

CHAPTER IX

Legal Aid Services and Social Justice in India

The State of India is wedded to the principle of an ideal democracy. It seeks to achieve an egalitarian society for the people of India. It stresses the principle of welfarism directed towards the realization of the hopes and aspirations of the people for providing to them maximum possible social security so that they are able to lead a life with full protection against oppression, discrimination, exploitation and other acts of violence. The people of India expect the state to promote their general happiness and welfare and to regard itself more as an agency of social service than as an instrument of power.

The Preamble to the Constitution of India and the Directive Principles though non-justiciable, articulate and declare justice, liberty and equality to be secured for the people as there are very important and democratically significant political ideals aiming to render our democratic ideals into tangible realities and are designed to direct the state, on political, social, and humanitarian grounds, to adopt welfare politics and implement them to ensure and provide maximum possible benefit to people without any discrimination so that the right to life and the dignity of life are adequately protected and rightly preserved.

9.1 Welfare State also stresses that no one should be deprived of legal justice

A welfare state also stresses that no one should be deprived of legal justice. India that claims to be a welfare State seeks to provide necessary legal aid service to the poor, to the helpless, to an individual unable to bear expenses to start and continue a legal battle for legal justice and to the weaker section of the society. It is against the principle of a welfare State or a democratic society if an individual or a member of the poor and weaker sections is denied or deprived of legal justice for want of money required as expenses to start and continue a legal fight for justice in the court. This denial or deprivation of justice is a glaring instance of violation of human rights and social justice. As a State is committed to

democracy and social welfare, India deserves praise and appreciation for striving to secure the provisions for its citizens a wide range of social services which also include the provisions of free legal aid to the deserving individuals. In the field of social security, India strives to protect its people against denial or deprivation of legal justice through the scheme of free legal aid which is based on the objectives of the free, competent, effective and comprehensive legal services. The scheme no doubt, aims at strengthening the state's commitment to democracy and welfarism. Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society. The Legal Service Authority Act, 1987, as followed, as amended by the Act of 1994, which came into force on November 9, 1995 aims at establishing a nation-wide network for providing free and competent legal services to the weaker sections.

The Central Government has undertaken the responsibility of ensuring free legal aid to a citizen who deserves it as a positive step towards the implementation of Article 39A, of the Directive Principles. It has set up some important agencies to look into the matters of free legal aid and effective and comprehensive legal services to people so that the legal justice is dispensed to them and their right to legal justice is ensured and protected. It has set up National Legal Service Authority (NLSA) which is entrusted with the responsibility to implement and monitor legal aid programmes in the country. The Supreme Court Legal Service Committee has been constituted under the Act.

To facilitate the provisions of free legal Services to deserving individuals or of all the country, the government has established High Court Legal Services Committees, District Level Services Authorities and Taluk Legal Services Committees. In every High Court of the State, the High Court Legal Service Committee has been set up to provide free legal aid to the destitute or the deserving or eligible persons in matters that came before the High Courts. The aims of division of Legal Aid Services authority into various levels – from the national level to the taluk level – is to cover the provision of legal aid services to people of all ranks and classes and to ensure this provisions to all deserving persons and to expedite this process. The Central Authorities Constituted under sections 3 of the Legal Service Authority Act (amended in 1994) have taken steps

to set up vibrant legal aid programmes such as clinics in legal literacy , establishment of legal aid clinics in Universities and law colleges, training of para legals and holding aid camps and Lok Adalats.

9.2 Meaning of Legal Aid

The term 'legal aid' means "payment from public funds for or towards the cost of legal advice or representation" (Oxford Advanced Learners' Dictionary). It refers to the services of a lawyer in a court case provided free to people too poor to pay for them. "Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to court system." It enables a poor, helpless person to have access to justice. It is meant for those who are unable to pay for the process of justice in the court of law. It is an instrument for ensuring equality before the law. Through legal aid the State seeks to ensure the right to counsel, and the right to a fair trial. The Constitutional guarantee of equality before law will not be a reality if the state fails to provide free legal aid to one who is entitled to avail oneself of it. India is committed to welfarism, and so it has ensured free legal aid to a deserving person. Legal aid is essential for social justice. Social justice is incomplete and thereby meaningless if the poor and the weaker sections of the society are unable to have access to justice in the court of law.

9.3 Legal Aid Service and Welfare state

A welfare state aims at providing security and Justice to its citizens . It seeks to make sure that no one is deprived of it. It upholds the rule of the law in the sense that the law will treat everybody with an eye of equality. Law is not the prerogative to the rich; the poor shall have equal access to the law. Hence legal aid is intimately related to the welfare state, and the provision of legal aid by a State is influenced by attitude towards welfare programmes. The state cannot refuse to provide legal aid to people who are entitled to welfare provisions, such as social housing, with access to legal advice and the courts. Legal aid has enabled people to have their economic, social and cultural and even personal

rights protected. It is essential for the state to provide individuals with access to justice in order to uphold welfarism .

Legal justice is one of the cardinal features of social justice and welfarism. Social justice cannot prevail in a society if the State fails to ensure legal justice to its citizens. The State is required to adopt all possible measures to provide free legal aid or services to the poor and the needy and who are unable to afford services of a lawyer for the conduct of a case or a legal proceedings in any court of law or tribunal or before any state authority. The State cannot stand away from providing this service to such deserving persons. An individual should not be denied justice because of his poverty or want of money. Justice Blackmun in **Jackson vs. Bishop case** says " The concept of seeking Justice cannot be equated with the value of dollars . Money plays no role in seeking Justice".

Article 39A of the Constitution of India provides that 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 other way to ensure that opportunities for securing justice are not denied to any citizens by reason of economic or other disability". Right to equality is constitutionally guaranteed to the people of India. Equality before the law, including equal protection of the laws (Art. 14) is one of the principal rights to equality . This Article proclaims "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India". This principle is in conformity with the **Universal Declaration of Human Rights** which states that "All are equal before the law" which states that "all are equal before the law and are entitled without discrimination to equal protection of the laws"

It is the duty and responsibility of a welfare state to see that "equality before the law" and "equal protection of laws" that are being secured to all without discrimination. The Supreme Court has laid down that "equal protection means equal protection under similar circumstances that law should be applied to all in the same condition". It means right to equal treatment under equal

circumstances. The law shall not discriminate and the State shall not make law favouring one person and placing another under any disadvantage.

Article 14 prohibits class legislation but allows reasonable classification. This classification must be rational and be based on reasonable relation to the object sought to be achieved by the legislation (P.K. Garg vs. Union of India , 1981, Prabhakar Rao vs State of Andhra Pradesh , 1986) . Article 14 stands right against discrimination and hence guarantees equality of right. The right to equality guaranteed in Article 14 is legal equality. Article 22 guarantees an important right because it is associated with personal freedom or personal liberty guaranteed in Article 21. Article 22 provides certain safeguards against arbitrary arrest and detention. In Madhu vs. State of Punjab , 1959 case the Supreme Court said that the man in custom must be informed as soon as possible , of the grounds of such arrest otherwise the detention shall be innocuous and unconstitutional even if his initial arrest was lawful and valid (State of Bombay vs. Atma Ram) . These two Articles “make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge fulfilled in its letter and spirit and equal justice is made available to the poor , downtrodden and weaker sections of the society”.

9.4 Legal Aid Schemes to Ensure Legal Justice

The Government of India has paid its attention to the issue of legal aid for the poor , and the needy classes of the society . In 1960, it draws some guidelines how to effectively provide legal aid through legal aid schemes. In the State of India legal aids schemes . In the State of India legal schemes were floated through legal aid Boards, Societies, and Law department. In 1980 a committee at the national level , chaired by justice P.N. Bhagawati , then a Judge of the Supreme Court was constituted to supervise legal aids programme throughout the country. This committee was designated as CILAS (Committee for Implementing Legal Aid Schemes) and it started monitoring Legal Aid activities throughout the country. Lok Adalat which has already been introduced lent a new dimension to the dispensation of Justice of the country. Lok Adalat provides a supplementary

forum to the litigants for conciliatory settlement of their disputes. In 1987, Parliament enacted Legal Service Authorities Act in order to accord a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced in 1995 after certain amendments had been introduced therein by the Amendment Act, 1994. The contribution of Justice V.R. Krishna lyre to the development and incorporation of the concept of legal aid in the Indian legal system has been of tremendous value. His Report entitled Professional Justice to the Poor by Justice V.R. Krishna lyre in 1973 showed the connection between law and poverty and spoke of Public Interest Litigation (PIL) in this context. It laid emphasis on the need for active and wide spread legal aid system that paved the way for law to reach people rather than for the people to reach law.

Justice Bhagwati and Justice lyre formed a two-member committee on juridicare and released the report of the committee in 1979 which stressed the need for new philosophy of legal service programme and at the same time cautioned that it must be framed in the light of socio economic conditions prevailing in the country. The Committee prepared a report on the specific needs and the peculiar problems of the poor of the country in view of traditional legal service programme. The report also included draft legislation for legal services and referred to Social Action Litigation. Justice lyre submitted his report in 1973 to the Government and the report came to be marked as a cornerstone of Legal Aid development in India. "it clearly laid down that it is a democratic obligation of the state towards its citizens to ensure that the legal system becomes an effective tool in helping secure the ends of social justice. He coined the word "juridicature" to cover a scheme of legal aid which brought justice to the doorstep of the lowly.

Free legal aid service to the poor and the weaker sections of the society is of overriding importance as far as legal justice is concerned. Law is an important instrument of social change which connotes social development. Social change, if systematic, democratic and welfaristic, leads inevitably to social development. There is law in India to protect the right to legal justice of those who approach the court to get justice. The 'concept of social justice' proves to be futile if an

individual is denied an opportunity to seek justice in the court of law. The 14th Law Commission Report defended the argument that the poor needed to be entitled to free legal service to justify the principle of an equality of opportunity to seek justice to all segments of society. If the state refuses or otherwise fails to ensure it to the poor or the helpless class of people or economically backward classes of society, their faith in the legal system is bound to evaporate, and the State that claims to be a welfare state will surely be untenable. India as a welfare state strives to provide free legal aid services to the deserving classes of people. Justice Krishna Iyer looked upon Legal Aid Programme as a very important initiative of the government to secure legal justice to those deprived of it because of their poverty or inability otherwise and also as a reminder to the State of its responsibility as declared in the Directive Principles of State Policy.

The Government is determined to provide the legal aid to the poor or the indigent and the helpless persons of society in accordance with the spirit and principles of the Constitution of India. State Legal Services Authority, West Bengal, lists the persons who are entitled to get free legal aid services:

- A woman or child
- A member of Scheduled caste or Scheduled Tribe
- An industrial labour
- Victim of trafficking in human beings, or beggar as referred to under Art. 23 (10) of the constitution;
- A mentally challenged person, or physically disabled person;
- A victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earth quake or industrial disaster
- A person who is unsteady in a protective home, or in juvenile home, or in a psychiatric hospital or in psychiatric nursing home;
- A male having annual income of less than Rs. 1 lakh, if the case is before any court other than the Supreme Court and having annual income of less than Rs. 1.25 lakh, if the case is before Supreme Court.

- The list of the categories of person as shown above, who are entitled to enjoy free legal aid services justifies India's welfarism. It is comprehensive and is expressive of the State's endeavour to ensure legal justice to the indigent and the helpless

9.5 Indian Constitution, Laws and Proscription of Social injustice

The Constitution of India guarantees individual rights and vows to protect the weaker classes of people against social inequalities and social injustices. It proscribes the violation of dignity of the individual and seeks to abolish all such traditional social practices as create division and discrimination between man and man in the society. The caste system which is deep-seated in the society continues to influence and encourage inhuman practices like manual scavenging which is a slur upon human dignity and hence, this a glaring example of the violation of human rights. Caste-based and hereditary occupations for dalits which still continue to be part of social life, unquestionably derogate the very existence of dignity of the people. Social equality which our Constitution proclaims for all is hard to achieve if casteism, caste-based occupations of the backward classes, caste-based discrimination and so on are not fully eradicated from the society. Casteism and caste-based occupations constitute an important factor of social inequality, social discrimination and social injustice in Indian society

Law is the instrument of social justice. There have been several legislations against social injustices. They are meant to uphold social justices, to protect rights of people and safeguard the interests of the weaker sections of the society. But laws against violence against women, children and exploitation of the poor working classes have not been properly and effectively enforced. Though there are laws to safeguard the interests of the weaker section, for lack of effective enforcement of the laws, they have become and are still becoming victims of deprivation in every sphere – social, economic, political. There should be laws for social change which paves the way for social development and social equality. Social development and Social equality form the pillar of social justice. Hence existing laws need to be adequately enforced to secure social justice for all. We

have laws against domestic violence which leads to the end of many innocent women's lives every year. Domestic violence includes dowry deaths, wife beating or torturing, torturing maid assistants, killing wives and maid servants, sexual violence against family members, etc.

Dowry death has assumed an alarming proportion, though Dowry Prohibition Act was passed in 1961. Statistics have shown that every year more than four thousands women, on an average, are becoming victims of dowry torture. Social violence is a violation of women's honour, right and dignity, and the existing laws of the state are still helpless to protect women against this violence. Women are eve-teased but society cannot protect them against this open humiliation; they are raped but laws fail to safeguard them and they are deprived of the share of the property but their families remain silent spectators. Incidents of gang rape and murder of women have maligned and tarnished our civilized society and prove that women are totally unguarded and unprotected in our society.

Strict laws are required to control family violence. The Government of India has enacted several laws – the Amended Acts on Rape in 1986, the Anti Dowry Act of 1984-86, the laws regarding molestation of women of 1986-87, etc. and even in case of **Vishakha vs. State of Rajasthan**, the Supreme Court have given verdicts against sexual harassment in 1997 and branded it as an act of violation of Human Rights. Yet the steps mentioned above are not adequate enough to contain the violence against women. What is required is a total transformation of our social mentality. What is more needed is to provide women in our society with protection, support and advice, specially to those who have become victims of family violence or other kinds of violence. There exist family courts in India to provide legal assistance to aggrieved women. The areas and jurisdiction of such court must be extended with greater earnestness so that the wailing mothers and women are properly and carefully redressed. The untold sufferings of the women must be addressed by law makers as well as by society. Offenders to women or criminals must be punished with all severity. What is more important is that women need to be made fully aware of their rights and positions in the society. They should not look forward to or depend upon their male counterparts for

realization of their rights, helps and assistance to protect themselves against social violence. They need be trained and educated properly for self-sufficiency and self-reliance physically and spiritually and even economically so as to enable them fight and resist all types of social oppression and violence against them.

The duty to proscribe all inhuman works and practices have been constitutionally devolved to the government which aims at building up an egalitarian society . Since equality is one of the cardinal features of the State of India, it should not allow the continuation of menial occupation that gives rise to class discrimination and derogates the dignity of mankind. Menial occupation is opposed to the principles of equality and social justice. It is an occupation that establishes social discriminations and gives validity to the violation of human rights and dignity The Parliament of India has since passed the Prohibition of Employment as Manual Scavenger and Their Rehabilitation Bill , 2012 and enacted the prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013. The aim of this Act is to eradicate manual scavenging in India in order to ensure just and human conditions of work as enunciated in Article 421 under the Directive Principles of State Policy.

K. Maylisamy , Assistant Professor , BMS College of Law , Bangalore , has made an intriguing study on manual scavenging as a social evil like untouchability and explores and explains how the anti-scavenging law needs to be exercised to eradicate this inhuman practice in his study entitled **“Eradicating Manual Scavenging in India – The Adequacy of the Law Examined”** Naya Deep 2014 , New Delhi. Like untouchability manual scavenging as a social evil has disgraced humanity at large . This practice is a social shame , national slur, flagrant violation of human right and direct tarnishing of the dignity of those whose traditional occupation is manual scavenging . According to the law , 1993, a manual scavenger is a person who is engaged or employed in manually carrying human waste. Manual scavenging soils the dignity not only of the class of a people but to the dignity of human dignity as well. In India , this traditional profession maligns the national dignity of India as one of the largest democracies in the world.

9.6 Legislations Made to Proscribe Inhuman Practices and to Protect Human Dignity.

The class of people who is engaged in such inhuman practices belongs to the Scheduled Castes and Scheduled Tribes. People of these classes are traditionally deprived of social and economic equality, social justice and human dignity. In order to protect them against inequality and injustice and also to protect their dignity as human being, the Indian Parliament has made four legislations against the inhuman practice of scavenging. The laws are;

- (1) Protection of Civil Rights Act, 1955
- (2) The SC/ST (Prevention of Atrocities) Act, 1989
- (3) The Employment of Manual Scavenger and Construction of Dry Latrine (Prohibition), Act 1993
- (4) National Commission for Safai Karmacharies Act, 1993

The Protection of Civil Rights Act, 1955, proscribes the practice of the untouchability and social disabilities arising out of it against the members of Scheduled Castes and Scheduled Tribes. The SC/ST (Prevention of Atrocities) Act, 1989, aims at preventing Commission of offences of atrocities against the SC/ST people. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 prohibits manual scavenging practice in India. In the Preamble to the Act it is stated that "whereas fraternity assuring the dignity of the individual has been enshrined in the Preamble to the Constitution, whereas the dehumanizing practices of manual scavenging of human excreta still continues in many parts of India...whereas it is necessary to enact a uniform legislation for the whole India for abolishing manual scavenging by declaring employment of manual scavengers for removal of human excreta as an offence and thereby ban further proliferation of dry latrines in the country".

National Commission for Safai Karmacharis Act, 1993 is another piece of legislation, dealing with matters associated with the manual scavenger. The Act recommends to the Central Government specific programmes for action.:

to eliminate inequalities in status,

to secure facilities and opportunities for safai karmacharis under a time bound action plan,

to study and evaluate the implementation of the programme and schemes relating to social and economic rehabilitation,

to adopt measures for social and economic promotion of Safai karmacharis.

Summary

To sum up, we may unambiguously say that free legal aid and advice to the indigent and helpless is a part of social justice to all. Denial of legal justice is denial of social justice, for social justice and legal justice cannot be seen separately. India as a welfare state has attempted to introduce free legal aid and advice to deserving persons. To uphold the principles of social democracy and to ensure equality before law India regards it as an obligation to provide legal aid and advice to indigent and helpless. The State Legal Aid Committee has been playing an important role in this respect. The District Legal Aid Committee and the Taluk Legal Aid Committee continue to provide free legal aid support to the deserving persons to vindicate the principles of legal justice in the Indian Society. Free Legal aid and advice is provided to the undertrials also. The fact that undertrials have been languishing in different jails in India for years, is an indictment of legal injustice and violation of human rights. The State needs to be more active in providing such undertrials relief from such languishment, tantamounting to physical and mental tortures, as a right and just step towards the vindication of legal justice which is a universal human right.

Legal Justice can make democracy a reality ; justice will remain vague if legal justice is not ensured to all irrespective of caste , creed and class. Legal justice is not easy to secure for people . The government of India has already adopted some positive steps to facilitate legal justice for people but more positive steps are still required to make legal justice a universal aspect of the democratic polity and policy of the government. More laws are to be enacted in this direction. In

this case the government should attach due importance to the right enforcement of laws meant to ensure legal justice. The process of legal justice for the helpless , the indigent , aggrieved women should necessarily be streamlined .