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## Law and Poverty - Legal Aid and Statutory Provisions

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*A statute establishing legal services authority to offer free and competent legal services to the weakest parts of society in order to guarantee that no citizen's right to justice is denied due to economic or other impairments and to establish Lok Adalats to guarantee that the legal system operates on an equal opportunity basis. India is a developing nation, Although its economy is growing poverty is still a challenge, such a challenge shouldn't deprive the person's rights, since our country believes in constitutional supremacy to fulfill the promise made in the preamble to secure all the citizen their Justice which shall be social, economical and political, article 39 A has been added into the 'Indian Constitution to provide free legal aid to the poor and weaker section of society and promote justice on the basis of equal opportunities Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before the law.*

*The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act 1987 to Provide free legal aid to the weaker section of society.”*

**Keywords:** *law, poverty, legal aid.*

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### INTRODUCTION

Since the Independence poverty eradication in our country is a major challenge and it has widened its roots to India's National development agenda to create a just and equitable society. World Bank has defined poverty as the deprivation of well-being, it includes low

income, not able to acquire the basic needs and needs to fulfill a dignified life, low level of health education, poor access to clean water and sanitation, etc. According to the Global Hunger Index 2020, India has been ranked 94 amount the 107 nations and is in the serious hunger category. According to the Global Multidimensional Poverty Index 2020, India is 62<sup>nd</sup> among 107 countries with an MPI score of 0.123 and a **27.91% headcount ratio**. When the major portion of the people is not able to afford their basic necessity it would merely be next to impossible for them to fight for their Rights or afford to fight for their rights that's the reason the Constitution by the way of Amendment has a provision in itself to protect economically backward people to protect their rights. As political philosopher; Charles de Montesquieu said that; "In the state of nature all men are born equal, but they cannot continue in this equality. Society makes them lose it and they recover it only by the protection of the law." The protection of the law "to poor, illiterate and weak is important to ensure equal justice is served, Legal Aid is a right of the people that ensures that securing justice are not denied to any person by reason of poverty, illiteracy, etc. Legal aid is a right given to the poor and the weaker section of the society with the object to enable them the rights given by law". Justice P.N. Bhagwati has rightly said that "the poor and the illiterate should be able to approach the Courts and their ignorance and poverty should not be an impediment in the way of their obtaining Justice from the Courts."

## BACKGROUND

The spirit of the Indian Constitution the Preamble secures justice to all its citizen which can be social, economical, and political, Hence, Article 39-A<sup>1</sup> is inserted into the Indian Constitution by the 42<sup>nd</sup> amendment<sup>2</sup> which brings forth free legal aid to the poor and also the feeble sections of the society, to encourage justice on the basis of equal opportunity, Articles 14<sup>3</sup> and 22(1)<sup>4</sup> of the Constitution also make it obligatory for the State to ensure equal protection of the law.

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<sup>1</sup> Constitution of India, art 39(a)

<sup>2</sup> Constitution (Forty-Second Amendment) Act 1976

<sup>3</sup> Constitution of India, art 14

<sup>4</sup> Constitution of India, art 22(1)

With the intention to execute “the Constitutional right, the Legal service Authorities Act 1987<sup>5</sup> was enacted for providing free and competent legal service to the weaker sections of the society, for the implementation of the objectives of the Act the National Legal Service Authority has been constituted, with The Chief Justice of India being the Parton-in-chief and the Senior most Hon’ble Judge, supreme court of India is the Executive Chairman of the Authority.”

“Free legal services under Legal Service Authority Act are available to a person belonging to Schedule Tribe and Schedule Caste, woman, child, victim of human trafficking, differently-abled person, industrial workman, and person in custody in a protective home and the poor.”

### **RIGHT TO FREE LEGAL AID**

It’s the duty of “the state to make plans and suitable enactment, and effective arrangement is done to provide free legal aid, To ensure that the doors of the justice to be open for every individual and it’s not denied to any citizen by reason of financial or any other disabilities, The states insufficient funds cannot be the reason for not providing the legal aid for the needy, it’s an obligation on the state for rendering the legal aid service.

Justice P.N. Bhagwati correctly expressed that Legal aid is an action which makes the machinery of administration of justice easily available to the individuals who are in need of the justice where they are having a right given by parliament Article 38(1)<sup>6</sup> upholds that the State will advance the welfare of the general population by validating and ensuring the social order including justice. Article 21<sup>7</sup> says that each individual has an equal right to life and liberty except according to the procedure legal aid is an instrument to have an equal right, In the case of *Hussainara Khatoon vs. State of Bihar*,<sup>8</sup> in this case, the court held that the accused has the right to free legal aid at the expense of state if he is not able to afford legal service for himself.”

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<sup>5</sup> Legal service Authorities Act 1987

<sup>6</sup> Constitution of India, art 38(1)

<sup>7</sup> Constitution of India, 21

<sup>8</sup> *Hussainara Khatoon v State of Bihar* AIR 1979 SC 1819

### **Who is entitled to free legal services?**

Under section 12 of the Legal Services Authorities Act persons Entitled to free legal service are:

- A person belonging to SC or ST community
- A beggar as referred to in Article 23 of the Indian constitution or a victim of human Trafficking
- A woman or a child
- An insane
- A person who is a victim of a mass disaster, ethnic violence, caste atrocity, flood, earthquake, drought
- A person in the custody
- A child in the juvenile home
- A person whose annual income is less than what is prescribed in the subsequent state, in case of Supreme court Annual income less than 5lakhs.

### **How has it been possible to render free legal service?**

In India the initiative to render Legal aid service was brought in in 42<sup>nd</sup> Amendment it has been successfully possible because of the ratio of Lawyers present in our country, According to the report given by the Commonwealth Human Rights Initiative CHRI, India per capita ratio of a lawyer is comparatively better than any other country, In India, there is one lawyer in every 736 people in total our country has about 1.8 million lawyers, Having 61,593 panel lawyers in our country there is one Legal aid Lawyer per 18,609 population According to NALSA analysis about 8.22 lakh people across India benefited through legal aid services from April 2017 to June 2018.

### **STATUTORY PROVISIONS RELATING TO LEGAL AID**

**Article 39-A:** Constitution of India -

### **Equal justice and free legal aid:**

“The State shall secure that the operation the legal system promotes justice, on a 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.”

This article promotes “Justice on the basis of equal opportunity, It imposes the obligation on the state to provide free legal aid for poor, This particular Article was inserted by the 42<sup>nd</sup> Amendment act 1976, It is with intend that the poor litigant should have access to court so as to invoke his legal right and have equal protection of law It has been held to be a mandate not only from Article 39A but also from Article 14 and 21. It has now been held that legal aid constituted a part of the right to personal liberty guaranteed under Article 21 and was enforceable by the Court. The State is held to be under a duty to provide a lawyer to a poor man and it must pay to the lawyer as fixed by the Court”

In *State of Maharashtra v. Manubhai Pragaji Vashi*,<sup>9</sup> The Supreme Court held that Article 21 read with Article 39A would render the state to provide free legal aid

### **Legal Aid under Criminal Procedure Code, 1973**

#### **Section 304 -**

In a trial in front of the Session Court, if there is no pleader for representing the accused and if the court thinks that the accused has no ground to have a pleader, rendering the expense on the state

The high court may with the approval of the state government make rules for:

- For the mode of selecting a pleader for defence
- Facilities to such a pleader
- The fees payable to such pleader by the government

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<sup>9</sup> *State of Maharashtra v Manubhai Pragaji Vashi* 1995 5 SCC 730

### **Legal Services Authorities Act, 1987**

This act is sunshine in the part of “the legal aid movement in India, it was enforced in 1995, Justice R N Mishra had an important role in enforcing this act, In 1988 Justice A S Anand became the executive chairman of the National legal service authority.”

There are two objectives in the act:

- 1) Free service for the poor and weaker sections of the society in the legal sector, and to see there is no absence of justice to the citizens due to any economic and other disability and,
- 2) To ensure equal delivery of justice organised by Lok Adalats.

In this act section, 12 lays down “a category of people who are entitled to free legal aid. And this act also mentions about the institutional framework on national, district, state and taluka level that is, legal service authorities of the state, district, and taluk.”

### **Rules Governing Advocates by the Bar Council of India**

The Bar Council of India governs advocates by the following rules, Rule 46 section VI of the Bar Council of India rules duty to render legal aid. It is the duty of every advocate to render free service for the people who cannot pay for their legal expenses the advocate within its limit of their economic condition should render free legal assistance as a duty towards their own society.

**Legal Services Authority Act, 1987**<sup>10</sup> has passed by the Parliament for giving legal aid to needy people. Almost 80% population of this country has come to entitle to a free legal aid Scheme. Various Authorities and Committees are constituted under this Act from trial Court to Apex Court

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<sup>10</sup> Services Act (n 5)

## CONCLUSION

Legal aid is important because it helps in the protection of the law which is an obligation to the government which means the state has to provide legal services to the people who are needy and who cannot afford the cost of the services of legal Services to proceed with legal proceedings. The focus of legal aid is to distribute justice effective implication of welfare benefits. In the disposal of social Justice and provide facilities to power the needy. As mentioned in the Legal Services Authority Act, 1987 which has a rule which mentions the rendering of free equity. It is the right provided by the state for its public. The duty that the state holds is to provide legal service because exploitation and scarcity Are the causes of to absence of legal awareness which are the rights and benefits that the poor people are to be provided by the state.