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Legal Aid and Legal Awareness in India: Issues and Challenges

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1. Introduction

India is a developing country. The development in the industrial sector is very much appreciable, but still this progress in the field industrialization, marketing, finance, etc. cannot hide the indispensable drawbacks of our society like population explosion and illiteracy.

Majority of people are not aware of the legal systems prevailing in the country and also of their constitutional rights. Even though people are aware of it, they are not in a situation to afford because of their economic and social backwardness. They are in a helpless situation to engage the services of legal counsel, which has become the costly affairs. With a view to provide free legal aid to the deserving sections of the society, Parliament of India has incorporated a specific Directive Principle viz. Article 39-A by 42nd Amendment of Constitution in 1976. Legal aid is a constitutional right supported by Articles 21 and 39-A of the Constitution of India. "Access to Justice" is a basic human right conferred by the common law and exists unless it is taken away under any valid exercise of statutory or constitutional power by the legislature. The word "access" in itself signifies a Right to move towards Remedy.

This is not a modern concept and it is a large reflective of the primeval principle of Roman law "ubi jus ibi remedium" i.e. where there is a Right, there is a Remedy. The prime obligation of state is to provide free legal aid to the poor, indigent and marginalized and it is their right guaranteed under the constitution of India to demand and avail. Further the paper proceeds with the legal awareness with issues and challenges in India and the conclusive part will be deal with certain suggestions for promoting more effectiveness of statutory provisions. So, an impartial independent judiciary is the guardian of individual rights in a democratic society. In order for citizens to have faith in their court system, all people must have access to the courts when necessary. Let us analyze the difficulties (issues) and challenges in providing free legal assistance to the poor and marginalized people and try to reach out the solutions.

2. Legal Aid - The Concept:

Legal aid to the poor is necessary for the preservation of rule of law which is necessary for the existence of the orderly society. Therefore Under Section 2(1)(c) of the Legal Services Authorities Act, 1987 "Legal Service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter; To provide free and competent legal services to the weaker section of the society was the basic object of enacting the aforesaid Act. Justice - social, economic and political, is our constitutional pledge enshrined in the preamble of our Constitution. The incorporation of Article 39-A in the Directive Principles of State Policy in the year 1976, enjoined upon the State to ensure justice on the basis of equal opportunity by providing free legal aid.

It 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. Until and unless poor illiterate man is not legally assisted, he is denied equally in the opportunity to seek

justice. Therefore 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 main object is to provide equal justice is to be made available to the poor, down trodden and weaker section of society.

The Indian constitution provides for an independent and impartial judiciary and the court are given power to protect the Constitution and safeguard the rights of people irrespective of their financial status.

In this regard **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.”

The foundation of the right to legal aid is premised in the universally accepted principle of “Fair trial”. The right to a fair hearing is universally recognized and documented in national constitutions and regional and international human rights instruments. It is the foundation for the protection of individual liberties. Right to legal aid is a demonstration of the need to level the powers of state to those of the suspect. The right to legal aid and representation at the expense of the state becomes a constituent element of the right to a fair trial. The purpose of legal aid provision is to inform those in contact with the law of the extent of their rights and provide assurance of the existence and availability of services, irrespective of social and economic means. The laws of every country across the continent guarantee free and prompt trials for all those who come into contact with the judicial systems. Governments across the continent have also taken important steps towards achieving more responsive, efficient and effective judicial systems. Legal aid service reforms are often lost or narrowly cast when subsumed into broader criminal justice reforms. There is a need to enjoin Governments to pay more attention to the delivery of legal aid services across the justice systems.

3. Legal Awareness

According to the American Bar Association, Commission on Public Understanding, legal awareness is, “the ability to make critical judgments about the substance of the law, the legal process, and available legal resources and to effectively utilize the legal system and articulate strategies to improve it is legal literacy”.

The Canadian Bar Association (1992) define legal literacy as, the ability to understand words used legal context, to draw conclusions from them, and then to use those conclusions to take action.

Multiple Action Research Group's (NGO working for the promotion of legal awareness) define legal awareness can be defined as “critical knowledge of legal provisions and processes, coupled with the skills to use this knowledge to respect and realize rights and entitlements”.

It is Public legal education; which is empowerment of individuals regarding issues involving the law. Legal awareness helps to promote consciousness of legal culture; participation is the formation of laws and the rule of law. Legal awareness can empower people to demand justice, accountability and effective remedies at all levels.

In India it is found illiteracy, poverty and innocuousness of wide range of people. Here in each and every people no matters of illiteracy, they should be aware of the basic law of the country, because ignorance of law is not excuse. For that purpose of providing awareness many NGO plays an efficient role. Those organizations make the people to understand their rights and engage them to afford free legal aid in the court. So many committees and schemes were introduced by the Government to the welfare of the economic and socially backward people. Still certain backlog in the grabbing of that right and

opportunity because of non awareness among the people. Hence, People even though being illiterate and poor, not considering of their status should enhance their right, approach the court and seek for justice.

4. Issues and Challenges in India:

The legal aid system in India has proven ineffective. There are following reasons why the National Legal Services Authorities has not been able to deliver real legal aid:

- General lack of awareness of the availability of legal aid;
- There is a perception that free service is incompatible with quality service;
- Not enough lawyers delivered by the legal services authorities,
- Lawyers generally are uninterested in providing competent legal assistance because of financial constraints.
- Lawyers assigned to provide legal aid and paid with public funds do not faithfully represent their clients, casting serious doubt on the credibility of the scheme of legal aid provided to weaker sections of society.
- Some lawyers engaged by legal aid committees hold their client's cases for ransom by employing delay tactics.
- These lawyers compel their clients, many innocent, to pay additional amounts of money to them, even though they are supposed to obtain their fee from the legal aid committee.
- One factor that may be contributing to this is that the remuneration paid to lawyers by the legal aid committee is very low and does not even meet the lawyer's incidental expenses.
- Another major obstacle to the legal aid movement in India is that the delivery system for legal aid is far too inefficient.
- More lawyers must be encouraged to delivery free legal aid and a campaign should be launched to inform people about the existence of free legal aid.
- The legal aid movement cannot achieve its goal so long as people are not aware of their basic rights.
- When the poor are not aware of their legal rights, they are subject to exploitation and ultimately deprived of the rights and benefits provided to them under law.
- Thus, the key to a successful free legal aid system is increased awareness among the populace and more efficient delivery processes.
- Successful legal aid delivery in India requires the government to embark on a campaign to inform and educate the public of its right to free legal aid.
- Further, the government must employ more efficient processes to improve legal aid delivery, including but not limited to increased compensation for legal aid lawyers.

5. Conclusion:

Legal aid is an obligation of the State and right of the citizens. The basis of legal aid is on distributive justice, effective implementation of welfare benefits and elimination of social and structural discrimination against the poor.

It works in accordance with the Legal Services Authorities Act, 1987 which acts as the guideline of the rendering of free justice.

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.

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