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Free Legal Aid: Empowering the Powerless

ORIGINAL ARTICLE



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Abstract

In a just society, access to legal representation is a fundamental right, not a privilege reserved for the wealthy. However, many individuals and communities face significant barriers in accessing legal assistance, perpetuating inequality and injustice. Free legal aid programs aim to bridge this gap by providing pro bono services to those in need. This paper examines the critical role of free legal aid in promoting access to justice, addressing the legal aid gap, and empowering marginalized communities. It explores the history and evolution of free legal aid, its impact on social and economic outcomes, and the challenges and opportunities in delivering effective free legal aid services. The paper argues that free legal aid is essential for creating a more equitable society, promoting human rights, and upholding the rule of law. By highlighting best practices, innovative approaches, and policy recommendations, this paper aims to inform and inspire efforts to expand and strengthen free legal aid services, ensuring that justice is accessible to all.

Key Words

Legal aid, Human Right, Constitution, Laws.

Introduction

A fundamental right! The Right to Legal Aid is an important matter component of access to justice, enshrined in various international human rights instruments and national constitutions. It ensures that individuals, particularly those who are indigent or vulnerable, have access to legal assistance and representation.

The key to democracy rests on the free enjoyment of rights. Most of the people living in rural areas are illiterate and even more than that upon them by law. After six decades of our independence, many people don't know how to implement them under the in this land. Their legal needs always stand to become a crisis made to provide the benefits to the undone vast. The task is based on the principles of constitutional ethics.

The Indian Constitution ensures certain fundamental rights to the people, because those are fundamental for sustenance. Access to justice and free legal aid is a fundamental right coming within the right of personal underprivileged. The concept of legal aid is not a new phenomenon for condition providing legal to the vast segment of people became huge task.

Meaning & Concept

In a democracy, rule of law and equal Justice are important part of life. The Constitution empowers citizen to secure fundamental rights. The Supreme court of India held that, fundamental rights are meaningless, unless the poor, illiterate, weaker and under privileged are given equal opportunity to enforce justice. For this purpose voluntary different organizations must be involved to implement the legal aid programme in various sectors. With a view to achieve social harmony, our constitution makers have incorporated a number of provisions in the Indian constitution.¹

Statutory Provision for Legal Aid in India

Our Constitution, Judiciary and various legislations provide schemes and guidelines for implementation of legal aid programmes. The constitution cast duties on states to secure social order in national life to promote equal justice and to provide free legal aid to the indigent and disadvantaged people. The Government of India has made a number of legislative attempts to secure justice to the needy.

- Section 304 (1) of Cr P.C. 1973 (Now Section 341 in BNSS)
- Order 33, Rule 9-A of C.P.C., 1976, provided for legal aid to poor and indigent persons.
- The Legal Services Authority Act, 1987 has been enacted in order to have a common system throughout the country by central Government. Under this central Legislation, each state is empowered to frame its own rules for the implementation of legal aid schemes.
- Kerala state at first implemented the schemes in 1957 and Orissa has started to implement to scheme in 1981.
- The Central Act, 1987 came into force on 9th November, 1995 with an object to establish nationwide uniform mechanism for competent legal services to the weaker sections of the society.
- The National Legal Services Authority (NALSA) has been constituted to monitor and evaluate implementation of legal services available under the Act, 1987. The NALSA provides guidelines for state level service Authorities to implement the legal aid programmes throughout the country.
- Supreme Court legal services committee and High Court level service authorities are constituted to administer and implement the legal aid programmes in their respective jurisdiction.
- Similarly, District level service authorities, Taluka level services committees are established to give effect to the policies and directions of the NALSA. Basically, they provide free legal aid, conduct Lok Adalats for marginalized people.

Eligibility Criteria of Receiving Legal Aid

The Legal Services Authorities Act prescribes following criteria for receiving legal aid. The person must be:

- (a) A member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or beggar as referred 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 undeserved 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 clause (g) of Section 2 of the Mental Health Act, 1987;

- (h) having annual income less than 1 lakh were entitled to avail free legal aid. Persons who satisfy any of the criteria specified above 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.

Judicial Vision and Legal Aid

Justice administrated in the courts of Law, quasi judicial bodies and administrative Tribunals are always substantial and effective for the poor and disadvantaged class of people. In recent years, Judiciary has taken a view in interpreting the constitutional rights and right to legal aid. The Indian judiciary is humanized gradually in recent year.

Nalsa and Legal Aid

The Legal Services Authorities Act, 1987 was amended in 1994 and is has established permanent Lok Adalat in India. As per the provision the Act, Chief Justice of India is the Patron-in-Chief and a senior judge of Supreme Court of India is the Executive Chairman of the National Leg Service Authority (NALSA). It is the apex body to monitor, evaluated execute legal aid programme in India. It is empowered to form policies and regulations to secure legal aid services to the poor people.

The Act provides for establishment of State Legal Service Authority (SALSA) in every State, consisting of Chief Justice as Patron-in-Chief and an acting or retired judge of the High Court nominated as its Executive Chairman to provide legal services and Lok Adalat in the State.

Similarly, the district Judge is the ex-office Chairman of the District Legal Services Authority to implement legal ad programmes in the District and Taluk Legal Services Committees for every district headed by a senior Civil Judge of the locality. The Central Authority shall constitute a committee for exercising such power and functions 25 provided by the regulations. This committee is called as Supreme Cout Legal Services Committee (SCLSC).

NALSA is empowered to give direction to the SALSA for constituting legal aid cells, publicizing legal aid schemes and spreading legal literacy. It is empowered to grant funds for executing the schemes throughout the country. It is assigned to trustworthy NGOs for campaigning legal literacy in the tribal and backward areas of the country. It has developed several schemes for implementing legal aid programmes i.e. counseling, conciliation, and accreditation of voluntary social service Institutions.

It has introduced plan for establishing Legal Aid Clinics in All Gram Panchayats and in the academic institutions during 2009-2010 plans about 7.25 lakh Lok Adalats were held These plans and programmes yielded good results. It is revealed that throughout the country in which more than 2.68 crore cases been settled. More than 3 crore people had been benefited through aid advice scheme in the country, which also include 75 lakh Scheduled Caste.

The Right to Legal Aid includes:

1. Access to legal advice and representation.
2. Free or subsidized legal services for those who cannot afford them.
3. Assistance in criminal, civil, and administrative proceedings.
4. Protection from self-incrimination and ensuring a fair trial.
5. Access to legal aid for marginalized groups, such as women, children, and minorities.

The importance of the Right to Legal Aid cannot be overstated, as it:

1. Promotes justice and equality

2. Protects human rights and dignity
3. Ensures accountability and the rule of law
4. Empowers vulnerable populations
5. Supports the integrity of the legal system

Many countries have established legal aid systems, including public defenders, legal aid organizations, and pro bono services. However, challenges persist, and continued efforts are needed to strengthen and expand legal aid services.

Article 39A

Article 39A of the Constitution of India states:

“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.”

In simpler terms, Article 39A mandates that:

1. The legal system should promote justice equally for all.
2. The State should provide free legal aid to those who cannot afford it.
3. This ensures that everyone has access to justice, regardless of their economic or social background.

This article aims to bridge the gap between the rich and the poor in accessing legal services, promoting social and economic justice. It has led to the establishment of various legal aid services and programs in India, including:

1. National Legal Services Authority (NALSA)
2. State Legal Services Authorities
3. District Legal Services Authorities
4. Legal Aid Clinics
5. Pro bono services

These initiatives provide free legal assistance, aid, and representation to marginalized communities, women, children, and other vulnerable groups.

Conclusion

In conclusion, free legal aid is a vital component of a just and equitable society, ensuring that access to justice is not limited by financial means. The importance of free legal aid cannot be overstated, as it: Promotes access to justice, Empowers marginalized communities, Reduces inequality, Supports economic growth, Upholds human rights.

To ensure the effectiveness and sustainability of free legal aid services, it is essential to:

- Increase funding and resources.
- Recruit and support pro bono lawyers.
- Develop innovative delivery models.
- Foster collaboration and coordination.
- Raise awareness and promote access.

By prioritizing free legal aid, we can create a more just society where everyone has equal access to legal representation and the opportunity to thrive.

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