

# CONCEPT OF LEGAL AID AND ITS RELEVANCE: AN ANALYTICAL STUDY

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**Abstract:** The research paper discusses the importance of legal aid in India. The paper highlights that the judiciary plays a significant role in providing legal relief to the aggrieved and the victims. Legal aid is a way of providing help to those who are unable to get legal help and have no knowledge regarding how to approach the court. The idea of legal help relies on the right of equality before law, the right to have an advocate, and a right to a fair trial. These are all Constitutional Rights which can be guaranteed through the way of providing legal aid to the general public. The paper also discusses the concept of free legal assistance, which is highly beneficial for those citizens who do not have sufficient money to hire an advocate or get any legal assistance. The benefit of legal aid can be provided through free advocates by the court, who get paid through the fund of court later on. These Advocates are on the panel of Legal Aid in the Courts. Legal aid also covers financial assistance to the needy. The paper concludes that the concept of legal aid is significantly seen in the concept of welfare, development, and upliftment of citizens, and it is interconnected with the concept of free legal aid.

**Keywords :** Legal aid, Equality before law, Free legal assistance, Constitutional Rights.

**1.0 Introduction:** Judiciary plays a significant role as it provides legal reliefs to the aggrieved and the victims. It has been rightly said that judiciary is one of the prominent pillars on which an administration of a country rely on. But to take out the benefit out of it, it is highly crucial that firstly, to be legally aware regarding one's rights. Secondly to have an access of legal aid. In other words, legal aid is the way of providing help to those who are unable to get legal help and have no knowledge regarding how to approach the court. The idea of legal help relies on the right of equality before law, the right to have an advocate and a right to a fair trial. These all are the Constitutional Rights which can be guaranteed through the way of providing legal aid to the general public. Under this paper, a reasonable effort has been done to clarify the utility and relevance of legal aid and in what way it is getting implemented in the country like India.

## **1.1 Concept of Free Legal Assistance**

Free Legal Assistance is highly beneficial for those citizens who do not have sufficient money to hire an advocate or get any legal assistance. The help of legal assistance makes one able to represent oneself before court with the help of legal professionals sometimes free and sometimes at very minimal cost. The benefit of legal aid can be provided through free advocates by the court, who get paid through the fund of court later on. These Advocates are on the panel of Legal Aid in the Courts. Legal aid also covers financial assistance to the needy. As it has been clearly written that state should act for the welfare of the state and should work by keeping in mind the welfare, development and upliftment of its citizens. This concept is significantly seen in the concept of legal aid as it is interconnected with the concept of doing task of welfaring the citizens of the state, and the reason behind applying the principle of providing free legal assistance is to fulfill the obligation of a state to be a welfare state. The provision of Legal aid is like a welfare which ensures that every needy person or all the persons entitled to get should be provided with the legal assistance and all other facilities which they deserve. They will have access not only of legal help but also of courts.

Under the Indian Constitution, preamble clearly states that every citizen is entitled to get every kind of justice like socio, economic and political. The specific mention of Article 38 and 39A is important here. Article 38 says, "The State shall promote the welfare of the people by securing and protecting the social order including justice." Under Article 39-A it is clearly stated, "The state shall in particular, provide free legal aid, by suitable legislation or schemes, to ensure that opportunities for securing justice are not denied to any citizen." In the same way, Article 14 states regarding equality before law. Under Section 304 of CrPC there is strict imposition of obligation on the courts to provide all kind of legal assistance to all those accused who are unable to do so. Equality in criminal cases cannot be imagined without giving legal assistance or professional help to the accused. This all is needed for carrying a fair trial. Under Order 33 Rule 17 of CPC, it is clearly stated that if a person is unable to get legal aid for himself/herself, then it is the duty of the court to exempt him from such

expenses like court fee. The need and importance of imparting legal aid can be seen in various Supreme Court's Judgements. In *Sheela Barse vs. State of Maharashtra*<sup>i</sup>, Court held that every person has full right to have legal assistance who is accused and arrested as it is his constitutional rights under various articles like 14,21 and 39-A. Our Constitution clearly signifies that personal liberty is extremely important to get any kind of legal assistance to protect the same is mandatory. It was held in *Hussainara khatoon vs. State of Bihar*<sup>ii</sup>, that if an accused is unable to endure the expense of legal aid then it is the duty of state to provide him/her free legal services. In *Sukhdas vs. Union Territory of Arunachal Pradesh*<sup>iii</sup>, Court held that the conviction of the accused will be set aside on the ground of constitutional infirmity if he has not been told about the right of his of getting free of cost advocate.

## **2.0 Need For Legal Aid**

A drastic change can be seen in the mindsets of the general public towards the utility of legal aid. Undoubtedly, people as well as the Government are realizing the significance of the concept of legal aid but even after putting all the reasonable efforts, the set goals have not yet been achieved. Although there are laws on papers for the protection of poor people, but due to the lethargic ways of government many of them are still not implemented, the same was observed by Supreme Court in *State of Haryana v. Darshana Devi*<sup>iv</sup>, that the poor shall not be priced out of the justice market by insistence on court fee. There are many hindrances while implementing the concept of free legal aid in the country. There are so many reasons of it. Firstly, citizens are not vigilant enough regarding their basic rights which caused big hindrance on the way of achieving the best benefits of legal aid movement. It is therefore, no relief has been reached to the poor and indigent and they still feel the same exploitation. Thus, it is the need of the hour that awareness should be spread from the grass root levels because the tortured prevail there. The basic education regarding the significance of utilizing rights like of free legal aid is must for everyone who is deprived of such legal assistance due to financial reasons. If they would not get free legal aid then they would either just let themselves harassed and keep their silence or sometimes try to solve them problems with anger or rage and get indulge into some kind of crime. This severely harms the basic idea of the legal system of the country and consequently the citizens lose trust in law of the country. The basic principles of natural justice can be achieved only by the aid of legal assistance to that party who is not able to afford the cost of legal professional. Only then it could be said that both the parties got the opportunity of being heard has been given in order to finalize who is guilty. Free legal assistance eventually ensure the equal opportunity of being represented in the Court.

Another crucial role which get played with the assistance of this provision is to ensure the removal of inequality. Although, inequalities can be seen very easily in each and every phase of the society, however to eradicate this hindrance to some extent in legal sphere, the idea of providing free legal assistance and imparting legal assistance free of cost is mandatory and important so that every citizen irrespective belonging to his/her caste, religion, region, community or place can get equal justice. Moreover, it is part of the legal professional ethics for any lawyer or advocate to never let money a parameter of proving help in accessing justice.

## **2.1 Legal Aid Mechanism in India**

An aggrieved person who is willing to avail the benefit of free legal assistance can report either in writing, orally or through e-mail, along with an application in the main office of Legal Service Authority which shows his/her eligibility to attain the same. The criteria has been fixed and on its basis only the benefit of free legal aid can be taken.

The criteria has been provided under Section 12 of the Legal Service Act. These are following people who can avail the benefit:

- a SC or ST;
- a victim of trafficking in human ;
- a woman or child;
- disabled person, including mental disability;
- a victim of mass disaster;
- an industrial workman;
- a person in custody;
- person whose annual income is less than rupees nine thousand or such other higher amount as

may be prescribed by the State Government if the case is before a court other than the Supreme Court and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government if the case is before the Supreme Court;

- unable to engage a lawyer and secure legal service on account of reasons such as poverty, indigence situation etc.,

Various Statutory and Judicial bodies have been established in order to provide quick redressal-

### **(a) National Legal Service Authority (NALSA)**

This Authority has been established in the year 1995. NALSA is a statutory body with the objective of implementing and monitoring all the Legal aid programs going on across the nation. NALSA does the

Supervision over other sub-ordinate authorities and issues guidelines to be followed by State Legal Service Authority and District Legal Service Authority. Their work is to organize Legal Aid Camps in every district so that legal awareness can be imparted amongst the general people regarding the guidelines and working of authority. Lok Adalats also get organized for disposing cases in rapid manner.

**(b)Supreme Court Legal Service Committee**

It is yet another statutory body which works for providing legal assistance to people who falls in the category as above mentioned. Besides that, LSA Act, 1987 also directs this authority to perform all those functions as may be determined by the Central Authority and State Authority respectively.

**(c)Taluka Legal Service Authority**

Under Section 11, Taluka Legal Services was established for implementing the rules made by the different States.

**(d)Lok Adalats [Judicial body]**

Lok Adalat is one of the significant alternate dispute resolution mechanisms, it is a forum where disputes get resolved amicably which are pending in the courts. Lok Adalat is a judicial body which has the powers same as of a civil court.

**3.0 Hindrances to Legal Assistance**

Presently, the legal aid movement in India is not able to achieve the set objectives. It is still unorganized and unstable and also it has lacking of co-ordination in it. The basic idea behind providing legal access to all has now come at end point. A significant gap can be seen between the goals set and met. It has been commented in a survey by a law firm that its really difficult for them to even survive<sup>v</sup>. A major cause behind the non co – ordination of legal aid work is that lawyers do not engage themselves in pro bono activities. Besides that there is lack of financial resources to maintain the continuity. It is pertinent to note that while imparting legal education, no effort has been made to provide social education which consequently fails to make an understanding amongst the legal professional that they are obligated to provide legal awareness to all needy, unaware and illiterate citizens. Furthermore, the legal professionals do not take an effort on regular basis to be in touch with the members of the community who need free legal aid. Another drawback which give fuel to the downfall of the concept of legal aid or awareness is illiteracy. As we all know that approximately people who lives in village are illiterate and hence they are not aware of their legal rights and also not have an inclination towards getting some kind of legal guidance. It proves to be one of the prominent causes of their exploitation and harassment.

**4.0 Critical Appraisal**

Undoubtedly, in a country where majority of people have no idea relating to their fundamental rights given under the Constitution, it is foolishness to even think that they have any idea regarding their rights like availing the benefit of legal aid. Therefore, the first step is to impart this information to the general people and specially to the needy ones so that the actual deserving people could avail their life saving method. In *M.H. Hoskot v. State of Maharashtra*<sup>vi</sup>, it was held that under Article 39-A, although an accused has a right to get free legal aid but it doesn't mean that he can approach Supreme Court for filing a writ of mandamus for compelling the state to give monetary aid to hire an advocate of his choice. Various Committees and Authorities are untiringly trying to facilitate free legal assistance, but the need which they want to fulfill is not getting quenched up to the mark. There are so many causes behind it. Another reason is the large number of cases pending and sometimes the lawyers do not pay proper attention to the facts in a case due to their over occupied schedule. That is why more advocates are needed so that proper distribution of work can be done. Sometimes, it has also been reported also that inspite of providing free of cost legal aid, some advocates charge fee, which is totally against the professional ethics of a lawyer. One another major disposal unit is Lok Adalat, as it disposes the case at a much faster pace. However, many a times, due to the allotted work of High Court, the judges in the Lok Adalat have to take up the case in a rash manner. The allotted work has to done within a prescribed duration and because of that sometimes judgements get passed in a speedy way.

**5.0 Conclusion**

Legal aid is one of the simple concept which proves to be helpful to citizens in availing justice. This provision is specifically made for those who are not in a position to seek the legal aid due to their financial crisis. It is important for all to represent themselves in a court of law to submit their part and without that the concept of natural justice also get effected. In *State of Maharashtra v. Manubhai Pragaji Vashi*<sup>vii</sup>, the court has expanded the area of right to free legal aid. This right has guaranteed under Chapter 4 of Indian Constitution under Article 21 and 39A provides “equal justice” and “free legal aid”.

To get legal assistance free of cost is one of the major principles of rule of law. To follow the concept of natural justice, opportunity of being heard is to be given to both of the parties, and therefore free legal aid proves to be a boon for those who are unable to afford the legal help. In the preamble, it is clearly stated that Justice is to be provided in every way particularly “social, economic and political; liberty of thought expression, belief faith and opportunity” and the concept of free legal aid is doing the same.

Undoubtedly, the utility of legal aid can be speeded only when the legal professionals play their vital role with honesty and dedication. It is their duty to be on the path of delivering their services without asking for any fee

and ensure that they represent their each client with same dedication. Hence, it is more needed that more and more lawyers should get registered themselves to provide their best services to the ones who are needy. There are so many law schools which plays significant role in enhancing the awareness of free legal assistance in nation. It is significant to note that the students of school of law plays prominent role in expanding the knowledge of the provisions of free legal aid. These law students provides support system to the needy society. In *Centre for Legal Research v. State of Kerala*<sup>viii</sup>, court held that the support of social groups plays a vital role in attaining the goal of providing free legal aid and thus state should do all reasonable efforts in increasing the participation of such voluntary organization so that it would be more easy to implement basic fundamental rights. The Court held to implement the provision of free legal assistance is not the duty of legislature and executive only but it also get bounded on courts too. It is a myth that generally legal unawareness among the citizens can be seen in rural areas only. Actual fact is there is still lot of population in urban areas too who are still unaware regarding their basic rights and one of them is of free legal aid. In the similar way, even education makes no such difference, surprisingly many so called educated people are still boarding on the boat of unawareness. These are those who really needed to be aware and it is the need of the hour to enlighten them with the knowledge of their legal rights. So, the dire need is to be focused on these unaware citizens and let no stone unturned in bringing them in the light of our laws which are meant to save all who are not treated equally and being exploited.

The centre point of doing all this is to ensure that financial status not to become a criteria of getting justice. Even those who are monetarily weak are having same say in the eyes of law. In *Indira Gandhi v. Raj Narain*<sup>ix</sup>, it was held that "Rule of law is basic structure of Constitution of India. Every individual is guaranteed rights under the Constitution. No one so condemn unheard. Equality of justice should be given to everyone. There ought to be violation to the fundamental right or prerogatives, or privileges, only then remedy goes to Court of Law. But also at the stage when he first is produced before the magistrate. In absence of legal aid, trial is vitiated." Various Jurists and Judges have supported the idea and advocated that the real change will come with the proper implementation of the law.

## 6.0 References

<sup>i</sup> A.I.R. 1983 SC 378

<sup>ii</sup> 1979 SCR (3) 1276

<sup>iii</sup> 1986 A.I.R. 991.

<sup>iv</sup> AIR 1972 SC 855.

<sup>v</sup> Public Interest Lawyering, Legal Aid and Para Legal Services- Dr. Kailash Rai.

<sup>vi</sup> AIR 1978, 3 SCC 81.

<sup>vii</sup> AIR 1995, 5 SCC 730

<sup>viii</sup> AIR 1986 SC 1322.

<sup>ix</sup> AIR 1977 SC 69