

LEGAL AID SERVICES AND APPROACH TO VULNERABLE

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ABSTRACT

The issue of pending cases in Indian courts is a matter of deep concern that has garnered significant attention in recent times. The backlog of cases in the Indian judicial system has reached alarming proportions. The Supreme Court has more than 80,000 cases pending while the 25 high courts had more than 61.7 lakh cases pending while district and subordinate courts had over 4.4 crore cases, taking the total pendency in all courts in the country to over 5 crore case. The growing litigation, delay in disposal, pendency in ordinary law courts are the reasons for the growth and popularity of this ancient but innovative alternative dispute resolution machinery. The Supreme Court of India, while giving effect to Article 39-A, has held in several cases that right to speedy justice and free legal aid is part of Article 21. The new responsibilities of the Bench and the Bar must be assessed in the context of mass discontent and the dynamic rule of law as its answer. Our judicial trust with social destiny can only be redeemed by a spread out and institutionalized legal services project adjusted to the conditions of our society. This paper is an attempt to understand the need of alternative dispute resolution system as well as social and legal barriers to achieve access to justice by common man.

INTRODUCTION

“The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of law, where there is no law, there is no freedom.”

John Locke

India is rightly acclaimed for achieving a flourishing constitutional order, presided over by an inventive and activist judiciary, aided by a proficient bar, supported by the state and cherished by the public. At the same time, the courts and tribunals where ordinary Indians might go for remedy and protection are beset with massive problems of delay, cost, and ineffectiveness. Potential users avoid the courts; in spite of a long- standing courts remain grid locked. There is wide agreement that access to justice in India requires reforms that would enable ordinary people to invoke the remedies and protections of the law.

In this study we will focus on an innovative platform, introduced in 1980's which has enjoyed substantial governmental and judicial support and is endorsed and promoted, indeed given pride of place by influential élites, as a promising avenue of access to justice. This platform is the *lok-adalat*, literally “people’s court,” and as the name suggests it is promoted shaving a different source and character than the courts of the state. Infact, the *lok-adalat* is a creature of the state, but because of the pretension that it is not, it deserves examination under the rubric of an alternative, on- state justice system. We suspect that a number of the inhabitant so that category bear a similar ambivalent relationship to the state.

CONCEPT OF LEGAL AID:

The expression “legal aid” has not been defined anywhere in Legal Services Authorities Act, 1987¹. Legal aid may be taken to mean free legal assistance to the poor persons in any judicial proceedings before the Court, Tribunals or any authority. It intends to provide free legal assistance to the poor persons who are not able to enforce the rights given to them by law. Legal Aid, in its common sense, conveys the assistance provided by the society to its weaker members in their effort to protect their rights and liberties, best owed upon the by the laws.

IN THE WORDS OF JUSTICE P.N. BHAGWATI:-

“Legal Aid means providing 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 the rights given to them by law.”

Justice Bhagwati emphatically observes, “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.”

BACKGROUND

“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 concerned.”

Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring [equality before the law](#), the [right to counsel](#) and the [right to a fair trial](#). This article describes the development of legal aid and its principles, primarily as known in Europe, the British Commonwealth, India and the United States.

LEGAL AID MOVEMENT IN INDIA - ITS DEVELOPMENT AND PRESENT STATUS

Article 39A of the Constitution of India² provides that 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 disability. Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all.

The Legal Services Authority Act was enacted by the Parliament in 1987 which came in to force on 9th November 1995. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to monitor and evaluate implementation of legal aid programs and to lay down policies and principles for making legal services available under the Act. His Lordship Hon. Dr. Justice A.S. Anand, Judge, Supreme Court of India took over as the Executive Chairman of National Legal Services Authority on 17th July, 1997. Soon after assuming the office, His Lordship initiated steps

¹ S.S. Singhvi, “Legal Aid, Justice and Democracy”, *Lawyer*, 1981.

² M.P. Jain, *Indian Constitutional Law* (1987), N.M. Tripathi Pvt. Ltd., Bombay.

for making the National Legal Services Authority functional. By February, 1998 the office of National Legal Services Authority became properly functional for the first time. In October, 1998, His Lordship Hon. Dr. Justice A.S. Anand assumed the Office of the Chief Justice of India and thus became the Patron-in-Chief of National Legal Services Authority. His Lordship Hon. Mr. Justice S.P. Bharucha, the senior-most Judge of the Supreme Court of India assumed the office of the Executive Chairman, National Legal Services Authority.³

Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to the eligible persons. Section 12 of the Act reads as under:-

"12. Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a mentally ill or otherwise disabled person;
- (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; or
- (f) an industrial workman; or
- (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 (104 of 1956); or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or
- (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Govt.

After the constitution of the Central Authority and the establishment of NALSA office towards the beginning of 1998, following schemes and measures have been envisaged and implemented by the Central Authority:-

- (a) Establishing separate Permanent & Continuous Lok Adalats for Govt. Departments, Statutory Authorities and Public Sector Undertakings for disposal of pending cases as well as disputes at pre-litigative stage;
- (b) Establishing Permanent and Continuous Lok Adalats in all the Districts in the country for disposal of pending matters as well as disputes at pre-litigative stage;
- (c) Appointment of "Legal Aid Counsel" in all the Courts of Magistrates in the country;
- (d) Accreditation of NGOs for Legal Literacy and Legal Awareness campaign;
- (e) Disposal of cases through Lok Adalats on old pattern⁴;
- (f) Publicity to Legal Aid Schemes and programmes to make people aware about legal aid facilities;

³ NALSA Report 1994

⁴ www.nlsa.nic.in

- (g) Emphasis on competent and quality legal services to the aided persons;
- (h) Legal aid facilities in jails;
- (i) Setting up of Counseling and Conciliation Centers in all the Districts in the country;
- (j) Sensitization of Judicial Officers in regard to Legal Services Schemes and programmes;
- (k) Publication of "Nyaya Deep"⁵, the official newsletter of NALSA;
- (l) Enhancement of Income Ceiling to Rs.5, 00,000/- p.a. for legal aid before Supreme Court of India and to Rs.1,00,000/- p.a. for legal aid upto High Courts; and
- (m) Steps for framing rules for refund of court fees and execution of Awards passed by Lok Adalats.

FREE LEGAL SERVICES INCLUDE

- (a) Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- (b) Providing service of lawyers in legal proceedings;
- (c) Obtaining and supply of certified copies of orders and other documents in legal proceedings.
- (d) Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

PRESENT DAY SITUATION ON LEGAL AID :-

The notion of legal aid conceived wisely by the pioneers of legal world certainly needed vigorous execution by meticulous planning. The word of caution being very clear that the traditional legal service programme, which is essentially court or litigation, oriented cannot meet the specific needs and the peculiar problems of the poor demanded a unique approach to this socio- economic philosophy. Under such influence The Legal Service Authority Act, 1987 was enacted to accomplish the vision of providing legal aid to the exploited masses of this country, whose need till now was echoed either in the golden words of UDHR or The International Covenant on Civil and Political Rights or discussed in the board rooms of Law commission or deliberated by socio-legally concerned groups only.

The Government of India is committed to ensuring equitable access to justice⁶ for the poor. There are several laws, schemes and social programmes in India that have adopted a rights-based approach to ensure basic rights to education, health, food, employment etc. These require a robust legal aid system, which can help the poor in accessing their rights and entitlements. Recognizing that long delays, pendency and backlog of cases put unacceptable pressure on the judicial system and impact the ability of the people to access justice in time, the Ministry of Law and Justice has launched a variety of initiatives to address this problem. An important initiative is the establishment of citizen centric E-Courts; an initiative which has allocated over Rs. 935 crore (USD 187 million) towards ensuring ICT enablement and improved services to the people. The Thirteenth Finance Commission (TFC) has provided Rs.5000 crore (USD 1 billion) for the period (2010-2015)⁷ to the Justice sector, primarily for

⁵ Nyaya Deep.Article no:3 p.47 2011

⁶ Upendra Baxi, "Access Development and Distributive Justice: Access Problems of The Rural Population",Journal of Indian Law Institute, 1976.

⁷ Access to justice Project report,2012,p34,para37

reducing pendency, improving infrastructure, legal aid, training and speedy justice delivery. The Government has also allocated Rs. 130 crore (USD 26 million) during the 12th Five Year Plan period (2012 – 2017) for setting up model courts. Another forward-looking initiative of the Department of Justice is the setting up of the National Mission for Justice Delivery and Legal Reforms⁸. The Access to Justice Project (2009-2012) implemented by the Department of Justice in collaboration with the UNDP is an example of efforts being made for creating sustainable and positive change across the States.

Apart from the Universal **Declaration of Human Rights**⁹, the Constitution of India, guarantees, fundamental rights in its Part III, from Articles 14 to 32. This includes, right to equality, freedoms, right to life, religious and minority rights, finally the special right which guarantees constitutional remedies in cases of infringement of fundamental rights

LEGAL AID ACTIVITIES OF THE AUTHORITY

1) LEGAL AID COUNSEL SCHEME: The Authority has implemented legal aid counsel scheme in Courts of Metropolitan Magistrates, Special Executive Magistrates, Children Welfare Board etc. Remand Advocates have been appointed to take up and defend the cases of arrested persons. Now, every unrepresented person in custody stands assured of legal representation at different stages of trial. The Authority has also a panel of advocates.

2) APPOINTMENT OF JAIL VISITING ADVOCATES: The Authority has also appointed Jail Visiting Advocates to visit different Jails regularly on fixed days of the week to help the poor and unrepresented inmates in terms of provisions of Section 12(g) of the Legal Services Authority Act, 1987. Any jail inmate can seek aid and advice; file any bail/parole application; appeal(s) etc. through these Advocates.

3) RAISING OF INCOME CEILING: The income-ceiling limit U/s 12(h) of the Legal Services Authority Act, 1987 has been enhanced to Rs. 50,000/- per annum to extend the benefits of the Act to more people.

4) EMPHASIS ON COMPETENT AND QUALITY LEGAL SERVICES TO THE AIDED PERSONS: The quality of legal services is the need of the hour for providing competent legal aid to the applicant. Delhi Legal Services Authority takes regular feed back of the Advocates on its panel and strikes of the names of the Advocates who fail to provide efficient services to the applicants/aided persons. The Authority is always on a look out to bring young, hard working and honest Advocates on its panel.

5) ACCREDITATION OF NON-GOVERNMENTAL ORGANISATIONS: The Authority is working collectively with Govt. Departments and agencies has also teamed up with Non-Governmental Organizations working directly or indirectly in the field of Legal Services. Most of the NGOs are registered.

⁸ M.O Hudson report, International context of Access to justice(1998)p.5

⁹ Sir H.Lauterpacht, International Law and Human Rights, p 394

6) OBSERVANCE OF LEGAL SERVICES DAY: On 9TH November which is observed as LEGAL SERVICES DAY in all the state Authorities, The Authority issued Press Release in leading National newspaper both in Hindi and English spelling out the salient features of the Legal Services Authorities Act; schemes made there under by the Authority and the services being provided by it. The Authority organizes many functions and legal literacy camps at various places in Delhi where various Non-governmental organizations and prominent citizens.

WOMEN AND ACCESS TO JUSTICE :

Many volumes of work have been written, advancing different reasons for the use or non-use, of formal legal structures in seeking to obtain access to justice.¹⁰ Most are based on the assumption that the person seeking access has defined the problem as being a legal one. The implication therefore is that a failure to perceive injury or to define unmet need as being a legal problem is the reason why many people do not seek access to the law.¹¹

From a gender perspective it is worth noting that although human rights are supposed to mitigate inequality and to provide a level playing field for all, often the potential benefits of human rights to the improvement of women's lives are circumscribed by the limitations placed upon their domestic application, by the invocation by states of reservations. International law permits a state ratifying a treaty to indicate that it will not be bound by a provision of the treaty.¹² It is interesting to note that the Women's Convention¹³ is one of the most heavily reserved of all the United Nations human rights treaties. Although not permitted, states continue to enter reservations which subject the treaty (CEDAW) to domestic law¹⁴ or which provide in general terms that the interpretation of the Convention will be subject to religion, custom, tradition or culture.¹⁵

BARRIERS AND CHALLENGES TO ACCESS TO JUSTICE IN INDIA

Lack of awareness of justifiable problems and lack of sources and availability of advices, are the two major barriers to the access to justice. However in countries like India, the financial burden of the litigation is also a major factor. The United Nations Development Programme in its Note on Access to Justice, published in the year 2004, added two other factors namely, long delays in adjudications and excessive number of laws, as additional barriers to access to justice.

¹⁰ See for example, Cappelletti and Garth (eds). Public Interest Law Initiative Columbia University Budapest Law Center (1978) at <http://www.pili.org/aboutpili/access.html>

¹¹ W. Felsteiner, R. Abel and A. Sarat 'The Emergence and Transformation of Disputes: Naming, Blaming and Claiming' 15 *Law and Society Review* (1980-1) at 631-54.

¹² *Vienna Convention on the Law of Treaties*, 1969, 1155 UNTS 331, Art. 19; R. Cook, 'Reservations to the Convention on the Elimination of all forms of Discrimination against Women', 30 *Virginia Journal of International Law* (1990) at 643-715.

¹³ Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW), 1249 UNTS 13.

¹⁴ *Vienna Convention on the Law of Treaties*, 1969 Art. 27. See also Human Rights Committee General Comment 24 on Issues relating to Reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under Article 41 of the Covenant (2 November 1994) CCPR/C/21 /Rev. 1/Add 6; CEDAW General Comment 4 on Reservations; UN Doc A /42 /38; CEDAW General Comment 20 on Reservations UN Doc A/47/38.

¹⁵ See also Human Rights Committee General Comment 28 on equal rights between men and women (article 3) CCPR /C /21.Rev.1 Add.10, paras 5, 9; CEDAW General Comment No.

Lack of awareness of legal rights, obligations etc., complexity in structures and processes in the judicial system and low rate of legally literacy are, of course, common in our country also. The people in this Country be short of access to appropriate and timely legal advice due to unaffordable expenditure involved in the process of litigations. However we have experimented solutions for this issues. We have enacted the Legal Services Authority Act, 1987 and as per the provisions of the said Act, we are providing free legal advice and legal services to the peoples having social and economic backwardness, women, children, industrial workers, victims of mass disasters and natural calamities. There are Legal Services Authorities in National, State and District Level and Legal Services Committees at Supreme Court, High Courts and Taluk levels. The important aspect is that all these authorities and service committees are headed by the Judges and Judicial Officers and there is proper and timely evaluation on the performance of these forums, in intervals¹⁶.

We have identified the process of Arbitration, Conciliation, Mediation and Settlement through the Special Agency, namely Lok Adalat, as the effective and speedy modes of alternative disputes resolutions¹⁷. We have Lok Adalat, constituted and convened, in regular intervals in all the Court Stations. The Mediation Centres are now established in the High Courts and there is special committee in the Supreme Court of India to monitor the functions of Mediation Centres and also to facilitate service of trained Mediators.

The Arbitration and Conciliation Act, 1996, provides an excellent system of alternative dispute resolution by way of Arbitration and Conciliation. Now-a-days the litigations arising out of commercial dealings are resolving through Arbitration, either through the Tribunal either an Institutional Arbitra

ROLE OF HIGHER JUDICIARY TO PROMOTE ACCESS TO JUSTICE.

The Higher Judiciary, in India consists of Supreme Court and High Courts in States. Complexity in the process and structure of our judicial system is one of the major barriers in strengthening the access to justice. To curb this situation, our courts are intensively promoting the special class of litigations, namely Public Interest Litigations. In the filed of writ jurisdiction, the higher judiciary in India widened the scope of locus standi principles, to enable the needy to exercise their right to access to judicial system. Thus a litigation for public good can be initiated not only by an aggrieved person but also by a public spirited individual or social action group or by a suo motu action by the Court, for the enforcement of the constitutional or legal rights.

The involvement of higher judiciary in ensuring access to justice is a matter requires appreciation. It is worth to highlight some of such instances. *In common cause v. Union of India*, AIR 1996 SC 929¹⁸, the Supreme Court of India, issued necessary directions to the Government to appoint expert committee and take urgent actions to curb the situations of serious deficiencies and shortcomings in the matter of collections, storage and supply of blood through blood centres. In *Bhopal Gas Peedit Mahila Udyog Sangathan*

¹⁶ XII report of NALSA on Awareness of legal rights,p.60(1998)

¹⁷Public Interest Litigation – Legal Aid and Lok Adalats, Mamta Rao, Eastern Book Company

¹⁸Cases; *common cause v. Union of India*, AIR 1996 SC 929

*v. Union of India, AIR 1989 SC 1069*¹⁹, the Court framed an interim relief scheme for the welfare of victims of Bhopal Gas Leakage Tragedy and directed the government to implement the scheme. In *Indian Council for Enviro- Legal Action v. Union of India, AIR 1996 SC 1446*²⁰, the Court burdened the industrial units, which are responsible for causing extensive damages to the environment and local residents held that the principles of strict liability and polluter pays will applicable in such cases.

When the instances of child exploitation, including prostitution, were brought to the notice of the Court, in *Vishal Jeet v. Union of India, AIR 1990 SC 1412*, the Supreme Court India directed the government to take urgent steps in providing rehabilitative homes manned by trained personnel. The Supreme Court in *Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14* directed the authorities to evolve a scheme for compensation and rehabilitation of rape victims and laid down board parameters in assisting the rape victims. The court's timely actions in *Pradeep Krishen v. Union of India, AIR 1996 SC 2040*, to ensure allotment of land for tribal people, regularising their possession of forest lands were widely accepted by the people in this Country.

CONCLUSION

Every government has one major role to play in democracy that is to protect the rights of all its citizens. In our country also steps are been taken by both parliament and judiciary to secure justice. Many Government schemes were started for removing poverty across the country, Scholarships were given to weaker section of society so that they can pursue their education without any financial burden, many important legislation were passed. Indian judiciary which is well regarded domestically and internationally for its progressive role in interpreting various provisions of the Constitution also took its work remarkably with a view to promote social, economic and political justice to all the sections of the society. Expanding the interpretation of the fundamental rights enshrined in the Constitution, overcoming restrictions based on rules relating to locus standi, creating new avenues for seeking remedies for human rights violations through public interest litigation pleas and promoting genuine judicial interventions in the areas of child labour, bonded labour, clean and healthy environment, and women's rights are a few examples of successful judicial intervention to uphold the rule of law and ensure justice. Despite of all this effort, at the same time it can't be denied that intention of constitution to achieve social, economic and political justice is yet unfulfilled.

Thus we can find a paradigm shift in the approach of the Supreme Court towards the concept of legal aid from a 'duty of the accused to ask for a lawyer' to a 'fundamental right of an accused to seek free legal aid'. But in spite of the fact that free legal aid has been held to be necessary adjunct of the rule of law, the legal aid movement has not achieved its goal. There is a wide gap between the goals set and met. The major obstacle to the legal aid movement in India is the lack of legal awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal

¹⁹Bhopal Gas Peedit Mahila Udyog Sangathan v. Union of India, AIR 1989 SC 1069

²⁰ *Indian Council for Enviro- Legal Action v. Union of India, AIR 1996 SC 1446*

awareness which leads to exploitation and deprivation of rights and benefits of the poor. Thus it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. Thus legal aid to the poor and weak person is necessary for the preservation of rule of law which is necessary for the existence of the orderly society. Until and unless poor illiterate man is not legally assisted, he is denied equality in the opportunity to seek justice.