



Role of judiciary in enforcing the legal service authorities Act, 1987

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Abstract

This paper discusses the role of judiciary in enforcing the legal Service Authorities Act, 1987. The judiciary through its significant judicial interventions compelled as well as guided the legislature to come up with suitable legislation to bring justice to the doorsteps of the weakest section of the society. Public Interest Litigation is one shining example of how Indian judiciary has played the role of the vanguard of the rights of Indian citizens especially the poor. For that Supreme Court relaxed procedure substantially. Apart from Public Interest Litigation aims to make justice cheap and easy by introducing process, where it aims to make justice cheap and easy by introducing Lok Adalat system as a one of the methods to provide free legal aid in a constitutional democracy like India where a significant system of the population has still not seen the constitutional promises of even the very basic fundamental rights being fulfilled for them. It involves people who are directly or indirectly affected by dispute resolution.

Keywords: legal aid, lok adalat, pre-litigation, authorities, judicial system, India

Introduction

Legal aid to the poor and weak 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. Therefore as a step towards making the legal service serve the poor and the deprived; the judiciary has taken active interest in providing legal aid to the needy in the recent past. The Indian Constitution provides for an independent and impartial judiciary and the courts are given power to protect the constitution and safeguard the rights of people irrespective of their financial status. Since the aim of the constitution is to provide justice to all and the directive principles are in its integral part of the constitution, the constitution dictates that judiciary has duty to protect rights of the poor as also society as a whole.

Legal Aid: The Concept

Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. Legal Aid is the method adopted to ensure that no one is deprived of professional advice and help because of lack of funds. Therefore, the main object is to provide equal justice is to be made available to the poor, down trodden and weaker section of society. In this regard Justice P. N. Bhagwati rightly observed that:

The Legal aid means providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law, the poor and 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. Legal aid should be available to the poor and illiterate who don't have access to courts. One need not be a litigant to seek aid by means of legal aid.

Therefore, legal aid is to be made available to the poor and needy by providing a system of government funding for those who cannot afford the cost of litigation.

Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor down trodden and weaker sections of the society. It is worthy to mention that the Constitution of India ^[1] 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. Constitution of India also makes 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 ^[2].

Free Legal Aid in India: The positive Contribution of Judiciary

The Supreme court of India got a major opportunity to make an emphatic pronouncement regarding the rights of the poor and indigent in judgment of Hussainara Khatoon ^[3] where the petitioner brought to the notice of Supreme Court that most of the under trails have already under gone the punishment much more than what they would have got had they been convicted without any delay. The delay was caused due to inability of the persons involved to engage a legal counsel to defend them in the court and the main reason behind their inability was their poverty. Thus, in this case the court pointed out that Article 39-A emphasized that free legal service was an inalienable element of 'reasonable, fair and just' procedure and that the right to free legal services was implicit in the guarantee of Article 21.

In the case of Khatri v. State of Bihar ^[4], the court answered the question the right to free legal aid to poor or indigent accused who are incapable of engaging lawyers. It held that the state is constitutionally bound to provide such aid not only at the stage of trial but also when they are first produced before the magistrate or remanded from time to time and that such a right cannot be denied on the ground of financial constraints or administrative inability or that the accused did not ask of it. Magistrate and Session Judge must inform the accused of such rights. The right to free legal

service is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require. The State cannot avoid this obligation by pleading financial or administrative inability or that none of the aggrieved prisoners asked for any legal aid.

In *Suk Das v. Union Territory of Arunachal Pradesh* [5], Justice P.N. Bhagwati, emphasized the need of the creating the legal awareness to the poor as they do not know their rights more particularly right to free legal aid and further observed that in India most of the people are living in rural areas are illiterates and are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness they are not approaching a lawyer for consultation and advise. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant and they cannot even help themselves. That is why promotion of legal literacy has always been recognized as one of the principal items of the program of legal aid movement in the country. I would say that even right to education would not fulfill its real objective if education about legal entitlement is not made accessible to people and our constitutional promise of bringing justice to the door step of the people would remain an illusion.

Justice Krishna Iyer, who is crusader of social justice in India, had rightly said that 'if a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to the Supreme Court for want of legal assistance, there is implicit in the Court under Article 142 read with Article 21 and 39-A of the Constitution, the power to assign counsel for such imprisoned individual for doing complete justice' [6].

It is a statutorily recognized public duty of each great branch of government to obey the rule of law and uphold the trust with the constitution by making rules to effectuate legislation meant to help the poor. Though the law has been enacted to protect the poor the governments are lazy to implement the enacted law. The same was observed by Supreme Court in *State of Haryana V. Darshana Devi* [7], that "the poor shall not be priced out of the justice market by insistence on court-fee and refusal to apply the exempt provisions of order XXXIII, CPC. The state of Haryana, mindless of the mandate of equal justice to the indigent under the magna carta of republic, expressed in article 14 and stressed in article 39A of the constitution, has sought leave to appeal against the order of the high court which has rightly extended the pauper provisions to auto-accident claims. Order XXXIII will apply to tribunals, which have the trappings of the civil court" even court also expressed its poignant feeling that "no state has, as yet, framed rules to give effect to the benignant provision of legal aid to the poor in order xxxiii, rule 9A, civil procedure code, although several years have passed since the enactment. Parliament is stultified and the people are frustrated. Even after a law has

been enacted for the benefit of the poor, the state does not bring it into force by willful default".

Legal Aid in India: Statutory Recognition

Though there was a statutory procedure providing free legal aid [9] by appointing the advocate for defending criminal case and by exempting court fees in civil cases, it was not really making any significant impact on the ability of the underprivileged people to get the judicial redressal for their grievance. Hence under tremendous constitutional persuasion from the Supreme Court the Legal Service Authority Act, 1987 was passed by the parliament of India. The Act prescribes the criteria for giving legal services to the eligible persons. It makes a person eligible for assistance under the act if he is –

- a. a member of a Scheduled Caste or Scheduled Tribe;
- b. a victim of trafficking in human beings or beggar 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 amass disaster, ethnic violence, case atrocity, flood, drought, earthquake or industrial disaster; or
- f. an industrial workman; or
- g. in custody, including custody in a protective home or in juvenile home
- h. of in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987;
- i. A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government [9].

This limit on income can be increased by the state government. Limitation as to the income does not apply in the case of persons belonging to the scheduled caste, scheduled tribes, women, children, handicapped etc. Thus by this the Indian Parliament took a step forward in making the legal aid possible in the country.

According to the Act the 'court' is a civil, criminal or revenue court and included any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions [10]. Under the Act 'legal service' includes the rendering of any service in the conduct of any ace or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter [11].

Legal Service Authority after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favor provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it's supported by a Legal Services Authority.

Bodies under the Act and Their Hierarchy

A nationwide network has been envisaged under the Act for providing legal aid and assistance.

NLSA

National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services.

SLSA

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

DLSA

District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman.

TLSC

Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organize Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

In order to provide free and competent legal service, the NALSA has framed the National Legal Service Authority (Free and competent Legal service) Regulations, 2010. The salient feature of Regulation is engaging senior competent lawyers on payment of regular fees in special cases like where the life and liberty of a person are in jeopardy.

SLSC

Supreme Court of India has also set up Supreme Court Legal Services Committee (SCLSC) to ensure free legal aid to poor and under privileged under the Legal Services Authorities Act. It is headed by a judge of Supreme Court of India and has distinguished members nominated by Chief Justice of India. The SCLSC has a panel of competent Advocates on record with certain minimum number of years of experience who handle the cases in the Supreme Court. Apart from that the SCLSC has full time Legal Consultant who provides legal advice to poor litigants either on personal visit or through the post.

The Judiciary is the assay mark of the great nation. Indian system is considered to be the most powerful judiciary system in the world. Judiciary is always applauded for working of people rights and entitlements, taking care of weaker sections of society and providing justice to all. Pending court cases in India have continued to rise gradually over the past year, straining the country's already overburdened judicial system. India now has almost 4 crore pending cases spanning the Supreme Court, various high courts and the numerous district and subordinate courts, according to written replies submitted by the Ministry of Law and Justice in Parliament. Pendency means undecided, undetermined case by court of law. Pending cases are increasing day by day this shows incapability of the judiciary to deliver justice on time. By comparing the Indian

judicial system with other judicial system present in the world we find that Indian judicial system is more competent and more reliable. But pendency of cases in India are more as compare to other judicial system in the world.

While the introduction of the Legal Aid Defence Council System is a step forward, the lack of institutional real-time monitoring of legal aid cases by the in-charge judicial officers greatly hampers the effective provision of legal aid services^[12]. The current system of legal aid also lacks effective monitoring and evaluation and feedback mechanisms to ensure that the service provided to beneficiaries is efficacious. The law mandates the establishment of monitoring committees to seek frequent reports and review the work of legal aid counsels. However, studies have found that a mere 60 per cent of district-level authorities have established monitoring committees, and less than 25 per cent of them maintain the registers used to track the progress of legal aid cases. These committees, too, are presided over by judicial officers^[13].

Conclusion

Legal aid is not a charity or bounty, but is an obligation of the state and right of the citizens. The prime object of the state should be "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 society. 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 awareness which leads to exploitation and deprivation of rights and benefits of the poor.

Reference

1. Article 39A of the Indian Constitution.
2. Article 14 and 22 (1) of the Indian Constitution.
3. Hussainara Khatoun v. State of Bihar, (1980), SCC 98.
4. Khatri v. State of Bihar, AIR 1981, SC 262.
5. AIR 1986, SC 991.
6. M.H. Hoskot v. State of Maharashtra (1978), 3 SCC 81
7. AIR 1972 SC 855.
8. Section 304 (1) of Code of Criminal Procedure and Order 33, Rule 17 of Code of Civil Procedure.
9. Section 12 of the Legal Services Authorities Act, 1987.
10. Section 2 (1) (a) of the Legal Services Authority Act, 1987.
11. Section 2 (1) (c) of the Legal Services Authority Act, 1987.
12. <https://theprint.in/opinion/indian-judges-overburdened-looking-after-legal-aid-shouldnt-be-on-te/5733000/> accessed on 04.12.2021.
13. https://njdg.ecourts.gov.in/njdgnew/?p=disposed_dashboard/info_mang accessed on 01.12.2021.