IJNRD.ORG ISSN : 2456-4184
INTERNATIONAL JOURNAL OF NOVEL RESEARCH AND DEVELOPMENT (IJNRD) | IJNRD.ORG
An International Open Access, Peer-reviewed, Refereed Journal

LEGAL AID AND SOCIAL JUSTICE

Yogeeta Sharma
Research Scholar
Himachal Pradesh University, Summerhill, Shimla, India

Abstract: Legal aid is a tool that enables the impoverished or otherwise disadvantaged to afford any kind of support when they seek justice and a fair trial in court. Any legal system would be incomplete without legal help, which is why it is essential to achieving the aims of the system. "Equality before the law" and "equal protection of the laws" for all are the objectives, along with a Supreme Court narrative that supports Article 14 that works. By ensuring that the weaker and oppressed groups in society have equal access to justice, legal assistance aims to uphold the constitutional commitment in letter and spirit. Although the legal aid movement has failed in its goals, free legal aid has long been regarded as a necessary element of the rule of law. There is a significant gap between the goals set and accomplished. The primary obstacle to India's push for legal aid is legal ignorance. Because individuals continue to be ignorant of their basic rights, the legal aid movement's objective has not yet been fulfilled. The poor are abused and robbed of their rights because they lack legal understanding. It is ignorance of the law that allows the impoverished to be taken advantage of and denied their privileges and rights. In order to fulfil the constitution's promise to provide equal and fair justice to all segments of society, especially the indigent segment, in order to ensure social justice, it is crucial to raise public awareness of the issue and make sure that legal aid is actually provided. Failure to do so will frequently result in abuse of the rights and benefits of the poor.

1. Introduction

Nothing irritates the human heart more than a frightening sense of injustice, which is why democracy, and the rule of law can only survive when people have effective & speedy access to justice. The importance of legal aid as a foundational element of justice is now better understood as legal aid is a fundamental part of justice.[1] Legal aid is basically a tool that helps those who are poor or otherwise disadvantaged to afford any assistance in accessing the court for justice and a fair trial. Legal assistance is a crucial component of any legal system, and its absence will make the legal system's goals ineffective. By developing a suitable system of just relationships and fair trials, social justice focuses more on relationships between groups within society than it does on individual justice. Combining these two ideas yields the conclusion that everyone should have equal access to the legal system, regardless of our socioeconomic status in the society.[2]

2. Lawyer And Social Justice

A lawyer while lawyering, a promoter while doing support is presumably making his own fortune, yet notwithstanding that his specialty of lawyering, his strategies of backing, his abilities of contention, his treatment to the law and current realities close by cast distinct shadows on the circumstances in the society, lawyers make the main commitment to the ultimate result of equity framework that is the court decisions and judgment which eventually shape the future way of our society. The job of a lawyer is key to one of the crucial organs of the state for example judiciary. Law isn't just a

[1] https://bvpnlcpune.org/law/law/SocialJustice.html last visited on Dec 19, 2022.
[2] Shipra Agrawal, "Social Justice and Legal Aid", *ProBono India available at*: http://probono-india.in/blog-detail.php?id=58 last visited on Nov 28, 2022.

profession to keep the pot bubbling yet it's a respectable profession. In Law profession individuals can take care of their concerns and find solutions to many inquiries which isn't offered by any other societal institutions.[3]

Every practicing advocate generally remember that anyone who truly needs legal counsellor or legal representation but cannot afford the legitimate help because of financial constraints. This feature is generally significant for the nation's legal system since if people are only given their rights, issues won't be resolved unless they are also given remedies alongside. However, if legal aid is not offered, the majority-poor part of India will not be able to use these remedies.[4]

3. Legislation and Legal Aid

Legal aid is a topic of conversation in every developed and developing nation. Because there are those in every society who cannot afford to use the legal services which are offered to them by any type of government to safeguard their rights. Similarly, India's primary law of land, the Constitution of India, includes provisions for legal aid. Indian Constitution was always connected to social justice. The wording of the Preamble and the Directive Principles of State Policy of the Constitution leans socialist. The Constitution's reservation provisions for Scheduled Castes and Scheduled Tribes serves as the best example of this. The framers of the Constitution were of the opinion that merely granting these groups the right to equality would not be sufficient to end the ages-old injustices they had experienced or to give their right to vote any meaningful significance. To advance their interests, special constitutional measures were required. Similar to this, under Indian law, social justice is safeguarded by providing legal help to those who cannot afford legal services.[5] In order to ensure justice, the Indian Constitution grants the right to free legal aid. The First Law Commission of India first considered the necessity for lawyers to represent clients in court, during jail appeals, and during criminal processes, and the 1961 Advocates Act urged the Bar Council to "provide legal help to the destitute." In India, there was a rise in interest in the 1970s and 1980s in addressing and expanding public awareness of the need for legal aid for the specific population.[6]

Article 14 of the Constitution obliges the State to guarantee all its citizens equality before the law and a legal framework that ensures justice on the basis of equal opportunity for all. In this regard, Articles 38 and 39 of the Indian Constitution provide a crystal-clear mandate. It has been established that inability to give free legal aid to an accused at the expense for the State unless the accused declines, would invalidate the trial that giving free legal aid isn't government's act of charity yet a state's obligation that ought not be underestimated.[7] According to Article 38 of the Indian Constitution, the State shall endeavour to promote the welfare of the people by securing and protecting a social order in which social, economic, and political justice shall inform all institutions. According to Article 39A, "the State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid" to the poor and needy, this is a particular provision. Nehruvian socialism and other forms of socialism were present throughout India's political history.[8]

Under Article 22(1) it is expressed that No individual who is arrested will be denied the option to counsel, and to be safeguarded by, a legal counsel.[9] India's judiciary and bar leaders have long acknowledged the importance of providing all members in society with efficient legal representation.

According to Section 304 of the Criminal Procedure Code, if a party is not being represented by a pleader and cannot afford one due to their financial situation, the court should assign one at the expense of the state.[10] In a similar vein, provisions pertaining to free legal aid are also found in other Acts, such as the Code of Civil Procedure.

According to the Civil Procedure Code of India, Order 33: Suits by Indigent Person, when a request to file a lawsuit on behalf of an indigent person is approved, the plaintiff is not required to pay court costs. If the circumstances of the case demand it, the court may assign a pleader to him if he is not represented by one; this right extends to the dependant as well.[11]

[3] Ishika Sharma, "Legal Aid, Poverty and Social Justice", *ProBono India*, *available at:* https://probono-india.in/blog-detail.php?id=132 last visited on April 04, 2024.

[4] Ibid.

[5] Ibid.

[6] supra note 2.

[7] supra note2.

[8] Kaleeswaram Raj, "New legal aid system needed to ensure justice for the poor", *Frontline*, Nov. 13, 2022 also available at https://frontline.thehindu.com/the-nation/urgent-requirement-new-legal-aid-system-to-ensure-justice-for-the-poor/article65791609.ece#:~:text=Article%2039A%20particularly%20says%20that,and%20other%20brands%20of%20socialism last visited on April 04, 2024

[9] The Constitution of India, 1950.

[10] The Code of Criminal Procedure, 1973.

[11] The Code of Civil Procedure, 1908.

The Legal Services Authorities Act, 1987, a step toward legal aid, aims to empower individuals' cooperation to participate in judicial administration through Lok Adalats, which is kind of like a growth of public interest representation in rural areas supporting social justice in India. It ensures that no citizen is denied access to justice due to financial or other barriers and to ensure that the functioning of the legal system advances social justice. This act also aims to provide free and competent legal services to the poor, disadvantaged, and socially disabled. Under this Act, in every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organise Lok Adalats.

4. Access Dilemma

An essential component of the Rule of Law, which is seen as a fundamental aspect of the Constitution, is access to justice.[12] A Constitution Bench reaffirmed that access to justice is a basic right under part III of the Constitution in Anita Kushwaha v. Pushap Sudan[13]. According to the court, the four aspects of "access" are (i) the requirement for an adjudicatory mechanism; (ii) its accessibility in terms of distance; (iii) the mechanism's promptness; and (iv) the mechanism's affordability for litigants.

There are numerous dimensions to the concept of access to justice. Additionally, it also touches on the problem of the marginalised and oppressed not having enough representation in the system. India's legal profession is basically driven by the elites, with few Dalits and minorities addressed in the calling's creamy layer. This also applies to the Bench. Therefore, the issue of access presents significant new difficulties to those who are already marginalised, such Dalits, members of linguistic or sexual minorities, sex workers, physically disabled people, street sellers, beggars, nomads, ragpickers, the elderly, the sick, and so forth. As a result, when discussing access to justice "the poor" has a number of different connotations.[14]

The goal is to ensure "equality before the law" and "equal protection of the laws" for everyone, as well as a functioning narrative for Article 14 within the Supreme Court. Finding an institutional version of Article 21 that guarantees everyone a dignified life and legally established legal procedure. access to the rule of law is also important. This requires a vision and a plan that are in line with the ideals of a socialist legal philosophy that the nation somehow throughout the years lost.[15]

The 2030 Agenda for Sustainable Development places a strong emphasis on access to justice. Goal 16's Target 16.3 aims to ensure that everyone has equitable access to justice at both the national and international levels. When a person's fundamental rights to life and liberty are in danger, this becomes even more crucial. The Basic Principles on the Role of Lawyers, published in 1990, begin with the following: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings." According to the Basic Principles, it is also the duty of the state and the legal community to guarantee that everyone, regardless of background or financial circumstances, has access to legal representation in order to defend the right to equality before the law.[16]

Access to justice is largely reliant on legal aid. Additionally, it lies at the core of the 2030 Agenda's necessity for equality as well as its main goal: must not leave anybody behind. For the downtrodden, marginalised, and poor, having access to legal aid correlates into having access to justice. It safeguards those who lack the resources to stand up for their rights in the criminal judicial system by being offered without cost: the people who are being confined, arrested, or in prison; those who are being investigated for, or charged with, a crime; victims, and witnesses. These people can better navigate the complex and overwhelming justice system with the use of legal aid. As it leads to a decrease in the duration of time suspects are detained in custody, the frequency of erroneous convictions, the occurrence of bribery and justice system abuse, and the rates of committing crime and revictimization, it has an influence on families and communities. For the protection of people's rights, to assist them in gaining access to necessary services, and to make sure that States' execution of emergency measures upholds international human rights standards, access to legal aid in times of crisis is critical.[17]

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly in 2012, acknowledged the significant role of legal aid and made mandatory that Member States

[12] supra note 8.
[13] (2016) 8 SCC 509.
[14] supra note 8.
[15] Ibid.
[16] https://www.unodc.org/unodc/en/justice-and-prison-reform/legal-aid.html last visited on April 04, 2024.
[17] Ibid.

establish systems that are easily accessible, efficient, long-lasting, and credible. These systems must also provide technical assistance for groups, particularly women and children. "Legal advice, support, and representation [...]" are all included in legal aid, that is offered at no cost for people without sufficient resources or when the interests of justice so require", as well as legal education, access to legal information, and service delivered through alternative dispute settlement methods and restorative justice processes. Additionally acknowledged by the UN Principles and Guidelines are the contributions made by service providers such civil society organisations, paralegals, and law students.[18]

5. Issues and challenges

Despite the existence of various statutory provisions, committees, and bodies, there is still a gap which it needs to be filled. Since they are unable afford to hire an advocate to represent them, many people nevertheless accept injustice. There are many factors for the large number of cases still pending in courts, including the large number of innocent people who were found guilty and are unable to defend themselves. The legal aid system in India has proven ineffective. The execution of legal aid services is hampered by various problems and difficulties.[19] There are the following reasons why the National Legal Services Authorities has not been able to deliver real legal aid:

i) Public ignorance of the law and lack of awareness of the availability of legal aid

These legal aid services are for the underprivileged and illiterate, and their lack of education, Lack of awareness of the law among individuals is another issue that arises during the implementation of the legal aid program. They lack legal knowledge, which means they are ignorant of their fundamental and legal rights. When they 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. Only 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.[20]

ii) Lack of proper standard fee for legal professionals.

The lawyers compel their clients 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 might 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. 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. If they work, they did not work with the same level of passion and dedication as they do for a case in which they are paid, which eventually defeats the very objective of legal aid, making its effectiveness a topic of significant worry. Only a small number of attorneys provide these services, yet the absence of competent legal advice makes it more difficult to administer justice. Also, there is a perception that free service is incompatible with quality service.

iii) Lack of authority over Lok Adalats

Compared to civil courts, Lok Adalats have limited authority. First, there still are inadequate techniques. In this scenario, they are not able to compel the parties to appear for the hearings. There is frequently a delay in the settlement when one of the parties fails to show up for the hearing.[21]

iv) Paralegal volunteers aren't being used enough

These paralegal volunteers' primary duty is to support for legal aid programmes and camps while also reaching out to the underprivileged and more vulnerable members of society. However, these paralegal volunteers do not receive the appropriate training, supervision, or verification. Moreover, these volunteers help compensate a very small proportion of the population altogether.[22]

v) It is important to understand that providing members of society who are economically disadvantaged with a means of redressisng their grievances and asserting their rights is necessary for their rehabilitation. People will be more likely to become contributing members of society if the law can be made to work for them.

On the other hand, if the law is viewed as an "enemy" and a poor person is unable to redress his or her grievances through the tools of the law, he or she may turn against the legally constituted authorities, encouraging destructive impulses. Poor people who are erroneously convicted due to insufficient legal representation not only receive an unfair punishment, but they are also more prone to become social outcasts. Poor people won't have much faith in the rights that democracy gives them if they can't fight an unfair eviction. The "rule of law" is not likely to make sense to a poor individual who has been scammed and has nowhere to turn since he cannot afford legal representation.

---

[18] Ibid.

[19] Beejal Ahuja, "Challenges and solutions to free legal aid", *iPleaders*, Nov. 29, 2020 *available at* https://blog.ipleaders.in/challenges-solutions-free-legal-aid/ (last visited on April 04, 2024).

[20] Ibid.

[21] Ibid.

[22] Ibid.

6. Solutions and Suggestions

When all those in need and those with low incomes are aware of it and taking advantage of it as it is their fundamental right, the aim of legal aid will have been accomplished. Therefore, some changes are required in order to close those gaps in the legal aid system.[23]

i) What NGOs do

Engaging non-governmental organisations more actively in the process of raising public knowledge of citizens' rights and proper administration of justice.[24] It requires to embark on a campaign to inform and educate the public of its right to free legal aid. The focus should be more on Legal Aid because it is essential in this present scenario where gulf between haves and have-nots is increasing day by day. And elimination of social and structural discrimination against the poor will be achieved when free Legal Aid is used as an important tool in bringing about justice.

ii) Legal aid programmes and legal awareness

For the purpose of educating the public about social justice and free legal aid programmes for the poor, there should be a widespread organisation of legal aid clinics and Lok Adalats. To educate people of various impoverished areas about their rights and the law and to persuade them to choose free legal aid by using Lok Adalats, ADR, and other alternative dispute resolution mechanisms, entitlement centres should be established there.[25]

iii) Legal Literacy Initiative

Other developed nations have missions with two-year or five-year time frames to educate the masses about the law and their rights. India could potentially roll out a five-year programme to educate people of their legal rights[26] as National Legal Services Authority (NALSA) has formulated National Plan of Action on spreading Legal Literacy across the country and launched the National Legal Literacy Mission for a period of 5(five) years i.e. 2005 to 09.

iv) Role of Legal Professionals

More lawyers must be encouraged to deliver free legal aid. Legal fraternity members, as well as everyone else who is aware of their rights and the protections afforded by the law, are equally responsible for raising public awareness of legal aid. The Constitution's promise to provide legal aid can only be cherished and fulfilled when society steps up to assist, care for, and nourish its vulnerable population in accordance with their legal rights.[27] This can be achieved by establishing a link between the local court and the legal clinics of law schools. So that those in need of assistance can first approach these non-judicial officers to learn about their rights as outlined in the Constitution of India.

v) Better remuneration to the lawyers

Due to their disinterest in providing free legal services and expectation of payment in the form of a set price, it is difficult to obtain a qualified lawyer representation nowadays.[28] A party must have access to attorneys who will consider it worthwhile to dedicate their entire time and attention to a legal aid matter if legal aid is to be a meaningful right. Thus, the government or courts should pay lawyers proper standard fee, even if they represent or speak on behalf of the accused for free.[29]

vi) Feedback strategy

The supervision of the performance of the counsels should be analyzed using the feedback method, which means asking the public for comment on the work of the counsel prior to actually producing accurate progress reports for each advocate. A suitable monitoring committee might be constituted to do all of this.[30]

Without equal access to the law, the system not only deprives the poor of their only form of defence but also gives their oppressors' bands the most potent and brutal weapon ever created. The government must take the necessary action by enlightening the public about their fundamental rights in order to have a successful legal aid movement in India. Ensuring "equal justice to all" should be the government's aim or mission. The Legal Services Authority Act must be effectively implemented in order to tackle the major issue of public ignorance and lack of legal education. If people are informed and aware of the rights there will be proper utilisation of free legal aid services, etc. All of this results in the exploitation and deprivation of rights by those in need. The legal aid services ought to be properly managed and supervised.[31]

---

[23] Ibid.

[24] Ibid.

[25] Ibid.

[26] Ibid.

[27] supra note 2.

[28] supra note 16.

[29] Ibid.

[30] Ibid.

[31] supra note 16.

vii) Adequate Financial Support

It is imperative that per capita spending along with the budget allocated to NALSA be increased. Additionally, provision could be made for companies to spend their corporate social responsibility (CSR) funds for legal aid and towards increasing the compensation for panel lawyers to enhance the quality of service.[32]

viii) Quality is never compromised

It is critical that lawyers, legislators, and the judiciary recognise their roles in upholding the vision of Article 39A. As part of their professional responsibilities, both experienced counsel and newcomers to the bar must volunteer to represent the poor. The legislature and judiciary must collectively require every advocate to take on a minimum number of pro bono cases during their tenure, and create a strict framework to incentivise them, including giving weightage to legal aid experience in the appointment of senior advocates/judges.[33]

ix) Role of Law Schools

We must increase the involvement of law schools in the justice delivery process. Since its inception in the 1970s, legal aid has yet to be fully incorporated into India's clinical legal education. According to the United Nations Development Programme (UNDP), legal aid centres in law schools play a critical role in increasing legal literacy among the masses and providing related assistance. This is a well-established practice in many countries. In the United Kingdom, for instance, a study revealed that university-run legal clinics handle an average of 104 cases per year.

x) It is long overdue for the government, legal fraternity and civil society in India to work together to correct the system's flaws. Otherwise, the constitutional right to free legal aid rings hollow.

7. Conclusion

Equal justice for all should be the primary goal of the state, and legal assistance is a right of people as well as a duty of the government that goes beyond simple altruism[34] because legal aid is a right of the people and a duty of the state, not a gift or a charitable act. Distributive justice, efficient welfare benefit implementation, and the abolition of structural and social discrimination against the poor are the main goals of legal aid. It operates in compliance with the Legal Services Authorities Act of 1987, which serves as the norm for the provision of free justice. "Equal justice for all" should be the main goal of the state. Legal aid works to ensure that the constitutional promise is upheld in letter and spirit and that the oppressed and weaker segments of society have access to equal justice. Free legal aid has been considered an essential component of the rule of law, however the legal aid movement has not succeeded in its mission. The goals established and achieved are far apart. Legal ignorance is the main barrier to the movement for legal help in India. The goal of the legal aid movement has not yet been accomplished because people are still unaware of their fundamental rights. Lack of legal knowledge is what causes the poor to be exploited and deprived of their rights and advantages.[35] Failure to provide legal aid will often lead to abuse of the poor's rights and benefits, so it is important to raise public awareness of the issue and ensure that legal aid is actually provided in order to fulfil the constitution's promise to provide equal and fair justice to all segments of society, especially the indigent segment, in order to ensure social justice.[36]

[32] Amar Patnaik, "NALSA was supposed to be India's beacon for legal aid. But it's stuck in a systemic rut", *The Print*, Jan. 20, 2022, *available at* https://theprint.in/opinion/nalsa-was-supposed-to-be-indias-beacon-for-legal-aid-but-its-stuck-in-a-systemic-rut/807587/ (last visited on April 04, 2024).

[33] Ibid.

[34] supra note 2.

[35] Sripriya. T, "Legal Aid and Awareness in India: Issues and Challenges", *Legal Service India* available at https://www.legalserviceindia.com/legal/article-82-legal-aid-and-awareness-in-india-issues-and-challenges.html last visited on April 04, 2024.

[36] supra note 2.