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Equal Justice and Free Legal Aid

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ABSTRACT

India is a country where the rate of poverty as well as the rate of crime is increasing day by day. With the amount of population in our country everybody is not able to get employment or live-in standard of living. It is also true that crime not only happens against people who can afford to fight against it. Even by the rule of natural justice everyone has a right to be heard. Article 39A of the Indian Constitution, 1949 inserted by the forty second amendment discusses the right to equal justice and free legal aid. It provides that all the citizens of India have a right to seek justice if their right has been infringed and if they don't have the resources to fight for the rights the state shall provide free legal aid to them. This paper mainly focuses on following objectives:

- *What is the interpretation of the term equal justice?*
- *What is the understanding and applicability of free legal aid?*
- *An overview on the applicability of article 39A in our country.*

The cases which will be discussed in the paper are State of Maharashtra v. Manubhai Pragaji vashi & Ors, Manoharan v. Sivarajan & Ors, Hussainara Khatoon & Ors v. Home Secretary, State of Bihar, B Sunitha v. State of Telangana and many more. The case law will also help us understand the interpretation of the Courts with regard to article 39A

I. INTRODUCTION

The primary objective of any legal system is to maintain peace and harmony in the country and to deliver justice. Justice means 'fair, reasonable or just'². In any democratic country the establishment of supremacy of law or legal system is a must. It helps people to get redressal of the wrong happening against them. The presence of legal system also keeps a watch on the actions of the other organs of the democracy like legislature and executive. It makes the citizens feel secure and protected by its mere presence. It also gives them a feeling that their issues would be heard and that they can seek redressal. Article 39A of the Constitution of India provides for equal justice which clearly means that justice is something which is available to all. It is not just the privileged class or the upper class in the society who can hail for justice. It

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² Andrew Higgins, Legal Aid and Access to Justice in England and India, National Law School of India Review.

is equal among both the haves and the have-nots. It clearly states that the legal system in the country should operate in a manner to promote justice to all and provide equal opportunity for the same.

The rule of natural justice lays down the principle of “audi altrem partem” which means here the other side or the right of both the parties to the issue to be heard or present their case. The Constitution of India under Art 39A also provides for free legal aid to be given to people with economically backward sections or who cannot afford on their own a representation in the court of law. It is the responsibility of the state to ensure that everybody gets the equal opportunity to be heard and to secure justice. India is a country where not everybody can afford to hire an advocate. Some do not even have the money to feed themselves leave aside the idea of hiring a lawyer to litigate on their behalf. This does not mean that they do not have the right to be heard or represented. There are provisions made under the Legal Services Authorities Act, 1987 in which the National Legal Services Authority (hereinafter referred to as NLSA) or State Legal Services Authority (SLSA) or the concerned District Legal Services Authority (DLSA) has the responsibility to provide for the free legal aid to the needy ones. The procedures for the same will be discussed in the later sections of this paper.

II. EQUAL JUSTICE AND FREE LEGAL AID UNDER THE CONSTITUTION OF INDIA

Before 1976 there was no concept of free legal aid in India. Bombay Legal Aid Society was the first one to propose the idea of free legal aid to poor litigants. It was first time in the year 1949 under the chairmanship of Justice P.N. Bhagawati a committee was set up and was called “The Committee on Legal Aid and Legal Advice in Bombay”. Later on following Justice Bhagawati, Sir Arthur Trevel Harris being the Chief Justice of Calcutta High Court also established a committee to look into the matter. Also in the Law Commission report of 1958 it was held that “rendering of legal aid to poor litigants is not a minor problem of procedural law but a question of fundamental character” which clearly shows the importance to address the issue if providing free legal aid and advice to all the needy ones in the country.³

A committee headed by Justice V.R. Krishna Iyer was formed in the year 1972 to consider the question of free legal aid and advice to the socially, economically and educationally backward classes of people to make them aware of the constitutional and other legal rights and to help them to seek redressal in civil, criminal and revenue courts respectively.⁴ By the forty second amendment to the Indian Constitution Article 39A was added which discussed about “Equal

³ DLSA, “History”, Available at: <https://kamrupjudiciary.gov.in>, Last Accessed: November 27th, 2020.

⁴ Ibid.

Justice and Free Legal Aid” in the year 1976.

Free legal aid not only means free representation or helping the litigant who is economically backward or has any disability in litigating the case but it also means awareness in the citizens of this country through various programs, conducting Lok Adalat to ensure speedy and expeditious justice and also help the people who cannot afford to travel all the way to the court. It also includes providing victim compensation in the matters listed out in the schedule or the follow up actions of the respective authorities.

India is a welfare state and it is the responsibility of the state to work towards the welfare of its people. Even if the idea of free legal aid and equal justice was enshrined in the constitution long back but in reality it was not actually implemented until the case of *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*⁵. In this case the facts were that a lot of men, women and children were put behind the bars for a long period of time that were waiting for their trial to begin. Many of them were arrested for trivial offences for which the punishment was imprisonment for some months but they were kept in the jail from three years to ten years of time period which was much more than the punishment for the offence that they have committed. Some of them were not even charged. The court in this case acknowledged the importance of Art 39A and held that all of them should be released with immediate effect and it stated that the state cannot deny the constitutional right of speedy trial only on the basis that it does not have adequate financial resources. This was also discussed in the case of *Sheela Barse v. Union of India*⁶ in which Sheela Barse who was a journalist and activist for prisoner’s rights informed the Hon’ble SC about the plight of 15 women prisoners who were in Bombay Central Jail. Five women among them admitted that they were assaulted by the police inside the lockup. In the Writ Petition and the report filed stated about the inadequacy of legal assistance to these women in the prison. The Court held that it violates Art 39A and gave certain guidelines regarding the same which gave the duty of the state as well as the magistrate.

Earlier the Constitution was the one law which discussed the idea of free legal aid and imposed the responsibility on the central government. The procedure for proving the same came up with the enactment of the Legal Services Authorities Act, 1987 in which the delegation of responsibility and authority was mentioned and also the procedure for legal aid was provided.

⁵ *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*, 1979 AIR 1369.

⁶ *Sheela Barse v. Union of India*, (1986) 3 SCC 596.

III. FREE LEGAL AID UNDER LEGAL SERVICES AUTHORITIES ACT, 1987 AND THE ROLE OF AUTHORITIES

The concept of equal justice and free legal aid was inserted in the Constitution in the year 1976 under Art 39A but it did not discuss it widely. In 1987 the central government came up with a new legislation called as the Legal Services Authorities Act, 1987. This Act discussed the definition 'legal services' u/s 2(c) as rendering service in the conduct or proceeding or advice on a case before any court or tribunal or other authority. It provided the procedure for the constitution of NLSA, SLSA and DLSA and their functions respectively which are primarily to render legal services and aids. Part IV of the Act lists the criteria for entitlement of legal services. Sec 12 of the Legal Services Authority Act, 1987 states the criteria for eligibility to access free legal services by member of SC or ST community, a victim of Human Trafficking or Begar as prescribed under Art 23 of the Constitution, woman or child, disabled person, person under circumstances of undeserved want, industrial workmen, in custody, in receipt of annual income less than Rupees 9,000 or higher as decided by state govt. if the matter is before HC and Rupees 12,000 if the matter is before the SC. Sec 13 states that any person who satisfy any or all the criteria mentioned u/s 12 shall be entitled to free legal services on the expenses of the state.

The Act also mentions the grants by the central government which is given to these authorities. The formation of National Legal Aid Fund and State Legal Aid Fund is also present in Part V of the Act. It discusses in detail the procedure of permanent and temporary lok adalats and about their power and functions. The whole Act is made to work towards the welfare of economically, socially and educationally backward sections of the society but are the question that comes is whether the grass root reality is the same as it is provided in the papers. The Act is made to serve the people at grass root level or even at the Taluka level is mentioned in the Act but the reality is we are still a long way to go in these matters. This is not the situation only in our country but worldwide the situation remains the same. There are provisions in almost every country regarding this but in reality it is not effectively working.⁷

IV. OTHER CASE LAWS

In the case of *State of Maharashtra v. Manubhai Pragaji Vashi*⁸ a Special Leave Petition (SLP) was filed by the Maharashtra govt. represented by Education Department in the Hon'ble SC

⁷ Global Study on Legal Aid, Global report of United Nations Development Program and United Nations Office on Drugs and Crimes.

⁸ *State of Maharashtra v. Manubhai Pragaji Vashi & Ors*, 1 1995 SCC (5) 730.

against decision of the HC which held that it is the duty of the state to provide grant-in-aid to both governmental and private law colleges under Art 21 and 39A of the Indian Constitution. The SC in this case upheld the decision of the HC and stated that not doing so is discriminatory and the state must provide for the same.

*Abul Hassan and National Legal Services Authorities v. Delhi Vidyut Board & Ors.*⁹, in this case the need for permanent lok adalat is discussed in detail by the court because there were various similar type of cases which were pending in the court which could be settled or decided by the mechanisms like lok adalat at pretrial stages. Article 39A as well as sec 22 of the Legal services Authorities Act, 1987 also give the provision for it. The same was also upheld in the case of *United India Insurance Co. Ltd. v. Ajay Sinha and another*¹⁰ that there are various petty cases or cases which are compoundable in nature so, it is the responsibility given to the Legal Services Authorities to make people aware about lok adalats and also conduct the same or establish permanent lok adalats.

The role of Legal Services Authorities was notably seen in the case of *Sampurna Behrua v. Union of India*¹¹, *Sampurna Behrua* the petitioner who filed a Public Interest Litigation to voice for the children or juvenile who were not receiving the benefits under the Juvenile Justice (Care and Protection) Act, 2015. It addressed the issue of proving fundamental rights to the children of the nation and not depriving it. In this case the Delhi Legal Services Authority helped the petitioner in litigating her case and moving the court on the issue of child rights. It can also be seen in the case of *National Legal Services Authority v. Union of India*¹² in which the matter which was brought before the court was about recognition of the rights of transgender. The court held that they will be treated as 'third gender' while giving them rights under Part III of the Indian Constitution, they should be legally identified by the state, and they should be treated as socially and educationally backward classes of citizen to avail all the benefit given by the state.

Also in the case of *New India Assurance Co. Ltd. v. Gopali*¹³ where the deceased died of a motor vehicle accident and the dependents of the deceased were unable to file a case against the appellant company as they could not afford to fight a case against them. The Hon'ble SC held that the appellant company must pay compensation to them the respondents will be granted legal aid under Art 39A of the Indian Constitution.

⁹ *Abul Hassan and National Legal Services Authority v. Delhi Vidyut Board & Ors.*, AIR 1999 Del 88.

¹⁰ *United India Insurance Co. Ltd. v. Ajay Sinha & Anr.*, SLP No. 17768 of 2006

¹¹ *Sampurna Behrua v. Union of India*, (2011) 9 SCC 801.

¹² *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

¹³ *New India Assurance Co. Ltd. v. Gopali & Ors.*, Civil Apeel No. 5179 of 2012.

In the case of *Manoharan v. Sivaranjan & Ors.*¹⁴ the suit was for recovery of property after repayment of loan but the sub judge rejected the suit for the non-payment of court fee which became the issue in the higher court. The apex court held that non-payment of fee cannot become a reason for rejection of suit and the litigant must be provided legal aid as guaranteed under Art 39A or the Legal Services Authorities Act, 1987. The court cannot be dismissed on this basis because Art 39A is equally applicable on district judiciary as well and it is the duty of the court to promote justice.

*B. Sunitha v. State of Telangana*¹⁵, in this case the lawyers were continuously going in for strike which lead to recurring of cases and jeopardized the justice which is to be delivered by the court. This case discusses that Art 39A provides for equal justice and opportunity for the same but regular strike by the bar is becoming a barrier in providing justice as early as possible. The bar as well as the bench should work towards delivering justice and also promoting it.

V. CONCLUSION

The Constitution of India with forty second amendment inserted the provision of Equal Justice and Free Legal Aid under Art 39A and based on this the Legal Services Authorities Act was enacted in the year 1987. Both the Constitution as well as the legislation was formulated to safeguard the faith of people in the legal system of the country and to promote the concept of justice. Not everyone is educationally or economically well to afford litigation but that should not be the reason for not getting justice if their right has been infringed. The whole idea behind these provisions is to establish a legal system where everybody is given equal opportunity to be heard and be represented.

The courts also have acknowledged these rights in various cases and have interpreted the statutes so, that they can give equal chance to both the parties. India is a welfare state and courts also made sure in various case laws to remind the state to take responsibility in providing legal aid and advice to the needy ones. But there are loopholes in this too as not everyone are able to avail the services made for them. They are not even aware that there are provisions like these made for them in any statute. It is important to spread awareness at the grass root level and not to deprive anybody what they are legally entitled to.

¹⁴ *Manoharan v. Sivaranjan & Ors.*, Civil Appeal No. 10581 of 2013.

¹⁵ *B. Sunitha v. State of Telangana*, Criminal Appeal No. 2068 of 2017.

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