



UNIT

8

Legal Services

Learning Outcomes:

Students will be able to:

- Trace the history of Legal Aid in India
- Describe main legislations that govern legal aid in India and abroad
- Explain the main provisions of NALSA Regulations, 2010
- Elucidate the importance of legal aid as an element of human rights
- Explain the provisions of Legal Services Authorities Act, 1987 and Legal Services Authorities (Amendment) Act, 2002

In the state of nature, indeed, 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 laws.

- Charles de Montesquieu

According to Encyclopedia Britannica, 'Legal Aid' is giving to persons of limited means, grants, or for nominal fees, advice, or counsel to represent them in court for civil and criminal matters. It aims to create a bridge between the poor and rich in society in order to provide equality to seek justice in the court of law.

Legal Aid is to ensure that no one is debarred from legal advice and help because of lack of funds. Thus, the provision of legal aid to the poor is based on humanitarian considerations and the main aim of these provisions is to help those who are socially and economically backward.

A. Legal Background

In a participatory democracy, it is essential that citizens have faith in their judicial institution that ensures appropriate representation in the court of law and settles the need for equality principle. An impartial and independent judiciary is the guardian of individual rights in a democratic society. For citizens to have faith in their court system, all people must have access to the courts when necessary. Making arrangements to ensure adequate representation in the court of law, for the masses, is an indispensable facet of principles of equality.

Citizens agree to a limitation on their freedom in exchange for peaceful coexistence, and they expect that when conflicts between citizens or between the state and citizens arise, there is a place that is independent of undue influence, that is trustworthy, and that has an authority over all the parties to solve the disputes peacefully. It is also the responsibility of the State to ensure that fair and impartial justice is made available at the doorstep of the poor and economically weaker sections irrespective of their caste, creed, religion, or geographical position, free of cost.

The fundamental value of the Indian system of justice is that the stability of our society depends upon the ability of the people to readily obtain access to courts because the court system is the mechanism

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recognized and accepted by all to peacefully resolve disputes. Denying access to the courts, forces dispute resolution into other arenas and results in vigilantism and violence.

Human rights and human dignity form the premises for the socio-legal foundations of free legal aid. As part of human rights, it is necessary to recognize the principle of equality and ensure access to justice. These foundations reflect the incorporation of legal obligation in international treaties, regional treaties, and the working of monitoring bodies under these treaties or in the national legal systems.

B. The Indian Legal System

The adversarial system, that the colonial era brought in, made access to justice difficult because it ended the era of informal dispute settlement prevalent in Indian society leaving aside the quality of justice dispensation in the indigenous mode. The pre-British system was accessible as it was not technical or formal and was conducted in a language known to parties.

The Supreme Court in the *M.H. Hoskot v. State of Maharashtra* ([1978] 3 SCC 544) observed: Our judicature bases itself on the Anglo-American model of dispensing justice. The system compels to collaborate lawyer-power thereby steering the wheels of equal justice under the law by providing free legal aid to certain categories of persons. It is due to the formal nature of proceedings in an adversarial system, requiring pleadings and court fees, that makes access to justice, a dream, for poor masses in India.

In the words of B Sivarammaya, the observation of Anatole France that 'the majesty of law treats a millionaire and a pauper sleeping under the bridge alike', held good in the case of the dispensation of justice by the courts modeled on adversarial systems.

It is therefore, that in an adversarial system, the poor are represented by the advocates appointed by the government to ensure equal representation in the court of law, which forms one of the most important facets of a true democracy.

B.i. Legal Aid under the Indian Constitution

The Constitution (Forty-second amendment) Amendment Act, 1976 inserted Article 39-A in the Constitution which is as follows: Equal Justice and free legal aid - The State shall secure that the operation of 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 way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The wording of Article 39-A reiterates that kind of equality which shall promote access to justice for all by creating equal opportunity. That this constitutional guarantee was more often violated than observed is visible in many of the cases brought before the courts including the apex court. Among many crucial reasons for this, it is evident that a technical application of statutory law or constitutional obligation is inadequate. Only a fair procedure can ensure the concept of equality and access to justice.

As envisaged under Article 15 of the Constitution of India, the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Based on this cardinal principle, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability. Article 14 of the Constitution of India provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

B.ii. Free Legal Aid under Criminal Law

Section 340 (1) of the Code of Criminal Procedure, 1898, provided that if a man was charged with an offence punishable with death, the court could provide him with counsel upon his request. However, an amendment in the Code of Criminal Procedure, 1973 facilitated the statutory implementation



of free legal aid. Section 304 (1) of CrPC provides that - In a trial before the sessions judge, if the accused does not have sufficient means to engage a pleader, the court should assign a pleader for his defence at the expense of the State.

B.iii. Free Legal Aid under International Law

International law addresses the provision for free legal services from the perspective of human rights. An explicit provision for legal services is incorporated in the International Covenant on Civil and Political Rights (ICCPR).

India has ratified the International Covenant on Civil and Political Rights, which came into force in 1976 and is bound by the international obligation to provide free legal assistance as per the requirements of the Covenant. The Indian Supreme Court has adopted the method of giving effect to international legal obligations when these obligations exist in the Indian legal system expressly. The Court also recognized international legal obligations as part of the law of the land when Indian law can be harmoniously interpreted as in conformity with international law.

A number of international treaties like the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on Elimination of Discrimination Against Women (CEDAW), and International Convention on Elimination of All Forms of Racial Discrimination may be interpreted as implicitly referring to the need for free legal services while aiming at effective legal remedy and access to justice.

There are a number of declarations and principles adopted by the UN which refer to effective legal remedy, of which free legal services (in genuine cases) form an essential component. For instance, Article 8 of the Universal Declaration of Human Rights (UDHR) provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by the law. Being a General Assembly resolution, some international law scholars describe UDHR as a soft law in terms of the declaration, encapsulating lofty idealistic notions about human rights. Still, it creates right-centric obligations of norm creating a character for the members of the international community.

C. The Legal Services Authorities Act of 1987

C.i. Brief History

The 14th Law Commission of India Report on Reform of Judicial Administration, 1958 mooted the idea of providing free legal aid to the poor by the State. The Report highlighted the responsibility of the legal community to administer legal aid schemes and the State to fund legal representation to the accused in criminal proceedings, appeals, and jails.

In 1960, the Union Government initiated the National Legal Aid Scheme which faced financial shortages and died a natural death. In 1973, in the second phase, the Union Government constituted a committee under the chairmanship of Justice Krishna Iyer to develop a legal aid scheme for states. The Committee devised a strategy in a decentralized mode with legal aid committees in every district, state, and center.

In 1980, a committee was constituted at the national level to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Justice PN. Bhagwati, then a Judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country.

In 1987, the Legal Services Authorities Act was enacted to give a statutory base to legal aid programs throughout the country on a uniform pattern. Subsequently, the Parliament enacted the Legal Services Authorities Act, 1987 to provide free legal aid to certain categories of citizens.

The preamble of the Legal Services Authorities Act, 1987 states: 'An Act to constitute legal services



authorities to provide free and competent legal services 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.'

The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes.

Society is rapidly progressing and the reflections of the same can be found on all fronts. Given the socio-economic changes in the last decade, the Preamble sets forth the need to address the grievances of weaker sections of society. None should be denied justice for being poor or disabled, the evils in the social hierarchy should also not affect anyone seeking justice.

C.ii. Entitlement to Legal Services

Section 12 and 13 of the Legal Services Authority Act, 1987 deals with the criteria of eligibility for legal services.

Section 12 -Criteria for giving legal services:

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is—

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or begar as referred to in 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 (1 of 1996);
- (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 (104 of 1956), or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 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 (14 of 1987); or
- (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.

Senior citizens' eligibility for free legal aid depends on the Rules framed by the respective State Governments in this regard.

In Delhi for example, senior citizens are eligible for free legal aid subject to the prescribed ceiling of annual income. Any individual above the age of 60 can apply for free legal aid/services.

D. Legal Services- Meaning and types

D.i. The Free Legal Services include-

1. Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;



2. Providing service of lawyers in legal proceedings;
3. Obtaining and supply of certified copies of orders and other documents in legal proceedings;
4. Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

Litigation is not a luxury but it should be used as a last resort. In criminal cases, prosecution is initiated by the State and when legal aid is provided to the accused, the expenditure of both the parties is managed by the State. Sometimes, it is criticized that legal aid in criminal cases encourages litigation. Therefore, pre litigation services were introduced as a category of legal services provided to eligible people.

Free Legal Services also include provision of aid and advice to the beneficiaries to access the benefits under the welfare statutes and schemes framed by the Central Government or the State Government and to ensure access to justice in any other manner.

D.ii. Legal services can be broadly categorized into the following two types:

- Pre-litigation legal services, and
- Post-litigation legal services.

E. Pre-litigation legal services

These days, the number of litigations is increasing day by day, which is against the smooth administration of justice. So far, emphasis was given only on post-litigation assistance or help. Now, it is being realized that pre-litigation legal services are more useful than post-litigation legal services. The pre-litigation legal services include:

- Legal education
- Legal advice
- Legal awareness
- Pre-litigation settlement

Post Litigation services include all those services that are required to be rendered by an Advocate to his client.

E.i. National Legal Services Authority

Article 39A of the Constitution of India provides free legal aid to the poor and weaker sections of 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 the law and a legal system that promotes justice on the basis of equal opportunity for 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 uniform nationwide network for providing free and competent legal services to the weaker sections of society on the basis of equal opportunity.

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to monitor and evaluate the implementation of legal aid programs and to lay down policies and principles for making legal services available under the Act.

In every State, a State Legal Services Authority and in every High Court, a High Court Legal Services Committee have been constituted. District Legal Services Authorities, Taluk Legal Services Committees have been constituted in the districts and most of the taluks to give effect to the policies and directions of the NALSA and to provide free legal services to the people and conduct Lok Adalats in the State.

Supreme Court Legal Services Committee has been constituted to administer and implement the



legal services programme insofar as it relates to the Supreme Court of India.

NALSA lays down policies, principles, and 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 to:

1. Provide Free and Competent Legal Services to the eligible persons;
2. Organize Lok Adalats for amicable settlement of disputes; and
3. Organize legal awareness camps in rural areas.

E.ii. NALSA Regulations, 2010

In 2010, the National Legal Services Authority (NALSA) of India adopted the National Legal Services Authority (Free and Competent Legal Services) Regulations in the exercise of its power under Section 29 of the Legal Services Authorities Act, 1987.

The Regulations are applicable to the Legal Service Committees of the Supreme Court, High Courts, the States, districts, and taluks. Some broad features of the relevant regulation are as follows:

- Selection of Panel Lawyers

The legal services institution is vested with the authority to invite applications from legal practitioners with requisite professional experience to indicate the types of cases as they may be entrusted with. The panel shall be prepared by the Executive Chairman of the legal service institution in consultation with the Attorney-General (for Supreme Court), Advocate-General (for High Courts), Government Pleader (for districts/Taluks), and the Bar Association President.

The legal practitioner shall have three years or more of experience at the bar for being considered for empanelment. Personal traits like competence, integrity, suitability, and experience shall be considered. Separate panels shall be maintained for different types of cases. The Regulations also provide for retainer lawyers. The Panel has to be reconstituted every three years without disturbing the work of panel lawyers already representing ongoing cases. In such cases where the panel lawyer wishes to withdraw from a case entrusted to him shall communicate this to the Member Secretary and the latter may permit him to do so. The panel lawyer is barred from taking any fee, remuneration, or other valuable consideration from any person for whom legal services are rendered under the Regulation or Act. The panel lawyer may be withdrawn from a case or his name removed from the panel on account of non-performance of duties satisfactorily or for actions against the object and purpose of the Act or Regulations.

- Payment of Fee

The Regulations specify the rules regarding the payment of fees for panel lawyers which shall be in accordance with the State regulations without any delay on receipt of completion of proceedings for them. It suggests a periodic revision of honorarium for the different types of services provided by panel lawyers in legal aid cases.

- Senior Advocates

The services of senior advocates may be availed, if the Chairman of the legal services institution forms an opinion to that effect in cases of great public importance and where serious threat to the life and liberty of the applicant exists.

F. The Legal Services Authorities (Amendment) Act, 2002

The Parliament of India realized that litigation-oriented legal services cannot bring out desired results, therefore, for encouraging pre-litigation legal services especially in public utility service, the Parliament



has made certain amendments in the Legal Services Authorities Act by passing an Act known as the Legal Services Authorities (Amendment) Act, 2002.

The purpose of this amendment is to bring out certain changes in the Legal Services Act, 1987 (hereinafter referred to as the Principal Act) especially:

- i. the establishment of permanent Lok Adalats to settle disputes concerning public utility services at pre-litigation state;
- ii. **pre-litigation conciliation and settlement pertaining to public utility services**

F.i. 'Public utility service' means any-

- (i) transport service for the carriage of passengers or goods by air, road or water; or
- (ii) postal, telegraph or telephone service; or
- (iii) supply of power, light or water to the public by any establishment; or
- (iv) system of public conservancy or sanitation; or
- (v) service in hospital or dispensary; or
- (vi) insurance service, and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this chapter.

F.ii. Permanent Lok Adalat- Important Provisions

Permanent Lok Adalat- Important Provisions:

1. The Permanent Lok Adalat shall, during conduct of conciliation proceedings assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.
2. It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.
3. In case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof.
Where the parties fail to reach at an agreement, the Permanent Lok Adalat shall decide the dispute.
4. Procedure of Permanent Lok Adalat - The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872).
5. The Award of Permanent Lok Adalat shall be final and deemed to be a decree of a civil court.

Other Initiatives

- **Legal Service Mobile App:**
 - ♦ To enable equitable access to justice, NALSA has launched **Legal Services Mobile App** on Android and iOS versions to **enable easy access to legal aid to common citizens.**
- **DISHA Scheme:**
 - ♦ The Department of Justice (DoJ) has launched a comprehensive, holistic, integrated and systemic solution on access to justice at pan India level through a scheme titled



‘Designing Innovative Solutions for Holistic Access to Justice (DISHA)’ being implemented from 2021-26.

- ♦ All ‘Access to Justice Programmes’ have been merged under the DISHA scheme and upscaled to all India levels.

G. When can Legal Aid be denied or withdrawn?

Legal Aid can be denied at the initial stage before the application for legal aid is accepted. It can also be withdrawn at the later stage after the application has been accepted. Legal aid can be denied or withdrawn in the following circumstances:

1. Legal aid can be denied if a person is found ineligible under Section 12 of the Legal Services Authorities Act, 1987;
2. Legal aid can be withdrawn if the aided person who applied under the income category is found to possess sufficient means;
3. Legal aid can be withdrawn where the aided person obtained legal services by misrepresentation or fraud;
4. Legal aid can be withdrawn where the aided person does not cooperate with the Legal Services Authority/Committee or with the legal services advocate;
5. Legal aid can be withdrawn where the person engages a legal practitioner other than the one assigned by the Legal Services Authority/Committee;
6. Legal aid can be withdrawn in the event of death of the aided person except in the case of civil proceedings where the right or liability survives;
7. Legal aid can be withdrawn where the application for legal service or the matter in question is found to be an abuse of the process of law or of legal services.

(<https://nalsa.gov.in/services/legal-aid/post-application-procedure>) make the link click.

H. Legal Aid In Context Of Social Justice And Human Rights

There are millions of people who are denied human rights only because they cannot afford the cost required for the enforcement of their rights. Merely talking about human rights from an elitist platform is not sufficient. In order to do social justice for them and to make human rights meaningful, legal aid becomes essential. Human Rights which cannot be enforced due to poverty are meaningless and worthless. A right to access to justice is sine-qua-non for social justice. Access to justice itself is one of the most basic human rights, and without it, the realization of many other human rights may become difficult. Indeed, the right to access justice or Legal Aid is evolved by judicial creativity for the benevolence of poor persons. Now, neither is it possible nor is it proper to isolate the right to legal aid from a range of human rights.

The reason is obvious, mere declaration and passing of resolutions about human rights are not enough, the guarantee for the enforcement of these rights is equally essential. Hence, it will not be incorrect to say that the right to legal aid stands first in the specie of human rights. Human rights are only mere pious declarations without legal aid. They become lucrative only when they are enforced. The right to legal aid enables the accomplishment of these human rights and makes them worthwhile for the poor masses in the world. In the present legal system of most countries, justice is not given but sold.

In the present legal system of most countries, justice is not given but sold. The consumers of justice have to pay the remuneration of counsel, and bear expenditures for court fees, and also other contingent charges. Indeed, poverty is an obstacle in the way of getting justice and due to this reason, the poor become a sufferer of social injustice. Legal aid is only a way for providing social justice to all. Legal aid indeed, is an integral part of human rights and it requires urgent considerations, otherwise,



there is an apprehension that someday the patience of poor persons may be exhausted and that will endanger world peace.

Exercise

1. Discuss the main provisions for free legal aid under the Indian Constitution.
2. Mention any four categories of persons entitled to free legal aid under the Legal Services Authority Act by the Central Authority.
3. How has the amendment of the Legal Services Authorities Act in 2002 widened its scope by establishing Permanent Lok Adalats?
4. Discuss three main provisions of National Legal Services Authorities Regulations 2010.



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