

Access to Justice and the Concept of Legal Aid in India

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Abstract

The noble preamble of our constitution promises social, economic and political justice. The concept of Justice and Legal Aid has also been enlightened in Part III (Fundamental Rights) and Part IV (D.P.S.P) of our constitution. But yet, some classes of people are unable to protect their rights by virtue of their vulnerability or socially and economically backwardness. By providing free legal aid to needy people on basis of equal opportunity, the goal of justice can be achieved. In this context, role of judiciary cannot be ignored which is reflected through Lok Adalat and Public Interest Litigations for maintaining equality before law.

Key Words: Access to Justice, Equality, Judiciary, Legal Aid

Introduction:

In the modern era, “Access to justice and the concept of legal aid” is a debated topic to provide justice to the needy people and to secure equality before law as provided in the preamble of our constitution. Justice and legal aid is the instrument for Protection and enforcement of fundamental rights of the people. Right to access to justice or judiciary is the most fundamental right and is required for all as a human right. Not only access to justice but also the concept of legal aid is also fundamental human rights in the scenario of post Second World War.

The concept of “Access to Justice” is also related with “Dharma” Chief justice P.B. Gajendragadkar in his Article, “Historical Background and theoretic basis of Hindu Law”ⁱ (The cultural heritage of India, vol-ii, 414) opined that in the ancient India, “State was not sacerdotal or even paternalistic.”

The learned judge also opined that:

“The concept of Dharma was multidimensional and it was something which sustained humanity in all its facets and coherence. So within the broad sweep of dharma comes both human rights and Law”.ⁱⁱ

Prof. Roseoe Pound in the preface of his classical work on jurisprudence referred to the denial Webster, who said that, “justice is greatest interest of man on earth”.ⁱⁱⁱ During the framing of our constitution, the cornerstone of our fundamental right i.e. “Right to equality” which is known as “Mother of Justice” was given more importance so that all citizens can able to access to justice in a simplified manner.

The term “Justice” is used twice in the constitution i.e. in preamble and in Art.14 of Indian constitution. Justice Krishna Iyer in an address to the 18th annual conference of the American Judges Association identified “Justice” with “Truth”. In his opinion “The quest for justice is quest for truth”.^{iv}

Justice is nothing but the fair, moral and impartial treatment of all persons. At the time of establishment of “Rule of Law” justice came to be identified with the observance and enforcement of Law.

When the concept of justice is taken into consideration, legal Aid system automatically comes to our mind because, this systems is associated with the needy and downtrodden of the society. The concept of legal aid plays a crucial role in the dispensation of justice. So to test the fruit of access to justice there is the requirement of legal Aid. In the common point of view legal Aid is the assistance provided by the society to weaker sections for protection and enforcement of their rights. It also means to provide free Legal assistance to poor needy people to stand at the door of courts.

According to Justice P.N. Bhagwati, “The legal Aid means providing an 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.”

There is a gap among the rich and poor people in respect of getting justice. So to close this gap, legal Aid is necessary for better availability of justice and to treat the rich and poor people equally in the eye of law. To uphold the provisions of constitution and for protection and enforcement of rights of people legal Aid is required mostly to the poor and vulnerable sections. Due to poverty illiteracy, ignorance of getting their right, they are beyond the capacity to knock at the door of courts for their protection of rights to live with dignity with the feeling of equality, freedom and to enjoy their

fundamental rights guaranteed by constitution. To avoid these inabilities, legal Aid plays a key role. Legal Aid is also mostly required to a person, who is accused of a crime. Sometimes poor and middle class people, who are neither higher class in society nor economically strong, are unable to go to the lawyer, and lawyers would also prefer to avoid a poor client. So to avoid these types of conditions and to fulfil the need of these people, legal Aid system has a dynamic approach.

2. Development of the Concept:

There is a constructional philosophy i.e. “All are equal before the eye of law.” But previously, it was remained only in the paper and was not practicable. The people weren’t able to protect their rights due to poverty and illiteracy. At that time law became blind towards them.

In every society there is a struggle for access to justice. So people fought for access to justice during post centuries and form this “Magna carta” was emerged on 5th May 1215. There was the first codification of individual freedom which gives right to a common man to get justice. The concept of legal Aid emerged and became a movement by creating opportunity for poor and vulnerable sections. So that they can get justice from the court with or without little cost, which is affordable and secure the benefits of legal system.

In the words of justice V. R. Krishna Iyer, “The spiritual essence of legal Aid movement consist in inviting law with a human soul: Its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent and dispensation of social justice through the legal order.”^v

Although the concept of legal Aid had its existence since the declaration of magna carta but now it is well developed and matured. So the concept of legal Aid as a humanitarian aspect has its own history.

(a) Ancient period:

The modern legal aid concept can be found not only in four Vedas viz. Rig Veda, Yajur Veda, sham Veda and Atharva Veda, but also in Puranas of Hindu society. There was moral supremacy and victory of good over evil, of justice over injustice, of dharma over adharma. Both in Ramayana and Mahabharata it is also narrated that ultimately there is victory of truth and righteousness.

Before 5000 years there was a view for establishment of ideal society with the value of universal validity like dharma (righteousness), Artha (wealth), Kama (desires) and Moksha (Salvation). Dharma is a concept which gives direction to control and regulate our life. Dharma is superior spirit to live with a dignified life. As there is always the victory of Dharma, "Dharma" is the concept of civil liberties of Tana (body), Skridhi (Dwelling house), Jibas (life) and Atman (Sole). The treaties of Manu, Kautilya, Yajnavalka describes the rights and duties of every individual living in society.

For example, the 36th and 42nd slokas under chapter 1 of Rig Veda refer to the need for saving people from 'rakshas', procuring strength for such protection alongside praying the Almighty to bless those who donate.^{vi}

(b) Medieval period:

In this period, there was the development of Buddhist's period and King Ashoka's era. This period is treated as golden period in the history of jurisprudence in India.

Vedas, Puranas, Mahabharata, Bhagwad Gita etc. speaks about natural law (Sanatana dharma) having religious character to create a spirit among the people for fighting against injustice and unrighteousness with faith, courage and devotion.

The great saint like Sankar, Ramanuja, Madhava, Tulsi Das, Kabir, Nanaka and others re-interpreted the Vedic dharma for re-establishment of supremacy of Indian Vedic value.^{vii}

(c) Mughal period:

When there was down falls of Hindu period towards the end of eleventh century and the beginning of twelfth century, at that time Muslims and Mughal rule prevailed in India for about 600 years. The Muslim's rules had no any basic principles of human dignity, Administration of Justice became complex and it became necessary to provide fees to lawyers, as all persons were unable to afford fees. lawyers played an important role during medieval period in the role of administration of justice.

(d) British period:

In the period of British rule of almost 300 years in India, there was complicated process in administration of justice. The fees paid to lawyers and justice system become far reaching place for Indian and mainly for poor people. In their laws, there were no devices of justice, equity and good conscience.

(e) Post-Independence Scenarios:

In the era of post 2nd world war, there is the significant growth in the legal aid mechanism, specially needed for poor and vulnerable section. Various committees like Bombay committee, Bengal committee, Gujarat committee, center

expert committee gave their report suggesting the beneficial scheme i.e. legal aid for its better availability and development. Besides this, there are also other provisions relating to legal aid in civil procedure code and code of criminal procedure.

3. Legal Developments:

For the protection of the weaker section, our constitution provides specific provisions. Besides the constitution, our legislature and the judiciary also played significant role in coming to the rescue of those poor and needy people. Let us discuss the measures taken by these organs for providing justice to such people.

(a) Indian Constitution:

Our constitution provides provisions relating to “access to justice” and “legal Aid”.

(i) Preamble:

The preamble provides provisions for justice in social, economic and political ground. Not only this much, but also provides provisions for equality which is very important aspect required for dignified life. So concept of access to justice and legal Aid are provided by our constitution. In Keshavananda Bharati's case^{viii} the Supreme Court held that preamble is the part of constitution.

(ii) Fundamental Rights:

Part III of Indian constitution provides fundamental rights, like right to life, liberty, equality, freedom of speech and expression, which are basic human rights of people. These rights are essential for the protection of rights and liberties of people against the encroachment of the power delegated to their govt.

Article 14 of Indian constitution provides that, “the state shall not deny to any person equality before law or equal protection of law with in the territory of India.”

So to provide equal justice, legal Aid should be provided to the poor or illiterate or weaker persons.

Article 21 of Indian constitution has a strong based support to legal Aid which provides that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Article 21 (A) provides right to education which is very much essential to literate the people so that illiteracy will be eliminated which is a major barrier.

Article 22 prescribes certain procedure in case of punitive and preventive detention.

Article 142 provides enforcement of decrees and order of Supreme Court and order as to discovery etc. This is also required to get justice.

Article 32 provides remedies for enforcement of rights. Article 226 provides that the High Court can issue certain writs. Both Article 32 and Article 226 are it selves fundamental rights for protection and enforcement of other fundamentals rights to get justice.

(iii) Directive principles of state policy (D.P.S.P.):

Part IV (Article 37 to Article 51) of Indian constitution speaks about D.P.S.P. Though D.P.S.P. is not enforceable but there are certain directions towards the state to meet those social, economic and cultural reforms which the framer of the constitution worked upon.

Article 38 of constitution which is based on Article 14, imposes a duty on state which obviously includes the judiciary in the context of securing and protecting as effectively as it may a social order in which justice – social, economic and political must inform all institution of national life.

An important Article with regard to legal Aid is Article 39-A of Indian Constitution.

Equal justice and free legal Aid to economic backward classes:

Article 39-A directs the state to ensure 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 of schemes or in any other way to ensure that opportunities for securing justice aren't denied to any citizen by reason of economic or other disabilities. This Art was added to constitution pursuant to the new policy of the Govt. to give legal aid to economically backward classes of people. "Legal aid" and "speedy trial" now have been to be fundamental rights under Article 21 of Indian constitution to all prisoners. In Hussainara Khatoon V. Home secretary, state of Bihar,^{ix} it is decided that a state has a duty to provide a lawyer to poor person at free of cost and the payment of lawyer will be fixed by court and govt. will pay this to the lawyer.

In the case of Centre of legal research v. state of Kerla,^x it has been held that, in order to achieve the objectives of Article 39-A the state must encourage and support the participation of voluntary organizations or social action groups in operating the legal aid programs which should be free from govt. control so that social justice can

be brought in order to adopt a new dynamic approach.

In a notable judgment in State of Maharashtra vs. Manubhai Bagaji Vashi,^{xi} the Supreme Court held that Article 21 read with Article 39 -A casts duty on the state to afford grant-in-aid to the recognized private law colleges similar to other faculties, which qualify for receipt of the grant.

The principles contained in Article 39-A are fundamental and cast a duty on state to ensure that the operation of legal system promote justice on the basis of equal opportunity, further Article 21 of constitution includes right to free legal aid in case of M.H. Hoskot Vs. state of Maharashtra^{xii} by applying the same rule of the case Maneka Gandhi Vs. Union of India.^{xiii}

(iv) Fundamental Duties:

The part IV-A (Article 51-A) was added to constitution by 42nd Amendment, 1976 and provides fundamental duties for citizens as they are provided with fundamental rights. The duties are imposed on citizens in order to not to infringe the rights of others.

Legislative power:

Both the parliament and state legislatures have the legislative power provided by the constitution. There are three lists namely union list, State list and concurrent list. Union parliament and state legislatures have the power to make laws in any matter enumerated in the union list and state list respectively. And both have the power to make laws in matter enumerated in concurrent list. This provision is to establish an order in the society. But parliament or state legislature has no

power to amend the basic structure of constitution.

(b) Lok Adalat:

There are Lok Adalats or specialized tribunals to reduce the burden of ordinary courts along with the adoption and recognition of the informal justice delivery systems there by leading to full-fledged and equitable utilization of the resources.

Lok Adalat is a system of alternative dispute resolution developed in India. It roughly means 'public court'. It is based on the principle of 'Mahatma Gandhi'. Lok Adalats are held by state legal service authority, district legal service authority, Supreme Court legal service committee and high court legal service committee. They held periodically for exercising such jurisdiction as they determine. According to sec.20 of legal service authorities Act 1987, the court can suomotu refer any matter, if it thinks fit to Lok Adalat. These provisions should be effected by judges.

In the case of P.T. Thomas v. Thomas Jobs,^{xiv} it was contained that, Lok Adalat is an alternative to judicial justice and a viable strategy for delivery of cheap, expeditious justice to common men who are not yet able to reach at the door of court, by adapting persuasive common sense and human approach to problems with assistance of experienced members of team of consolidators.

It is evident that the numbers of litigations are increasing. Keeping this concept in view, Lok Adalats are created to improve access to justice at grass root level and mostly for the weaker sections in the community who are unable to knock at the door of traditional court of justice.

The main object of the beneficial scheme of Lok Adalat is to provide justice to people at their door step by solving the disputes speedily, in which there is no court fees and parties can interact with judges through their counsels which is not possible in regular courts.

(c) Legal Service Authority Act 1987:

The main aim legal service authority Act 1987, which is enacted by Govt. of India, is to provide free legal aid and with an object to fulfil the provisions of Art.39-A of constitution with the constitutional obligations.

Certain provisions regarding Lok Adalats are also included in this Act for disposal of cases in process of arbitration and settlement between parties for a speedier system of administration of justice .Again the govt. amended the legal service authority Act in the year 2002 and amended Act is known as Legal service Authority (Amendment Act) 2002.This Act has a preamble providing provisions to settle up permanent Lok Adalats for settlement of cases relating to public utility services.

Legal service Authority Act 1987 consists of 7 chapters and 30 sections .It provides also provision for the constitution of National legal service authority, State legal service authority and District legal service authority and for funding of these authorities by means of grants from central Govt. and state Govt. in order to provide legal service to weaker sections of society including women .This Act also provides for the constitution of supreme court legal service committee, High court legal service committee, Taluk legal service committee. These institutions are directed

for proper implementation of the legal service programmers.

4. Legal Aid vis-à-vis social Justice:

The preamble of our constitution provides social, economic and political justice to each citizen. According to justice Sabharwal,

“Given that justice is defined in the terms of rights, access to justice, most simply put would include the ability of any person to approach to the appropriate authority and effectively claim the enforcement of rights. Thus access to justice in moral real terms would include the sum total of all those rights and remedies available to a person through which he can seek the enforcement of his/her rights”^{xv}

The terms social justice includes two concepts. One is concept of ‘society’ and other is concept of ‘justice’. Here “social” something relates to structure of society and arrangement of social and economic relations. “Justice” relates to co-operation among people in a united society and to live according to their talents and abilities with equal and real opportunity.

As there is equality before law, Justice is required. Thus “Justice” and “equality” are connected with each other. The term “equality” has a key role in the concept of access to justice, because there should be an equality of consideration. This equality of consideration includes the concept of legal-aid to watch that whether the poor and needy people are getting their rights, reasonable aid and advice of beneficial scheme or not. If they are not provided with that, then they should be provided such beneficial things.

5. Emergence of the concept of public interest litigation:

The concept of public interest litigation (P.I.L.) originated in the United States in mid-1960s. In our country, the tree of P.I.L. has been growing since there is the seed of concept of P.I.L., initially shown in India by Hon’ble Justice Krishna Iyer in 1976 in case of *Mumbai Kamgar Sabha v. Abdulbhai*^{xvi} which deals with an industrial dispute regarding payment of bonus. The term P.I.L. first used by learned judges in *Fertilizer Corporation Kamgar union v. Union of India*^{xvii} and subsequently the seed blossomed and took its root in the case through *S. P. Gupta v. Union of India*^{xviii} by the remarkable judgment of Indian judiciary. Since that there are series of remarkable judgments in leading cases relating to P.I.L.

Public Interest Litigation (P.I.L.)

The court now permits public interest litigation’s (P.I.L.’s) at the instance of “public spirited citizens”, for the enforcement of constitutional and other legal rights of any person or group of person who because of their poverty or socially or economically divergent position are unable to approach the court of relief.

Justice Krishna Iyer, declared that “access to justice through “class action”, “P.I.L.” and “representative proceeding” is the present constitutional jurisprudence.

In the case of *People’s union for democratic rights other v. Union of India and others*,^{xix} commenting on the emergence of P.I.L. the court held that the same is a strategic arm of legal aid movement and also has been resorted to For establishing the ‘rule of law’ doesn’t mean that the protection of law is to be confined only to a fortunate few for protecting and upholding the status quo

under the guise of enforcement of their so called civil and political rights.

The Hon'ble Supreme Court in a later decision in the case of *Dr. B. Singh v. Union of India*^{xx} and others pointed out that P.I.L. should not be publicity oriented litigation in the guise of redressing grievance otherwise there may be loss of scarce judicial time. P.I.L. has a dynamic approach for the protection of down trodden masses of country and for the protection of socially, economically and politically disadvantaged ignorant sections. For the poor and women, now the fundamental issue is of "survival" and "security". So P.I.L. plays a vital role for the protection and enforcement of rights of needy people. P.I.L. makes justice equal for all classes of citizens in reality and eradicates the barrier for access to justice. Now there are legal awareness programs on P.I.L.. There is the process of formulation of social organizations for democratic rights of people. Supreme Court is entertaining telegrams, letters and post cards as P.I.L. cases.

6. Role of the Judiciary:

Our judicial system presupposes effective access to justice. Judiciary as a watch dog of the supreme law of our country i.e. constitution, it plays a key role for better availability of justice to need people. Judiciary gives justice to people in different way according to procedure established by law. In the words of chief justice Gajendragadkar the court has to play the role of a "sentinal on the qui vive" for protecting fundamental rights.^{xxi} In *M. H. Hoskot v. state of Maharashtra*,^{xxii} the Supreme Court held that if it is deemed fit then free legal aid is also implicit in Article 21 and there must be a fair

procedure for punitively and preventively detained person.

In the case of *Hussainara Khatoon*,^{xxiii} justice Bhagwati followed the view of justice Iyer in *M. H. Hoscot's* case and taking into account the "due process" as held in *Maneka Gandhi's* case, opined that, "The right to free legal Aid services is clearly an essential in-gradient of reasonable fair and just procedure for a person accused of an offence and it must be held in the guaranteed of Article 21. This constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as under a mandate to provide a lawyer to an accused person, if the circumstances of cases and the needs of justice so required, provided of course the accused persons doesn't objects to the provision of such lawyer"

The same principle was also followed by justice Bhagwati in *Khatri v. state of Bihar* case. By judicial activism, the fundamental rights of weaker sections can be enforced. This concept is also quite relates to justice Bhagwati in *S.P. Gupta v. Union of India*.^{xxiv}

Further in the case of *Hussainara Khatoon v. Home Secretary*^{xxv} the court held that right to speedy trail is also under the provision of Article 21.

There are also other Leading cases from which we can conclude that the judiciary performs its duty to protect and to enforce the rights (human rights) guaranteed by constitution and to provide justice to people.

In *Nilabati Behera @ Lalita Behera V. State of Orissa and others*^{xxvi} the principle is that under Art.21 there is also "duty to care" which wouldn't be denied to anyone.

In *D. K. Basu v. State of West Bengal*^{xxvii} the principal is that actions of the state must be right, Just and fair. Torture or extracting any kind of confession would neither be right nor just and fair.

In *Maneka Gandhi's case*^{xxviii} the Supreme Court held that Article 21 controlled by Article 19. The court observed that if there is a law which prescribes a procedure for depriving a person of personal liberty there may be no infringement of Article 21; but such a law can be challenged on the ground that it takes away any fundamental rights under Article 21 of constitution.

Judiciary has also role in conducting legal aid programs, Lok Adalats which are discussed earlier. Judiciary has a role in PIL: To watch this there are certain cases of PIL and judgments given by the Hon'ble Supreme Court.

For better access to justice our hon'ble supreme court has opened his door to the tortured prisoners, victims of custodial violence, degraded slum-dwellers, homeless pavement-squatters, bonded labors, sweated workers, discriminated and sexually harassed women employees, raped girls, dowry burnt brides, physically challenged persons, social activities and to other needy people and economically backward classes.

7. Conclusion:

Legal assistance is a measure which provides justice to needy people and due to which there is an equal treatment among poor and rich. There are various constitutional provisions also. In order to provide justice, good governance is very much essential. There is development in legal aid system. Social justice and rule of law are interrelated, having a dynamic approach in modern area. Due to justice,

social- economic structure can be brought into a path of harmony.

Pandit Jawaharlal Nehru viewed that, "The rule of law must run close to the rule of life. It cannot go off at a tangent from life's problems.... It has to deal with today's problems." Thus the law is meant to serve the people and to uphold the spirit of the constitution which can be sustained by social justice. The essence of social justice is the attainment of social and economic equality and as such it has got a dynamic character with many aspects and dimensions. It has been observed rightly as "yard stick of justice and equity itself changes with changes in condition of individual and national life."

Various aspects like, case management, court management, financial management, legal literacy programs, education facilities, involvement of voluntary organizations, arrangement of lok adalats at regular intervals may be taken in to consideration for getting fruitful results in the field of justice delivery system.

Now a day legal aid clinics are established in Govt. colleges, legal literacy programs are held. Legal literacy leads to legal empowerment. Legal literacy mission is now a part of legal Aid movement. Lok Adalats are held in regular intervals and various measures are taken for access to justice." It is the high time to watch whether the needy people get justice or not, to test the fruit of their rights as well as supreme law of land i.e. Constitution for a dignified life irrespective of age, sex, caste, religion, place of birth etc. and we have to prepare for our future for better access to justice and all will be able to reach at the door of independent judiciary for justice.

End Notes:

1. As Quoted by Justice A.K. Ganguly in Nyaya Deep, Vol-6,2005, at P-15
2. Ibid. at p-15
3. Ibid. at p-16
4. As Quoted by Justice S.B. Sinha in Nyaya Deep, Vol-8,2007, at P-59
5. The Govt. of India, Ministry of Law, Justice and Company affairs, Report of Expert committee on legal aid 'Procedural justice to the people'; May 1973, Para-5, P-10
6. Singh Govind, Hindi Translation of Important Parts of Rig Veda (Sadna Pocket Books, New Delhi,1992) P31-36
7. Dr. S.R. Dhyani, Fundamental of jurisprudence, The Indian Approach, Central Law Agency, Reprinted-1972, at P-84
8. AIR 1973 SC 1461
9. AIR 1979 SC 1360
10. AIR 1986SC 1322
11. (1955) 5 SCC 730
12. AIR 1978 SC 1548
13. AIR 1978 SC 597
14. (2005) (4) ALR S150 SC
15. Supra note 2, at P 10-11
16. AIR 1976 SC 1455
17. AIR 1981 SC 344
18. AIR 1982 SC 149
19. (1982) 3 SCC 235
20. (2004) 3 SCC 363
21. As Quoted by Justice A.K. Ganguly in Nyaya Deep, Vol-6,2005, at P-17
22. AIR 1978 SC 1548
23. AIR 1974 SC 1143
24. AIR 1982 SC 149 at P-189
25. (1980) 1 SCC 81
26. (1993) 2 SCC 746
27. AIR 1997 SC 610
28. AIR 1978 SC 597