

“Realization of Access to Justice Through Free Legal Aid in India”****Aaditya Kumar********Research Scholar******Dept. of Law,******Central University of Haryana********Dr. Dhrampal Singh Punia******Associate Professor******Central University of Haryana*****Abstract**

Access to justice is axis on which the judicial system runs. Justice without access by all the person equality by no stretch of can be said a trait of modern judicial system. India is a complex and diverse country, where a large section of population is living life on minimum resources. Then it becomes the responsibility of the state to provide means of justice to such class of people who cannot access it by their own means. After freedom movement the people of India through the constitution adopted a parliamentary democracy with the vision of freedom liberty and equality of all humans. The constitution of India through preamble prescribed the goal of sovereign, socialist ,secular, democratic republic values. The economic and political justice and equality for all are basic key principle of constitutional morality. In our country majority of the people are legging behind for basic necessity to live a dignified and peaceful life. In this scenario access to justice and administration to justice plays a key role to provide equality to all its citizen. The state has responsibility to provide justice for all. It is also a basic human right of any citizen. This paper try to elaborate the tools to achieve the goal of access to justice for all.

Keywords: Justice, Administration, Legal Aid, Equality, Rule of Law, Immigrant, Human Right, Constitution, Deprivation, Authority, Movement.

Introduction

“Justice must not only be done but must also be seen to be done,” Lord Hewart observed in the famous case of *Rex v. Sussex Justices*.¹ This quote shows the importance of the realization of justice in society in a fair manner. Justice is something just and equitable in the matter of right. It shouldn't be seen through the policy but by a practical approach from the administration of justice, and democratization of transparent governance by following due process of law and principles of natural justice. Even in ancient India, we will find these principles. Our Constitution makers included all these principles in our Constitution. The Preamble of our Constitution talks about justice not only at the social level but also on the economic and political level based on the principle

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¹ *Rex v. Sussex Justices [1924] 1 KB 256.*

of equity and equality so that all people are not only treated equal in policy but also in the practical approach of the state through different welfare schemes and legal aid.

In the case of *Keshavananda Bharati v. State of Kerala*,² the Apex Court declared that rule of law is the basic and important feature of our Constitution and it can't be amended. For a just and equitable society, it is very important to ensure the right to access to justice for all because everyone is equal and nobody is above the law. We live in a diverse geographical and socio-economic situation. So, sometimes this diversity also brings disparity in the matter of access to justice. In our judicial system, a large section of our population can't afford the cost of litigation. We have lengthy procedural things; also, fees for personal attorneys are high which a needy and poor can't afford.

Rule of law, Audi alterum partem, Nemo judex in causa sua are the basic principles of natural justice which must be followed in all cases. To ensure these principles in our judicial system, the state must provide equal opportunity to everyone to pursue his/her judicial cause before the appropriate authority. In the famous 26/11 case which is also known as *Mohammed Ajmal Mohammad Amir Kasab @ Abu mujahid v. the State of Maharashtra*³ the accused who was charged for 26/11 Mumbai terror bomb blast case provided two counsels for the defense and argument in the case which was filed against him. Because he was not in a position to engage a private lawyer for his defense. Even the state has to manage the fund for the function of these Legal Aid Authorities and the state is bound to provide legal aid to prisoners as the Supreme Court ordered these guidelines in the case of *Sheela Barse v. the State of Maharashtra*.⁴ In the case of *Hussain Ara Khatun v. State of Bihar*⁵, the Apex Court declared that speedy justice is a fundamental right under Article 21 of the Constitution of India. To satisfy the needs and wants of large marginal sections of society our constitution maker introduced the right to free legal aid under article 39 (A) of the Constitution of India.

After the silent phenomena of globalization and the revolution of information technology demand for transparency, equality in the matter of justice is demanded largely in public sentiment. To satisfy this sentiment the central government brought the *National Legal Services Authority (NALSA) Act* on 9th November 1995. under this Act, NALSA, SLISA, on the state level and district-level DALSA has established to ensure the right to free legal aid to the marginal section of society.

The Legal Aid Movement in the USA

If we trace back the history of the legal aid movement in the world then we will find out that first time this kind of initiative was initiated in America by non-governmental organizations like the

² Keshava Nandan Bharati v. State of Kerala, AIR 1973 SC 1461.

³ Mohammed Ajmal Mohammad Amir Kasab @ Abu mujahid v. State of Maharashtra [2012] 8 S.C.R. 295

⁴Sheela Barse v. the State of Maharashtra, AIR 1983 SC 378

⁵Hussain Ara Khatun v. State of Bihar, AIR 1979 SC 1369

German Society of New York. The first Legal aid clinic was established in the year 1876 for the help of migrated immigrants in the city of New York.⁶ The objective was to provide legal assistance to the poor immigrants. Primarily it was a very limited service and only passionate advocates who wish to give their service free of cost voluntarily joined the cause. Before that, it was not a matter of free of cost or without fees on humanitarian grounds. Sometimes it was a matter of subsidy on the recommendation of a third-party independent organization.

In the year 1919, an advocate Reginald Heber Smith belonged to the *Boston Legal Aid Society* came up with some innovative ideas and plans in their published paper named “justice and the poor” in his writing he observed that it is the collective social responsibility of bar to provide access to justice to the unrepresented masses.⁷ After the publication of this paper then legal aid achieved its organized structure. That structure not only covered the necessity of a permanent physical structure but also a permanent administrative service for the management of legal aid services and full-time committed advocates for the public interest. In this kind of clinic, there was a permanent office for meeting with the client in that office salaried advocates devoted their services to working full time for the client.⁸ Primarily legal aid was initiated in the field of poverty law, civil rights law, public rights law, charitable organization representation, and administration of justice. After the establishment of the legal aid clinic by the German society and the paper of Mr. Smith, the development of the legal aid movement grew rapidly in the year 1916.⁹ The American Civil Liberties Union was established to take up constitutional matters of government abuses. It has not fought in court but also set up an ideal model for fundraising.

Then, Ralph Nadar Public Citizen & Common Cause was established with the mission to help the organization that was actively raising public interest. After legal defence and education were established, this organization set up an ideal model for a legal aid organization. This organization focused not only on fighting the matter before the court but spreading the words of awareness among the people who were unrepresented in the matter of access to justice. This organization got a small contribution of donation from the American Fund for Public Service (Garland fund). In the beginning, public organizations were hesitant to give funds to an organization that worked for the right to access justice for all. But after the year 1960, many public foundations like the 20th century fund, new world Foundation, and Ford Foundation started taking interest in giving financial assistance to civil rights and justice for all initiatives. After getting this kind of financial booster the legal aid movement grew rapidly across the USA. And the new phase has originated in the

⁶Mauro Cappelletti & James Gordley, et.al. (eds.), *Towards Equal Justice: A Comparative Study of Legal Aid in Modern Societies* 6-16, (Oceana Publications, New York, 1975).

⁷Mamta Rao, *Public Interest Litigation: Legal Aid and Lok Adalats* 13, (Eastern Book Company, Lucknow, 5thedn., 2018).

⁸*Ibid.*

⁹Robin, “Lawyering for Social Change: Perspectives on Public Interest Law” 28 *Stan L Rev* 207-14 (1976).

field of public interest law. It was the development of the legal aid movement in a developed country like the USA.

But in that period the most third world country was lagging in this field. After Magna Carta (1215), petition of rights (1628) and the bill of rights, a spark for justice, equality, and voices against all kinds of exploitation had been sparked in these countries. So, after the Second World War, the world was passing through a transition phase in the field of the political system. It was a phase of the end of the Victorian era and a phase of the democratic political system. In this system, citizens were master and maker of their government. Hence democracy was based on equality, liberty, and all kinds of (economic, social, and political) justice. So, the unrepresented voices of the masses demanded their part in the system. It was not wrong because it was part of neo political principal rule of law or equality before the law. Mr. Cappelletti has described the thrust for access to justice in third world countries in his words “the right to effective access to justice has emerged with the new social right. And these social rights presuppose mechanisms for their effective protection. So, in the context of third world countries effective access to justice can thus be seen as the most basic human right.”¹⁰ Moreover, after the end of the colonial period, most third-world countries included the principle of access to justice in their constitution and India was also among them, by the basic human right was not an unknown fact for India, it was part of *dharma*.

The development of access to justice movement in India

After a long struggle, India achieved freedom in the year 1947 from the British. After independence, a constituent assembly was set up to frame the Constitution. The members of the constituent assembly were in favour of making India an equal and just country for all people irrespective of their gender, clan, and creed. And we can see the member’s opinions in our Constitution like Article 14 ensuring equality before the law, and Articles 15 & 16 are against exploitation and equality for all gender, caste, clan, and ages. Article 39 (A) of the Constitution of India was added for access to justice for all who can’t afford court crafts and proceedings. So, article 39 (A) of the Constitution of India was way given to the unrepresented masses for their satisfactory participation in the matter of justice. The provisions of legal aid to the poor are based on humanitarian grounds and to help and assist the poverty-stricken people who are socially and economically backwards.¹¹

According to Lord Denning, the greatest revolution in the law since the post-second world war has been the evolution of the mechanism of the system for legal aid.¹² According to Justice P. N. Bhagwati, 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

¹⁰M. Cappelletti and Z. Rabels, “Access to Justice,” 669,672, Comparative General Report (1976).

¹¹C.H. Scott, Legal Aid Past & Present, 4-5, A Brief Bleak Picture.

¹²Lord Denning, What Next in the Law (Butterwords, London, 1982).

resort to it for enforcement of rights given to them by law.¹³ In an article Justice Dr. Jitendra N. Bhatt has said that legal aid as human rights is implicit in Articles 7, 8 & 10 of the Universal Declaration of Human Rights and also provided in clause(3) of Article 14 of the International Covenant on civil and political rights. Even in Article 8 (2) (e) of the American Convention of Human Rights, legal aid is prescribed as a fundamental right.¹⁴

In the case of *M. H. Haskot v. State of Maharashtra*¹⁵ Justice Krishna Iyer found that providing legal aid is the state's duty and not the government's charity. It means that the state is duty-bound to provide and manage the expense of providing legal aid to eligible persons for contesting the case. Legal aid is a guarantee and necessary step for the realization of justice by providing free legal advice till the final stage of the case.

In *Indira Nehru Gandhi v Raj Narayen*¹⁶ it was decided by the Supreme Court that legal aid ensures the 'rule of law' and 'rule of law' is the basic structure of the Indian Constitution. 'Rule of law' is also a well-settled principle of natural justice,¹⁷ which is also a universally accepted principle for delivering justice. So, to satisfy these well-settled principles, the state must strengthen the institution of legal aid. India is full of diversity not in terms of geography but in a matter of socio-political and economic terms too, according to a website there is of two-thirds of the population of India lives below the poverty line and 68.8 per cent of the Indian population lives on less than \$2 a day.¹⁸ From this data, we can understand that a large section of our population can't afford the expense of a legal battle and then they will not raise their voices against injustice which will be not a good sign for a healthy democracy also they will lose their faith in the administration of justice.¹⁹ They will not approach the courts to settle their disputes and then in that situation, they may settle their dispute on roads, they will take the law into their hands, and this situation will take us towards anarchy.

The law commission in its fourteenth report suggested that there should be some provision for assisting the poor man with the payment of court fees and the lawyer's fees and other incidental costs of litigation. If provisions will not be made like so then it will mean that poor man is denied equality in the opportunity to seek justice.²⁰ So, from the point of view of preservation of the right to quality and equal justice legal aid to indigent people is a very important and unique feature of our constitution under Articles 38 (1) and 39 (A) of the Constitution of India. In the case of

¹³Report of the Legal Aid Committee, P. 5. (1971).

¹⁴A.I.R. 2007 Journal 113(Sep. 2007 Part).

¹⁵*M. H. Haskot v. the State of Maharashtra*, (1978) 3 SCC 544.

¹⁶*Indira Nehru Gandhi v Raj Narayen*, A.I.R. 1975 S.C. 2299.

¹⁷*Daryao v. State of U.P.*, A.I.R. 1961 S.C. 1457.

¹⁸Poverty in India: Facts and Figures on the Daily Struggle for Survival available at Poverty in India: Facts and Figures on the Daily Struggle for Survival (soschildrensvillages.ca)(last visited on March 2, 2022).

¹⁹Public Interest Lawyering, Legal Aid and Para Legal Services,196 (Central Law Publications, Allahabad, 7thedn., 2016).

²⁰Law Commission of India, "14th Report on Reform of Judicial Administration," (Sept. 1958).

*Hussainara v. the State of Bihar*²¹, it has been observed by the Supreme Court that the right to free legal aid is an important ingredient of fair, just, and reasonable procedure established by law and it is inherent in the right to life and personal liberty under Article 21 of the Constitution of India. That's why in the Bar Council of India Rule 46 and Advocate Act under section 49 (1) (c) provisions have been for advocates to render legal aid to the poor people. Free legal aid to the poor and indigent is one of the most important duties of an advocate for society.

In the famous case of *Sukhdas v. Union Territory of Arunachal Pradesh*²² Justice P. N. Bhagwati said that in this country there are 70% of people are illiterate and don't know their rights in some cases even educated human beings are also don't know their rights. The lack of legal information brings deception, exploitation, and deprivation of their right. If legal aid will provide to this section of society, then other people who are belonging to the same level of the section will also be aware of the passing of information and legal knowledge. So, legal literacy was made an important segment of this legal aid movement. To achieve these above goals article 39(A) was inserted by the Constitution (Amendment) Act, 1976. Through this amendment, the right to legal aid was inserted as a fundamental right in our Constitution. And in 1980 on the recommendation of the committee for implementing Legal Aid Schemes (CILAS) under the chairmanship of Justice P. N. Bhagwati the *Legal Services Authorities Act, 1987* was passed. But it came into effect on 9 November 1995 with the aim to provide free legal and competent legal aid services to the weaker section of the society.

Efficient management of legal aid authority/clinic

Presently legal aid movement is going in the right direction. Any legal aid institution covers legal literacy, awareness, and management of human resources for smooth functioning. it also covers the appointment of skilled advocates and staff, record maintaining of cases, arrangement of alternate dispute redressal forums like Lok Adalat, counselling and training session, and arrangement of funds for the smooth working of legal aid clinics and institutions.

In the case of *State of Maharashtra v. Manubhai Pragaji Vashi*²³ the Supreme Court observed that for the smooth working of legal aid institutions the state is duty-bound to manage the fund for legal aid clinics. For providing a quality legal aid service there is a need for qualified advocates, law teachers, and students to take their service for quality legal aid facility there should be some token of amount for their appreciation and it is not possible without proper funds. So, the state must arrange funds for different activities like legal literacy camps, door-to-door awareness programs, empanelment of advocates, and for daily office maintenance expenditure etc.

²¹Hussainara v. the State of Bihar, A.I.R. 1979 S.C. 1369.

²²Sukhdas v. Union Territory of Arunachal Pradesh, (1986) 2 SCC 401.

²³State of Maharashtra v. Manubhai Pragaji Vashi, 1995 S.C.C. 730.

The subject of legal aid is not only a term of law rather it is a wide area of administration of justice and it has a social impact. To make it better and more beneficial there is a need of taking help and encouragement of voluntary organizations to take part in it because a voluntary organization works on the ground level, and they have a connection to people from all walks of life so they can spread the words of awareness better. The Supreme Court has advised in the matter of *Centre of Legal Research v. State of Kerala*²⁴ that the state should encourage and support the participation of voluntary organizations or social action groups in operating the legal aid program. It is further also said by the Supreme Court that such organizations or groups should not be under the control of the government.²⁵ Free legal aid is not only a matter of just free advice or consultation but also it should be provided for trial and bail purposes, free legal aid is a complete package for any poor people who wants to fight against injustice or who wants to make their defence in their case where a matter of criminal trial.

In the matter of *M. H. Hoscot v. the State of Maharashtra*²⁶ and the matter of *S.C. Legal Services Committee v. Union of India*²⁷, the Supreme Court issued various guidelines for lower courts to be followed in any case of prisoners, in these guidelines it is also clearly mentioned that the state has a duty to engage the lawyer where the prisoner is unable to engage the lawyer and state will engage the lawyer on its expenses. Now, these guidelines are followed by the legal aid committee. Application for engaging a lawyer moved through *jail Legal Aid Services Committee* undersigned by Remand Advocate to the *District Legal Aid Authority* and the authority authorized their panel lawyer for the case on a subsidized fee. In the above paragraph, I have already written that legal aid is important for social justice the same is delivered by the Supreme Court in *Sugreev v. Sushila Bai*²⁸ for enforcing the constitutional mandate of equality before the law and ensuring access to justice legal aid movement is need of the hour.

But it should be restricted only to poor or indigent people if one can afford fees and legal expenses then this service should not be available to them. This contention was iterated by the Apex Court in the matter of *Ashok Kumar v. the State of Rajasthan*.²⁹ Section 12 of the *Legal Services Act* defines eligibility criteria for getting free legal aid. But an institution can't work without a proper organizational structure so under *NALSA Act* a three-tier structure on the National level, State level, and District-level legal services authority have been created. These legal services authorities are working properly on the ground to achieve their aim. The chief justice of India N. V. Ramana said in a seminar that "the legal profession is not about profit maximization but about service to the

²⁴Centre of Legal Research v. State of Kerela, A.I.R. 1986 S.C. 1332.

²⁵D.K. TRIVEDI v. State of Gujrat, A.I.R. 1986 S.C. 1322

²⁶M.H.Hoscot v. the State of Maharashtra, A.I.R. 1978 S.C. 1548

²⁷S.C. Legal Services Committee v. Union of India, 1 (1998) SLT 214.

²⁸Sugreev v. Sushila Bai, A.I.R. 2003 Raj. 149.

²⁹Ashok Kumar v. the State of Rajasthan, 1995 Cr. L.J. 1231.

society”.³⁰ In that seminar, Justice U. U. Lalit expressed that out of the total cases only 1% of cases were given legal aid so there is a need to spread the word of awareness that certain people are entitled to free legal aid and it is their right.³¹

For management of efficient legal aid services some tools of awareness should be used as I have seen as a panel lawyer and while working as a paralegal volunteer, I have some useful tools for awareness.

Useful points for making legal aid service more efficient for the realization of justice on a grassroots level.

For an effective awareness about legal aid schemes first, we have to focus on making the mass aware that the service is for them and they should get the benefit of it. To achieve the aim of maximum awareness on the ground level we should take the help of informal and formal ways of awareness. Formal ways like organizing seminars, conferences, workshops, etc. many things already are happening over this part but we are not achieving our goal because the level of communication is not matching the level of understanding of grassroots. So, we should focus more and more on the informal ways of communication. We should focus on more outreach activities. For effective outreach, the following measures need to be taken.

For an effective outreach first, we should focus and fix our universe area as we do in research. Then we should know about the economic and social classification of the area, their lifestyle, their way of life, and the language of that particular area, if it is possible, we should try to get the legal case history of that area through websites and draw a chart. This is the initial stage of going outreach activity.

On the second stage we should make teams of dedicated volunteers, we can make some meaningful encouraging names for teams. Then train the volunteer about how to communicate from selected areas. It should be an instruction to the volunteer that try to interact with them in their regional language and not more in a legal way rather in a more informal way with noting down it with paper and pen or record it is if possible. Language is the most important thing when communicating with people about the subject matter.

We should make a team of a skit on the legal subject. The language of the skit or play should be in the local language or a very simple and easy-to-understand language. The skit, play, the song is the best way to communicate informally. If you talk formally to them, they will not deliver you the right information. We can make our team leaders which should be from a third-year or LLM

³⁰Legal Profession About Service to Society, Not Maximizing Profit, India, available at Legal profession about service to society, not maximising profit: CJI Ramana | Latest News India - Hindustan Times as (last visited on March 1, 2022).

³¹Ibid.

first-year student as responsible heads as follow up person to solve the legal problem which will come in while outreaching.

Then we should collect data through forms we should segregate data and make a report over it. The graphical chart will help us to reach the conclusion that what more we can do to make them more aware and what is the most important point where we should focus on in the next visit.

We should give them a handbill on which our local legal aid clinic's address, phone number and the person who is dealing should be mentioned on the handbill. We should give them facilities like photocopy, print our photos, drinking water, sanitation, a calming facility where anyone can feel satisfied to tell freely. Specially in the case of old age, child, and women related cases in our legal aid clinics. We should ensure proper record maintenance of cases in our clinic and the privacy of data.

For maintaining funds of any legal aid clinic, we should not more dependent on just government funds we should raise funds by crowdfunding and through the board of patrons which can be created by the involvement of alumni. We can also take funds from govt. verified Non-Government Organization (N.G.O.) for the funds. And we can also get sponsorship of projects from this thing we should explore the network of social workers in our society or alumni of law schools.

Awareness and funding are not only the key to success on this topic we should also focus on allotting lawyers quickly and make the process very easy of allotting a lawyer. For maintaining the quality and motivating the lawyer a legal authority should organize training sessions and informal chat sessions.

A Legal Aid Authority should release the advocate's bill on time for speedy and qualitative redressal of cases. Because money is a motivating factor for work and we can't ignore it. In the appointment of higher and lower judiciary levels, there should be a priority for those advocates who are serving or have served legal aid authority. It will encourage talented and qualitative ambitious advocates to join legal aid which will improve legal aid services on different levels. The fees should also be increased for empanelled advocates because the current fee structure has not been updated for the last five years.

A Legal Aid Authority should publish its success story in the media to make a stronger public reputation.

A Legal Aid Authority's staff should be very calming, honest, and dedicated to the legal aid movement. And also knowing the local language will help them in efficient communication with the local client.

Access to justice for all is a very jubilant issue in our society. it will not be possible without the proper implementation of legal aid facilities at the grassroots level. For making it more accessible to the grass root and spreading its area to real beneficiaries' legal authority should focus on both formal and informal ways. Courts should focus on speedy redressal of the cases and Authorities should also focus on making awareness about the facility, and self-independent in the matter of finance through the rightful method of fundraising. In awareness or dealing, visitors should be given a liberal, free atmosphere to tell their problems without hesitation. Legal aid is a very appropriate thing to deal with the matter of dissatisfaction related to legal issues from a social and economic class whose voices are unsung. Presently, Legal Aid Institutions are doing better and achieving more and more successful stories. But above things, if they keep in mind, it will grow more and benefit more and more marginal sections of society.