

Role of Free Legal aid in India: A legal perspective

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Abstract:

Access to Justice' is a basic human right, yet it is a distant dream for the poor and deprived section of the country. Free legal aid is an initiative to provide protection of law to the weak, poor and illiterate and ensure them equal justice. Legal aid is meant for those people who cannot bear the expenses of lawyers' fees and expenses (Singh R , 2017). The concept of legal aid coincides with the Preamble of the constitution of India that secures to all its citizens Social, Economic and political Justice (Constituent Assembly, n.d.). The importance of this concept can be gauged from the fact that 30% of Indian population is living below the poverty line. As per international poverty line, India has the largest number of people living under poverty line (PTI, 2016). Due to the poor implementation of the welfare schemes, more than 90% workforce in India falls under unorganised sector (Express News Service, 2015). There is a need to revamp the socio-economic structure for the people, in need of justice, to be empowered. Establishment and development of effective legal aid system is required to eradicate the inequality between the poor and the rich in serving justice (Pathak). The concept of legal aid cannot be undermined when we see the holistic picture of the Indian population deprived of even the basic needs of their lives. Setting up of legal services authorities and committees at national, state and district levels with the objective to improve the quality of legal services and make justice approachable to the deprived section of the society (Multiple Action Research Group, 2012). But the lack of legal awareness among people is one of the major reasons to get people deprived of the justice. For this, not only legal fraternity, but society also needs to come forward and take the responsibility to take care of its vulnerable population (Vardhan, 2015). This paper focuses on the purpose and functioning of legal services authorities. The aim of the paper is to study the extent to which the legal services authorities are working towards providing free legal aid to the poor and promote justice on a basis of equal opportunity.

Keywords: Legal Services Authorities, Justice, Legal Aid, Deprived & Awareness

INTRODUCTION

This paper highlights the significance of free legal aid in a democratic country like India, where a substantial part of the society is far away from having the benefits of the constitutional rights conferred upon them. 'Access to Justice' is a basic human right, yet it is a distant dream for the poor and deprived section of the country (Singh D., 2017). Legal aid provides the citizens, a fundamental right to have access to fair and impartial justice to all with main focus on the weaker section of the society. It provides freedom to take stand for oneself and access legal information, legal advice and legal education & knowledge. The Preamble of constitution of India clearly states to provide for social, economic and political justice. Social development requires providing legal aid to the disadvantaged and deprived section of the society

(Neha & Jain, 2017).

LEGAL AID IN INDIA

Legal aid is considered as a social value, quintessential component of the constitution and a potent weapon to amend the quandary of the impoverished (Singh D. , 2017).

The Constitution of India incorporated the provisions of Article 38 (1) and Article 39 (A) to bring about a social change by providing legal aid to the deprived section of the society. Article 38 (1) strives to protect and secure the people effectively and promote their social, economic and political welfare. It also attempts to provide for equal status and opportunities by removing or minimizing the inequalities. Article 38 (A) strives to secure justice, provide free legal aid and ensure justice not denied to any citizen by whatsoever reason (Neha & Jain, 2017).

Hence, in order to realise these articles, legal services authorities act 1987 was framed to provide free and competent legal services to the exploited people of the society, with the aim of “Access to Justice” for all by organising Lok Adalats to ensure the justice. (Neha & Jain, 2017).

Legal aid is not a matter of charity, but a matter of right. Justice V. R. Krishna Iyer made a tremendous contribution in the development of legal aid and recognising the need of providing the legal aid to the poor. Legal aid system was framed to make the law reach the people and not making the people to reach law. Colonial hangover of the Indian Legal System was mostly insensitive to the socio-economic problems of the large part of the society. Various reports of certain committees constituted clearly lay down that legal system is an effective tool in securing social justice to the people. Justice P.N. Bhagwati is regarded as the originator of the legal aid programmes who suggested ways and means of providing free legal aid and advice to the poor and weaker section of the society (Projects and Research, 2014).

It was *Hussainara Khatoon* judgement that took the attention of the Supreme Court towards the inability of the downtrodden people to engage a counsel for their defence and bear the costs of the delay in getting the judgement. In this case, the court pointed out the importance of Article 39-A that free legal services are absolute for reasonable, fair and just procedure (Mallikarjun, 2013).

Legal Services Authority

On 5th December, 1995, The National Legal Services Authority was constituted under the Legal Services Authorities Act, 1987 with the aim to provide free legal aid to the poor and to organize Lok Adalats for pleasant dispute settlements. NALSA provides the funds to the states to make successful implementation of the policies and schemes. State Legal Services Authority was constituted in every state to implement the policies laid down by NALSA in the states. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. District Legal Services Authority was instituted in every district to execute the Legal services programmes at district

level. District Judge of the District is its ex-officio Chairman. For each Taluk or Mandal or a group of Taluks or Mandals, Taluk Legal Services Committees, headed by a senior Civil Judge, are also set up to systemize the legal services activities and conduct Lok Adalats (Projects and Research, 2014).

Constitution of these bodies aimed at providing free legal services to the members of SC/ST, human trafficking victims/ beggars, a woman or a child, physically or mentally disabled person, a victim of some sort of disaster, an industrial workman, person under custody, or a person having an annual income of less than Rs. 9000 or such other higher amount as may be prescribed by the State Govt. The legal Services authorities examine the eligibility of the applicant, and accordingly bear all the expenses in connection with the case to be presented in the court (Projects and Research, 2014).

Various schemes and measures have been projected and executed by NALSA to achieve the objective of disposing of the pending matters and disputes at the pre-litigative stage by establishing Permanent and Continuous Lok Adalats in all the districts in the country. It is envisaged to give authorisation of NGOs to spread legal awareness and legal literacy by conducting campaigns. Its aim is to provide legal aid facilities to the jail inmates also. It aims at providing training to the Judicial Officers in regard to Legal Services schemes and programmes to make counselling and conciliation more effective and deliver competent and quality legal services to the aided persons (Projects and Research, 2014).

CURRENT SCENARIO

‘Lok Adalat’ is a one momentous scheme of NALSA, to resolve the disputes peacefully, where all the matters can be resolved except for the criminal cases which are non-compoundable. As per statistics available with NALSA website, 1, 67,586 Lok Adalats have been held (From April 2015 to March 2016) and 1, 52, 99,214 cases were settled in these many Lok Adalats (NALSA, 2016).

3, 46,509 legal literacy camps have been held, since April 2012 till March 2016. To make people aware of their legal rights and providing knowledge about the functioning of the legal services institutions, NALSA has undertaken various awareness activities

and programmes by mode of conducting seminars, lectures, pamphlet distributions, mobile multi-utility vans through public interactions, nukkad natak, short documentaries, cultural activities involving school children, various extra-curricular activity competitions programmes which may vary from place to place depending upon the needs of the people in the locality. For this purpose, NALSA has been appointing law graduates or 10th pass students to voluntarily join the initiatives to promote the importance of the legal services activities. Colleges are also being covered by the Legal services Authority by running legal aid clinics to achieve the objective of legal services (NALSA, n.d.).

Legal services authorities provide for the payment of court and other process fee, advocate fee, charges of legal proceedings, and any other costs of paper work or costs related to the matter (RAO, 2012). The legal services authorities at national, state and district levels also extend their services to provide counselling and advice as well in addition to legal representation to provide effective and quality legal aid to the marginalised. These services prove as an important and daunting challenge for these authorities (Singh D. , 2017).

Majority of the people living in rural areas are illiterate and are not aware of their legal rights and do not have adequate means to access justice. Even the literate people do not have much knowledge about the rights and entitlements being conferred upon them by law. Hence, non-awareness of legal rights can be considered as one of the major reasons for the manipulation, deficit and deception of rights and benefits. Ignorance and illiteracy result in making them helpless and more troubled. Hence, legal awareness can be helpful to a great extent in alleviating their miserable condition (Projects and Research, 2014).

But, it has been observed that there is a wide gap between the goals set and goals met. Lack of legal awareness among the poor has come out as a major reason for this gap. Poor knowledge about their rights and provisions available to them has made it difficult to achieve the main objective of providing them free legal aid and hence they are exploited and Several years have passed since the enactment of the legal services, but the state does not bring the law

into force, intentionally, for the benefit of the poor escalating the frustration among the people and humiliating the parliament, as it was observed in the *State of Haryana v. Darshana Devi case* in Supreme Court of India (Mallikarjun, 2013). Lack of awareness among the poor has made them lose their faith in the legal system, and its administration triggering them to opt for illegal ways to sort out the matters out of the courts and worsen the situation (Bansal, 2015).

As per the Bar Council of India, it must be one the topmost duties of an advocate towards the welfare of the society to provide free legal assistance to the needy and oppressed. This obligation imposed is purely moral. However, very fewer efforts have been made in terms of charity and it has received criticism for not taking the community responsibility of public legal aid and leaving the destitute to linger on the faint light of hope (Singh D. , 2017).

The advocates associated with legal services authorities get remuneration paid on a case to case basis to earn their living. They have huge number of cases assigned that jeopardizes the adequate representations of their dispirited clients. The lawyers working for the actual benefit of the clients are very few in number who cluster around the doorsteps to provide justice to the poor and deprived. The lawyers are refraining from investing into this noble cause because of the financial constraints (Singh D. , 2017).

Absence of follow-up of the panel lawyers is also a drawback in the evaluation of the services provided by them to the poor and needy. Their performance needs to be appraised to keep them aligned and motivated towards the goals and objectives of the legal services authorities (Multiple Action Research Group, 2012). It has also been observed in the report made by UNDP that feedback about the experience of the clients with the lawyers is not being taken. If the client suffers during the procedure of legal aid, he might not find a path to put a complaint for his dissatisfaction (Multiple Action Research Group, 2012).

The objective of setting up legal aid clinics in institutes, especially in law schools, would help the

scholars in getting practical knowledge of lawyering skills and inculcating essential values of competent representation, promotion of justice, fairness and morality. But, it is a big delusion till date that Clinical Legal Education is only a matter of academic importance (Singh D., 2017).

Paralegal volunteers range from law students, social workers, teachers, principals etc. And sometimes lawyers also. Many of them do not have clarity about their roles because of lack of training and practical knowledge during their education (Multiple Action Research Group, 2012).

Legal services authorities have functional websites for NALSA, every state and district. But these websites lack comprehensive legal information which could be probably due to the resource constraints. These websites need to be updated time to time disseminating information which is of public interest. This would help in gaining trust and faith of the masses in the legal service assistance. It has been observed that, many district and taluk level offices lack infrastructure facilities. Some of the offices are established in the court complexes only and no separate space has been provided to them (Multiple Action Research Group, 2012).

30% of Indian population is living below the poverty line (PTI, 2016). Illiteracy and poverty make Legal aid a national and constitutional necessity in our country. It is hence important to all the stakeholders to contribute to the national cause of free legal service to the needy. Legal educators, political leaders, lawyers and judges, law students should take a leading role in promoting and providing legal assistance to the poor (Singh D., 2017).

CONCLUSIONS AND RECOMMENDATIONS

- The major drawback being poor knowledge of legal rights available to the deprived section of the society needs attention. It is important to impart legal education about their basic legal rights, which needs to be done at the grass root level of the country. Legal services authorities need to increase the frequency of conducting the legal awareness programmes and put complete efforts in making such programmes successful.

- Legal Aid requires complete attention and focus of the Judiciary to study the wide gaps between the objectives set and objectives met, which is increasing day by day.
- There is a need to use Legal Aid as an important tool to achieve the goal of ensuring distributive justice and eliminating the social and structural discrimination against the downtrodden.
- Ineffective implementation of the legislations and judgements has just proven to be a myth. So, it is required to have focused on effective and proper implementation of the existing laws first, instead of passing new regulations to make legal aid a reality.
- There is a need to provide proper Alternate Dispute Resolution methods to accelerate the process of resolving the matters at the pre-litigative stages without making any further appeals. Inclusion of law students in the ADR can be beneficial in providing convenient and speedy disposal of the matters.
- There is a need to allocate more funds by the state and the government to make sure that no one is deprived of the legal advice due to lack of funds.
- In order to bring a change in the quality of legal aid, there is an urgent need to employ experienced lawyers and train them to provide legal aid and count Legal Aid as an obligation.
- For this, not only legal fraternity but society also needs to come forward and take the responsibility to take care of its vulnerable population (Vardhan, 2015).

References:

1. Constituent Assembly. (n.d.). India Code Legislative Department. Retrieved from India Code:
2. <http://indiacode.nic.in/coiweb/coifiles/preamble.htm>
3. Bansal, Y. (2015). Legal Aid and Legal Schools. Academike.
4. Express News Service. (2015, April 12). 90% Indian workforce in unorganised sector deprived of welfare schemes, says,
5. Justice T S Thakur. The Indian Express.
6. 4. Mallikarjun, D. G. (2013). LEGAL AID IN INDIA AND THE JUDICIAL CONTRIBUTION. NALSAR Law Review, 234-241.

7. 5. Multiple Action Research Group. (2012). Needs Assessment Study of Selected Legal Services Authorities. Department of Justice, Government of India and UNDP India.
8. 6. NALSA. (2016). National Legal Services Authority. Retrieved from National Legal Service Authority:
10. <http://www.nalsa.gov.in/content/regular-lok-adalat>
11. 7. NALSA. (n.d.). National Legal Services Authority. Retrieved from National Legal Services Authority:
12. Neha, & Jain, P. K. (2017). Revamping Legal Aid Services in India. International Journal of Human Resource Management and Research (IJHRMR), 45-48.
13. Pathak, V. (n.d.). Legal Service India- A brief History of Legal Aid. Retrieved from Legal Service India:
<http://www.legalserviceindia.com/articles/laid.htm>
14. Projects and Research. (2014, April 29). Evolution of the Concept of Legal Aid in India. India. Retrieved from Projects and Research:
<http://law-projects.blogspot.in/2013/04/evolution-of-concept-of-legal-aid-in.html>.
15. PTI. (2016, October 3). India has highest number of people living below poverty line: World Bank. Business Today..
16. RAO, Y. (2012, June 16). Right To Free Legal Aid.
17. Singh, D. (2017, January 17). Access to Justice and Legal Aid Services with special reference to specific Justice needs of the underprivileged people. Delhi, Delhi, India..
18. Singh, R. (2017, January 17). Access to Justice and Legal Aid Services with special reference to specific Justice needs of the underprivileged people (ProBono Articles). Retrieved from Probono India: <http://probono-india.in/research-paperdetail.php?id=15>.
19. Vardhan, P. P. (2015). Right to Legal Aid; A Constitutional Commitment. Retrieved from Press Information Bureau: [http:// pib.nic.in/newsite/mbErel.aspx?relid= 118011](http://pib.nic.in/newsite/mbErel.aspx?relid=118011)
20. Singh, D. (2017, January 17). Access to Justice and Legal Aid Services with special reference to specific Justice needs of the underprivileged people. Delhi, Delhi, India.