

## **Introduction to Legal Aid Services in India**

**Kosha K. Raval**

B.Com., LL.M.

Teaching Assistant,

Sarvajanik College of Law, Surat.

Ph.D. Scholar, Parul Institute of Law,

Parul University, Vadodara.

**Dr. Kalpeshkumar Gupta**

Associate Professor, Parul Institute of Law,

Parul University, Vadodara.

*'Legal Aid is fundamentally important in a democratic, civilized society.'*

- *Jeremy Corbyn*

### **1. Introduction:**

Legal aid services play a crucial role in ensuring access to justice and legal representation for individuals who may not have the financial means to hire private attorneys. Legal aid services are typically provided by government-funded agencies, nonprofit organizations, or pro bono lawyers, and they aim to bridge the justice gap and ensure that everyone, regardless of their economic status, can assert their legal rights and navigate the legal system.

One well-known definition of legal aid comes from the American Bar Association (ABA): "Legal aid refers to the provision of assistance to people who are unable to afford legal representation and access to the court system." Legal aid services encompass a wide range of legal issues, including but not limited to civil rights, housing, family law, immigration, criminal defense, and consumer protection.

These services can be crucial for disadvantaged or marginalized individuals who may face various legal challenges, such as eviction, domestic violence, immigration issues, or wrongful criminal charges. Legal aid services can provide legal advice, representation in court, mediation, and educational resources to help individuals understand and navigate the legal system. Legal aid services are rooted in the principle that access to justice is a fundamental human right, and they are supported by various international and national legal frameworks. For example, Article 6 of the European Convention on Human Rights guarantees the right to a fair trial, which includes the right to legal assistance.

### **2. Ancient Period**

As part of their "service to the poor," which was regarded as "service to the Almighty," the weak and the impoverished in ancient India were entitled to support, kindness, and generosity when they needed it. Social help and the king's support were seen as "PHARMA." The generous were asked to use state resources to assist the underprivileged, orphans, and elderly with all the amenities. The safety and well-being of the subjects was a king's greatest "DHARMA."

“A component of the legacy is the idea of Dharma. The concept of Dharma, which is a combination of responsibility, morality, law, and justice, is inherently just and moral. The legal code in India was represented by Emperor Ashoka's "Dharma Chakra," or wheel of Dharma. The law applied even to the Monarch.<sup>1</sup>

The overall view of that age can be traced in the words of the eminent lawyer Mr. N.A. Palkhivala, as under :

“It would be hard to improve upon the sense of values which made ancient India so great. Our old sages judged the greatness of a state not by the extent of its empire or by the size of its wealth, but by the degree of righteousness and justice which marked the public administration and the private lives of the citizen”.<sup>2</sup>

When Muslims made their first significant invasion of India in or around 1100 AD, the Muslim era officially began. In criminal cases and revenue domains where Kazis and attorneys played crucial roles, a robust and efficient legal system and more sophisticated forms of justice administration were devised and implemented during that time. Despite the absence of a legal association, the legal profession thrived during the Muslim Middle Ages. Vakils, or expert legal representatives, were the ones who represented litigants in court.

Two widely used codes, (1) Fiqh-Firoz Shahi and (2) Fatwa-i-Alamgir, both explicitly outlined the responsibilities of a Vakil. During Shah Jahan's reign, government vakils were initially hired to defend civil claims against the state. "All during Aurangzeb's reign, attorneys known as Vakil e Sarkar or Vakil e Shara were appointed to every district. Occasionally, they were assigned to provide free legal counsel to underprivileged litigants.<sup>3</sup>

### **3. British Period**

The British era, which spans about 200 years, started with the British Power's consolidation in the middle of the eighteenth century. With the gradual introduction of the English model of adjudicatory process—a complicated web of formalities and procedural complexities—the Anglo-Saxon legal system was established during this time. English bias and biases were used in the drafting of laws intended to oppress the Indian populace and advance or safeguard the interests of the British monarchs. Discriminatory behaviour, injustice, and malfeasance were prevalent in the court system's administration, which was not only intricate and time-consuming but also expensive and inaccessible to the general public and the impoverished. Professional solicitors were indispensable to the administration of justice in litigation, as were the costs associated with the courts and other services. The impoverished had difficult access to the legal system, and the wealthy took use of this disadvantage to their advantage and that of the broader public to oppress and exploit them by using the expensive legal system as a tool. However, the concept of offering assistance to individuals with disabilities in a judicial procedure was very much alive in the British psyche, which was nurtured further by global trends and sociolegal consciousness. The spirit found formal forms during the codification

---

<sup>1</sup> Sujata V. Monohar in “The Indian Judiciary and Human Rights” in the book titled “Democracy, Human Right and. the Rule of Law” : essays in honour of Nani Palkhivala: : Edited by Venkat Iyer, Butterworth’s (India) 2000 Page 137.

<sup>2</sup> N.A. Palkhivala, India’s priceless Heritage, Bharatya Vidya Bhavan, Bombay, 1983 Page 38

<sup>3</sup> V.D. Kulshreshtra, Landmarks in Indian legal and constitutional history. EBC. Luknow, 4th Reprint, 1994 P26.

process in British India following the passage of the Charter Act in 1833 and the establishment of the Institute of Law Commission in 1834.<sup>4</sup>

The Criminal Procedure Code, 1878 was enacted in 1878, and some power was granted to the accused under section 340 of the code, acknowledging the accused's right to be defended by a pleader, i.e. to be engaged by the accused at his own expense. However, under the Criminal Rules of Practice of the High Court, legal aid was given to the destitute and needy accused at the state's expense only in instances involving capital penalty.

In the civil processual system of justice, the Code of civil procedure 1908, by Order XXXHI, provides for legal aid in pauper claims without payment of court fees. When a person lacks adequate resources to pay the fees prescribed by law for the plaint in the suit, he is considered to be a pauper.

When, in 1944, a Committee, chaired by Lord Rushcliffe, was appointed to enquire what facilities existed in England and Wales at the time for giving legal advice and assistance to the poor persons and to make such recommendations, as appeared to be desirable, for the purpose of ensuring that poor persons in need of legal advice may have such facilities at their disposal, the social consciousness and demand for legal aid in India received a boost. The British Parliament passed the LEGAL AID AND ADVICE ACT 1949 after accepting the Rushcliffe Committee's recommendations.

#### **4. After Independence**

Following independence, many high-level committees created by the states and the Central Government investigated legal aid, some of which are detailed below:

##### **4.1 Report of the Bombay Govt, committee on Legal aid and advice, 1949.<sup>5</sup>**

In 1949, the Government of Bombay appointed a Committee, chaired by Justice N.H. Bhagwati, to investigate the issue of providing legal aid in civil and criminal proceedings to poor people, people with limited means, and people from backward classes, and to make recommendations for making justice more easily accessible to these people.

The Committee on Legal Aid conducted a thorough investigation and produced a valuable report in 1949. Although the Government of Bombay was unable to implement the committee's recommendations, the committee's report marked a significant advancement for the cause of legal aid in the nation.

##### **4.2 Bengal Committee**

In 1950, the state of West Bengal established a committee headed by Sir Arthur Trevo Harris, a former High Court Judge of Calcutta, to report on the issue of legal aid and to make recommendations regarding judicial reform. This group followed the Bombay committee. The committee deliberated over the issue of providing state assistance to poor litigants, and its report included a comprehensive legal aid programme in addition to insightful suggestions similar to those made by the Bombay committee.

---

<sup>4</sup> Law Commission of India, Fourteenth Report, Vol I, 1958.

<sup>5</sup> <https://www.legalserviceindia.com/article/I261-Legal-Aid.html>

### **4.3 International Commission of Jurists**

The position that "the State has an obligation to provide legal aid to those who are unable to pay for it if the rights and remedies of the individual under the rule of law were to be given practical reality" was expressed in 1959 by a committee on "judicial and legal profession under the rule of law" at the New Delhi Congress of International Commission of Jurists.<sup>6</sup>

### **4.4 The Central Government Scheme, 1960**

The Central Government made the decision to develop a plan for Central support of legal aid services, but Chinese invasion and the 1962 declaration of emergency dealt a blow to the programme.

Even though the issue of legal aid received less attention for a while after that, the government did pay attention to it in 1961–1964, when the Commission on SC and ST Report identified them as a class that belonged to the lowest of the low in the socioeconomic hierarchy. The report emphasised that the class should always have access to legal aid, and the attorneys involved in that procedure should be compensated on a par with attorneys involved in government matters.<sup>7</sup>

### **4.5 National Conference on Legal Aid, 1970<sup>8</sup>**

The Institute of Constitutional & Parliamentary Studies organised the National meeting on Legal Aid, 1970, a meeting aimed at discussing legal aid issues and related programmes. The conference decided that there was an immediate need to offer legal help to a large number of people, and they desired a law that would impose a legislative duty on the state to provide legal aid to the underprivileged.

As a result of the National Legal Aid Conference's recommendations, the Indian government was forced to present an amendment to the Advocate's Act, 1961, in Parliament in 1970 (Advocate's Amendment Bill 1970, Bill No. 40 of 1970). This amendment required the Bar Council to assume responsibility for legal aid without receiving funding from the government. Mr. Madhu Limaye, M.P. proposed The Free Legal Aid measure, 1970 in the Lok Sabha on March 13, 1970; however, the measure was not able to pass because of a lack of sponsorship and support. But the law demonstrated the serious consideration the issue had begun to get at the highest echelon of parliamentary democracy.

### **4.6 Gujrat Committee Report<sup>9</sup>**

The Government of Gujarat decided it was intentionally important to offer legal help to the impoverished due to the encouraging advancements and growing awareness of this matter, supported by the principles of social justice and the state's acknowledged duty to do so. To create a legal aid programme to offer support and legal representation to the those who are poor and destitute in the state. Therefore, on June 22, 1970, the Government of Gujarat passed a resolution designating a four-member committee to be chaired by Justice P.N. Bhagwati. The committee's mandate was to examine the issue of providing legal aid to the poor, those with limited resources, and members of the underprivileged classes in civil, criminal, revenue, and

<sup>6</sup> Government of India, Outline of A scheme for Legal Aid to the poor, Part V 1960.

<sup>7</sup> Government of India, Report of the Commissioner for Scheduled Castes and Scheduled Tribes, 1963-1964 PP 27-28.

<sup>8</sup> <https://www.legalserviceindia.com/article/I261-Legal-Aid.html>

<sup>9</sup> <https://www.hcmadras.tn.nic.in/legalaid-issues.pdf>

other proceedings. It also recommended measures to facilitate the provision of legal advice to these individuals, including financial support and encouragement for the institutions providing this kind of aid. The committee submitted report in 1971, which was very exhaustive, and instructive. It was proved to be a milestone in the legal aid movement of the country.

The characteristics of Preventive Legal services programme are : 1) aims at prevention and elimination of injustices which poor as a class suffer because of poverty 2) implies qualitative changes in the system 3) involves radical, multi dimensional use of lawyer skills for protection of group interests 4) calls for the fusion of legal and political roles on the part of the lawyers 5) makes poor self-reliant by giving knowledge, organisation and power 6) recognises inter-relation between law and socio economic problems of poverty.<sup>10</sup>

#### **4.7 Report of the Expert Committee appointed by Central Government 1973 (Krishna Iyer Committee)<sup>11</sup>**

The expert committee submitted its report in May, 1973, titled "Processual justice to the People" underlining the principles that legal aid as a means of justice. An enhanced Gujrat Report is envisioned in the expert committee report. It advanced the goal of legal aid, which the Gujrat Report had accomplished. The study played a significant role in galvanising public opinion in support of legal assistance and spurring the governments to take action in this regard. A new Criminal Procedure Code, 1973 was implemented in 1973. Section 303 of the amended Code stipulates that "any person accused of an offence before a Criminal Court or against whom proceedings are instituted under this code, may of right be defended by a pleader of his choice." Additionally, Section 304 was inserted to specifically provide legal aid, at state expense, to the accused who lacks the necessary funds to hire a pleader in certain cases.

#### **4.8 Incorporation of Legal Aid in the Constitution of India**

The government was encouraged to give "Legal Aid" a statutory expression in the Constitution by the successive reports of the committees appointed to study and implement legal aid services; conferences; global views; respect for human rights; swift progress towards achieving socioeconomic goals and social justice; landmark rulings and observations from the Supreme Court regarding equal justice and the state's constitutional obligation to provide legal aid; and a general strong awareness of the necessity and urgency of providing legal aid.

Therefore, in order to modify the Constitution, the then-central government created a committee led by Mr. Swaran Singh, a former minister. Among other groups, the Swaran Singh Committee suggested including a specific provision for legal aid in the Constitution.

In accordance with the recommendations of the Swaran Singh Committee, "Free Legal Aid" was given specific wording and constitutional status by the 42nd Amendment of the Constitution, which included it in PART IV of the document as a necessary component of equal justice. As a result, a new and exclusive clause known as Article 39A was added in 1976. Concurrently, Entry No. 11A was added to the concurrent list of the Administration of Justice, enabling the Central and State Governments to enact laws for legal aid, so placing constitutional duties on both the Centre and the State. As per Article 39A<sup>12</sup>, it states:

<sup>10</sup> Report of the Legal Aid Committee, Government of Gujrat (1971) P 262.

<sup>11</sup> <https://www.legalserviceindia.com>

<sup>12</sup> V.N.Shukla, The Constitution of India, Eaten Book Comapany.

Article 39A : “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”.

Notably, the Civil Procedure Code Amendment Act, 1976 was passed in 1976, significantly changing a number of the code's provisions, particularly Orders XXXIII and XLIV, which deal with giving the poor access to legal aid. By inserting Rule 17, which states that any defendant who wishes to plead a set off or counterclaim may be allowed to set up such a claim as an indigent person, the benefits of legal aid, which were previously granted to the indigent plaintiff for instituting suits, are now also available to the indigent defendants. In addition, rule 18 of Order XXXIII of the Civil Procedure Code was also added simultaneously by the aforementioned Amendment Act. This rule states that, in accordance with Order XXXIII's provisions, the Central or State Government may enact any additional laws that it deems necessary to offer free legal assistance to those who have been declared indigent and have been submitted for suit.

5.

#### 6. Conclusion

The Legal Services Authorities Bill, 1987 was introduced in the Lok Sabha on August 24, 1987, with the goals of defining the composition of statutory legal authorities, providing statutory support for Lok Adalats and their awards, and ensuring efficient oversight of legal aid programmes. The Bill outlines the makeup of these authorities as well as how monies from the federal and state governments would be used to support them. The National and State Committees now have the authority to oversee the efficient execution of legal assistance programmes. A distinct section has been allocated for Lok Adalat, endowing it with all the legal authority to relieve the workload of the standard courts, deliver justice directly to the impoverished, and expedite and reduce the cost of justice.

The bill was passed by both the houses of Parliament and received the assent of the President on 11.10.1987 to become an Act of Parliament under the title “THE LEGAL SERVICES AUTHORITIES ACT, 1987” (39 of 1987). However, although the Act came on the statute book on 11.10.1987, it remained in abeyance till it was amended by The Legal Services Authorities (Amendment) Act, 1994 (Act 59 of 1994) to make it operational.