



## LEGAL AID MOVEMENTS ARE LANDMARKS IN INDIAN JUDICIARY TO ACHIEVE ACCESS TO JUSTICE FOR ALL-A STUDY

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### KEYWORDS :

#### INTRODUCTION:

*"No society can develop without peace and security, No State can be secure, if its people are condemned to poverty without hope and no Nation can be secure or prosperous for long, if the basic rights of its citizens are not protected"*

Judiciary is one of the most important parts of organs of the government in any country and independent judiciary which protects the legal, basic and constitutional rights of citizens is respected by everyone. Unless the judicial system is accessible to everyone, no country can progress and develop in effective manner. The rich can approach court of law very easily but poor people should also be given the equal opportunity to get their rights enforced. It is the duty and obligation of the state to provide competent legal aid to every person who cannot afford it due to financial restraint or due to some disability. In India, where certain basic and fundamental rights have been provided to every citizen under Articles 14, 21, 22(1), 39A then at the same time, an obligation is also put by framers of the constitution to help the needy and poor people to avail the same. Relieving 'Legal Poverty' i.e. the incapacity of many people to make full use of law and its institutions, has now been accepted as one of the functions of a 'Welfare State'.

Article 39A of the Constitution of India 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. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

The first major step taken in this regard prior to independence of the country was in the year 1945 when in the State of Bombay, a society named as Bombay Legal Aid Society was set up which invited the intention of the Government of India towards Lord Rushcliffe's report regarding legal aid and advice in England and Wales. The post-independence legal aid development was initiated by formation of Bombay Committee in 1949 under the Chairmanship of Mr. N.H. Bhagwati, Sir Arthur Trevor Harries Committee in West Bengal in year 1949, initiatives by the State Governments such as The Legal Aid Committee formed in UP, the Legal Aid Committee formed in Madras in 1954, and so on. Kerala Legal Aid (to the schedule caste, to the schedule tribes and to poor) Rules, 1957, 14<sup>th</sup> Report of the Law Commission of India, Central Government Scheme, 1960 as well as National Conference on Legal Aid, 1970 also came in existence.

Initially the government was of the view that making provisions of legal aid to poor was the entire responsibilities of the state and states have to make budgetary provisions in this regard. In January, 1956 Government of India again asked state governments to increase the scope of legal assistance to the poor. Though some private societies tried to take initiative in this regard but could not do much in that direction due to lack of funds.

#### Law Commission Report (1958)

Government of India set up 14<sup>th</sup> Law Commission under the Chairmanship of Mr. M.C. Setalvad, the then Attorney General of India on 5<sup>th</sup> August, 1955 who in its 14<sup>th</sup> report investigated various aspects of system of judicial administration of the country. The Commission consisted of other 10 Members also which included two serving Chief Justices of High Courts, two retired High Court judge, Advocate Generals of two different states and prominent advocates besides Co-opted Members. The commission suggested broad outlines of some changes to make judicial system speedier and less expensive.

In its 14<sup>th</sup> report, Law Commission dealt with the issue of legal aid. Commission was conscious of the fact that unless provisions are made for assisting the poor people for providing court fees, lawyers' fees and other incidental charges of litigation, he is denied equal opportunity of seeking justice. Legal aid to poor is not a minor procedural law problem but is a question of fundamental character.

The Law Commission further held that, it is the obligation of the state to provide legal aid and rejected the plea that providing of legal aid would make people more litigious, would increase litigation, put extra financial burden on budget and would invite dishonest and unscrupulous persons to misuse this facility. Commission further requested the lawyers and legal fraternity to take some moral and social responsibilities for implementing the scheme of providing free legal aid to poor as they have to conduct their cases in the court of law but totally opposed the putting force and compulsion of doing this work. It was suggested that some scale should be made for providing fee structure, though comparatively at lesser rate than normal fee for lawyers who offers to do such service for poor persons. Making of provision of substantial budgetary provision was also recommended for providing legal aid to poor. It was also recommended that N.H. Bhagwati Committee's report given in context of State of Bombay with some modifications be made applicable to each state. Commission recommended for immediate setting up legal aid committees by every bar associations in each state, making some changes in High Court rules etc.,

#### PN. Bhagwati committee report (1971)

The another major step towards providing free legal aid took place when government constituted a committee under the chairmanship of Justice PN. Bhagwati, Judge Supreme Court of India who observed "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 the rich in the administration of justice." The focus of the committee was the indigent person seeking to access justice. Answering to the question of inequality in the administration of justice between the rich and the poor the report clearly stated that there can be no rule of law unless the common man irrespective of the fact whether he is rich or poor is able to assert and vindicate the rights given to him by the law. The machinery of law should be readily accessible to all. The poor must be placed in the same position as the rich by means of adequate legal service programme.

**Justice V.R. Krishna Iyer Committee Report (1973)**

Justice V.R. Krishna Iyer presided over another similar Committee set up on 22 October, 1972 and dealt with the question of nexus between law and poverty. The report was submitted on 27<sup>th</sup> May, 1973 and spoke highly in favour of concept of public interest litigation and emphasized the need for active and widespread legal aid system that enables law to reach the people, rather than requiring people to reach the law.

The report of this committee can be said as mark stone of legal aid development in India as it impressed upon the democratic obligation of the state towards its subject to ensure that the legal system becomes an effective weapon in helping secure the ends of social justice and an effort was made to classify those categories of persons who are most in need of legal aid and the faith of the poor man in the legal system should be enhanced by providing him with adequate non- governmental as well as governmental assistance. Committee somehow blamed the attitude of the judiciary in the country and professed the resolution of disputes at the grass root level through village panchayats.

**Juridicare Committee Report (1977)**

Another committee of two judges Justice P.N. Bhagwati and Justice V.R. Krishna Iyer was set up for providing adequate legal service programme in all the states on uniform basis. This committee in its final report popularly known as 'Report on National Juridicare: Equal Justice-Social Justice' submitted in the year 1977 stressed upon the need for a new philosophy of legal service programme to be framed in the light of socio-economic conditions prevailing in the country. It also opined that the traditional legal service programme which is essentially a court or litigation oriented, cannot meet the specific needs and the peculiar problems of the poor in our country. The committee in its report also included draft legislation for legal services in the name of National Legal Services Bill, 1977 and gave it the name of Social Action Litigation. It also recommended that legal service organization should not be a department of the government but an autonomous institution headed by the Judge of the Supreme Court having representations from Bar Associations, the Government, the Parliament and the judiciary as well as Voluntary Associations and Social Workers and that would be a multi tier set up for the legal aid organization. The contents of this report clearly point out that it was in continuation of the 1973 report with an extensive revision, updating, reevaluating and adding. The various suggestions made by him can be summarized as under:

**Committee for Implementing Legal Aid Scheme**

Though the ideas as laid down by the Justice Bhagwati and Justice V.R. Krishna Iyer's report was revolutionary but not much that was mentioned in the report was implemented despite its submission in the year 1977 and it remained on the shelf along with it the National Legal Services Bill. To augment the justice delivery mechanism, the Central Government on 26 September, 1980 constituted another high-powered Committee for implementing legal aid schemes, to monitor and implement comprehensive legal aid programme and to work out mechanism which could operate and workout satisfactorily at all levels i.e., National, State and District as well as Taluk/Mandal levels on uniform basis. The said committee was christened as 'Committee for Implementing Legal Aid Schemes' (CILAS) and the same was constituted under the Chairmanship of Mr. Justice P.N. Bhagwati (as he then was) and the said committee was assigned the task to monitor the implementation of legal aid programmes on uniform basis in all the States and Union Territories and to fulfill the objective of providing free legal aid. CILAS evolved a model scheme for legal aid programmes applicable throughout the country by which several Legal Aid and Advice Boards were set up in the states and union territories. The CILAS was totally funded by grants from the central government and the government was very much concerned

with the programme of legal aid as its implementation was the constitutional mandate. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes.

**Legal Services Authorities Act**

A review, however, of the working of the CILAS revealed that there were certain deficiencies and it was therefore felt that it will be desirable to constitute a statutory legal services authorities on National, State and District levels so as to provide effective monitoring of the legal aid programmes and with this endeavour and objective and for providing for the composition of such statutory legal services authorities and for the funding of such authorities by means of grants from the central government and state government, the Legal Services Authorities Act, 1987 was enacted which came into force w.e.f. 9<sup>th</sup> November, 1995 after certain amendments were introduced in it. The year 1987, proved to be very significant in Legal Aid history, as the "Legal Services Authorities Act" was enacted to give a statutory base to legal aid programs throughout the country and bring about a uniform pattern. The said act provides for the setting up of the National Legal Services Authority, the State Legal Services Authorities in different States, the District Legal Services Authorities at different district levels as well as creation of setting up of Permanent LokAdalats. The act also provides for a mechanism whereby supervision can be done regarding the functioning of the State Legal Services Authorities by the National Legal Services Authority and of the District level Services Authorities by the State Legal Services Authorities.

Justice R.N. Mishra, the then Chief Justice of India played a key role in the enforcement of the act. The constitution of the Committee for the Implementation of Legal Aid Schemes (CILAS) in 1980 was a major step in institutionalizing legal aid. The Legal Services Authorities Act, 1987, displaced the 'CILAS' and introduced a hierarchy of judicial and administrative agencies. Under this act, National Legal Services Authority (NALSA) at the Centre and a State Legal Services Authority in every state were ordered to be constituted to give effect to its directions.

National Legal Services Authority was made functional under the Executive Chairmanship of Dr. Justice A.S. Anand, Judge, Supreme Court of India on 17<sup>th</sup> July, 1997. The first Member Secretary of the authority joined in December, 1997 and by January, 1998 the other officers and staff were also appointed. By February, 1998 the office of National Legal Services Authority became properly functional for the first time. NALSA is a statutory apex body which has been set up to lay down policies and principles for making legal services available and to frame most effective and economical schemes for legal services and for implementing and monitoring legal aid programs in the country. It also disburses funds and grants to State Legal Services Authorities and Non-Governmental Organizations (NGOs) for implementing legal aid schemes and programmes. The Supreme Court Legal Services Committee has also been constituted under the act. In every High Court also, The High Court Legal Services Committees have been established to provide free legal aid to the eligible persons in legal matters coming before the High Courts. The Legal Services Authorities Act, 1987 also provides for constitution of the State Legal Services Committees, High Court Legal Services Committees, District Legal Services Committees and Taluk/Mandal Legal Services Committees.

Justice S.P. Bharucha, Executive Chairman, NALSA, while writing in 'Nyaya Deep' and in the course of his keynote address in the meeting of the Member Secretaries held in NALSA office on 19<sup>th</sup> February, 2000 emphasized the need for improving the quality of legal aid that is being given by legal aid advocates. He observed that teeming millions of this country who live below poverty line in tribal, backward and far flung areas looks to Legal Services Authorities for help and

support in resolving their legal problems. When involved in litigation they very often feel that they are fighting an unequal battle in which the party that has better financial resources can secure more able legal assistance. Justice Bharucha is of the view that these poor and weaker sections must not remain under the impression that they are getting comparatively inferior legal assistance. He has called upon legal services authorities to revise the payment schedule for legal aid panel advocates and also compress the panels so that panel advocates get more work and better remuneration from legal services authorities and thus get encouraged to render effective legal assistance to aided persons.

Besides that, the act also seeks to devise and give impetus to another mechanism of justice delivery system in the form of Lok Adalats and it notes that for some time now the Lok Adalats are being constituted at various places in the country for the disposal of disputes pending in the courts and even at pre-litigation stage in a summary way. The said concept of Lok Adalat has proved to be very popular in providing speedy system of justice system and it was felt that there was a need for providing statutory back up to the said institution and to give legal mandate to the awards being given by Lok Adalats and it was felt that such a statutory support would not only reduce the work of regular courts but also take justice to the doorsteps to the poor and needy and make justice quicker and less expensive to the less privileged sections of the society. With these objectives in mind, the act provided for setting up of Permanent Lok Adalats as well as devised a concept of mechanism to set up Lok Adalats at pre-litigative stage so that the requirement of filing a case is obviated altogether. The Legal Services Authorities Act, 1987, therefore, sought to fulfill all these objectives and was thus enacted.

#### CONCLUSION:

The law as it is today is too complex for the poor to understand and decipher and there is very little feedback on how the poor perceive the law, the legal system and the personnel they encounter within it. The inability of those whom the law is meant to empower, to invoke its processes for number of reasons and primarily the fear of reversal from the upper caste undermines the requirements and need to spread the awareness of the existence of law as well as provide legal aid system and legal aid in invoking its processes and therefore, this manner of awareness generation must form one of the principle task of the Legal Services Authorities. The feedback obtained from the poor shall provide sufficient inputs in examining the relevance that the legal system has to the lives of the poor and would enable us to attempt any legal and institutional reform if required. The law has to be brought out of the ivory-towers, its processes demystified and it must be so simplified and codified to enable people to understand and question the law and reconstruct it in a manner that would sub serve their purpose. Simultaneously, the Legal Services Authorities would have to built up a structure and system wherein the poor and the aggrieved persons feel free to come to it to seek redressal of their grievances and vindication of their rights and should not feel constrained and contrived to come to it in view of its larger than life edifice and complex systems which are hard to understand. The Legal Aid Authority must develop their image so that the poor regard it as one of their ally and law must be made to work for the poor and not against them so that the transformation of equal access to justice is complete from a formal tool to an effective right. The Legal Aid Authorities must work to provide a buffer mitigating the consequences of inequalities where yawning economy and social disparities segregate the disadvantaged sections into the areas of criminality and illegality and further disable them engaging with the process that enmesh the criminal justice system.

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