



- Legal aid is considered as a helping hand to the poor defendants, vulnerable people in the prison, police custody and other downtrodden people.
- A democratic country running with full-fledged constitutional values, it is a mandate that no one shall be denied of his or her right to equality.
- Justice should not be denied because of the reason that he has no money in his purse.
- Therefore, state should strive to provide maximum help to the deprived and downtrodden class for achieving justice.
- Legal aid in the common parlance means the help providing by the state to the weaker members in the society to protect their rights.
- Justice Bhagwati rightly said that “the legal aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of the rights given to them by law.”
- The Law Commission in its fourteenth report has stated the importance of legal aid by saying that without legal aid equality before law, an integral part of the rule of law cannot be achieved
- When we go through the developments of legal aid in India, it is visible that it has acquired some constitutional status since the preamble of the Indian Constitution itself provides achieving justice as one of the main components of the state.
- The Legal Services Authorities Act, 1987 is a central legislation enacted for constituting authorities providing legal aid in India.
- This legislation can be considered as a path breaker in the Indian legal system

#### LEGAL SERVICE AUTHORITY

- The Legal Services Authorities Act, 1987 was enacted in the light of article 39 A of the constitution which provides that “the State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall , 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.”
- The legislative intention of the Parliamentarians is clear from the statement of objects and reasons of the Act.
- The other important object of the Act is to create a three tier system of authorities for the effective monitoring of the legal aid programmes.

- The Act also intended to give statutory backing to the Lok Adalats, which was established in many states as a voluntary and conciliatory agency.
- The ultimate purpose of the Act is that to constitute legal services authorities to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.
- Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all.
- Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all.
- In the year 1987, the Legal Services Authorities Act was enacted by the Parliament which came into force on 9th November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity.
- Though article 39-A of the constitution is a directive principle, Parliament and judiciary equally gave importance to the article like a fundamental right and strengthened the article.
- In *L. L. Vghasia v. State of Gujarat* (1999 (2) KLT SN. 36.) Supreme Court observed “right to legal aid has become almost like a fundamental right. It is an important right backed by Constitution and Legal Services Authorities Act, 1987 was enacted translating the spirit of Article 39-A. Legal aid is not merely a right of the needy and the deserving but is correspondingly, duty of the authority to make it available to the needy and deserving.
- In *Supreme Court Legal Services Committee v. Union of India* (1998 (5) Supreme Court gave some valuable directions to the authorities for the maximum efficiency of the functions of the authorities under the Act. The directions are as follows:
  - To ensure that every prisoner/convict is provided with free copy of the judgment of the Sessions Court or the High Court in her/his case or matter within 30 days of the pronouncement of such judgment and that the Registry of the Court concerned will personally endorse such copy to the Superintendent of the Jail for forwarding the same to the petitioner.

- The Superintendent of the Jail concerned to ensure that the judgment of the Sessions Court or the High Court, as the case may be, is read out to the prisoner and explained to him in the language as understood by him;
  - The prisoner will be informed by the superintendent of every jail about the availability of legal aid in the High Courts and the Supreme Court and be asked whether he is desirous of exercising his constitutional right to avail of legal aid;
  - Every jail will have to provide at the cost of the State Exchequer copy of Vakalatnama, proforma Affidavit in the form as required by the respective High Courts and the Supreme Court for being signed by the prisoner immediately upon expressing his intention to avail of legal aid;
  - The Superintendent of the Jail will ensure that complete papers/records of the case are sent to the Supreme Court Legal Aid Committee or the High Court Legal Aid Committee along with the signed Vakalatnama and Affidavit of the prisoner forthwith by registered post at the cost of State Exchequer and that if there is any delay in forwarding the papers, the reasons for forwarding the papers belatedly will accompany such papers.
  - That where the judgment of the Sessions Court and the High Court is in a language other than English, the Superintendent of the Jail will at State's cost arrange to have the same translated before sending the papers to the Supreme Court Legal Aid Committee or the High Court Legal Aid Committee, as the case may be".
  - The Section 3 of the Legal Services Authorities Act deals with the constitution of the National Legal Services Authority. As per this section, the Central Government has power to constitute a body known as National Legal Services Authority
  - The National Legal Services Authority shall consist of the following members:
    1. the Chief Justice of India who shall be Patron-in-Chief;
    2. a serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and
    3. such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India.
  - There shall be a member secretary who shall be appointed by the Central Government in consultation with the Chief Justice of India who is possessing such experience and qualifications as may be prescribed by the Government to exercise such powers and perform such duties under the Executive Chairman of the Central Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.
  - The terms of office and other conditions relating to the member secretary and other members of the authority shall be prescribed by the Central Government in consultation with the Chief Justice of India.
  - The salary of the members of the authority shall be defrayed out of the consolidated fund of India.
  - There shall be a member secretary who shall be appointed by the Central Government in consultation with the Chief Justice of India who is possessing such experience and qualifications as may be prescribed by the Government to exercise such powers and perform such duties under the Executive Chairman of the Central Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.
  - The terms of office and other conditions relating to the member secretary and other members of the authority shall be prescribed by the Central Government in consultation with the Chief Justice of India.
  - The salary of the members of the authority shall be defrayed out of the consolidated fund of India.
  - Section 3-A of the Act empowers the National Authority to constitute a committee known as the Supreme Court Legal Services Committee.
  - The purpose of the committee according to this section is to exercise powers & functions which may be determined by the regulations made by the National Authority.
  - The Supreme Court Legal Services Committee consists of the following members:
    1. a sitting Judge of the Supreme Court who shall be the Chairman; and
    2. such 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.
  - The Chief Justice shall appoint a person as secretary of the committee who has such experience and qualification as prescribed by the regulation framed by the National Authority.
  - The salary and other conditions of service of the members of the committee shall also be prescribed by the Central Government in consultation with the Chief Justice of India.
- FUNCTIONING OF NALSA**
- NALSA lays down policies, principles, guidelines and frames effective and economical schemes for the State Legal Services Authorities to implement the Legal Services Programmes throughout the country.
  - Primarily, the State Legal Services Authorities, District Legal Services Authorities, Taluk Legal

Services Committees, etc. have been asked to discharge the following main functions on regular basis:

- i. To Provide Free and Competent Legal Services to the eligible persons;
- ii. To organize Lok Adalats for amicable settlement of disputes and
- iii. To organize legal awareness camps in the rural areas.

#### FREE LEGAL SERVICES

- Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- Providing service of lawyers in legal proceedings;
- Obtaining and supply of certified copies of orders and other documents in legal proceedings.
- Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

#### PERSONS ELIGIBLE FOR LEGAL AID

- Women and children;
- Members of SC/ST
- Industrial workmen
- Victims of mass disaster, violence, flood, drought, earthquake, industrial disaster.
- Disabled persons.
- Persons in custody
- Persons whose annual income does not exceed Rs. 1 lakh (in the Supreme Court Legal Services Committee the limit is Rs. 5,00,000/-).
- Victims of Trafficking in Human beings or beggar

#### STATE LEGAL SERVICES AUTHORITY

- Section 5 of the Act deals with the constitution of the State Legal Services Authority.
- The Act empowers the state government to constitute the State Legal Services Authority for each state to exercise the powers and perform the functions conferred on a state authority.
- The state authority shall consist of the Chief Justice of the High Court as the Patron – in – Chief, a serving or retired judge of the High Court as its Executive Chairman and other members possessing such experience and qualifications as prescribed by the state government and nominated by the government in consultation with the Chief Justice.
- The state government shall in consultation with the Chief Justice of the High Court appoint a person who is not below the rank of a District Judge as Member Secretary and he may exercise such powers and duties under the Executive Chairman.
- The proviso further states that if there is any person functioning as Secretary of the State Legal Aid and Advice Board immediately before the constitution of the authority, he shall be appointed as Member Secretary even though he is not qualified to be appointed as stated in the section for a period not exceeding five years.

- The terms and other conditions of the Member Secretary and other members shall be prescribed by the State Government in consultation with the Chief Justice of the High Court.
- The State Authority may also appoint officers and other employees in consultation with the Chief Justice of High Court.
- The State Authority by virtue of section 7 A of the Act shall constitute a Committee known as the High Court Legal Services Committee for every High Court.
- The Committee shall consist of a sitting judge of the High Court as its chairman and such other members possessing such experience and qualifications to be nominated by the Chief Justice of the High Court.
- The Committee shall appoint a secretary possessing such experience and qualifications

#### DISTRICT LEGAL SERVICES AUTHORITY

- Section 8 of the Act empowers the State Government to constitute a District Legal Services Authority for each district in consultation with the Chief Justice of the High Court.
- The District Authority shall consist of the District Judge as its Chairman and other members possessing such experience and qualification who shall be nominated by the state government in consultation with the Chief Justice of the High Court.
- The State Authority shall in consultation with the Chairman of the District Authority appoint a person not below the rank of a sub judge or civil judge as secretary of the District Legal Services Authority.

#### TALUKA LEGAL SERVICES AUTHORITY

- The section 11 of the Act provides for the constitution of the Taluk Legal Services Authority in each Taluk or Mandal or Group of Taluks or Mandals.
- The committee shall consist of a senior judicial officer operating within the jurisdiction as the ex-officio Chairman and such other members possessing such qualification and experience.
- The committee may also appoint such number of officers and employees in consultation with the Chief Justice of the High Court.

#### FUNCTIONS OF THE NALSA

- The functions of the National Authority are mentioned in section 4 of the Act as follows:
  - lay down policies and principles for making legal services available under the provisions of this Act;
  - frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;
  - utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
  - take 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, give training to social workers in legal skills;

- organise 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 their rights as well as encouraging the settlement of disputes through Lok Adalats;
- encourage the settlement of disputes by way of negotiations, arbitration and conciliation;
- undertake and promote research in the field of legal services with special reference to the need for such services among the poor;
- to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IV-A of the Constitution
- Monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act
- Provide grants –in –aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out of the amounts placed at its disposal for the implementation of legal services schemes under the provisions of this Act.
- Develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions;
- Take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures
- Make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and
- Coordinate and monitor the functioning of [State Authorities, District authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk legal Services Committees and voluntary social service institutions and other legal services organisations and give general directions for the proper implementation of the legal services programmes.

#### FUNCTIONS OF STATE LEGAL SERVICES AUTHORITY

- The State Authority shall give effect to the policy and directions of the National Authority.
- To give legal service to persons who satisfy the criteria laid down under the Act.

- To conduct Lok Adalats including Lok Adalats for High Court Cases.
- To undertake preventive and strategic legal aid programmes
- To perform other functions entrusted by the State Authority in consultation with the National Authority.

#### FUNCTIONS OF DISTRICT LEGAL SERVICES AUTHORITY

- To perform the functions of the State Authority in the District as delegated to it by the State Authority.
- To coordinate the activities of the Taluk Legal Services Authority and other legal services in the District.
- To organize Lok Adalats and to perform other functions as the state authority may fix by regulations

#### FUNCTIONS OF TALUK LEGAL SERVICES AUTHORITY

- To coordinate the activities of legal services in the taluk.
- To organise Lok Adalats within the taluk.
- To perform such other functions as the District Authority may assign to it.
- Further, a scheme on Access to Justice titled “Designing Innovative Solutions for Holistic Access to Justice in India” is implemented by the Government of India which aims to strengthen Pre-Litigation Advice and consultation through Tele-Law; to ensure pan - India dispensation framework to deliver Pro Bono legal Services through Nyaya Bandhu (Pro Bono Legal Services) programme and to empower citizens through Pan India Legal Literacy and Legal Awareness Programme.
- The Scheme embeds use of technology and developing contextualized IEC (Information, Education and Communication) material in regional / local dialect to support its intervention and to achieve easy accessibility of legal services to the poor and weaker sections of the society.
- The Tele-Law service seeks to connect the beneficiary with the lawyer via tele/ video conferencing facilities available at the Common Service Centers and through Tele-Law Citizens Mobile Application.
- As on 30th November 2023, Tele-Law services is available across 2.5 lakh Gram Panchayats in 766 districts and has rendered legal advice to 60,23,222 beneficiaries, which includes women, children, Scheduled Caste, Scheduled Tribe etc.
- The Nyaya Bandhu platform enables seamless connect on the Nyaya Bandhu Application (available on Android/ iOS) between the interested Pro Bono Advocates and registered beneficiaries entitled for free legal aid under section 12 of Legal Services Authorities Act,1987.
- As on 30th November, 2023, there are 10,629 Pro Bono advocates and 89 law schools have constituted Pro Bono Clubs to facilitate the culture of Pro bono among law students.

- All these services under the scheme are provided free of cost to all citizens of the weaker sections of the society.

#### RECENT RESEARCHES

- A majority of the people who are entitled to the free legal aid system see the service as an option only when they cannot afford a private lawyer.
- A pan-India research by Prof. Jeet Singh Mann of National Law University, Delhi (NLUD) has found that people don't have faith over the services of legal aid counsel (LAC) under the free legal aid services due to a variety of factors.
- A majority of potential beneficiaries are disinclined towards the option of availing these services," remarked the research report titled 'Quality of Legal Representation: An Empirical Analysis of Free Legal Aid Services in India'.
- Recently, Commonwealth Human Rights Initiative (CHRI) had come out with a report stating that India's per capita lawyer ratio is better than most countries in the world. There are about 1.8 million lawyers in India which mean there is one lawyer for every 736 people.
- The same report also stated there are 61,593 panel lawyers in the country, which translates to just one legal aid lawyer per 18,609 population or five legal aid lawyers per 1,00,000 population.
- According to the statistics provided by NALSA, about 8.22 lakh people across India benefited through legal aid services from April 2017 to June 2018.
- According to a research proposed by Prof. Mann, director at Centre for Transparency & Accountability in Governance, NLUD — The study demonstrated that beneficiaries opt for free legal aid service due to the dearth of resources to engage a private lawyer.
- About 75% of beneficiaries responded that they opted for free legal aid because they had no means and resources to hire a paid private practitioner.
- Also, 22.6% of the beneficiaries responded that they won't opt for free legal aid services for the second time.
- The study also found that 60% of women, who were aware of the free legal aid services, chose to opt for private legal practitioner because they could have better control over their lawyer.
- These women have no faith and confidence over the quality of services offered under the legal aid system, the study said.
- The survey found that 56% of LAC spends an average of 1 to 10 hours per week on legal aid cases. On the contrary, around 58% LAC spend on an average of 20 hours and above per week on private cases.
- Around 16.30% of beneficiaries claimed their LAC often demand money before or after every court hearing.
- Also, around 33% of the judicial officers said complaints were received against LACs for demanding money from beneficiaries.
- Majority of judicial officers (52% ) rated the overall skill set of a private legal practitioner as of fairly good quality and that of LAC as of moderately low quality, the report said.
- Currently, the engagement of LAC is usually on an ad-hoc basis. Around 45% of the regulators opined that making them full time will definitely improve the level of commitment among the LAC.
- LAC can withdraw from an aided case by submitting a reason to member-secretary. In this scenario, a beneficiary has to go through the painstaking task of retelling their case history to newly allotted LAC.
- This problem can be tackled by increasing the honorarium given to LAC.
- The study recommended that making honorarium for a legal aided case at par with private cases, will compel LAC to not withdraw or desert aided cases in middle.
- Advocate Priya Singh, empanelled as a LAC for juvenile courts in Delhi, said remuneration towards the empanelled lawyers should be increased every year. This is important for those who are serving in juvenile courts as they are not allowed to have their own private practice, she added.
- Ms. Singh said. "Currently, lawyers handling juvenile justice cases are empanelled for three years, once the time is up, they are retained or removed based on their performance,
- The problem with most of the beneficiaries is that they are illiterate and don't have the procedural knowledge of the functioning of courts. "Hence they end up getting irked after three or four dates. Thereafter, they don't want to come to court".
- Trust deficit among the beneficiaries towards the panel lawyers was hard to eradicate. "The panel lawyers have not come from a family or acquaintance's reference or recommendation.
- They are a stranger to the beneficiaries
- NALSA director Sunil Chauhan said the quality of legal aid is one of the prime focus areas of NALSA
- Mr. Chauhan said NALSA was improving the selection process of panel lawyers to ensure selection and empanelment of committed lawyers.
- After periodic assessments, lawyers can be delisted from the panel.
- Mr. Chauhan said the Structure and Framework of Monitoring Committees have been changed, and now these committees also do the work of mentoring of panel lawyers in legal aided cases.
- Front offices at the district level are being upgraded to make them one-stop centres for legal aid seekers. They also update the record of legal aided cases.

AMICUS CURIAE

- According to Supreme Court, if a petition is received from the jail, or in any other criminal matter, if the accused is unrepresented then, an advocate is appointed as amicus curiae, by the court to defend and argue the case of the accused.
- Amicus Curiae can be appointed in criminal as well as civil matters
- It can be appointed in any matter of general public importance.
- Legal jurisdiction of Amicus Curiae is not much wider
- According to Delhi High Court, Amicus Curiae means the “friend of the court”.
- An advocate in this capacity is asked to help court in a case on volunteering service to the court
- There is a growing trend where practitioners have started turning towards academia - such academician with practical knowledge & experience developed an interaction between academia & industry.

#### COMPARATIVE ANALYSIS

##### SOUTH AFRICAN LEGISLATIVE SYSTEM

- In South Africa, non-parties may make submission as an amicus curiae in the constitutional court, Supreme Court, high court, land claim court & labour court.
- Constitutional court rules requires the non-party seeking to be admitted as amicus curiae have an interest in any matter before the court – such potential curiae must describe her interest in the initial submission
- This interest is not same as a direct interest required for intervention
- Supreme Court of appeal permits an interested party to admit an amicus curiae without the court’s permission when amicus obtains party’s consent.

##### LEGISLATIVE FRAMEWORK IN UNITED KINGDOM

- A memorandum issued in 2001 – which quotes, that the role of the curiae is to assist the court when, there is a danger of an important & difficult point of law being decided without court hearing relevant argument
- The court should not be restricted from hearing the parties only – it allowed third party intervention nowadays – like public bodies, private individuals, companies, NGOs to make submissions raising the issues of public importance
- Since 1996, when the house of lords allowed the first intervention by an NGO the trend is on higher mark.

##### LEGISLATIVE FRAMEWORK IN THE U.S.A.

- Brief for an Amicus Curiae, procedure under supreme court of US - Rule 37 – Procedure & application to appoint the Amicus Curiae is widely considered by international community to resolve the disputes before the court & thus forth UNO has passed a charter in the WTO to work as a dispute resolution mechanism & to hype cases of international law.
- An Amicus Curiae brings to the attention of the court relevant matter which did not highlighted by the parties – may be of considerable help to the court.
- Amicus Curiae brief may be filed only by an attorney admitted to practice before this court as provided in rule 5.

##### BRIEF OF AN AMICUS CURIAE - RULE 29 (U.S.A.)

- May be filed only if accompanied by, written consent of all parties or leave of court granted on motion or at the request of the court except that, consent or leave shall not be required when the brief is presented by the United State
- A motion of the leave shall identify the interest of the applicant