the true essence of an effective justice delivery system. Legal aid plays a pivotal role in subsuming the indifferences and realizing “access to justice for all” practiced by legal services in India.

It is indeed a pleasant surprise that the legal literacy level is comparatively lesser than the literacy level in our country.³³⁷ Therefore, the need for legal awareness must be inculcated in par equivalence with literacy. Since legal aid and awareness is an integral part of distributive justice, its effective implementation till the grass root level requires an able administration. The four-tier system of legal services in India, National legal services authority, State legal services authority, District legal services authority and Taluk legal services committee form an integral part to realize such aforementioned effort. With new challenges and issues in focus, the need to eliminate such problems and arrive at an amicable and speedy solution is the need of the hour.

Historical Background

The roots of modern legal aid jurisprudence can be traced back to the 40th paragraph of the Magna Carta which pledged that *“To no one will we sell, to no one will we deny, or delay, right or justice”*³³⁸ However, in the recent past, the traces can be found when an enactment was introduced in France in 1851 for providing legal assistance to the indigent. Later in Britain, the history of the organized efforts by the State to provide legal services to the poor and needy dates back to 1944, when Lord Chancellor, Viscount Simon appointed Rushcliffe Committee to inquire about the facilities existing in England and Wales for providing necessary legal advice to the poor and to make recommendations to that effect, as appear to be desirable for ensuring that persons in need of legal advice gain access for the same with States intervention.³³⁹ From

³³⁷ Jananeethi, “Legal Literacy: Social Empowerment for Democracy and Good Governance”, <https://www.hurights.or.jp/archives/asia-pacific/section1/08Jananeethi.pdf> (25/07/2017)

³³⁸ Multiple Action Research Group(MARG), Needs Assessment Study of Legal Services Authorities, iv (2012), <http://www.undp.org/content/dam/india/docs/DG/needs-assessment-study-of-selected-legalservices-authorities.pdf> (25/08/2017)

³³⁹ Legal aid Movement in India – Its development and present status, <http://nalsa.gov.in/about-us> (25/08/2017)

1952, the government of India steered the wheels when it started dwelling upon the question of legal aid for the poor in numerous conferences of Law Ministers and Law Commissions. As a fruit of these efforts, some guidelines were drawn by the government for providing legal aid schemes in 1960,³⁴⁰ thus marking the beginning of something quintessential in the fabric of justice.

Reminiscence in Judicial Decisions

An important milestone in efforts to advance Legal aid and awareness was recorded when Legal Aid scheme was pioneered by Justice P.N. Bhagwati under the Legal Aid Committee formed in the year 1971. In his inimitable style, Justice Bhagwati opined: “*Legal aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice. If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21 and we have no doubt that every State Government would try to avoid such a possible eventuality*”,³⁴¹ He recapitulated his stand in *Suk Das v. Union Territory of Arunachal Pradesh*³⁴² and said “*It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21*”.³⁴³ This part of the narration would be futile without referring to the other astute architect of human rights jurisprudence; Justice Krishna Iyer in *M.H. Hoskot v. State of Maharashtra* declared that: If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to appeal (before the honorable Supreme Court) for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice.³⁴⁴ Also, Justice Krishna Iyer observed that providing free legal aid is the *State's duty and not Government's charity*.³⁴⁵

The honorable Supreme Court in the case of *State of Maharashtra v. Manubhai Prageji Vashi* has made it crystal clear that it is now well established that the failure to provide free legal aid to an accused at the cost of the State unless refused by the accused, would vitiate the whole process of trial.³⁴⁶ Further, the Supreme Court of India got a majority opportunity to make an emphatic pronouncement regarding the rights of the indigent people in the landmark case of *Hussainara Khatoon v. State of Bihar*,³⁴⁷ whereby the honorable court emphasized that free legal service as envisaged under Article 39A was an inalienable element of ‘reasonable, fair, and just’ procedure and that the right to free legal services was implicit in the guarantee of Article 21.

Thus, a necessary correlation between Article 21 and Article 39A was drawn by virtue of this case. Plethora of judicial decisions has dwelled upon the importance and need for legal aid and

³⁴⁰ S K Sarkar “Law Relating to Lok Adalats and Legal Aid, Commentary on the Legal Services Authorities Act, 1987” Allahabad Orient Publishing Company (2004)

³⁴¹ Excerpt from *Hussainara Khatoon v. State of Bihar*. 1979 SCR (3) 532

³⁴² 1986 SCR (1) 590

³⁴³ Para 2 of *ibid*.

³⁴⁴ 1979 SCR (1) 192

³⁴⁵ *Ibid*.

³⁴⁶ AIR 1996 SC 1

³⁴⁷ 1979 SCR (3) 532

awareness, each of these decisions in its own unique way acts as a guiding path when new challenges are posed for the effective rendering of justice.

Legal Aid: Constitutional and Statutory Commitment

The laws of India provide an enabling framework for the much-needed provision of legal aid. Amongst which the guiding force and the grundnorm, the Constitution of India gives higher significance to constitutionalism and rule of law. This is regarded as the basic structure and also an essential conducive factor for natural justice. Fair opportunity to be heard and present their own case is the underlying principle of *Audi Alteram Partem*,³⁴⁸ which is the crux of legal aid.

The preamble of the Indian Constitution secures to its citizen, social, economic and political justice; Article 14 of the Constitution envisages that State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Within the ambit of Article 14, we find the first integral part of legal aid; which ensures equal justice. The guarantee of equal justice would be futile if the poor or illiterate or the needy cannot enforce their rights because of various impediments such as their poverty or illiteracy or weakness.

Furthermore, Articles 38 and 39, of the Constitution of India also throw light on the need for access to justice for all and lay down a clear mandate in this regard. Especially Article 38 (1) clearly delineates that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic or political, shall inform all the institutions of the national life.³⁴⁹

However it is the language of Article 39A that explicitly directs that the State shall secure 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 disabilities.³⁵⁰ Even though it is a Directive Principle, the interlink between equal justice and free legal aid with other fundamental rights has made it obligatory on the part of the state to realize the mandate laid down in this article.

In order to effectuate Article 39A to its letter and spirit, a separate legislation, the Legal Services Authority Act, 1987 was enacted to establish the much needed Legal Service Authorities in order to provide free and competent legal services to the weaker, downtrodden and needy sections of the society; so as to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other impediments.³⁵¹ Also, the introduction of Lok Adalats by virtue of this statute paved a way to hassle-free, speedy disposal of cases. The Legal Services Authorities Act constituted statutory legal services authorities at different levels such as the National, State and District level and Taluk levels to address and reach out to the general public at large.

³⁴⁸ Maneka Gandhi vs Union of India, (1978 AIR 597)

³⁴⁹ Article 38(1) of Constitution of India

³⁵⁰ Article 39A of Constitution of India

³⁵¹ Ibid

Procedural laws such as the Code of Criminal Procedure and the Code of Civil Procedure also lay down certain provisions in parlance with free legal aid. Amongst them section 304 of the Criminal Procedure Code envisages the nature and provides that, wherein a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader; the Court shall assign a pleader for his defense at the expense of the State.³⁵² The language of Section 304 is couched in mandatory terms.³⁵³ This is reflected by the use of the word ‘shall’ thus making it clear that the courts through the State is under an obligation to provide legal assistance to a person charged with offence triable before the Court of Session.³⁵⁴ The criterion for such entitlement to Legal Aid to the accused is usually poverty and indigence; about which a certificate, after an inquiry has to be issued by the committing magistrate.³⁵⁵

Further, Order 33 of the Civil Procedure Code lays down the procedure in case of a suit by an indigent person. It states that, when an application to sue as indigent person has been granted, the plaintiff who made such application shall not be liable to pay any court fee and if in case he is not represented by a pleader, the Court may, after evaluating the circumstances, if necessary, assign a pleader to him.³⁵⁶ This benefit has now been extended to the dependent also. By the cursory reading of this Order, one can closely associate the same as a hand in glove with legal aid.

Recognizing the need for access to justice for all, the International Covenant³⁵⁷ on Civil and Political Rights also under Article 14 (3)(d) guarantees everyone: “Right 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 require, and without payment by him in any such case if he does not have sufficient means to pay for it.” It was the first step taken by India before the enactment of Legal services authority act, 1987 to recognize the need for legal aid.

All the above provisions are a merely the external manifestation of the intention that it underlies and that intention is access to justice; which shall not be curbed merely because of infirmity. Therefore Legal aid strives to ensure that the envisaged constitutional commitment towards the needy is fulfilled in its true meaning, so as to ensure equal justice to all.

Present Scenario

The paradigm shift in approach towards recognizing the concept of legal aid from a duty to a fundamental right of the accused to seek the assistance of a lawyer is indeed a reflection towards the importance of legal aid in the present scenario. Legal aid has become an integral appurtenance of rule of law. A plethora of judicial decisions has time and again reiterated the importance and need for legal aid. The concept of legal aid especially in the present scenario

³⁵² Section 304(1) of the Code of Criminal Procedure, 1973

³⁵³ Muralidhar S, “Law, Poverty and Legal AID Access to Criminal Justice” New Delhi Lexis Nexis (2007)

³⁵⁴ Supra Note 350

³⁵⁵ Sarswati v. Executive Member, Karnataka Industrial Area Development Board (AIR 2002 Kant.447)

³⁵⁶ Order XXXIII of Code of Civil Procedure, 1908

³⁵⁷ India ratified the treaty on 10 April 1979 and effectuated on 10 July 1979

is intertwined with various elements of the law. Tools such Public Interest Litigation has not only boosted judicial activism but also has represented the interest of society at large. Interests of poor and needy in the recent past have been represented under the garb of public interest litigation. Access to justice for all is not only limited to legal aid nor other conventional aspects, the tools to realize the same has enlarged with the advent of judicial activism.

The need for legal aid has been emphasized in global level; India over the past has taken proactive steps to ensure the same at domestic level. Sensitization of judiciary and accountability of public authorities has not only increased transparency but also has certainly paved way for people realizing the importance of justice. There is a huge gap between the number of goals set and those which are met, various challenges and issues hinder the process of realizing the goal of access to justice. It is not only necessary to identify such problems but also to address them in an effective manner, so as to strengthen the very foundation of these goals.

Web of Challenges and Issues

Enactment to realize the goal of “access to justice for all” was one of the very few steps in a much larger picture. It established a much-needed link between the needy and legal service institutions by way of its 4- tier institutional mechanism. However, myriad challenges and issues have tested the efficiency of these institutions. Manned by judges and judicial officers, parliament had entrusted the judiciary the herculean task implementing the provisions of these act. Some of the issues and challenges that have hindered the process of realizing the objectives are:

The first step towards change is awareness:

The hiatus between the general public and legal services authorities arise from lack of awareness. This has been one of the predominant challenges for legal aid in India.³⁵⁸ Further, the question of whose onus is it? Is it the onus of individuals to be aware or is it the onus of legal services to create awareness amongst them. The answer to these question lies in a reciprocal relationship, India being a densely populated state with predominant rural concentration, accessibility to every nuke and corner is near to impossible. With national legal services authority being the heart of the operation, its subordinates act as veins spreading throughout the nation the much-needed blood of legal awareness. Awareness about the availability of free legal aid is indeed the need of the hour. It is primarily a reciprocal relationship because of veracity in legal problems; every iota of detail cannot be covered. Henceforth, the onus of public participation and to elicit the needful lies on individuals. While the legal services have the onus to conduct various legal awareness programs wide across the country to create effective legal awareness. Awareness creates knowledge and knowledge, in turn, equips people with their rights and duties and thus striking the balance of equal justice to all. Also Section 4(l) of the Legal Services Authorities Act the Legal Services Authorities should spread legal awareness particularly among the weaker sections about their rights, entitlements and privileges.³⁵⁹

³⁵⁸ Dr. Kailash Rai, “Public Interest Lawyering, Legal Aid and Para Legal Services” (2012)

³⁵⁹ Section 4(l) of the Legal Services Authorities Act, 1987

Additionally, innovative ways can be incorporated to create awareness amongst the general public, especially with the advent of technology. Since media and internet form a major source of public opinion and awareness, the same can be utilized efficiently to reach the unreached masses. The traditional method of awareness is limited due to various constraints, however the same constraints and barriers are not an issue in the instant case. The medium through which Mann ki Baat is broadcasted has an estimated reach of 99.19% of the Indian population,³⁶⁰ it is evident from this fact that innovative use of various available mediums has a great potential in reaching people. Further, it only curbs the expenses incurred but also saves valuable resources, especially with lack of financial and other resources for legal aid. Regular articles in the local newspaper in comprehensible language would certainly help the needy.

Cumbersome procedure of litigation.

To access justice, a chance to such access needs to be provided. However, the cost, time and burden involved in the process of litigation have made the needy think twice before such access is granted. Henceforth in light of the aforementioned scenario, Attorney General Robert Kennedy rightly felt that *“the poor man looks upon the law as an enemy, not as a friend. For him, the law is always taking something away.”*³⁶¹ Section 89 was incorporated in the Code of Civil Procedure by virtue of section 7 of the CPC Amendment Act, 1999 in order to resolve disputes without going to trial and was incorporated in pursuance of the recommendations of the Law Commission of India and Malimath Committee report.³⁶² Even though an alternate dispute resolution mechanism has been introduced for speedy disposal of cases, litigation percentage still surges above everything.³⁶³

The root of this problem lies in the huge pendency of cases before subordinate courts right up to the Supreme Court. Litigation is intended to provide justice and not deter people. Therefore, Justice S.B. Sinha rightly observed that *“these undue delays are making people shy from justice delivery system”*, and also remarked that all of us should uphold the maintenance of law and Constitutional values and not forget that access to justice to everyone should be given utmost preference.³⁶⁴ Pendency of cases has made the litigation process unfriendly; this would have an adverse effect in providing legal aid, since legal aid does not only include counseling but also litigation process. Efforts of mobile courts, fast-track courts, Lok Adalats, ADRs and Gram Nyayalayas³⁶⁵ have shared the burden to reduce the pendency and make courts public friendly.

Lack of funds and human resources.

Even though India is making laggard progress in providing the access to justice for all through various mechanisms, those mechanisms need to be equipped both financially and also in

³⁶⁰ Financial Express, <http://www.financialexpress.com/india-news/pm-narendra-modis-mann-ki-baat-is-an-effective-medium-to-tom-tom-schemes-but-big-revenue-generator-for-air/567069> (28/10/2017)

³⁶¹ Attorney General Robert Kennedy, Law Day Speech, May 1, 1964

³⁶² Sarkar, S.C., and Prabhakar C. Sarkar. *“The Law of Civil Procedure”* 11th ed. Vol. 1. Delhi: Wadhwa and Company Nagpur, 2006

³⁶³ Statistics provided in the press release by Press Information Bureau, Government of India, Ministry of Law and Justice dated 03 March 2016

³⁶⁴ DNA India, http://www.dnaindia.com/india/report_pendency-of-cases-are-gigantic-problems-sc-judge_1264662 (28/10/2017)

³⁶⁵ Established by virtue of Gram Nyayalayas Act, 2008

terms of resources. These institutions which act as a link between the needy and judiciary are manned by Judges and Judicial officers. National Legal Aid Fund is the grant received from Government of India by National legal services authority. The National Legal Aid Fund is further divided amongst the State Legal Services Authorities by National legal services authority. In the 2016-17 the grant released by the ministry was Rs.63,67,00,000/-³⁶⁶ as a whole. Compared to the work and resources involved, the amount granted is minuscule.

Additionally, aspects such as infrastructure and human resources form an integral part of effective functioning of a mechanism. Especially the panels of lawyers in the legal services authority are integral pillars in realizing the objective of access to justice to all. Therefore, lack of lawyers in the panel and Para-legal volunteers should be ample to meet the need. Not only the number matter but also the quality in those numbers is crucial, which requires constant exposure to training, workshops and seminars to hone their skills exponentially. All these efforts require substantial financial aid and resources, therefore the National Legal Aid Fund should accommodate the needs of the authority to meet its ends and function effectively.

The partnership between Legal Services authority and civil societies are budding over the years. It is to be noted that law teachers, lawyers, law students, Para-legal volunteers, representatives of local panchayats act as facilitators between rural people and legal service institutions. Such partnerships have contributed largely to reducing the gap between the needy and legal services authority. Especially with the advent of NGOs, handling and equipping legal aid clinics with proficient volunteers has indeed reduced the burden of legal services authority. These legal aid clinics assist in various legal aspects such as drafting simple notices, providing assistance to avail various government schemes and also provide initial advice on simple problems. These legal aid clinics act as a guiding force on the road to access of justice. Such partnership between the Legal Services authority and civil societies has not only acted as a solution to lack of human resources, but also has decreased the financial burden of legal services authority through resource sharing.

The example of South African Legal Aid Board in involving private law firms, NGOs and university law clinics to provide pro-bono legal aid services to the marginalized through signing cooperation agreements with them is worth accommodating in the Indian scenario.³⁶⁷ Also the same has been realized in the recent past by Indian Legal Services Authorities.

Does free service entail quality and competency?

A quality legal aid would involve a skill set of up to date legal knowledge combined with an application of the same in a manner useful for the aggrieved.³⁶⁸ Which essentially makes it very difficult to assess the quality of legal services. While some notable services are visible, the aggrieved lack the expertise and experience to judge the technicality and quality of the services rendered to him. Such individuals should blindly presume irrespective of the competency or quality rendered to them, that their interest is best represented. Necessary parameters should

³⁶⁶ NALSA, <http://nalsa.gov.in/content/funding> (05/12/2017)

³⁶⁷ Increasing Access to Justice for Marginalized People: GoI-UNDP Project, http://doj.gov.in/sites/default/files/Increasing-A2J_0.pdf (06/12/2017)

³⁶⁸ Legal Services Consumer Panel, "Quality in Legal Services Final Report" November 2010

be laid down to assess the competency of the pleaders, who are part of the panel. This would not only instill confidence amongst the needy but also acts a check and balance to provide quality legal aid.

When the Bar Council of India conducted the verification of advocates under the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015, to ones dismay it was reported that a very high percentage (33 to 45%) of lawyers were fake.³⁶⁹ A robust selection of panel of lawyers is the key to solve the aforementioned problem. However, again as explained earlier the lack of funds and human resources would be a kneejerk to the whole process. Since law is a vast field, where expertise in a particular branch would escalate the competency in handling the matter, due care should be taken by the authorities to assign the legal aid cases accordingly in order entail quality and competency in the disposal of the assigned case. The need for competency and quality is important because it all boils down to the reason that justice does not only mean the outcome of the case, but also the way in which the aggrieved was represented. Whether his interest was best represented. This is the spirit of justice.

Hon'ble former Chief Justice of India Mr. Handyala Lakshminarayana Dattu words explain the cause in a nutshell:

"Defend the defenseless, not the indefensible; represent those who are not represented not those who cannot be represented; argue the unargued not the unarguable; persuade by assembling the facts not by disassembling them; study the briefs to understand and construe, not to launder and misconstrue; take up a matter if it has at least half a case and not just a full purse; aim not to be just mere legal masons, but to be juridical architects. It is your bounden duty to assist the courts not only to decide between right and wrong, but also between two rights."

In order to ameliorate these problems, NALSA has framed the National Legal Services Authority (Free and Competent Legal services) Regulations, 2010 which is aimed at providing free and competent legal services. Some of the salient features include Scrutiny of legal aid applications, monitoring of cases where legal aid is provided, and also includes the provision of engaging senior lawyers on payment of regular fees in special cases, which requires such assistance.³⁷⁰

Need for Harmonious cooperation and coordination between stakeholders.

Lack of cooperation is an operational problem for legal aid. These may relate to the internal inefficiency of the justice system or other external factors involving third parties.³⁷¹ Cooperation is an essential tool for both construction and change. There are various stakeholders in the process of realizing the goal of access to justice for all. Especially lack of cooperation and coordination between the government and administration, police department and judiciary has hindered the process of access to justice. With the need for securing

³⁶⁹ Law Commission of India, Report No. 266, March 2017. Pg.33

³⁷⁰ Rule 15 of the National Legal Services Authority (Free and Competent Legal services) Regulations, 2010

³⁷¹ Amita Singh and Aslam Zahid, "Strengthening Governance through access of Justice", PHI Learning Pvt. Ltd, (2009) pg. 78

coordination between the law implementing agencies, almost all the states have constituted committees at different level for promoting cooperation between these agencies.³⁷²

When the efforts are shared and channeled across different entity it would not improve the results but also rapidly increase the momentum of the cause. Therefore, it is essential that legal services authority strive hard in establishing such cooperation between different stakeholders. Since the reach of legal service is limited due to various reasons, it can still operate coherently with the help of third parties. In order to improve cooperation between stakeholders, various cooperation agreements have been signed between Legal services authority and third parties.

Other Issues and Challenges

Under various circumstances, a person eligible for legal aid might not be competent or capable to approach the authority for enforcing his rights. Such circumstances may include children, mentally ill and mentally retarded individuals and likewise, it is not only difficult to identify such people but also difficult to understand the veracity of the problem, does this mean that they are not entitled to Justice? Keeping in mind such difficulties NALSA (National Legal Services Authority) has implemented 10 different schemes aimed at providing justice to such people who are unable to be represented.³⁷³

Resort to Alternate dispute resolution mechanism would be on a discretion basis and should be acceptable by both the parties; it is to be inferred as an option and not as a definite solution; therefore it is not a readily available option, especially for marginalized people. Scrutiny of applications is another burdensome process, the scope for frivolous complaints and disputes are also a possible prospect. Therefore, it is necessary that such applications are weeded out against genuine applications. Issues are mere challenges that test the functioning and competency of our mechanism, in fact they strengthen our ability to adapt to changes and strive towards realizing the ultimate objective of “access to justice for all.”

Numerous welfare legislations and programs have been introduced to improve the socio-economic conditions of the marginalized people. Initiatives by State, Central and Legal Services Authority for the benefit of needy and weaker sections are often unrealized due to lack of interest or defective implementation strategies. They merely remain laws on books and not laws on reality. It not only results in ineffective utilization of resources but also channeling of necessary resources to unwarranted areas.

Solutions at Sight

*“The first step towards change is awareness. The second step is acceptance.”*³⁷⁴ Until or unless people are willing to accept the change, it is impossible to imbibe any kind of awareness or instill sensitivity for the need to access justice. As we recall recently our honorable Prime Minister Shri Narendra Modiji, while expressing his views on National Legal Services Day emphasized the need of access to justice by quoting “Sabka Nyaya” alongside “Sabka Saath, Sabka Vikas”³⁷⁵

³⁷² Dr. Sanjay Paswan and Dr. Paramanshi Jaideva, “Encyclopedia of Dalits in India, Human Rights: Role of Police and Judiciary” (Vol. 13), Kalpaz Publications, (2003) Pg. 226

³⁷³ NALSA, <http://nalsa.gov.in/content/preventive-strategic-legal-services-schemes> (28/12/2017)

³⁷⁴ Quote by Nathaniel Branden

³⁷⁵ India Today, <http://indiatoday.intoday.in/story/pm-modis-message-to-legal-fraternity-sabka-nyaya-is-as-important-as-sabka-vikaas/1519792.html> (28/12/2017)

thus highlighting the fact that development is intertwined with justice. The participation of law schools and NGOs has indeed boosted the strength of legal services authority in reaching the unreached population.

Section 4(k) of the Legal Services Authorities Act 1987 mandates the National Legal Services Authority to develop, in consultation with the Bar Council of India, programs for clinical legal education and promote, guide and supervise the establishment and working of Legal Services Clinics in Universities and Law Colleges.³⁷⁶ The National Legal Services Authority has already notified the National Legal Services Authority (Legal Aid Clinics) Regulations, 2011. Amongst various provisions, Regulations 22 to 26 of which has been made applicable to Student Legal Aid Clinics. This is a positive development, since the inclusion of students would not only sensitize them with existing problems but also nurtures the budding lawyers to take pro-bono cases in the interest of needy.

Additionally in order to realize the goal of “access to justice for all” The Government has in its various collaborations have partnered with UNDP (United Nations Development Program) in order to commence a decade-long Access to Justice for Marginalized People Project, currently the same is being implemented in eight States of India, which has the highest proportion of people living in poverty. The primary focus has been also shifted to North-East and Jammu Kashmir. The project primarily focuses on strengthening the legal aid facility in select areas alongside empowering the marginalized. On a bright side, the program has already imparted legal literacy to over 20 lakh people from over 62 districts. As a proactive step to reduce the burden on the judiciary, the government is considering a National Litigation Policy which would reduce avoidable and unnecessary litigation involving the government. The said policy would smite the problem of unnecessary burden on the judiciary, considering the fact that major chunk of litigation involves the government as a party.³⁷⁷

Numerous problems that have plagued the justice delivery system could be solved by embracing the use of technology. Especially with the advent of start-ups in India, various projects have centered on simplifying the access to justice. One among such efforts is “Nyaya” which is a one-stop resource, where laws are well documented, easily accessed and explained in simple language.³⁷⁸ Effective use print media and broadcast media have a huge channel of network and would sail through the barriers to reach huge masses.

Epilogue

Legal aid is a catalyst for social change. Law without justice is blind, whereas justice without law is lame.³⁷⁹ Number of legislations or judicial decisions emphasizing the need for legal aid is not the answer for prevailing problems, but turning these texts into reality is the need of the hour. What good is a law, if it is not practiced? It would only be a manifestation of tokenism or window dressing. An ink for change is possible, only if thoughts of change are transformed

³⁷⁶ Section 4(k) of the Legal Services Authorities Act 1987

³⁷⁷ Excerpt from Speech Of Hon'ble Minister Of Law And Justice On “Making India: Role Of Empowering Citizens With Legal Awareness” On 15th January 2016 At Kochi

³⁷⁸ NYAAYA, <http://nyaaya.in/mission> (02/01/2018)

³⁷⁹ Dineshbhai Dhemenrai vs State Of Gujarat. (2001) 1 GLR 603.Para. 50

into deeds. Access to justice should not *always* be seen as a goal but instead a reality at some point. A chance at justice is an integral part of providing justice, both needs to be equated in same scales. Judicial activism has reinforced the need for legal aid in the present scenario. Sensitizing the need for legal aid will ignite minds towards the cause; dissemination of information is the first step towards sensitization. Issues and challenges are only hurdles in a long journey of realizing the goal of access to justice for all.

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