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Concept of Legal Aid and its Function

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“In the State of nature all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the Law.”

Charles de Montesquieu

INTRODUCTION

India is a democratic country that has accepted the concept of ‘welfare state’. It is the duty of state to do welfare work for general people. In the context of our Constitutional demands and state obligations, Legal Aid implies gives 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 any authority. It has assumed a more positive and dynamic role which include strategic and preventive services. Lord Denning while observing that Legal Aid is a system of government funding for those who cannot afford to pay for advice, assistance, and representation said: “the greatest revolution in the Law since the post-second world has been the evolution of the mechanism of the system for Legal Aid. It means that in many cases the lawyers ‘fees and expenses are paid for by the state: and not by the party concerned². The main focus of legal aid is mainly on distributive justice, effective implementation of welfare benefits and elimination of social structural discrimination against the poor relieving ‘Legal poverty’- the incapacity of many people to make full use of law and its institutions has now been accepted as a function of a ‘welfare state’. The right of free legal service is, therefore, clearly an essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a Constitutional right of every

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² Denning, What next in the Law (London. Butterworths,1982)

accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty and the state is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer¹.

HISTORY OF LEGAL AID IN INDIA

The concept of legal Aid scheme in India was first introduced by Justice P.N.Bhagwati under the legal Aid Committee formed in 1971. The main object of this committee was to provide legal Aid so that the mission of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law. Since 1952, the Government of India also took the initiative to addressing to the question of legal aid for the poor and indigent in various Ministerial Law conference and Commissions. In 1960, some guidelines were drawn up by the government of India for legal aid schemes. Legal aid Schemes were floated through Legal Aid boards, Societies and Law departments in various states of the Country. In 1980, a national committee was constituted under the chairmanship of Mr. Justice P.N.Bhagwati, Such committee known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal Aid activities throughout the Country. In 1987, Legal Services Authority Act enacted to give a statutory base to legal aid programmes throughout the Country on a uniform pattern. This Act was finally enforced on 9th of November 1995.

LEGAL AID-OBJECT AND RELEVANCY

According to Article 39-A, the Constitution of India, the main objective of legal aid is to provide 'Access to justice for all' so that justice is not denied to citizens by reason of economic or other disabilities. However in order to enable the citizen to avail the opportunities under the Act in respect of grant of free legal aid, it is necessary that they are made aware of their rights. This article mandate for free legal aid to the poor and weaker section

¹ Labhu Laxman v. State of Gujrat (1999) 1 GLR 889

of the society. It makes obligatory for the state to ensure equality before Law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid is really nothing else but equal justice in action. It is in fact, the delivery system of social justice .Legal aid is now a fundamental right.

The Supreme Court has decided many cases on these issues. Although legal aid was recognized by the Court as a fundamental right under Article 21 reversing their earlier stance, the scope and ambit of the right was not clear. In the case of Sunil Batra v. Delhi Administration¹, the requirement of legal aid was brought about in not only judicial proceedings but also proceeding before the prison authorities which were administrative in nature. In the case of M.H.Hoskot v. State of Maharashtra² ,It was held that the state should provide free legal aid to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such assistance. Further in the case of Hussainara Khatoon v. State of Bihar³ , It was held that a procedure which does not make available legal service to an accused person who is too poor to afford a lawyer and who would, therefore have to go through the trial without legal assistance cannot possibly be regarded as reasonable, fair and just. Further in the case of Kkhatri & ors. (II) v. State of Bihar⁴, the Court held that the state is constitutionally bound to provide such aid not only at the stage of trial but also when they are first produced before the magistrate or remanded from time to time and that such a right cannot be denied on the ground of financial constraints or administrative inability or that the accused did not ask for it. The right to free legal service is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee under the Constitution of Article 21 and the state is under a Constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer. But in the case of Union of India v. G.S. Bajwa⁵, the court held

¹ (1978)4 SCC 494

² AIR 1978 SC 1548

³ AIR 1979 SC 1360,69

⁴ AIR 1981 SC 928

⁵ AIR 2004 SC 867

that where the Act does not provide for giving legal aid to the employee, it cannot be implied in Article 21 of the Constitution. The Supreme Court in its very recent judgment has stated every person has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty. The object and purpose of providing competent legal aid to undefended and unrepresented accused person are to see that the accused gets free, fair, just and reasonable trial of charge in a criminal case¹.

KINDS OF LEGAL SERVICES

Legal services are of two types. One is pre-litigation services and other is post-litigation services. In pre-litigation services, it is really said that prevention is better than cure. Pre-litigation services includes: legal education, legal advice, legal awareness, pre-litigation settlement etc. In the present days the number of litigation is increasing day by day which is very dangerous for smooth administration of justice. So far emphasis was given only on post-litigation assistance or help but now it is being realized that pre-litigation legal services are more useful than post-litigation services.

GROUND FOR LEGAL AID SERVICE

1. Legal aid is not available for the all person living in the Country. According to Section 12 of the Legal Service Authority Act, 1987 deals the criteria of persons who are entitled to receive free legal aid from the State as follows:
2. A member of a Scheduled Caste or Scheduled Tribe.
3. A victim of trafficking in human being or beggar as referred in Article 23 of the Constitution.
4. A women or a child
5. 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
6. A person with circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster
7. An industrial workman or

¹ Mohd.Hussain Julfikar Ali v. The State (Govt. of NCT) Delhi,2012 (I) SCALE

8. 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 (i) of Section 2 of the Juvenile Justice (care and Protection of Act, 2000 or in a psychiatric hospital or psychiatric nursing home within the meaning of clause(g) of Section 2 of the Mental Health Act , 1987 or
9. 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 amount as may be prescribed by the Central government, if the case is before the Supreme Court.

LEGAL AID NOT TO BE GIVEN IN CERTAIN CASES

1. Legal aid is not an absolute right. Free legal aid shall not be given in the following cases:
2. Proceeding wholly or partly in respect of defamation or malicious prostitution.
3. Proceeding relating to any election.
4. A person charged with contempt of Court proceeding.
5. Proceeding in respect of offences where the fine imposed is not more than Rs. 50/
6. Proceedings in respect of economic offences against social Laws, such as the protection of Civil Rights Act,1955 and the Immoral Traffic (Prevention) Act,1956.

FUNCTION OF LEGAL AID

Earlier there were no statutory provisions for free legal Aid and services. The Government has shown its concern over the existing position of justice delivery system. It has acknowledged the fact that poor and underprivileged sections of society have suffered the worst under the present system. Therefore it has incorporated legislative actions such as Legal Service Authorities Act, 1987. The Act provides a structure in the form of committees from Supreme Court of India to State, District and Taluk level for imparting legal Aid and set up bodies such as National Legal Service (NLSA), Supreme Court Legal Service Committee (SCLSC), State Legal Service Authority (SLSA), Taluk Legal

Service Committee and District Legal Service Authority (DLSA). The NALSA has been constituted under the Legal Service Authorities Act, 1987 to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for making legal services available under the Act. The other object of these authorities is to provide free legal aid for the weaker section of the people. These authority gives, legal services to the people through legal awareness camp, using legal books in simple language and conduct Lok- Adalat in the Court for quick disposal of cases. The Lok Adalat shall for the purpose of holding any determination under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters namely:

- (a) The summoning and enforcing the attendance of any witness and examining him on oath.
- (b) The discovery and production of any document.
- (c) The requisitioning of any public record or document or copy of such record or document from any court or office and
- (d) Such other matters as may be prescribed.

The concept of free legal aid is also in some statutory provision. Section 304 of Criminal Procedure Code, 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 defense at the expense the application of the above provision in relation to any class or trial before other Court in the State. Order 33 of Civil Procedure Code, 1908 enables persons who are too poor to pay court-fees and allows them to institute suits without payment of requisite court fees whereas Order 44 thereof deals with appeal by indigent person. It enables persons who are too poor to pay court-fees and allow them to institute suit without payment of requisite court fees. According to Article 8 of United Declaration of Human Right, everyone has right or an effective remedy by the competent national tribunals for acts violating the fundamental rights guaranteed by the Constitution or by Law.

THE LEGAL SERVICES AUTHORITIES (AMENDMENT) ACT, 2002

The Parliament of India realized that litigation oriented legal services cannot bring out desired result, for encouraging pre-litigation legal services, the Parliament has made certain amendments in legal services Authorities Act by passing an Act known as the Legal Service Authorities (Amendment)Act, 2002. The purpose of this amendment is to bring out certain changes in the legal services Act, 1987 (hereinafter referred to as the principal Act) especially for the establishment of permanent Lok Adalat to settle disputes concerning public utility services at pre-litigation state.

The amendment has made the following changes in the principal Act:

1. In the Legal Services Authority Act, 1987 in Section 11A in Sub-Section (2) in clause (a), for the words 'Senior Civil judge', the words 'senior most judicial officer' has been substituted.
2. After chapter VI of the principal Act, a new chapter VIA has been substituted.
3. In section 22 of the principal Act, for the words "Lok Adalat", wherever they occur, the words "Lok Adalat or permanent Lok Adalat" shall be substituted.
4. In Section 23, the words " members of the Lok Adalat " the words " members of the Lok Adalat or the person constituting permanent Lok Adalat" shall be substituted.
5. In Section 27 of the principal Act , in sub-section (2), after clause(1), the following clause shall be inserted namely "(1a) the other terms and conditions of appointment of the Chairman and other persons under sub-section(2) of Section 22B."

Chapter VIA provides certain provisions dealing with pre-litigation conciliation and settlement pertaining to public utility services. Section22A provides that in this chapter and for the purpose of section 22 and 23 unless the context otherwise requires: "permanent Lok Adalat" means a permanent Lok Adalat established under sub-section (1) of section 22B. "Public utility service" means namely:

- a. Transport service for the carriage of passengers or goods by air, road or water or

- b. Postal , telegraph or telephone service or
- c. Supply of power, light or power or water to the public by any establishment or
- d. Service in hospital or dispensary or
- e. System of public conservancy or
- f. Any service which the Central Government or the State Government, as the case may be, may in the public interest, by notification, declare to be a public utility service.

SUGGESTIONS TO OVERCOME CHALLENGES

1. Legal Literacy and Legal Awareness

It is true that in our democratic Country a number of persons are ignorant about the laws and because of this ignorance, various rights conferred by laws remain not known to the real beneficiaries which results in exploitation and undeserved sufferings. Under these circumstances the need for legal literacy and legal awareness assumes importance. Legal literacy and legal awareness programmes may be conducted with the help of lawyers, teachers, law students and legal academics. Legal literacy project must be started in all states at micro level. Legal awareness programmes may be conducted at village level, Taluk level for children, labour, empowerment of women and other needy sections of the society.

2. Legal Aid Clinic and Camp

The legal aid clinic is an excellent medium to teach professional responsibility. These are intended to function as first aid centres in the field of legal service. It must be set up in all law colleges and law Universities and students must be encouraged to adopt remote village areas as their area of operation.

3. Client Education and Collaboration with Voluntary Organisation

Educating legal aid clients to evaluate the service provided by the legal aid lawyers themselves is a way to increase the accountability of lawyers. They can supply with written materials on what can be asked, expected and obtained from lawyers in

different kinds of cases. There are large numbers of voluntary organizations in the field of legal services which are working in every corner of the country addressing different needs of the society, targeting different sections of the society. Many non-governmental organizations and social action groups working in this field must be given accreditation.

CONCLUSION

The government of India has numerous efforts to provide free legal aid to ensure the true prevalence of welfare state. In India, the legal aid service is not fully effective. It is mainly because of lack of awareness among the people. They generally are not aware about their rights and they don't want to know what their statutory duties are towards societies. Even though they don't want to get in the complicated legal issues, whenever suddenly any legal issue comes over them, they become awakened about the legal complications and seek advice from the various sources. In this situation, without knowing the merits of alternative Disputes Resolution system, they prefer to approach the Court. In this connection sometimes few lawyers use the ignorance of these poor peoples and usually demand high fee as per their will and wishes. To improve the condition all legal aid plans should be made accountable to any independent institutions. Such plan should have objective studies done by independent outside evaluators to determine which models of service delivery would best serve their clients, and should adjust their services in accordance with the results. All these plans should make maximum use of non-traditional methods of dealing with conflicts such as mediation, conciliation and arbitration. Article 39 -A of the Constitution of India, has again amplified and magnified the concept and philosophy of free, fair and full justice. It may be submitted that the duty of State is not only to provide free legal aid but also to give legal awareness among the people through they would be able to understand merits and demerits of the case.