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“A CRITICAL STUDY ON DELIVERY OF LEGAL SERVICES “

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ABSTRACT:-

Independent judiciary which protects the legal, basic and constitutional rights of citizens is respected by everyone is one of the important parts of any country. No country can progress and develop in effective manner unless the judicial system is accessible to everyone. The poor person should



be given the equal opportunity to get his rights enforced because the rich can approach court of law very easily. Due to financial restraint or due to some disability it is the duty and obligation of the state to provide competent legal aid to every person who cannot afford it. In India, under articles 14 , 21 , 22(1) , 39A where certain basic and

fundamental rights have been provided to every citizen then at the same time, an obligation is also put by framer of the Constitution to help the needy and poor people to avail the same. Relieving ‘Legal Poverty’ i.e. the incapacity of many people to make full use of law and its institutions, has now been accepted as one of the function of a ‘Welfare State’. In this study, the historical background of legal aid is discussed and to study the various aspects to get the legal aid as it is the right of every citizen.

KEYWORDS: Legal Aid, Legal Poverty, Fundamental Rights, Welfare State, Independent Judiciary.

INTRODUCTION :

HISTORICAL BACKGROUND OF LEGAL AID

It is provided that state shall secure that the operation of the legal system promotes justice on a basis of equal opportunity under the Article 39A of the Constitution of India, and shall in particular, free legal aid is provided, by suitable legislation schemes to ensure that by reason of economic or other disability opportunities for securing justice are not denied to any citizen. Articles 14 and 22(1) also make it mandatory for the state to ensure equality before law and a legal system on a basis of equal opportunity to all promotes justice. Legal aid strives to ensure that equal justice is made available to the poor, down-trodden and weaker sections of the society and constitutional pledge is fulfilled in its letter and spirit.

Until a serious need for legal counsel or representation arises the importance of good, competent and effective legal aid is often overlooked by everybody. The reasons why people need legal aid can vary as widely as the individuals themselves. Some people need legal representation for civil suits, either as the applicant or offender. Some people may need legal aid in dealing with domestic violence charge, divorce, involvement in criminal offenses etc. Many people take services of lawyers for help in writing wills, documents of different nature as well as before signing business contracts. The needs and requirements of legal help in the sphere of life cannot

be counted being endless and stage when it is needed. It is certain to be an important issue and one in which there is no room for mistakes whatever the need for legal aid.

Free legal aid to the needy is provided by the Government. Legal aid implies that who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before any authority giving free legal services to the poor and needy. It becomes very difficult to provide free legal aid to everyone however, in a country of continental dimensions and with population more than a billion.

In medieval period, the idea of legal aid originated. In the fast changing socio-economic conditions, the legal aid, however, was considered to be hybrid in some form of political right or charity from rich to the poor initially but this view was found not acceptable. In the modern society, legal aid cannot be placed on the lower side. If the law has to play, a purposeful and significant role in a democratic order for the socio-economic reconstruction of the society, legal aid must give meaningful and substantive education to the poor about the law and their rights and provide solution to their legal problems.

Article 14(3) of the International Convention on Civil and Political Rights (ICCPR), 1966 guarantees to everyone, “the right to have legal assistance assigned to him in case where the interest of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it”.

Since 1952 the government of India started addressing the question of providing free legal aid to the poor, weaker sex, disadvantaged groups and down trodden persons etc. The Fourteenth Report of the Law Commission of year 1958 also echoes this concept: Equality is the basis of all modern systems of jurisprudence and administration of justice. In so far as a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose. Unless some provision is made for assisting the poor man for the payment of court fees and lawyer’s fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice.

To achieve the constitutional goal of ‘equal justice to all,’ a new directive contained in article 39A, has been inserted to enjoin the state to provide free legal aid to the poor and particular categories and to take other suitable steps to ensure equal justice to all. In 1980, Committee for Implementing Legal Aid Schemes (CILAS) was constituted to oversee, supervise, monitor and implement legal aid programs on a uniform basis throughout the country. The Committee evolved a model scheme and after removing certain deficiencies, it was desired to constitute statutory legal authorities from national level to village level. In 1987, to fulfil the constitutional obligation and to give a statutory base to legal aid programs, Legal Services Authority Act was enacted which came into force with effect from 9 November 1995.

The Legal Services Authorities Act 1987 (hereinafter referred as ‘Legal Aid Act’), under Articles 14 and 39A of the Constitution was enacted to effectuate the constitutional mandate enshrined. The object is to provide ‘access to justice for all’ so that justice is not denied to citizens by reason of economic or other disabilities.

However, in order to enable the citizens to avail the opportunities under the Act in respect of grant of free legal aid etc. It is necessary that firstly they are made aware of their rights. Legal aid is an essential part of the administration of justice and must be so implemented.

Section 2(c) of Legal Aid Act defines legal service which includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter. The definition of ‘legal service’ under this Act is not restricted but is inclusive. It may include number of things which could not have been anticipated by the Parliament at the time of passing the Act pertaining to enforcement of legal rights and obligations. Court includes any tribunal or any other authority constituted under any law for the time being in force means a civil, criminal or revenue court to exercise judicial or quasi judicial function as described under section 2(aaa) of the Legal Aid Act.

Indian Judiciary in the past six decades has done a remarkable job of protecting citizens’ rights, liberty, dignity and rule of law against all obnoxious odds by controlling the abuse of administrative discretions and arbitrary actions. The administration equipped with rule-making powers overwhelms the “little man” by trampling upon his liberty and property. The judiciary “growth with liberty” has been instrumental in channelizing the unbridled administrative powers to achieve the basic aim of any civilized society. There are also

certain legislations which were challenged on constitutional scale and were subsequently struck down by courts partly or wholly.

RATIONALE OF THE STUDY

In every society there is a wide gap between the people and the justice delivery system which always cause late justice and it affects a million of citizens adversely. The need of the hour is to attach importance on causes of the poor and down trodden. Legal Assistance where it is not provided injustice is likely to result is a necessary sine qua non for justice. The Article 39A has been inserted in 1976 to enjoin the state to provide free legal aid to the poor and to take other suitable steps to ensure equal justice to all to achieve the constitutional goal of equal justice to all, a new directive. In 1987 Legal Aid Act was enacted to fulfill the constitutional obligation and to give a statutory base to legal aid programs. This Act was finally enforced on 9 November 1995.

Under Legal Aid Act, free legal services are being provided which includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter. Court means a civil, criminal or revenue court.

Legal services under the Act are effective only in limited jurisdiction and it is practically not available in revenue courts. In most of the cases studied for this report legal aid is provided and further all persons in villages are not aware of the provision of legal aid.

In spite of statutory and constitutional provisions guaranteeing free legal services to the poor and needy, access to justice still remained as a dream for millions of Indians. The realization and enforcement of the right to legal aid is still a challenge.

OBJECTIVES OF STUDY

The objectives of study are as follows:—

- + To study the significance of legal aid services.
- + To study historical background of legal aid.

The main aim of this research is to find out whether the legal aid services are properly delivered to the needy and poor persons or not? The Legal Services Authorities Act which is nicknamed as Legal Aid Act prescribe the list of persons who are eligible to seek and avail legal aid and have to be given mandatory legal aid and services unless they knowingly and intentionally refuse to take the same despite knowing the consequences of non availing of the same. It is bounded duty of every quasi judicial authority as well as court that there should not be any unrepresented needy person.

FINDINGS

It is found after studying the work, function and performance of various Legal Services Authorities as well legal aid service providers that the intention of the legislature behind framing the Legal Aid Act has been fulfilled to a great extent though some more things still can be done. The legal aid is required to reach to all the needy, down trodden and poor persons in every hook and corner of the country including of remote areas and this can happen only when extensive awareness programmes are organized and conducted in every village, slum areas and remote corner of every district. While conducting research it is found that this authority has involved various innovative ideas such as use of mobile van, 24 x 7 legal aid clinic, telephone helpline, continuous lokadalats, mega lokadalat etc. in respect of activities of the Legal Services Authority for providing legal services and for creating awareness about the rights of the people and facilities and schemes available of them as well as for quick disposal of the pending cases and at pre-litigative matters and that those ideas should be also adopted in other states.

While conducting research, it is also found that if some more actions are done at different levels as suggested at the end of the thesis, then the spirit behind the framing of the Legal Aid Act can be also fulfilled upto maximum and can achieve its upper heights. As far as difficulty in extending legal aid is concerned, main reason is “ignorance”. The litigants particularly the persons of the backward classes are ignorant both of their rights and of

the availability of the legal aid. Unless one appraise them about their rights and availability of the legal aid, it will not be possible to have success. Education is the only remedy for its success. As far as the litigants are concerned, they may be the poorest litigant but want best of talents. He feels that he would sell his property but engage a good counsel. He always feels that the legal aid counsel are novice or is a person who has accepted to do free service as he has no work and therefore, he is not capable. This somehow is a wrong notion and somehow is making the litigant not accepting the legal aid counsel.

Legal Services Authorities and Committees should educate the masses, educate the persons who require legal aid and they must be shown that the persons who are legal aid counsels are also competent. To achieve this target, senior advocates, committed good and well known counsels must be joined in the panel of legal aid advocates.

PROBLEMS

In the year 1977, the Constitution was amended to fasten a liability on ruling politicians to provide a system of free legal aid. This was to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. The politicians washed their hands of this liability by enacting the Legal Aid Act. The entire task was passed on to judges from the apex court to the district court. It was bankrolled by funding from the union government.

The Act gave a charter by which judges have to discharge functions having nothing to do with their constitutional duties of judging and administering their own respective courts. The charter is so wide that it has made the judges the cutting edge of the fight against corruption in the development process that affects the lives of millions and at the same time illegally funds our politicians but that has not happened and there seems to be little chance of that happening. Instead, like the ruling politicians, judges-run legal aid is not open to public scrutiny with regard to utilization of its own funds.

The problems in utilization of legal benefits by disadvantaged groups depended on the levels of legal awareness and availability of legal services to that particular group and that a variety of historical, sociological, and economic constraints limited the scope of access to legal services to such groups.

Due to a multitude of factors with illiteracy, destitution, and corruption heading the list, disadvantaged groups remain largely invisible to the formal legal system and therefore continue to suffer the substantive inequalities that plague their lives.

It is evident that the right to legal aid is an enforceable right in Indian jurisprudence and at least in theory, has appropriate schemes and means of implementation. However, one of the most crucial deficiencies which emerge in the current scenario is that of the role played by the lawyer. Quality lawyer is the need of the hour but is unfortunately not always available. The brightest minds in the profession are often unavailable to devote time and effort to legal aid because of the low remuneration involved. It is pertinent to note though, that while counsels appointed for the state are paid a much higher fee, counsels appearing in legal aid matters clearly do not receive the same.

The need of the hour is to prepare a large pool of trained professionals in the field of ADR who will be able to practice these ADR methods to resolve disputes by creating an awareness of ADR among the people.

In India, varied ADR mechanisms exist for resolving disputes outside the courts. The choice of the ADR method largely depends on the nature of the dispute and relation of the parties. The general ADR methods of resolving disputes are arbitration, conciliation, mediation, negotiation, lokadalats etc. Thus, there are sufficient ADR mechanisms in India and the only requirement is their application in true letter and spirit. Arbitration is the most commonly used method in India for resolving and adjudicating various disputes but it is expensive and lengthy technique.

Mounting arrears and delay in disposal of cases has put our justice delivery system under severe strain and requires immediate attention. We need to take remedial measures to avoid total collapse of the system. The need of the hour today, therefore, is the speedy disposal of cases. How to curb the delays and clear the backlog? We have to find out effective alternative methods of dispute resolution. We have to search for an alternative forum, which may be less formal, less expensive, more effective and speedy.

The need for alternatives to the formal legal system has engaged the attention of the legal fraternity, comprising judges, lawyers and law researchers for several decades now. This has for long been seen as integral to the process of judicial reform and as signifying the ‘access to justice’ approach.

There were over 1.32 crore (13.2 million) criminal cases and around 70 lakh (7 million) civil cases. The Parliamentary Standing Committee on Home Affairs found that there were in 21 High Courts in the country, 35.4 lakh cases pending and out of 618 posts of High Court judges, there were 156 vacancies as on January 1, 2000. The position in the subordinate courts was even more alarming. There was a backlog of over 2 crore (20 million) cases for as long as 25 to 30 years old. The total number of subordinate Judges in all the states and union territories in the country, as in September, 1999 was 12,177. In the last 10 years the Supreme Court, by improving its efficiency, has been able to reduce the number of pending cases from 1.05 lakh cases in 1991 to 20,000 cases. However, in the same period the number of pending cases in the High Courts increased from 1.9 million to 3.4 million. In the subordinate courts also, the number of cases pending had stagnated at around 20 million.

The Arbitration Act, 1940 was not meeting the requirements of either the international or domestic standards of resolving disputes. Enormous delays and court intervention frustrated the very purpose of arbitration as a means for expeditious resolution of disputes. The Government of India thought it necessary to provide a new Forum and procedure for resolving international and domestic disputes quickly. Thus, "the Arbitration and Conciliation Act, 1996 came into being. The law relating to Arbitration and Conciliation is almost the same as in the advanced countries. Conciliation has been given statutory recognition as a means for settlement of the disputes in terms of this Act. In addition to this, the new Act also guarantees independence and impartiality of the arbitrators irrespective of their nationality. The new Act of 1996 brought in several changes to expedite the process of arbitration. This legislation has developed confidence among foreign parties interested to invest in India or to go for joint ventures, foreign investment, transfer of technology and foreign collaborations.

ADR is becoming increasingly popular in resolving conflicts involving commercial and labour disputes, divorce, motor vehicle accident claim cases, medical malpractices and other issues that would otherwise likely end up in court. Due to its current popularity, some commentators have noted that alternate dispute resolution may be understood to stand for appropriate rather than alternative dispute resolution, because there is no longer anything 'alternative' about Alternate Dispute Resolution.

Suggestions To Government Agencies, Non Governmental Organizations:-

- + Certain government departments such as labour department, health department, law department, child or women commissions etc., must coordinate with other agencies and NGO's whose aim must be to approach at the doorstep of every needy person to find out their problems and solutions. NGO's can play very big role in the same and they must utilize funds to the benefit of such poor and needy persons.
- + Government agencies must also be liberal in giving recognitions of such institutions and NGO's, provide them funds and work with their coordination for the upbringing and uplifting of deserving and needy persons in the legal field and legal services.
- + Legal aid is not a charity, but a constitutional obligation on the state. All legal aid functionaries need to strive and ensure that this constitutional pledge is fulfilled in its letter and spirit.
- + One must aim to ensure equal justice for all. It is rather sad that even after more than sixty years of our independence, the downtrodden and weaker sections of the society feel handicapped in pursuit of justice and this should be a matter of concern for all those who are engaged in justice delivery system.
- + The legal aid functionaries in the country should strive to evolve every possible strategy to ensure that not even the weakest amongst the weaker sections of the society, living in the remotest corner of the country, feels that he has to suffer injustice in silence.

Summed Up

Special legal aid schemes for women, children, persons in custody and backward segments of the society need to be evolved and propagated with utmost sincerity. Despite all odds, obstacles and constraints, we can

hope that the different legal services authorities shall become a potent force in realizing the dreams and aspirations of the founding fathers of the Constitution of India and also the people with whom lies the sovereign power of the state. Legal awareness will definitely create confidence among them and will enable to make conscious use of law as an instrument to safeguard them and their interests.

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