



Legal Aid Movement in India – The role of National Legal Services Authority (NALSA)

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ABSTRACT: *The present paper explores the constitutional and legislative provision for legal aid. It attempts to provide the various provision of legal aid, which is provided in constitutional and legislative acts. The number of acts provides not only right of legal aid but also provides how and who provide the legal aid. It also explains what the various problems, reasons for awareness and not accepting the free right legal aid.*

Keywords: *Constitution, legislature, legal Rights, Problems, provisions*

INTRODUCTION: The concept of legal aid to the indigent has its roots in the well-settled principle of natural justice: By the constitutional 42nd Amendment Act of 1976, a new provision was included in the Constitution under Article 39A, for dispensing free Legal Aid. Legal Aid implies giving legal service to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceedings in any court tribunal or before an authority.

The concept of legal aid in the forum of Article 39A into our Constitutional Framework. Hence, Legal Aid is not charity or bounty, but is a constitutional obligation of the State and right of the citizens. The problems of Human Law and justice guided by the Constitutional goals to the solution of disparities, agonies, despairs and handicaps of the weaker, at larger brackets of Bharat's humanity is the prime object of the dogma of "Equal Justice for all" thus legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the downtrodden and weaker sections of the societies. It is the duty of the State to see the legal system promotes justice on the basis of equal

opportunities for all its citizens it must therefore arrange to provide legal aid to those who cannot access justice due to economic and other disabilities.

ANALYSIS OF CONCEPT:

The importance of ensuring justice is perhaps the objective of each egalitarian society. Achieving this objective is synonymous of peaceful existence of the society. History has witnessed a great demand for ensuring justice; socially, economically and politically within a society from the time immemorial.

The Law Commission of India¹ had considered the question of legal aid and made the recommendation that free legal aid to poor person and persons of limited means is a service which a modern welfare State owes to its citizen. The Commission was of view that State must accept this obligation and make available necessary funds for the purpose.

Even while retaining the adversary system, some changes may be effected whereby the judge is given greater participatory role in the trial so as to place poor, as far as possible, on a footing of equality with reach in the administration of justice.



First respite in the history was the insertion of Article 39A in Part IV of the Constitution of India by 42nd Amendment Act of 1976, which put a constitutional mandate upon policy makers to provide for Free Legal Aid by suitable legislation. Article 39A provided that 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 order to comply with the above constitutional mandate the Government of India had constituted a committee known as 'Committee for Implementing Legal Aid Schemes' 2(CILAS) to monitor and implement legal aid programmes on a uniform basis in all the States and Union Territories of India. The Committee evolved a model scheme for legal aid Programmes applicable throughout the country and pursuant thereto, several legal aid and advice boards were set up in all the States and Union Territories of India.

Legal Services under the Legal Services Authorities Act, 1987.

The term 'legal service' has been defined under section 2(a) of the Legal Services Authorities Act, 1987 as: legal service includes the rendering of any service in the conduct of any case or other legal proceeding before any court or any other authority or tribunal and the giving of advice on any legal matter. The National Legal Services Authority³ has decided to open Legal Aid Clinic at every village where needy people can take the advantage of the availability of the Para-legal volunteers⁴ and Legal practitioners

empanelled with Legal Service Institutions.⁵

The aim of the Scheme is to provide inexpensive local machinery for rendering legal services of basic nature like legal advice, drafting of petitions, notices, replies, applications and other documents of legal importance and also for resolving the disputes of the local people by making the parties to see reason and thereby preventing the disputes reaching courts. In cases where legal services of a higher level are required, the matter can be referred to the legal services institutions established under the Legal Services Authorities Act, 1987.

Legal Aid Clinic.

The insertion of the word clinic in the end made it clear that legal Aid Clinic is just like a medical clinic, where panel Advocate with the help of Para-legal volunteers, just like a medical practitioner, provides legal services in order to prevent the disputes from maturing into litigations and assist the parties even in litigations by providing necessary help in pleading in appropriate cases. The lawyer manning the legal aid clinic will also attempt to resolve the disputes of the disputants amicably outside the court. This provides the lawyer in the legal aid clinic an opportunity to understand the difficulties faced by people in the distant villages for access to justice. Legal aid clinics have to be manned by Para-legal volunteers selected by the Legal Services Authorities and lawyers with a sense of commitment, sensibility and sensitivity to the problems of common people.

Legal Aid Clinics at Doorstep



Each District Legal Services Authority is required to establish Legal Aid Clinic in all villages or a cluster of villages in order to make the idea of access to justice for all a ground reality. Legal Services rendered at the legal aid clinic shall be inclusive in nature. Besides legal advice, other services like preparing applications for issuance of ration card, subsidy, loan at subsidized rate of interest, job card under the MGNREGA Scheme, liaison with the government offices and public authorities and helping the common people who come to the clinic for solving their problems with the officials, authorities and other institutions also shall form part of the legal services in the legal aid clinic. Legal aid clinic should work as a safety valve for helping the disadvantaged people to solve their problems where the operation of law comes into picture and to adopt the preventive measures by sorting out the disputes amicably outside the court as far as possible.

Legal Aid Clinics: Law Students as Human Resource

The provisions of the Legal Aid Clinic at villages shall *mutatis mutandis* be applicable to the students' legal aid clinics set up by the law colleges and law universities also. However, in such clinics the students in the final year classes may render legal services and the junior students may assist them. The student's legal aid clinic shall always be under the supervision of a faculty member who shall be present in such clinics for immediate consultation. The students of law colleges and law universities may also make use of the other legal aid clinics established under this scheme⁶

Legal Aid Clinics at Law Colleges and Law Universities.

Besides the student legal aid clinics in the rural areas, law colleges and law universities also may set up permanent legal aid clinics attached to their institutions as per the scheme of the National Legal service Authority, rather as the researcher highlighted above it should be a mandate upon the Law Universities to incorporate this kind of activities in the academic curriculum itself and simultaneously, the legal service institutions should provide necessary help and resources to the Legal academic institutions. The State Legal Services Authority shall be informed about the establishing of such legal aid clinics. The State Legal Services Authority shall render the required technical assistance for such legal aid clinics and shall coordinate with the legal aid clinics so established⁷ The service of the trained Para-legal volunteers⁸ may be provided to the legal aid clinics in law colleges and law universities for assisting the seekers of legal aid and for interacting with the students and the members of faculty.

Legal Aid Clinics in Jails

The ambit of Article 21 of the Indian Constitution is considered to be vast in nature and even inclusive of the rights of the prisoners in jails. The convicts are not by reason of their conviction deprived of all fundamental rights which they otherwise possess, though all the fundamental rights may not be claimed. Prisoners being the *in communicado*, walled-off from the rest of the world, require special attention and should be given legal aid, which is very much inclusive in Article 21. Prisoners are doubly handicapped and since the



Supreme Court is the last in Indian pyramid of justice, every party in person elicits from the Court extra solicitude so that he may not suffer from a sense of handicap due to the absence of professional legal service.⁹ Supreme Court held that our judiciary, moulded by Anglo- American models and our judicial process, engineered by kindred legal technology, compels the collaboration of lawyer-power or steering the wheels of equal justice under the law. Free legal services to the needy are part of the English criminal justice system. American jurist, Prof. Vance of Yale' words sounded sense for India too when he said: "What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is? Or that the courts are open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee?"

CONCLUSION: NALSA is keen to develop and promote a culture of conciliation instead of litigation in the country so that the citizens of this country prefer to resolve their disputes and differences across the table in a spirit of goodwill and brotherhood. NALSA also wishes to ensure that even the weakest amongst the weak in the country does not suffer injustice arising out of any abrasive action on the part of State or private person.

References

¹ Law Commission of India, 14th Report on Reforms of Judicial Administration (1958).

² Vide resolution dated 26-9- 1980, under the Chairmanship of Mr. Justice P.N. Bhagwati

³ Established by the Central Government under Sec. 3 *LSA Act*, 1987. The National Legal Services

Authority (NALSA) consists of (a) the Chief Justice of India as Patron-in-Chief (b) a serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairperson (c) such number of other members, possessing such experience and qualification, as may be prescribed by Central Government, to be nominated by that Government in consultation with the Chief Justice of India.

⁴ The project of Para-Legal Volunteers is aimed at imparting legal awareness to volunteers selected from certain target groups who in turn act as harbingers of legal awareness and legal aid to all sections of people. The Volunteers are expected to act as intermediaries between the common people and Legal Services Institutions and thereby removing the barriers of access to justice. (*as per the scheme for the project of Para-Legal Volunteers under the Plan of Action for the year 2009-10*) Para-Legal Volunteers would be expected to have some rudimentary knowledge of basic rights of the individuals, functioning of the courts, functioning of the Legal Services Authorities and functioning of some of the organizations such as Municipal Corporation and District Administration.

⁵ As per clause (e) of regulation-2 of *National Legal Services Authority (free and competent legal service) Regulation, 2010*, "Legal Services Institution" means the Supreme Court Legal Services Committee, a State Legal Services Authority, the High Court Legal Services Committee, District Legal Services Authority or the Taluk Legal Services Committee, as the case may be.

⁶ *Id.*, Rule 21

⁷ *Id.*, Rule 24.

⁸ Recruited as per the Appendix-II of the NALSA-A quinquennial vision and strategy

⁹ M.H. Hoskotv. State of Maharashtra, AIR 1978 SC 1548