

I. INTRODUCTION.

India, being a country having a total population of 121 crores¹, has a certain percentage of population who are below poverty line without any access to basic amenities like food, shelter, education etc. This situation of poverty prompts them to commit crimes such as robbery, dacoity and sometimes even murder to get something to get a living. But once an individual is caught and taken in by the police for the commission of such offence, he isn't aware of all rights available to him upon being arrested. In such cases, the provisions of the Constitution come to the rescue of such persons.

The Constitution of India through its Preamble aims to secure justice for its citizens socially, economically and politically. This is achieved through the Directive Principles of State Policy which are set out in Part IV of the Constitution. The Directive Principles are certain obligations which are cast upon the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country.²It is a well settled in Article 21 of the Constitution that no person shall be deprived of his life and personal liberty except in accordance with the procedure established by law. Procedure here refers that the conditions under which a person is deprived of his life or personal liberty shall be just, fair and reasonable and should not be arbitrary in nature.³Therefore it is a mandate upon the State to provide free legal aid to the poor and the needy who are unable to knock on the doors of the Courts to seek justice.

Nowadays access to justice has been made much more accessible with the coming in of judicial activism whereby the poor are able to approach courts for justice. The introduction of the concept of Public Interest Litigation was a major success as now a public spirited person can file a petition on behalf of those aggrieved persons before any constitutional court. Also certain legislations has been made by the Parliament for fulfilling the directive in Article 39-A which provides for the establishment of legal aid organisations, all of which shall be discussed in brief in the subsequent chapters.

¹ As per census report of 2011

² *Minerva Mills vs. Union of India* (1980) 3 S.C.C. 625. (India)

³ *Maneka Gandhi vs. Union of India* (1978) 1 S.C.C. 248. (India)

II. ACCESS TO JUSTICE.

Access to justice is the hallmark of civilised society. It is a building block in the architecture of a post-war welfare state.⁴The term “access to justice” is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances. It is used in different ways with different contexts. It is a basic human right of every individual which has been conferred by the law and exists unless and until the legislature takes it away under valid statutory or constitutional power. Access to justice relates to the ease of entry to a legal institution as also to the nature of the de jure fact that carries its promise.⁵It refers broadly to the access that citizens have for dispute resolution to seek justice. The two basic purposes of the justice system of any country should be firstly that the rights of the individual should be upheld and secondly that the disputes among the citizens should be solved under the countenance of the state. Access to justice has an inherent nexus with justice since it is its minimum prerequisite. W. Freidmann said “Justice is an irrational concept.” He concludes that justice as a general valid concept is the goal to which every order aspires as a “purposeful enterprise”.

According to V. R. Krishna Iyer, the prominent jurist of our country and the former judge of the supreme court of India, access to justice, which is fundamental in implementation of every human right, makes the judicial role pivotal to constitutional functionalism.⁶The Constitution of India is the living document of the country and the basic law of the nation. The preamble states that the Indian Constitution stands for securing justice to all the citizens. Article 39A of the Indian Constitution retains its aspiration to secure and promote access to justice, in following terms.

“The state shall secure that the operations of the legal systems promote justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

⁴ By Justice Secretary, Ken Clarke at the introduction of government’s legal aid reforms

⁵ This view is contrary to the general notion wherein the nature of justice as contained in the law (procedural or otherwise) is considered beyond the scope of this head.

⁶ Justice V. R. Krishna Iyer, legally speaking, Universal Law Publishing Co. Delhi, (2003) at pg. 171

Access to justice can be broadly divided into two categories namely formal and informal access to justice. Formal method of access to justice is the resolution of the disputes in the courts by way of established procedures. The other form, informal method of access to justice includes the other modes over the courts such as lok adalats, nyaya panchayats, arbitration, conciliation and mediation. Adversarial legalism⁷ is the mode of access to justice in India.

III. CONSTITUTIONAL PROVISIONS FOR LEGAL AID.

The 42nd Amendment to the Constitution of India in 1976 through section 8 introduced article 39 A into the Constitution. Article 39 A mandates that the State shall provide free legal aid for its citizens. The Law Commission of India in its 14th Report has advocated for legal aid so that the poor and the deprived class could afford a lawyer. The Commission, citing the Preamble and the principle of equality articulated in article 14 of the Constitution of India stated that if a person is unable to get access to courts to get his wrongs redressed or to defend himself against a criminal charge, then justice becomes unequal and the laws meant for the protection of the poor and the deprived class will have no meaning at all. It was further observed that legal aid should be made available for all and must not be confined to those genuinely defined as poor. Legal aid shall be free for those people who are unable to pay while others will have to pay on a graduated scale. It has been held by the Supreme Court that Article 39 A of the Constitution furnishes a beacon light that justice shall be done on the basis of equal opportunity and that no one is denied justice by reason of economic or other disabilities.⁸

Article 21 of the Constitution states that no person shall be deprived of his life and personal liberty except by procedure established by law. The procedure under which the life or personal liberty of a person is being deprived must be just fair and reasonable. Therefore providing free legal services to the poor and the needy is an essential element of just, fair and reasonable procedure.⁹This directive has been taken into cognisance by the Courts upon a combined reading with Article 21 to lead to the following guides for the administration of justice:

⁷ It is a legal system prevalent in the common law countries where two advocates represent their parties' positions before an impartial person, usually jury or a judge, to seek justice

⁸ Air India Statutory Corporation vs. United Labour Union (1997) 9 S.C.C. 377. (India)

⁹ Hussainara Khatoon vs. Home Secretary, State of Bihar (1980) 1 S.C.C. 98. (India)

- a) When the accused is unable to engage a lawyer due to poverty or similar circumstances, then the duty is upon the State to provide free legal aid by engaging a lawyer for him and whose engagement the accused does not object to.¹⁰
- b) Jail Authorities are to supply a free copy of the judgment to a prisoner so that he can exercise his right to appeal.¹¹
- c) The right to free legal aid has been extended to a proceeding under section 110 of the Code of Criminal Procedure, 1973 where there is no trial.¹²
- d) To allow an indigent claimant to for compensation for a road accident to apply in *forma pauperis* (in the form of a pauper).
- e) Also directions have been issued by the Supreme Court to the District Judge to arrange for legal aid for certain cases.¹³

In *Indira Gandhi v. Raj Narain*¹⁴ the Court observed that Rule Of Law is a part of the basic structure of constitution of India. Every individual is guaranteed the rights given to him under the constitution. No one should be condemned unheard. There ought to be a 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."

The Supreme Court in *Sheela Barse vs. State of Maharashtra*¹⁵, in a combined reading of Articles 14, 21 and 39 A went on to hold that the State should provide free legal aid to a poor or indigent accused person who is arrested and put in jeopardy of his life or personal liberty and it is a constitutional imperative mandate under Articles 14 and 21.

In *Khatri vs. State of Bihar*¹⁶, it was held that it is the constitutional mandate under Article 21 to provide free legal aid to the poor and the needy person. The Court further held that the State Government cannot avoid its constitutional obligation to provide free legal services to poor accused person by taking the plea of financial or administrative inability. The Court directed all the State Governments to make provisions for grant of free legal aid to the poor

¹⁰ M.H.Hoskot vs. State of Maharashtra (1978) 3 S.C.C. 544. (India)

¹¹ M.H.Hoskot vs. State of Maharashtra (1978) 3 S.C.C. 544. (India)

¹² Gopalanachari vs. State of Kerala 1980 (Supp) S.C.C 649. (India)

¹³ State of Haryana vs. Darshana (1979) 2 S.C.C. 236. (India)

¹⁴ (1975) S.C.C. (Supp) 1. (India)

¹⁵ (1983) 2 S.C.C. 96. (India)

¹⁶ (1981) 1 S.C.C. 627. (India)

people who are brought before the court and who cannot engage a lawyer to represent their case.

In *Hussainara Khatoon vs. Home Secretary, State of Bihar*¹⁷, by a combined interpretation of Articles 21 and 39 A, the Court held that the right to free legal service is an essential ingredient of just, fair and reasonable procedure for a person accused of an offence and it is implicit in the guarantee of Article 21.

In *Ranjan Dwivedi vs. Union of India*¹⁸, the dispute was regarding the fees payable to the advocate appearing as *amicus curiae*. It was contended that when prosecution was conducted by senior lawyers as a matter of processual fairplay, the State should provide the accused with a lawyer on the basis of equal opportunity. The Supreme Court agreed on this and enhanced the fee payable and went on to direct the State Governments to make provisions for the grant of free legal aid to the poor accused person.

In *People's Union for Democratic Rights and others vs. Union of India and others*¹⁹ commenting on the emergence of public interest litigation, the Court held that the same is a strategic arm of the legal aid movement and also has been resorted to for establishing the rule of law. The Court held that the rule of law does not mean that the protection of the law is to be confined only to a fortunate few for protecting and upholding the status quo under the guise of enforcement of their so-called civil and political rights.

In *Ajmal Kasab vs. State of Maharashtra*²⁰ the apex Court held that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, one would be provided legal aid at the expense of the State.

In *Rajoo @ Ramakant vs State Of M.P.* ruled that free assistance must be provided to all poor accused, irrespective of the severity of the crime attributed to them, at every stage of the three-tier justice delivery system and could not be restricted to the trial stage only. Neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody.

¹⁷ (1980) 1 S.C.C. 98. (India)

¹⁸ (1983) 3 S.C.C. 307. (India)

¹⁹ (1982) 3 S.C.C., 235. (India)

²⁰ (2012) 9 SCC 1. (India)

This makes it abundantly clear that legal services shall be provided to an eligible person at all stages of the proceedings, trial as well as appellate. It is also important to note that in view of the constitutional mandate of Article 39-A, legal services or legal aid is provided to an eligible person free of cost.

IV. STATUTORY PROVISIONS AS TO LEGAL AID

Prior to 1987, the statutory provision governing legal aid was the Code of Criminal Procedure through section 304 of the Code. The section provides for legal aid to accused at State expenses in certain cases. The remedy of an indigent accused to get a lawyer to defend him lays in an application under section 304 of the Criminal Procedure Code, 1973. A writ of mandamus will not lie to compel the State Government to supply the accused with a lawyer at the expense of the State. But after 1987, Parliament enacted the Legal Services Authorities Act to implement the Directive in Art. 39 A. The Act also provides for the setting up of Lok Adalats that serve as an Alternate Dispute Redressal Forum.

Section 12 of the Act lays down the criteria for grant of free legal services. The following persons are entitled to legal aid under this section of the Act:

- a) A member of the Scheduled Caste or Scheduled Tribe,
- b) A victim of trafficking in human beings and or beggar as referred to under Article 23 of the Constitution,
- c) A woman or a child,
- d) A person with disability as defined in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995,
- e) A person under circumstances of underserved want such as being a victim of a mass disaster, ethnic, violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- f) An industrial workman; or
- g) In custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 , or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 or in a

psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987,

- h) In receipt of annual income 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.²¹

It was observed by the Delhi High Court in *Abul Hassan vs. Delhi Vidyut Board*²² that

“It is emphasized in Article 39A that the legal system should be able to deliver justice expeditiously on the basis of equal opportunity and provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reasons of economic or other disabilities. It was in this context that the parliament enacted Legal Services Authority Act, 1987. One of the aims of the Act is to organize Lok Adalat to secure that the operation of legal system promotes justice on the basis of an equal opportunity. The provisions of the Act, based on indigenous concept are meant to supplement the court system. They will go a long way in resolving the Odispute at almost no cost to the litigants and with minimum delay. The Act is a legislative attempt to decongest the courts of heavy burden of cases.”

But there are certain conditions which are laid down for non-entitlement to legal aid unless it has been approved by the Chairman that it falls under the category of special cases. They are as follows –

- a) Proceedings wholly or partly in respect of defamation or malicious prosecution or any incidental proceedings thereto;
- b) A person charged with contempt of court proceeding or any incidental proceedings thereto;
- c) A person charged with perjury;
- d) Proceedings relating to any election.
- e) Proceedings in respect of offences where the fine imposed is not more than Rs. 50/-
- f) Proceedings in respect of economic offences and offences against social laws, such as, the protection of Civil Rights Act, 1955, and the Immoral Traffic (Prevention) Act, 1956 unless in shc cases the aid is sought by the victim.²³

²¹ Section 12, Legal Services Authorities Act, 1987, Act No. 39 of 1987, Acts of Parliament, 1987(India).

²² (1999) S.C.C. Online Del 53. (India)

Certain Statutory bodies are also established by the Act for providing legal aid to the poor and the deprived class. They are as follows:

a) **Central Authority**

The National Legal services Authority is constituted by the Central Government, with the Chief Justice of India as the Patron in Chief, a serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, shall be the Executive Chairman along with other members, possessing such experience and qualifications, as may be prescribed by the Central Government. A member secretary is also appointed by the Central government in consultation to Chief Justice of India also the Central Authority may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India. All orders and decisions of the Central Authority are authenticated by the Member-Secretary or any other officer of the Central Authority duly authorised by the Executive Chairman of that Authority.

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Supreme Court Legal Services Committee is constituted by the Central Authority which consists of a sitting Judge of the Supreme Court who shall be the Chairman and number of other members possessing such experience and qualifications as may be prescribed by the Central Government, to be nominated by the Chief Justice of India. A Secretary of the Committee is also appointed by the Chief Justice of India.²⁵

Functions of the Legal Services Authority includes laying down policies and principles for making legal services available, frame effective and economical schemes for making legal services available, make appropriate allocations of funds available to the State Authorities and District Authorities, taking necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, giving training to social workers in legal skills. The authority also organises legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to

²³ Arindam Dutta, Legal Aid; <http://www.legalserviceindia.com/article/1206-Legal-Aid.html>

²⁴ Section 3, Legal Services Authority Act, 1987, Act No. 39 of 1987, Acts of Parliament, 1987(India).

²⁵ Section 3A, Legal Services Authority Act, 1987, Act No. 39 of 1987, Acts of Parliament, 1987(India).

their rights also encouraging the settlement of disputes by way of negotiations, arbitration and conciliation and many other functions covered under Section 4 of the Act.²⁶

b) State Authority

The State Legal Services Authority is constituted by the State Government, here the Chief Justice of High Court is the Patron-in-Chief, a serving or retired Judge of the High Court to be nominated by the Governor, in consultation with the Chief Justice of High Court, shall be the Executive Chairman along with other members, possessing such experience and qualifications, as may be prescribed by that Government. A Member Secretary is appointed here as well as he shouldn't be lower in rank than that of a District Judge.²⁷

Section 7²⁸ covers the functions of the State Authority which include giving legal service to persons who satisfy the criteria laid down under this Act, conducting Lok Adalats, undertaking preventive and strategic legal aid programmes.

Every High Court is also supposed to consist a High Court Legal Services Committee which shall consist of a sitting Judge of High Court who shall be the chairman, other members possessing such experience and qualifications as may be determined by regulations made by the State Authority and a Secretary to the Committee is appointed by the Chief Justice of the High Court.²⁹

c) District Authority

The District Legal Services Authority is constituted by the State Government in consultation with the Chief Justice of the High Court for every District in the State to exercise the powers and perform the functions conferred on, or assigned to, the District Authority under this Act.

It's comprises of a District Judge who shall be it's chairman, number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of

²⁶ Legal Services Authority Act, 1987, Act No. 39 of 1987, Acts of Parliament, 1987(India).

²⁷ Section 6, Legal Services Authority Act, 1987, Act No. 39 of 1987, Acts of Parliament, 1987(India).

²⁸ Legal Services Authority Act, 1987, Act No. 39 of 1987, Acts of Parliament, 1987(India).

²⁹ Section 8A, Legal Services Authority Act, 1987, Act No. 39 of 1987, Acts of Parliament, 1987(India).

the High Court. The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman³⁰

The functions under Section 10³¹ include performing the duties which are delegated by the State Authority, coordinate the activities of the Taluk Legal Services Committee, organise Lok Adalats within the District and other functions that can be fixed by the State Authority via regulations.

V. POSITION OF LEGAL AID IN INDIA.

Legal Aid implies the providing of free legal services to those underprivileged classes who are unable to afford a lawyer to fight the cases for them. The pioneers of Legal Aid Justice P.N. Bhagwati had observed that legal aid meant providing an arrangement in the society so that the missionary of administration of justice becomes readily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law. The poor and illiterate should be able to approach the courts and their ignorance and poverty should not be a hindrance in the way of them obtaining justice from the courts. Therefore Legal aid should be available to the poor and illiterate, who don't have access to courts.

The objective of Article 39 A was to secure equal justice and free legal aid to the citizens. This is done so that the principle of equality and justice as set out in the Preamble to the Constitution is achieved and that the poor and the deprived class is able to knock on the doors of the Courts to get justice. The period of judicial activism in the late 1980's also proved to be a good example whereby a public spirited citizen can file a petition in the Court on behalf of the deprived class so as to obtain justice for them. This has been laid down in the famous case of S.P.Gupta vs. Union of India³² where the concept of Public Interest Litigation was evolved. Public Interest Litigation was regarded as a strategic arm of the legal aid movement which intends to bring justice to the people. Judicial Activism was held to be one of the successful methods by which the poor could get access to justice. The current introduction of

³⁰ Section 9, Legal Services Authorities Act, 1987, (Act No. 39 of 1987)

³¹ Legal Services Authority Act, 1987, (Act No. 39 of 1987)

³² (1981) 1 S.C.C. (Supp) 87. (India)

Common Service Centres by the State Legal Services Authorities whereby through video conferencing para legal consultants will connect the clients with the panel of lawyers for which the Ministry of Law, Government of India has opened certain websites. This has been deemed to be a good step to reach those parts of the population who cannot be reached due to their geographical challenges or lack of infrastructures.

But legal aid also has its drawbacks. In India, a majority of the population is illiterate and poor and is not able to access courts for justice. But to access courts, they need the knowledge which they lack. This is one of the major drawbacks of the legal aid systems in India. Also there is a huge backlog of cases in the Indian judiciary which ranges almost to 2.81 crore cases as per the current statistics of 2017. Therefore the very purpose of the provision of legal aid in our Constitution is defeated due to such drawbacks.

VI. CONCLUSION.

Legal Aid is a gift in disguise for the deprived classes who are unable to access justice because of poverty or any similar situations. The aim of the jurists due to whom the concept of legal aid got incorporated was to ensure that the hands of justice extends to those classes who are not able to get access to the Courts of Law to get justice. Therefore the primary aim of the legal institutions is to ensure that justice is served to those who are poverty stricken and are not able to afford the litigation expenses. On realising this aim, only will then the dreams of the founding fathers of our Constitutions of a society without discrimination see the light of the day.