

Right to Free Legal Aid in India: Realising Human Right to Equality**Dr. Shubhangi Panchal,**

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Legal aid should be available to the poor and illiterate, who do not have access to courts. One need not be a litigant to seek aid by means of legal aid'¹

Abstract:

The State, through the laws seeks to confer rights, create liabilities, and impose duties on its subjects to regulate the society and maintain law, order and peace as its prime objective. But the Welfare State notion has extended its responsibilities in manifold dimensions. It has become the protector, provider, entrepreneur, arbitrator². The rights should not only be declared but made accessible to the poor, downtrodden and vulnerable section of the society and bring them to equal footing for seeking justice. The legal machinery should be accessible and accommodating for all people irrespective of their social, political, biological, economic or any other discrimination depriving them from justice system. Democratic State will thrive only if it upholds Rule of Law and Equality; only then we can realise the human right to equality in its true essence., The Indian Constitution envisages Art 39-A providing the 'Right to Legal Aid' and the judiciary has raised it to the pedestal of fundamental right. In this backdrop, the research paper portrays the development of right to legal aid as a Fundamental right and realising the human right to Equality in India. It also discusses the international, constitutional, and Statutory perspectives and discuss the judicial trend developed in this regard.

Keywords: Human Rights, Legal Aid, Legal Services Authority Act, Equality, Lok-Adalat, Constitutional obligation, Judicial trend

¹ Mr. P.N. Bhagwati, Chairman Speaking through the Legal Aid Committee formed in 1971 by the State of Gujarat on Legal Aid.

² M P Jain and S N Jain, Principles of Administrative Law, N M Tripathi Pvt Ltd at pg 5.

Right to Legal Aid: Meaning and importance

Right to legal Aid Legal aid in its common parlance, means the assistance provided by the society to its weaker members in their effort to protect their rights and liberties, bestowed upon them by the laws.

General meaning of Legal Aid is a social arrangement extending and providing special assistance or help to the poor and weaker members to enable them to enforce their legal rights facing on an equal platform the powerful and rich members through the legal process.

P.N. Bhagwati rightly observed that³ *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 must 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*

It also has been defined by Dr R Madhava Menon, renowned jurist and legal aid activist as 'Legal aid has been taken to mean the organised effort of the Bar, the community, and the government to provide the service of lawyers free or for a token charge, to persons who cannot afford to pay lawyer's fee'⁴

Thus, it consists of financial assistance towards fees of lawyer, free services of lawyers, representation through lawyer at State's expense in the Court, legal advice, legal awareness, preventive services etc.

The importance of right to legal aid lies in the fact that it is an instance of equality. And for a peaceful and prospering democratic society, where the rule of law prevails, there should be

equality before law and equal access to law to all. Irrespective of being rich or poor, the machinery of justice should be readily available and accessible to all equally and without discrimination on social, economic, geographical, biological or any other types of differences.

The Law Commission emphasised in its 14th Report, noted 'without legal aid equality before law, an integral part of Rule of Law, cannot be achieved'. 'Equality is the basis of all systems of jurisprudence and administration of Justice.... Unless some provision is made for assisting the poor man for payment of court fees and other incidental costs of litigation, he is denied equality in opportunity to seek justice'⁵

Right to Free Legal Aid—Human Rights and International perspective

Nearly all international documents pertaining to human rights implicitly recognise legal aid as a human right concern. Consequently, human rights are inclusive and apply to everyone without exception. Because they are essential to human life and cannot be violated by any state act, human rights are often referred to as fundamental rights. It is most likely true that in a democracy-loving nation like ours, democracy means nothing to the people unless they can protect their fundamental human rights

The United Nations Universal Instrument⁶ declare the 'Basic Principles on Roles of Lawyers' which states that:

- 1) All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to

³ Supra at note 2

⁴ Menon, N R Madhava, 'Legal Aid and Justice for the Poor', Upendra Baxi (Ed), 'Law and Poverty: Critical Essays', 1988, at pg 366.

⁵ Law Commission 14th Report, 1958 at pg 587.

⁶ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba adopted on 7 September 1990

defend them in all stages of criminal proceedings.⁷

- 2) Special attention should be given to assisting the poor and other disadvantaged persons to enable them to assert their rights and where necessary call upon the assistance of lawyers.⁸

Rights under Indian Constitution

Fundamental rights Article 14 contains two parts ‘equality before law’ and ‘equal protection of law’; both these expressions have been used in UDHR⁹ where Article 7 declares that ‘All are equal before law and are entitled without any discrimination to equal protection of the law’. Both these expressions describe the concept of equality. As per the Indian interpretation, ‘equality’ does not mean absolute equality it means reading equals as equals and making conscientious and conserved efforts to heighten the loneliest and the lost equal to those of height and might. Legal Aid is a catalyst agent to this process of bringing the social economic transformation instrument of law becomes connected with the provision of equality before law

Article 21 under the constitution provides for right to personal liberty and right to life which cannot be deprived of except for according to procedure established by law. The interpretation of the term procedure established by law has given much strength for interpretation of right to free legal aid the liberal approach given to the word processor established by law as a reasonable fair and just procedure as widened the scope for providing Legal Aid services to the poor so as to bring them at par with their other counter parts in seeking justice.

7 Ibid available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>

8 Ibid

9 Universal Declaration of Human Rights , Article 7

The cases of Maneka Gandhi v Union of India¹⁰ reiterated in Sitaram V State of UP¹¹ has made it crystal clear that the procedure depriving the right of person Liberty and right to life must be reasonable fair and just.

In *Haskot v State of Maharashtra*¹², the requirement of reasonable, fair, and just criminal procedure was emphasized, where the court set the accused free on the ground that there was no provision for making available legal services to an accused who was poor to afford the lawyer and had to go through the trial without legal assistance. After this case the reading of under Art 39 A with fundamental right started. The legal aid gained the status of State obligation.¹³ Article 21 encompasses another important right of speedy trial as an important ingredient of and procedure established by law.

Article 22 directly and expressly States the right of the accused to be informed about the grounds of arrest and the right to consult and to be defended by legal practitioner of his choice.

In *Hussainarra Khaton v State of Bihar*¹⁴ it was declared by the apex court that every accused person unable to engage lawyer at his own cost had his constitutional right to have a counsel engaged by the State, the requirement of legislation and this regard has been underlined as an obligation on the State.

Hon’ble Justice P N Bhagwati declared¹⁵, ‘The right of free legal services is clearly an 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.

10 Maneka Gandhi v Union of India AIR 1978 SC 547

11 Sitaram V State of UP AIR199 SC 745

12 Haskot v State of Maharashtra AIR 1978 SC 1548
13 Sajjan Singh, ‘Legal Aid- Human Rights to Equality’ Deep and Deep Publications (2011) at pg 214.

14 Hussainarra Khaton and others V State of Bihar AIR 1979 SC 1369

15 Ibid

In *Sheela Barse v State of Maharashtra*, the Supreme Court opined that legal assistance to a poor or indigent accused under arrest and put in jeopardy of his life and personal liberty is a constitutional imperative mandated not only by Article 39-A but also by Article 14 and 21 of the Constitution.¹⁶

Article 39-A,¹⁷ inserted by the 42nd Constitutional Amendment is the directive principle having direct bearing on the right to free legal aid achieving equality also directed under Art 39. Thus Article 39-A of the Indian Constitution grants the state the authority to guarantee the smooth operation of the legal system, promoting justice on the basis of equal opportunity. In particular, the state is mandated to provide free legal aid by appropriate legislation, as stipulated by the Indian Constitution, ensuring opportunities for ensuring that no citizen, regardless of disability or economic status, is denied justice.

The 42nd Amendment also removes the subject of 'Administration of Justice' (where free legal aid belongs) from State List to Concurrent List as entry 11-A, aiming to strengthen the legal aid to poor

Statutory In view of the recommendation by Law Commission of India in its 14th report and declaration of Right to free legal aid as a

16 Mr .Nikhil Singh, Constitutional Provisions Relating To Free Legal Aid In India: An Analytical Study.

<https://www.legalservicesindia.com/law/article/3036/10/Constitutional-Provisions-Relating-To-Free-Legal-Aid-In-India-An-Analytical-Study->

17 Art 39 -A 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' available at <https://indianconstitution.guru/constitution-of-india/part-4/article-39/>

fundamental right, by the judiciary; the Legal Services Authority Act, 1987 was enacted by the parliament with effect from 1995. The Act mainly established the hierarchical legal service system at National Legal Services Authority, State Legal Services Authority and District Legal Services Authority. The Act provides the criteria for legal services under section 12. Section 19 provides for organising Lok Adalats for pending cases through alternative dispute resolution system.

To achieve the objectives enshrined in the National Legal Services Scheme, Justice J.N.Bhatt has suggested the following ten commandments for the same¹⁸

1. To provide and create effective and efficient well-structured, comprehensive, and cohesive, legal service programmes and projects for prompt distributed justice and high order of social equality and legal aid in its scope and ambit must contain both preventive and protective measures. Legal Aid should be adopted as such, as people's movements for speedy and inexpensive justice, at all levels.
2. Legal Service Authorities and Committees under the Act must be sufficiently funded by the State and must receive adequate support and ample assistance from the civil services. It should also, be liberally assisted by bench and bar between whom, I always believe, exists unbreakable, irrevocable, and harmonious partnership. It should, also, be helped generously by non-governmental organisations (NGOs).
3. Legal service personnel should strictly comply with and employ the means-cum-merit criteria for avoiding likely misuse of legal service rights flow from duties and duties confer rights. If all simply insist on

18 Justice J.N. Bhatt, "Ten Commandments for Effective Legal Services", Vol. II Issue 3 Nayaya Deep 19 (1999)

- rights and not duties, there shall be no effective legal service and social order and justice.
4. Panel of advocates, who are service oriented, should be made for prompt and pure legal service, only on the criteria of competence, character, commitment, and credentials.
 5. Appointment of “LEGAL AID COUNSEL” in all courts of Magistrates to ensure that no person in custody feels handicapped in this defence keeping in mind the model scheme of activated, sensitized, dynamic and dedicated approach to the legal aid by the judiciary and legal fraternity is not only equally important but is imperative.
 6. Aspects of “PERMANENT LOK ADALAT” must be planned and working in all districts in the country phase-wise and then to assess and make periodical review. Settlement of pre-pending and post-litigation, disputes of such permanent Lok Adalat must be protected as being final and binding and that too on the principal of “might is not right but right is might” with persuasive professional capacity, forensic skills, devotion and dedications.
 7. Well-structured and effective planning for efficient publicity campaign for awareness of objects of provisions of Legal Services Authorities Act to the subjects and to educate persons concerned for which multifaceted and dimensional legal literacy campaign on large scale must be evolved and executed.
 8. Item of legal services should be planned item in the budget so as to ensure national legality in the plan of national development. It is not only expedient but obligatory in our country which is wedded to the welfare state policy and more so when more than majority are handicapped by poverty and illiteracy and social inequalities.
 9. Legal service is not a charity nor a grace but a constitutional mandate and State, members of bar and bench, as well as other concerned legal aid functionaries, service-oriented clubs and organizations should strive and ensure that this solemn pledge is observed with letter and spirit.
 10. Legal fraternity must respond with juristic sensitivity to the voice from the Silence Zone and mass voice of weak, meek, poor, suppressed, and exploited women and destitute children. The Bar must evolve a scheme to ensure that unprotected is not priced out of market. Bar is, really, backbone of legal service to complete the constitutional obligations and obtain statutory rights of millions of handicapped, needy, and deserving people. The scheme of family counsellor in each District to begin with, if not in each court, will help to solve and settle many disputes of family, dispute between spouses etc.
- The right of impoverished or destitute accused persons who are unable to hire solicitors to get free legal aid was addressed by the court two years later in the case of *Khatri v. State of Bihar*¹⁹ It concluded that the state is constitutionally required to offer such assistance not only during the trial phase but also during their initial appearance before the magistrate or periodic remand; this right cannot be withheld on the grounds of lack of funds, administrative incompetence, or the accused's lack of request. It is the duty of magistrates and session judges to advise the accused of their rights. The right to free legal services 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

¹⁹ *Khatri v. State of Bihar*, AIR 1981 SC 262.

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.

Issues

Though the legislature has made law, judiciary has supported it but still the legal services face many hurdles in its full realization. The primary concern should be to remove the internal obstacles to access to justice which lie under the cover of power in the hidden forms of lack of understanding the law, inability to deal with cases, prejudices, amenability to political and other influences, the taint of corruption and insensitivity to human sufferings.²⁰

To make legal services available to the needy people, efforts should have been made from all four sides and every corner with great force and impact by involving all the concerned agencies and units, then only the objective and mandate of legislature behind enacting the Legal Aid Act shall be fulfilled.²¹

Dr. Manmohan Singh, the ex-Prime Minister, who has said 'the rule of law can become a living reality for millions and millions of our people, only if the rights of law-abiding citizens are effectively protected and safeguarded, only if justice is seen to be delivered and delivered in time, only if right of the weak and dispossessed are protected.' India being inequitably graded society, Dr. Ambedkar recognized the need for a three-fold strategy:

- a) Provision of equal rights (overturning the customary framework of caste system based on principle of equality and denial of equal rights, particularly, to untouchables).

- b) Provision of legal safeguards against the violation of these rights in terms of laws
- c) Pro-active measures against discrimination for fair share and participation in legislature, executive, public services, education, and other public spheres for discriminated groups (in the form of reservation)²²

Conclusion and Suggestions

Thus, from above discussions it can be concluded that under Indian system much has been done on the Constitutional. It can be concluded that in our Indian legal system, the constitutional law provides firm bedrock for the notion of equality and right to free Legal Aid services as one of its dimensions in realising equality. The provisions are further strengthened by the liberal and constructive interpretations of the Indian judiciary entrance sitting cases like M H Haskot case and *Hussainara Khatoon* case. This has resulted in infusing fairness and reasonableness in the 'procedure established by law.'

The judicial contribution is appreciable. It has displayed the activism in establishing the right of free Legal Aid Service and right to speedy trial as implicit under Article 21. The constitution of framework has been supported with the statutory framework by the legal service authorities act which establishes comprehensive and hierarchical implementation machinery from the National Level State Level District Level to the Taluka Level. The inclusion of Law schools and law colleges in the legal awareness and legal services program furthers the purpose of the Act.

²⁰ Mr Nikhil Singh, Constitutional Provisions Relating To Free Legal Aid In India: An Analytical Study.
<https://www.legalservicesindia.com/law/article/3036/10/Constitutional-Provisions-Relating-To-Free-Legal-Aid-In-India-An-Analytical-Study->

²¹ Ibid Mr Nikhil Singh

²² Dolly Choudhury, CONCEPT OF FREE LEGAL AID- A COMPARATIVE ANALYSIS FREE LEGAL AID IN INDIA, UNITED KINGDOM and AUSTRALIA accessed on 25 August 2023 at https://ijlljs.in/wp-content/uploads/2016/07/cp11_FINL.pdf

Apart from the above efforts, much needs to be done for reaching out to the needy and sensitizing them in enforcing their rights.

Suggestions

- The voluntary organisations in the field of legal aid should be encouraged and supported.
- The lawyers owe a duty to take up free legal aid work.
- The counsel, provided in legal aid, must be competent and committed to generate confidence in the beneficiary that he is on equal footing with his opponent.
- The members of the judiciary also have a duty to inform to the unrepresented person that he has a right to counsel. They should vitiate the proceedings advanced without legal representation²³
- The judiciary should have a bias for protecting the rights of the poor. The Public Interest Litigation, as a means, should be used for the purpose by the judiciary and the public-spirited people.
- The main duties of these legal volunteers are to assist the less fortunate and marginalised groups in society and to advance legal aid initiatives such as camps and programmes. But there is not enough supervision, tracking, monitoring, and training provided to these legal volunteers.
- Proper training, Funds, monitoring should be provided
- Para legal advocates should be given minimum incentives for their work
- Law Schools and College students and teachers should be properly trained and supported with training and resources to reach out maximum people
- More focus should be on preventive legal awareness rather than remedial.

Sensitization of rights and remedies should be the priority.

The right to free legal aid as a dimension of human right to equality can be realised in its true sense and spirit only on wholehearted efforts from implementing machinery, sensitization and awareness in people.

²³ Sujan Singh, Supra at page 310.