

LEGAL AID IN INDIA

*Anshruta Maheshwari**

"Nothing rankless 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 in and benefit by its impartiality and fairness."

- (M.H.Hoskot v. State of Maharashtra, 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)

Legal aid in the simplest terms means providing legal services free of cost to a person who cannot afford to do so on his own, to avail the services of a lawyer, pay the court fees and other costs incurred to make use of the best professional advice possible. Legal aid plays a very important role in providing fair and equal access to justice to those who may be shut out of the door to justice and our legal system, because of their financial constraints.

➤ **Origin-**

There is a common misconception that the area of commencement of the earliest form of legal aid is Europe, particularly France. However, as a matter of fact, one need not look far to find out the roots of legal aid, since it is India only where the first traits of the philosophy of legal aid can be found. The ancient Indian Law had all the characteristics of a mature legal system. The King, i.e. the State, represented the law and also governed it. Few sources say that the presence of legal aid was there as early as 6000 years ago whereas others agree on 18th century B.C., which is the Vedic period. The Rig Veda in its Shloka 103 of Chapter III, says that it is the

King who provides means to the ones in need of help, and therefore it is he who is the deserves the wealth of the opponent and the *Devatas* always protect him. Therefore we can deduce that King is the State here, and he provides social aid to the ones in need of help and support of the State.

The idea of providing legal aid to the poor kick-started from the Vedic period, all the way up to the modern India, which in its course also included the Mughal Period, wherein the state *vakils* were under the King's command to give advice free of charge to the poor.

Apart from India, legal aid maneuver began in France and Britain in 1851 and 1944 respectively. In France, it was started as a method to help the poor and the angered achieve justice. In Britain, it commenced as an effort on the part of the State which mainly started during and after the Second World War to create a fairer post-war society. And with this in mind, the Rushcliffe Committee was appointed which made the Rushcliffe Report and made recommendations, which lead to the establishment of the first legal aid scheme in U.K. through the Legal Aid and Legal Advice Act 1949.

➤ **Functioning of Legal AID Services in U.K, U.S.A, Australia and Germany**

As has been discussed earlier, it was imperative for U.K. to establish a legal aid system for it to emerge as a post-war welfare state. There have been many reforms since then, starting from the Legal Aid Act of 1988, Access To Justice Act 1999, Legal Services Act 2007 and The Legal Aid, Sentencing and Punishment of Offenders Act 2012. However with the Act of 2012 coming into effect the legal aid budget was cut down by £350 million. moreover, when Chris Greyling became the Justice Secretary, he introduced mandatory court charges, which unfortunately, and very surprisingly made the poor clients shell out lesser money to plead 'guilty' than to plead 'not guilty' and then have a trial, whenever they were accused of a crime. And this itself defeated the whole purpose of the spirit of Legal Aid to the helpless and the needy. As a result of which fewer and fewer people accessed advice on legal matters. And in addition, people were forced to represent themselves in proceedings, especially in Family Courts, because of which many parents ended up walking away from their children or never seeing them again, since they have no legal training to represent their case in the courts.

In USA, although the service of legal aid had begun in the 1870s, with the founding of the Legal Aid Society of New York in New York City in 1876. Apart from that, there was no substantial funding and no action was taken until the inception of the 20th century. The provision of Legal Aid emerged with the Ford Foundation. Further, the landmark U.S Supreme Court case of *Gideon v. Wainwright* 372 U.S. 335 (1963) launched the legal aid movement, wherein the Court unanimously ruled out that the State would guarantee the citizens a counsel, a fundamental right which is essential to a fair trial. Currently, the Legal Aid in USA is carried out by Legal Services Corporation (LSC) which falls under Legal Services Corporation Act, 1974. There are various other services such as independent staff based service providers, local governments, and other federal government sources.

➤ **Legal Aid in Australia and Germany-**

Legal aid in Australia is provided to its citizens by means of Legal Aid Commissions, which are there in each of the eight States. These commissions are present in the States of Western Australia, Northern Territory, South Australia, New South Wales, Queensland, Tasmania and Victoria.

Germany instituted its Legal Aid as early as 1919. being the central country in the World Wars, it adopted the system of legal aid immediately after World War I. Germany follows a very clear system of Legal Aid. the Courts observe as to whether the applicant is actually meager, and whether there is a merit attached to the party's case. It is only then that the Court appoints a lawyer for him.

➤ **Legal Aid Scenario in India-**

After the Constitution of India came into force in 1950, the main aim that was set out was providing justice to all, and providing for free legal aid for the poor and the needy in India. This was done by inclusion of Art. 14 wherein it was mentioned that the State must not deny any person the equality before law and a legal system which promotes justice and equal opportunity to all. Moreover, Art.22 stated that no person shall be denied the right to consult, and to be defended by a legal practitioner of his choice. Further, Art. 39A, which was added by the Constitution (42nd Amendment) Act, 1976, ensures free legal aid to the poor and the needy and ensures justice for all.

There are many committees, schemes and legislations that have been brought about in India for providing legal aid to its citizens.

Post independence, Justice Bhagwati Committee and the Trevor Harries Committee, both appointed in 1949, made a number of recommendations for incorporating legal aid services in India.

Justice Bhagwati Committee appointed on 23rd March 1949, by the Government of Bombay made a few recommendations, which included formation of administrative machinery of legal aid at four levels, i.e. State level , High Court level , District level and Taluka level; that no aid should be provided in trivial and trifling cases; There should be a declaration on oath about "Disposable Income" and "Disposable Capital"; assignment of lawyers, i.e., every member of Bar should handle at least six cases per year; The lawyer is entitled to get remuneration only after six cases; lastly, when assisted party is successful then cost should be credited in Legal Aid Fund and in case of his failure, cost should be paid out of Legal Aid Fund.

Trevor Harries Committee recommended a three - tier institutional structure for delivery of Legal Aid Services, that legal representation at state expense would be available only where an indigent accused was being tried for an offence punishable with a capital sentence. This however was not a statutory right but was at the discretion of the court.

One of the most important enactments in India for the furtherance of the provision of Legal Aid in India would be the **National Legal Services Authority (NALSA)**. NALSA, which was constituted under the **Legal Services Authorities Act 1987** that came into force on 9th November, 1995, was appointed to monitor and evaluate implementation of legal services available under the Act. It also contemplates establishment of "Permanent Lok Adalats"

➤ **Important cases with respect to Legal Aid in India-**

The scope and object of legal aid in India was only made clear in the case of *Sunil Batra v. Delhi Administration*¹ wherein the conditions under which a prisoner can ask for legal aid were

Anshruta Maheshwari- symbiosis law school, pune*

¹ Sunil Batra v. Delhi Administration (1978) 4 SCC 494

laid down. The two conditions were, first, to seek justice from the prison authorities and second, to challenge the decision of such authorities in the court.

In the case of *Hussainara Khatoon v. State of Bihar*² the court held that free legal services must be provided to the poor and the needy, and that legal aid is an essential element of any 'reasonable fair and just procedure'. The Hon'ble Court also pointed out the urgent necessity of introducing a dynamic and comprehensive legal services programme. The court also stated,

"The poor in their contact with the legal system have always been on the wrong side of the law. They have always come across "law for the poor" rather than "law of the poor".

In the case of *Khatri v. State of Bihar*³, Justice P.N. Bhagwati stated that even though the right to legal aid to the accused is vested in Article 21 of the Constitution, there are many states which do not take heed of such a provision to help the accused by providing with free legal aid to him.

Moreover, in the case of *Sukhdas v. Union Territory of Arunachal Pradesh*⁴ Justice P.N. Bhagwati, while referring to the *Hossainara Khatun*⁵ case commented on the absence of awareness about legal aid in India, that it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness 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.

² *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 98

³ *Khatri v. State of Bihar* AIR 1981 S.C. 926

⁴ *Sukhdas v. Union Territory of Arunachal Pradesh* AIR 1986 S.C. 991

⁵ *ibid*

➤ **Development of Legal Aid in India -**

The value of money is going down, because of inflation and other economic reasons. That is to say, the rich are becoming richer and the poor are becoming poorer. The long pendency of cases in all the courts acts in favor of the rich and affluent and against the poor and downtrodden, who are the actual consumers of the legal aid services.

The Legal Services Authorities Act , 1987 prescribes the criteria for providing legal aid services to a person who is a member of Scheduled Caste or Scheduled Tribe, a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution; a woman or a child; a mentally ill or otherwise disabled person; a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, etc; an industrial workman; and a few other persons. But nowhere does this Act or any other Act per se does not include any provision for legal aid services to the middle class people.

The ordinary working or middle class people with their little means fall within a zone whereby they cannot hire a lawyer because it is too expensive for them and they do not qualify for legal aid because they are not as poor or fall within the criteria as the act requires of them. And therefore for the impecunious and the most vulnerable lot, their basic right remains at a risk or rather at most times unfulfilled. Apart from what is provided in the Act, most help groups serve those at or below the poverty line and the middle class people are left devoid of any legal aid. This system of law reflects the kind of legal system which is insensitive, especially towards the socio-economic problems of the masses.

With an aim to resolve this problem the Supreme Court Legal Services Committee (SCLSC) was constituted under the Legal Services Authorities Act, 1987.

The **Middle Income Group Scheme** is available under the **Supreme Court Middle Income Group Legal Aid Society**, which is headed by a sitting judge of the Supreme Court with the Attorney General of India as its ex-official vice president. As a result of this scheme, legal services to the middle income group citizens will be provided to those whose gross income does not exceed Rs.60,000 per month or Rs. 7,50,000 per year.

Although there is now a statute governing the service of legal aid to citizens, yet there is little respect and repute for the same in the eyes of the citizens, and there are many reasons for that. The delay in filing petitions for the legal aid is because of the slackness of the people handling such cases. Further, the lawyers are mostly not willing and do not prioritize such cases wherein the client is poor and cannot pay the court fees or the lawyer's fees. Lawyers in our country need to think and look beyond profitability and must endeavor to help the needy and the poor so that the doors of justice are never closed for him.

As has been discussed before, the funding of the legal aid programmes poses very serious hurdles in the way of providing free legal aid to the needy. In this regard the best example of a country providing legal aid to its citizens would be that of Britain. It spends £2billion a year, which is 20 times the European average and more than seven times the amount spent by France or Germany. Figures released by their Ministry of Justice showed more than 1,000 lawyers were paid over £100,000 a year by taxpayers to appear in criminal courts.

Another country whose legal aid system is worth mentioning here is New Zealand's legal aid service, which is governed by the Legal Services Act, 2000. It is a very orderly and methodical system wherein access to justice is provided by providing a legal aid scheme which is focused on legal representation, providing other schemes of legal assistance, and by supporting community legal services by funding community law centers ("CLCs"), education and research. The major focus of State funding is on legal representation. Legal aid for representation is available for most criminal, civil, family cases. India can take example from these countries and try to improve its legal aid system.

Although there are a few shortcomings in this system, however, the Parliament couldn't have done better than entrusting the duty of legal aid to the legal fraternity of India. It's a joint responsibility on the shoulders of the bar and bench. The parliament has entrusted the task of Legal Aid to the Chief Justice of India, which means the Chief Justice and all the other judges of the Supreme Court. It has given the task of Legal Aid to the Chief Justice of the High Court and the other judges of the High Court. And at the District level, the duty lies upon the District Judge of the respective district. Apart from all the Chief Justices and the Judges, this duty also lies upon all the members of the bar practicing in the respective courts.

➤ **Criticism and Conclusion-**

More than 58,416 people have benefited through the legal aid services in India. However, most citizens are unaware of its provisions for free legal services. As has been stated before regarding the restricted use of funds in U.S.A, the same can occur in India, that limited funding, for legal aid, instead of cutting cost would result in consuming more time and money of the Court when inexperienced and untrained persons present their case in the court.

There are a few key problems with regards to the problems in the legal aid services in India. Few of them are-

- 1. Incorrect drawing of the eligibility criteria which leaves out a wide range of people from enjoying the benefits of legal aid.**
- 2. Barriers such as lack of awareness about free legal aid prevent people who are eligible for accessing these services.**
- 3. Lack of proper funding of state legal aid services**

Providing high-quality legal aid services should be the main aim to reach the desired result. Effective legal representation can change people's lives. A system that provides high-quality services to clients would enable people to make informed choices about their situation. Providing effective case management would make sure that representation is aimed at meeting the aided person's needs and representing them appropriately in the justice system. Many people are not in a good position to judge the quality of the legal services they receive. Continuous improvement, feedback loops, monitoring, auditing, awareness programmes and complaints would not only uplift the reputation of legal aid in India but also substantiate the in practice the right of free legal aid bestowed upon the citizens by the Constitution of India.