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Legal Aid in India: An Overview

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Introduction

A new era in direction of legal aid and legal service in India began in the year 1976 which witnessed a fundamental change in the philosophy underlying the programme for extending legal aid and legal services to the indigent. The Constitution (Forty-second Amendment) Act, 1976 inserted Article 39A in Chapter IV (Directive Principle) of the Constitution of India making it a duty on the part of Federal and State Governments to provide social defence to the poor and weaker section of community. Article 39A provides 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 any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

It is in this context that the programme of legal aid and legal service in India has assumed a special significance particularly to secure justice for poor and downtrodden communities. The purposes of this article is to describe the development of legal aid institutions in India and to examine their efficacy.

Objects of Legal Aid

Legal aid may be taken to mean free legal assistance to the poor persons in any judicial proceeding before the Courts or Tribunals. In other words legal aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. Thus it intends to provide free legal assistance to the poor persons who are not able to enforce the rights given to them by law.

Justice P.N. Bhagwati¹ has very clearly stated the meaning and object of the legal aid. According

to him 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.² He has rightly said that 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.³

Thus legal aid is taken to mean the 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. The object of legal aid is to ensure equal justice. Legal aid is provided to ensure that the opportunities for securing justice are not denied to any person by reason to poverty, illiteracy etc.

Legal Aid in India: A Brief History

In India in past during Vedic period and thereafter justice was administered by the elders of the community of the villages on the basis of justice, equity and good conscience. The institution is known as Nyaya Panchayats (a court of five elders of the village community) and the parties to the dispute were bound by verdict of elders, whose decision was final and acceptable to all.

In course of time, however, the society become more and more complex and complicated. Justice became the concern of the state to be administered through the courts according to the procedure established by law. This made the justice almost inaccessible to the poor and downtrodden sections of the society. Later after independence, realizing the need to providing legal aid to these sections, the government in 1952 started addressing to the question of legal aid for the poor and indigent in various ministerial law conferences and commissions. In, 1960 some,

guidelines were drawn up by the Government of India for legal aid schemes, which were floated through Legal Aid Boards, Societies and Law Departments in various states in the country. In 1980, a National Committee was constituted, under the Chairmanship of Hon'ble Justice P.N. Bhagwati, then a judge of the Supreme Court of India, 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 and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. The year 1987, proved to be very significant in legal aid history, as the "Legal Services Authorities Act" was enacted to give a statutory base to legal aid programmes throughout the country and bring about a uniform pattern. This Act was finally enforced on 9th November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. Hon'ble Mr. Justice R.N. Mishra the former Chief Justice of India played a key role in the enforcement of the Act.

The Constitutional Provisions Ensuring Legal Aid

The Preamble of the Constitution and Article 14 give much emphasis on the equal justice, in real sense every person should have opportunity to seek justice. The economic inequality often prevents a poor person to seek justice. In such condition access to free legal aid to poor and weak persons is necessary for the maintenance of equal justice in real sense.

Article 38 of the Constitution provides 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.

By the Constitution 42nd Amendment Act of 1976, Article 39A was added to the Constitution for providing free legal aid and enhancing the concept of equal justice found place in our Constitution.

The text of Article 39A reads as under:-

"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 for economic or other disabilities."

Thus the Constitution of India under Article 39A mandates for free legal aid to the poor and weaker sections of society. Also, it has been established by the Supreme Court that right to free legal aid or free legal service is essential ingredient of "reasonable, fair and just procedure" and implicit in the guarantee of the right to life and personal liberty under Article 21.⁴ This is the Constitutional right of every accused person who is unable to engage a lawyer due to poverty.⁵ The State in under mandate to provide a lawyer to an accused person if the circumstances of the case and needs of justice so require provided the accused person does not object to the provision of such lawyer.⁶ In *M.H. Hoskot v. State of Maharashtra*,⁷ Mr. Justice Krishna Iyer has rightly observed that providing free legal aid is the State's duty and not Government's charity.

Statutory Provisions Ensuring Legal Aid Provisions under Cr. P.C.

In 1972, the Law Commission of India gave its 45th report where it recommended that all accused persons must be furnished with counsel for their defence at State expense.⁸ The Law Commission explained its recommendations thus:

"Defence of the indigent accused by a pleader assigned to the State should be made available to every person accused of an offence, i.e., in all criminal trials, so that mere poverty may not stand in the way of adequate defence in a proceeding which may result in the deprivation of liberty or property or loss of reputation....In our view representation by counsel is so basic Ingredient of a criminal trial that the law should go as far as possible in seeking that this requirement is not absent. The

assistance of counsel is required at every step in the proceedings and irrespective of the nature of the offence under trial."⁹

The inclusion of Section 304 in Cr.P.C. 1973 in an impact of the above recommendation of the Law Commission Clause (1) of the said section 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 defence at the expense of the state. Section 304 (2) provides that the High Court may, with the approval of the State Government make rules for the mode of selecting pleaders for defence under aforesaid sub-section (1) of Section 304, the facilities to be allowed to such pleaders by the courts, the fees payable to such pleaders by the courts, the fees payable to such pleaders by the Government and for carrying out the purposes of sub-section (1) stated above.

Sub-section (3) of Section 304 provides that the State government may, by notification, direct that as from such date as may be specified in the notification that the aforesaid provisions of sub-section (1) and sub-section (2) of Section 304 shall apply in relation to any class of trials before other courts in the state as they apply in relation to trial before the Court of Session.

Section 304, thus makes it clear that the state is under an obligation to provide legal assistance to a person charged with the offence triable before the Court of Session. It enables the state government to direct that this provision shall apply in relation to any class of trials before other courts in the state. Each of the High Courts formulated rules and schemes under section 304(2) of the Cr. P.C. 1973 in the matter of preparation of panels of lawyers, and the fees payable to them for providing legal aid by way of representation in the session's courts. In regard to other courts, notifications had to be issued by the state governments under section 304(3) of the Cr. P.C. to extend the facility of assigned counsel. Thus, the right to legal aid into a majority of criminal cases was made to depend on executive will. However, with the enactment of the Legal Services

Authorities Act, 1987, each of the states has now made rules and regulations which, inter alia, provides for legal aid for defending a case to all persons in custody and this includes those in custodial institutions like protective homes, and juvenile courts. Thus, the LSAA has ensured a wider coverage for persons facing criminal proceedings in all the courts.

Provisions under C. P.C

Order XXXIII of the Civil Procedure Code provides for the suit by indigent person. This order aims at to enable indigent persons to institute and prosecute suits without payment of requisite fees, otherwise a person who does not possess sufficient means to pay the court fees will not be able to file a suit, and consequently deprived of the justice. And, therefore this order exempts such person from paying the court fees at the time of presentation of the plaint and allows him to prosecute his suit in *forma pauperis*, provided he fulfils the condition laid down in order XXXIII.¹⁰

The courts are duty bound to ensure that the cause of a litigant does not fail merely because of genuine incapacity to pay requisite court fee.¹¹

The benefit of Order XXXIII is conferred on persons without sufficient means and not without any means of all. Pauperism is not a pre-possession of property but sufficient means. This benefit has now been extended to the dependent also. According to Rules 18 of Order XXXIII and the provisions contained therein the Central Government or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those persons who have been permitted to sue as indigent persons. The Order XLIV, makes provision in respect of appeals by indigent person. Now a separate legislation, the Legal Services Authority Act has been passed so as to provide legal aid to the poor and weaker sections of the society. The provisions of the Act have been stated below.

National Legal Services Authority Act, 1987

As stated earlier, Article 39-A of the Constitution imposes a duty on the State to secure that the operation of the legal system promote 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 besides the right to free legal aid is now considered the part of the right to life and personal liberty guaranteed by Article 21.¹²

To fulfill the Constitutional obligation, the Legal Services Authority Act, 1987 was enacted to constitute the Legal Services Authority for providing free and competent legal services to the weaker sections of the society and to ensure that opportunities for securing the operation of the legal system promotes justice on a basis of equal opportunity.

In a case the Karnataka High Court¹³ has observed that the Legal Services Authority Act, 1987 has been promulgated to provide free and competent legal service to the weaker section of the society and to organize Lok Adalats to ensure that the operation of the legal system promotes justice on the basis of equal opportunity.

(to be concluded)