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A GENERAL OVERVIEW OF LEGAL AID AND ADVICE IN INDIA

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ABSTRACT

A vital part of the criminal justice system, legal assistance guarantees that those accused of a crime have access to counsel and a fair trial. The significance of legal aid in the criminal court system is examined in this abstract, along with the difficulties in dispensing it. The fundamental right to legal representation is covered in the first section. This right is established in numerous national and international legal systems, including the Universal Declaration of Human Rights. The abstract then looks at the several channels via which legal help is offered, such as public defenders, individual attorneys, and legal aid organisations. Additionally, it covers the difficulties encountered by persons looking for legal assistance, such as a lack of funding and geographic restrictions, and it shows some creative solutions that have been created to deal with these difficulties.

Keywords: Criminal, Justice, Criminal Court, Human Rights, Legal Aid, Funding, Legal Assistance

INTRODUCTION

Since ancient times, Indian society has helped the destitute and those in need. The behaviour was viewed as a sacrifice to the deity. A weaker segment of society should be protected and assisted in whatever way feasible, according to the Dharma philosophy.

These signs of legal assistance date back to the Vedic age, when some shlokas acknowledged the necessity of shielding the defenceless from the violent. Even in the Vedic era, legal help was prioritised; during the Muslim era, head Qazi was selected as a full-time lawyer to offer free legal counsel to the underprivileged.

The Bombay Legal Society was established in the British era in 1924 to provide access to justice for those in need and to reduce the expense of litigation and the legal system. Following India's independence, the creation of a code of criminal process aided legal aid in cases involving criminal culpability.

According to the United Nations Principles and Guidelines, "legal aid" includes free legal advice, assistance, and representation for people who are detained, arrested, or imprisoned, suspected of committing a crime, or who have been charged with it, as well as for victims and witnesses in the criminal justice system. This is given to people who are in need or when it is in the best interests of justice.

Additionally, "legal aid" is meant to cover the ideas of access to legal information, legal education, and other services offered to people through restorative justice and other alternative conflict resolution approaches.

In addition to reducing the prison population, wrongful convictions, jail overcrowding, courtroom traffic, and the rate of reoffending and victimisation, a functioning legal aid system also reduces the amount of time suspects are kept in jails and other detention facilities. It might

also defend and uphold the rights of victims and witnesses as part of the criminal justice system. Legal aid can assist in lowering crime by encouraging a better understanding of the law.

DEVELOPMENT OF LEGAL AID IN INDIA

Under a number of statutes, including the Legal Services Authorities Act, 1987, and the Indian Constitution, accused people are given legal representation in India. The Legal Services Authorities Act was passed to ensure that justice is not withheld from anyone on the basis of their socioeconomic condition and to offer free and professional legal services to the poorer segments of society.

Everybody who cannot afford legal representation is entitled to free legal help under the Act. This include not just those who have been charged but also crime victims, eyewitnesses, and anybody else who needs legal representation. Legal services, including advice and representation in court, can be offered as part of legal assistance.

These services might aim to help the poor get legal representation, spread legal awareness, and support Lok Adalats, PILs, and other legal reform initiatives that could help bring about justice. Justice Bhagwati claims that the idea of legal assistance has to do with establishing order in society so that people who require it for the defence of their legal rights can easily access the system of dispensing justice.

Several states, starting with Kerala and moving on to Tamil Nadu and Maharashtra, were suggested in the 14th Law Commission Report to offer free legal aid services to the disadvantaged. In 1971, a commission headed by Justice Bhagwati was formed to investigate the duties of judges as well as the State, Taluka, and District Legal Aid Committees.

However, the Processual Justice to Poor report from 1973 by a panel chaired by Justice Iyer placed emphasis on sustaining the notion through the enactment of legislation and the facilitation of legal aid clinics inside law schools. Justices Bhagwati and Krishna Iyer created the groundwork for NALSA in their joint study, which also looked at the efficiency of legal aid programmes and the role of solicitors. As a result, the 42nd Constitutional Amendment introduced article 39A to Chapter IV of the Directive Principles in 1976. The Lok Adalats were added in 1980 by the Committee for Implementation of Legal Aid Scheme (CILAS), which was run by Justice Bhagwati.

THE LEGAL AID AND ADVICE (AMENDMENT) BILL

A piece of proposed legislation called the Legal Aid and Advice (Amendment) Bill aims to make changes to the current Legal Aid and Advice Act of 1972. The bill was first introduced in 2015 and then reintroduced in 2017 to the Indian Parliament.

The fundamental goal of the legislation is to give marginalised and vulnerable groups in society, including as women, children, seniors, and people with disabilities, greater access to legal aid and counsel. It aims to do this by broadening the range of legal aid services and making more legal aid providers available.

A National Legal assistance and Services Authority would be created under the proposed legislation, and it would be in charge of developing rules and regulations for the distribution

of legal assistance and guidance. Additionally, it aims to create State Legal Services Authorities in each state to supervise the localization of legal assistance initiatives.

The creation of legal aid clinics in each district of the nation and the provision of legal assistance to people during the pre-trial, trial, and post-trial phases of legal procedures are among the bill's other important elements. Additionally, the measure aims to amend the Indian Constitution to include legal aid as a fundamental right. Overall, if passed, the Legal Aid and Advice (Amendment) Bill might greatly increase India's marginalised people's access to justice.

NEED OF THIS ACT

The constitutional requirement was put into practise for the provision of legal aid services to the impoverished and members of society's weaker classes. India is a developing nation where the majority of the people are impoverished, barely making ends meet, and unable to pay for services. Therefore, legal aid is crucial for the protection of the vulnerable and destitute as well as for the well-functioning rule of law in society. The government system must offer if the poor illiterate individual is denied equal opportunity to pursue justice because he is not legally competent to help a lawyer for himself.

As a result, the court of the nation has started a programme to offer legal aid services to the underprivileged and needy as a whole society, regardless of their financial situation. The Legal Services Authority Act of 1987 established the National Legal Services Authority (NALSA), which provides free legal services to the destitute and underprivileged who cannot pay them and arranges Lok Adalats for the civil resolution of disputes.

PURPOSE OF THIS ACT

Provide legal aid services to the underprivileged and illiterate so that they can obtain surety justice based on equal opportunity for everyone in the society as a whole. People learn about their legal and constitutional right to receive free legal aid and services from the government through the passage of Article 39A, as well as the obligation of the government to provide free legal services and swift justice to its citizens. Victimized citizens who suffered greatly because they were unable to obtain legal assistance for their needs and requirements must be compensated. It was the responsibility of the government to offer these services. Encourage the use of alternative conflict resolution methods like ADR, which involves neutral evaluation, arbitration, and mediation and allows the parties to come to an agreement among themselves based on the mediator's arguments. Organised Lok Adalats contributed to the success of free legal aid services in the nation; individuals have recently begun to become aware of their fundamental right to legal assistance and the right to pursue justice within the Act's existing framework.

RIGHT TO FREE TRIAL AND FREE LEGAL AID AS A FUNDAMENTAL CONCOMITANT

Two crucial essential requisites of the right to access justice are the right to a fair trial and the availability of free legal representation.

A number of international human rights treaties and state constitutions recognise the right to a fair trial as a fundamental human right. This right entails the right to a fair trial by an unbiased jury, the right to an open hearing, the right to counsel, the ability to cross-examine witnesses, and the right to appeal.

A recognised tenet of international human rights law, free legal assistance is guaranteed in most national constitutions, including the Indian Constitution. Article 39A of the Indian Constitution guarantees all people access to free legal representation, with a focus on the impoverished and disadvantaged groups in society. A recognised tenet of international human rights law, free legal assistance is guaranteed in most national constitutions, including the Indian Constitution. Article 39A of the Indian Constitution guarantees all people access to free legal representation, with a focus on the impoverished and disadvantaged groups in society.

FREE LEGAL AID IN INDIA

The right to legal representation goes hand in hand with the right to a fair trial, one of the most important human rights. The writers' efforts to create a study about the Indian situation have made this right increasingly important.

India is a nation free of illiteracy, poverty, and the ignorance of a wide variety of individuals who are ignorant of the specifics of the legal system. Only when they are facing a charge, whether criminal or civil, or when they are the victims themselves, do they learn about the legal processes and procedures. Even literate people who lack awareness are unable to understand the requirements of the legal system.

A politician's daughter fell in love with Nitish Katara, a man from a modest background, and it did not sit well with her overly powerful and notorious politician father, so the man was brutally murdered. This was very well depicted by Nilam Katara, the brave mother of the murdered Nitish Katara, the victim of one of India's most famous murders. Ms. Nilam Katara, the mother of the murdered Nitish Katara, whose husband was experiencing a paralytic attack, was forced to face her fate on her own shortly after the tragedy in an effort to seek justice. She did not come from a legal background, and as a result, she had to endure a great deal of hardship as a result of the rigid and formalistic legal procedures in India occasionally impeding her attempts. Despite coming from a highly educated upper middle-class family and having a good education herself, she endured unfathomable suffering as she fought for justice for her murdered son.

She later described her struggles for justice in an interview, calling for the inclusion of some fundamental legal concepts in primary and secondary education so that citizens are aware of the rules that govern them and are not suddenly exposed to an unfamiliar environment during one of life's most trying periods. Thus, the aforementioned incident can demonstrate that, with the exception of a small group of people, the Indian population knows very little about the complex legal system that governs them and that it is not acceptable to use ignorance of any law from that vast collection of laws as an excuse. In such situations, the need for those who are familiar with the law becomes crucial, and when we consider the illiterate and impoverished mass that makes up the majority of the large Indian population, the need for such people grows exponentially at no cost. Because of this, the Supreme Court of India, the nation's highest court, played a crucial role in establishing free legal aid as one of the fundamental human rights.

Every person who must file or defend a case is entitled to legal services under Section 12 of National Legal Services Authority Act (NALSA) 1987, if they meet the following criteria:

- A. any member of a Scheduled caste or Scheduled Tribe;
- B. they are a victim of human trafficking or a beggar;
- C. they are a woman and child;

- D. a person who is mentally ill or otherwise disabled;
- E. a person who is the victim of unjustifiable circumstances, such as a mass catastrophe, ethnic conflict, caste atrocities, flood, drought, earthquake, or industrial disaster
an industrial worker;
- F. an industrial worker

IMPORTANCE OF LEGAL AID IN INDIA

Legal assistance is essential to ensuring that accused people are not denied justice simply because they lack the financial means to do so. It guarantees that individuals have access to legal counsel, which is necessary to provide a fair trial. The criminal justice system would be severely skewed in favour of those who can afford to retain the best attorneys in the absence of legal aid.

Legal aid is essential for defending the rights of those who have been accused. It guarantees that people are conscious of their rights and that these rights are upheld throughout the course of the inquiry and trial. It aids in the prevention of erroneous convictions and injustices, which can have terrible repercussions for innocent people and their families. Access to justice is another goal of legal assistance, and it is a cornerstone of any democracy. It makes sure that everyone, regardless of their financial condition, has access to justice, not just those who can afford to pay for it.

ISSUES AND CHALLENGES

There is still a gap that needs to be filled even after numerous law provisions, committees, and authorities. Many people still accept injustice today because they cannot afford to have a lawyer defend them. Many people who are innocent but condemned and unable to defend themselves are among the many reasons why there are so many cases in court that are still outstanding. The execution of legal aid services is hampered by a number of difficulties and problems.

1. Lack of Public Legal Education and Legal Awareness

These legal aid services are for the underprivileged and illiterate, and their lack of education is their main problem. They lack legal knowledge, which means they are ignorant of their fundamental and legal rights. Few people are aware of the legal aid services that are available to them. As a result, the legal aid movement has not succeeded in its purpose because few people are aware of Lok Adalats, Legal Aid, etc.

2. Lack of Support by Advocates, Lawyers, etc.

The majority of lawyers and advocates nowadays do not want to take part in such social services since they all want to be paid fairly for their work. Only a small number of solicitors provide these services, yet the absence of competent legal counsel makes it more difficult to administer justice.

3. Lack of Powers to Lok Adalats

Compared to civil courts, Lok Adalats have fewer powers. First, there aren't enough formalities. The parties cannot be forced to appear for the proceedings in this case, so. There is frequently a delay in the resolution when one of the parties does not show up for the hearing. (Website-lexscriptamagazine.com) 7 (Email-riday.r662@gmail.com)

4. Underutilisation of Para-legal Volunteers

These paralegal volunteers' primary responsibility is to spread awareness of legal aid programmes and camps while also connecting with the underprivileged and socially vulnerable. But these paralegal volunteers are not properly trained, monitored, or verified. Additionally, compared to the entire population, the number of these volunteers is extremely low.

LANDMARK CASE GENERATING LEGAL AID IN INDIA

Sheela Barse Vs. Union of Indian

A ruling was made that it is a constitutional requirement demanded not only by Art. 39A but also by Articles 21 & 14 to provide legal representation to a poor defendant who has been detained and is in danger of losing his life or his freedom. Everyone has an equal right to life and liberty, with the exception of situations when it is prohibited by law, according to Article 21.

Hussainara Khatoon v. Union of India

In this case, it was decided that if an accused individual cannot afford to hire counsel, the state must offer free legal help to that person.

Sukhdas Vs. Union Territory Of Arunachal Pradesh

It was also determined that if a suspect was not adequately notified of his rights and persisted in being unrepresented by an advocate, any conviction that resulted from the suspect's trial would be subject to being reversed. Similarly, Article 14 talks about legal equality.

According to Section 304 of the Criminal Procedure Code, the courts must offer legal assistance to an accused who lacks the resources and funds to hire a lawyer at the government's expense. Without a fair trial and expert help defending the accused against the criminal charge, there cannot be fair equality in criminal proceedings.

CONCLUSION

India's population of nearly half is unable to afford the high legal fees that are charged there. However, a lot of these lawyers also do pro bono work.

However, it necessitates the legally mandated free legal assistance for people in need in order to uphold their faith in the legal system. However, no matter how many legislations and laws are written, very nothing will change until and until these people are made aware of the law. The only way to raise legal awareness is through legal education, which involves teaching the disadvantaged about the laws and judicial system. Only then can one hope to see the welfare state notion come to fruition in its truest form, and the term justice—which is referenced in the

Preamble of the Indian Constitution—show its power over the country's territory through the Indian people.

Legal aid is important, but there are still a lot of issues that need to be resolved. These include a lack of proper funding for legal aid programmes, a lack of knowledge among people about their legal assistance rights, and a dearth of qualified lawyers ready to offer legal aid services. To solve these issues and guarantee that legal assistance is accessible to everyone, governments and civil society organisations must collaborate.

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