

JUSTICE - A DISTANT DREAM FOR MANY?

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ABSTRACT

The Constitution aims to secure social, economic and political justice to its citizens. Article 14 and article 39A of the Constitution furthers this intention. Accessibility of justice is ensured to all sections of society through Article 32 of Article 226 of the Constitution. However, the time and process for legal justice is tedious to begin with. Legal Aid envisaged under article 39A of the Constitution is a means of helping the weaker sections of the society. Public Interest Litigation is another method to help the downtrodden sections of the society. Despite so many safeguards and methods of awareness, and provisions to seek justice, still, numerous individuals having poor and illiterate backgrounds have not been able to complete or even began to seek justice upon violation of their fundamental rights. This paper seeks to address this issue by analysing the current status of Legal Aid and Public Interest Litigation as available measures to seek justice.

Keywords : *Legal Aid, PIL, Justice, fundamental rights, Litigation*

I. Justice delayed is indeed justice denied

II. Legal Aid: A means of helping the weaker section of society

III. Public Interest Litigation (PIL) – Another alternative to help the downtrodden

IV. The Current Situation

I. Justice delayed is indeed justice denied

ONE OF the key mandates of the Constitution of India is to secure justice at social, economic and political level. Article 39A of the Constitution makes it clear that State is under the obligation “to secure the operation of the legal system which would promote justice, on a basis of equal opportunity, provide free legal aid, by suitable legislation or schemes or in any other way, ensuring that opportunities for securing justice are not denied to any citizen by reason of economic or any other disabilities.” Article 14 of the Constitution of India directs the State to ensure equality to all the persons under the eyes of the law. Justice is the end and laws are the way to achieve that end by a way of legal system which should be accessible to everyone. Until and unless, the poor and illiterate individuals are legally assisted, they are denied equality in the probability and opportunities to seek justice.

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The judiciary has taken an active interest and methodology to provide legal aid to the weaker sections of the society. Upon the infringement of the fundamental rights of any individual by the State, the Constitution of India has provided safeguards in the form of constitutional remedy, that is, to have direct access to the Supreme Court and High Courts through the power of extraordinary writ jurisdiction under article 32 and article 226 respectively. In a country such as ours, where the poor and backward individuals are living in secluded areas, such as, in villages, tribes, rural areas, *etc.* where the accessibility of justice is difficult, the aforementioned methods become extremely significant and handy.

Despite so many safeguards and methods of awareness, and provisions to seek justice, still numerous individuals having poor and illiterate background have not been able to completely or even began to seek justice upon violation of their fundamental rights. For the ones who have, the process of the court and the justice delivery system is so thorough and gradual, that it takes a considerable amount of excessive time to deliver the justice to these individuals, that is, when the justice gets delivered. Otherwise, the cases remain pending and keep getting postponed with future dates due to lack of proper administration and lack of integrity among the legal professionals representing these individuals of weaker section of the society. At present, there are more than 28 million cases pending throughout the various courts in our country.¹ Consequently, the staggering amount of pending cases has crippled the efficient working of the judiciary and has adversely affected the right of the individuals of the weaker sections of the society to timely delivery of justice.²

According to the common man's perspective, the enforcement of rights is done through the judicial processes which would be simple and swift as there is a strong concept of right and wrong and the ability of the judiciary to distinguish between the two. But, in reality, the procedures of the court are complex, costly, tedious and tardy, consequently putting the individuals of weaker section of the society at a disadvantage since they cannot afford their time and meagre resources into the court procedures. These certain challenges or obstacles which are in the way of providing an effective and efficient justice delivery system can only be resolved by the ethical and harmonious functioning of the three core parts of the state, which are, Legislature, Executive and Judiciary.

¹ Tata Trusts, "India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid" (2019), available at: <https://www.tatatrusters.org/upload/pdf/overall-report-single.pdf> (last visited on April 5, 2021).

² Yashomati Ghosh, "Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency" 5 (1) *Asian Journal of Legal Education* (2018).

II. Legal Aid: A means of helping the weaker section of society

As the name suggests, Legal Aid means helping someone by providing free legal services. Concept of Legal Aid implies providing cost free legal services to the individuals from the weaker sections of the society or those having weaker financial background. Legal Aid is the step adopted to ensure that anyone, who is unable to seek legal help from any legal professional due to absence of resources, is not deprived of professional legal advice and help. This is made possible by forming a system of government funding.

The concept of Legal Aid strives to ensure that Constitutional pledge is fulfilled in its spirit and letter and equal and natural justice is made available to the poor, needy, downtrodden and weaker section of the society. It is already mentioned in the Constitution of India that the State shall secure the equality of every individual, on a basis of equal opportunity, and shall provide free legal aid services by any legal scheme or suitable lawful manner, to ensure that justice is not denied to any citizen due to any disability, be it economic or literacy. The Constitution of India also makes 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.

The notion of legal aid is mentioned completely in article 39A of the Constitution of India. It has been observed that “cost free legal service is a constitutional right of every other accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty or indigence” and the “State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.”

“Personal liberty cannot be cut out or cut down without fair legal procedure,” as held in Maneka Gandhi’s case.³ Legal aid is deemed to mean, “not only representation through the lawyers at state expense in court proceedings but will include helpful legal advice, information and legal awareness, legal mobilization, Public Interest Litigation (PIL), law reform and a variety of strategic and preventive services which avoid injustices to the individuals and promotes equal access to justice.” Legal Aid is taken to mean as free legal

³ *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.

assistance to the backward, poor, illiterate and weaker sections of the society with the sole motive to make them capable to access and exercise the rights given to them by the law.⁴

Legal Aid is an approved fundamental right in two of the major global conventions, article 6(3)(c) of the European Convention on Human Rights and 8(2) (d) of the American Convention on Human Rights.

i. Legal Aid as mentioned under the Code of Criminal Procedure, 1973 –

“Accused entitled to legal aid at the expense of the State in certain cases.” If the accused is unable to engage a legal professional to represent in his trial in the court of sessions and it shall be understood by the court that the accused does not have sufficient resources to do the same, then the Court shall assign a legal professional who will represent him at the expense of the State. It is quite vivid that the State is under obligation to provide legal assistance to a person charged with a criminal offense.

ii. Legal Aid as mentioned under the Code of Civil Procedure, 1908 –

Order 33 Rule 1: Pauper suits or suits by indigent persons. Appointment of a government legal representator to an indigent person is mentioned in rule 9. Subsequently, rule 18 empowers the government to provide free legal services or legal aid to indigent persons. Indigent person is defined as an individual who is incapable to pay the court fees as prescribed. Similar provision under order 44 rule 1, the indigent person can appeal in the court without paying the fees of the court if he does not have enough resources for the same.

Following are the cases in which Legal Services is not provided under regulation 14 of the Supreme Court Legal Services Committee Regulation, 1966 –

- (a) Proceedings in the respect of defamation or malicious prosecution or a person charged with contempt of proceedings or perjury.
- (b) Proceedings related to any election.
- (c) Proceedings incidental to any proceedings referred to in sub – regulation (1) and (2)
- (d) Proceedings in respect of offences where the fine imposed is not more than Rupees 50.
- (e) Proceedings in respect of economic offences and against social laws, such as, the Protection of Civil Rights Act, 1955 and the Immoral Traffic (Prevention) Act, 1956, unless in such cases the aid is sought by the victim.

⁴ Dr. G. Mallikarjun, “Legal Aid in India and the Judicial Contribution” 7 (1) *NALSAR Law Review* (2013).

- (f) Where a person is looking for legal service –
- (i) The respective person is concerned with the proceedings only in a representative or official capacity
 - (ii) Or if a formal party to the proceedings not materially concerned in the outcome of the proceedings and his interests are not likely to be prejudiced on account of absence of proper representation.

iii. Legal Aid as mentioned under the Legal Services Authorities Act, 1987 –

This Act was finally enforced in our country on November 09, 1995 after subsequent amendments were made in the Amendment Act of 1994. The Act defines Legal Aid as to provide free and professional legal assistance in the terms of legal knowledge, awareness and representation to the individuals who belong to the weaker sections of the society so that it is ensured that the justice is being secured at every opportunity and it is not being hindered due to reason of economic or any other disability.

Necessary conditions for the grant of Legal Services –

Section 12, chapter IV of the Legal Services Authorities Act, 1987 reads as, “Every person who has to file or defend a case shall be entitled to legal services if that person, is –

- (a) A member of the Scheduled Caste or Schedule Tribe.
- (b) A victim of trafficking in human beings or beggar as referred to in the Article 23 of the Constitution of India.
- (c) A woman or a child.
- (d) A mentally ill or otherwise disabled person.
- (e) A person under circumstances to the undeserved want such as being a victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster,
- (f) Or an industrial workman.
- (g) Or in custody, including custody in a protective home or in a juvenile home or in a psychiatric hospital or psychiatric nursing home”
- (h) Any citizen of India whose annual income from all sources does not exceed Rupees 1,00,000/- (One Lakh) shall be entitled to get legal services before the courts other than the Supreme Court. For the Supreme Court of India, the threshold is Rupees 1,25,000/- (One Lakh Twenty Five Thousand.)

III. Public Interest Litigation (PIL) – Another alternative to help the downtrodden

In the case of *People's Union for the Democratic Rights v. Union of India*⁵, Justice P.N. Bhagwati stated that, "It would not be right or fair to expect a person acting *pro bono publico* to incur expenditure out of his bag for going to a lawyer and preparing a regular Writ petition. In such a case, a letter addressed by him can legitimately be regarded as an appropriate proceeding." This is the concept of the Public Interest Litigation which is another way of access to justice. It can be explained briefly that, "any citizen of India belonging to any group or territory can act and file petitions on behalf of the weaker sections of the society which suffer from poverty and illiteracy, subsequently, defending their Constitutional rights." Although, this was introduced in the terms of good faith, PIL has been criticized over its legitimacy, limitations and impact.

i. Alternative Dispute Resolution –

Lok Adalats (*defined as a forum where voluntary effort aimed at bringing about settlement of disputes between the parties is made through conciliatory and persuasive efforts*), Grama Nyayalayas (*the e - courts constituted under Gram Nyayalayas Act, 2008*), Ombudsman (*it is a public sector institution, preferably established by legislative branch of Government to supervise the administrative activity of the executive branch*) and Legal Service Authorities under Legal Service Authorities Act, 1987 are part of this legal system whose objective is to enforce and implement justice to individuals who are incapable of sustaining the long court procedures and investing resources and time into them, at a speedy and less expensive rate. But there are a few issues with this system as well. Unlike the sessions court's judge, the mediator or conciliator cannot order either of the parties to follow anything based on what is right or wrong, it is not binding.

IV. The Current Situation

India celebrated its 70 years of Independence in 2017 but delivering justice for the majority of the population of the country has remained a pursuit. Extreme back logs, delays and pending cases have staggered to the amount of more than 28 million across various courts of the country.⁶ It is believed that the average duration of a case exceeds the life span of the litigant representing the party and the matter at hand gets passed down in the next generation

⁵ AIR 1982 SC 1473.

⁶ *Supra* note 1.

as a part of their heirloom. Right to speedy trial is fundamental to the international human rights discourse and is an integral part of the principles of fair trial. Article 10 of the Universal Declaration of Human Rights and article 9(3) of the International Covenant on Civil and Political Rights, both speak about the significance of the right to free and fair trial as an integral part of human rights and has highlighted the importance of an individual to be tried in a justified and reasonable period of time. Concept of speedy trial is mentioned in article 21 of the Constitution of India as an essential part of the fundamental right to life and liberty guaranteed and preserved.

According to the recent estimation of the National Judicial Data Grid (NJDG), a total of 24,247,103 cases are pending across various courts of India, out of which 7,815, 594 cases are of civil nature and 16,431,509 are of criminal nature.⁷ It has also been estimated that more than 16 percent of the cases have been pending for a period of more than five years and almost 10 percent of the cases have been pending for a period of more than ten years. This delay does not only cost the passage of time, but also increases the burden in other forms such as enhanced and subsequent cost of litigation, possibility of a pressured judgement leading to miscarriage of justice, probability of facts getting mixed up and getting faded and the leading relief to be in vain. Not only does the litigant faces the issue of attending the trial for the extended longevity of the trial, the party being represented also going through the entire tedious procedure gets their normal life hampered and loses hope in getting the justice. Almost, 56 percent of the cases are pending for a period of more than 2 years and major states like Uttar Pradesh, Maharashtra, Gujarat, West Bengal, Karnataka, Bihar, Rajasthan, Tamil Nadu and Kerala are facing an acute problem of the increasing cases.⁸ This staggering number of cases has clogged the system, with so much paperwork, some being so old that it is not possible to read or make out what is mentioned in the same.⁹

The Fourteenth Law Commission Report had made an observation that post – independence, the adoption of the welfare Constitution was vital in facilitating the steady increase in number of cases along with three major factors¹⁰ –

⁷ National Judicial Data Grid, *available at*: <https://njdg.ecourts.gov.in/njdgnew/index.php>. (last visited on April 5, 2021).

⁸ Department of Justice, Government of India and UNDP India, “Needs Assessment Study of the Legal Services Authorities in the States of Madhya Pradesh, Jharkhand, Bihar, Uttar Pradesh, Odisha, Rajasthan and Chhattisgarh” (2012), *available at*: http://www.probono-india.in/Indian-Society/Paper/24_needs-assessment-study-of-selected-legal-services-authorities.pdf. (last visited on April 5, 2021).

⁹ Jeffrey Falt, “Congestion and Delay in Asia's Courts” 4 (1-2) *Pacific Basin Law Journal* (1985).

¹⁰ Law Commission of India, “14th Report on Reform of Judicial Administration – Vol. I” (1953).

- (a) The Economic and Industrial Development of the Nation
- (b) Enforcement and Protection of Fundamental Rights conferred by the Constitution of India
- (c) Expansion of the jurisdiction of High Court with the enactment of special laws such as Sales Tax Act, Income Tax Act and Representation of People Act.

Note: The judicial system is not only at fault but the citizens are too. The bulk of the cases pending before the High Courts are writ petitions and the appeals arising from the single judges of the High Court. Indiscriminate resort to writ jurisdiction for trivial issues enforces the court of law to follow the entire legal procedure and make sure the fair decision is made.

Further reports, analysis, scrutiny and observation has enumerated the following bullet points for the increment of pending cases in the court of law which are as following –

- (a) Litigation Explosion: An estimated pendency in the High Courts from 191,972 in 1956 increased to 1,546,526 in 1987 which gives the precise notion of the problem.
- (b) Increase in legislative activity: Different legislations for dealing with economic affairs, social welfare programs, environmental laws, *etc.* in the last 70 years have given a boost to numerous legal rights which consequently becomes the reason for the increased litigation.
- (c) Hasty and imperfect drafting of the legislation leads to ambiguity in the interpretation and allows the exploitation of the loopholes, if any, which further requires the judicial interpretation of the same.
- (d) Plurality, accumulation of appeals, revisions, *etc.* all sum up to the gigantic number of pending cases. Plurality from the first to second appeals and revision of judgements of such appeals amount to lining up of the burden of cases.
- (e) Number of judges in the entire judicial system is not enough to tackle the number of cases which have been lined up and pending throughout these years. Late appointment of judges in the high courts and the long gap of vacancy also add up to the piling up of cases.¹¹ But the same cannot be done with any candidate, the position of the judge is prestigious and requires high and precise knowledge of the law and its interpretation.

¹¹ Law Commission of India, “79th Report on Delay and Arrears in High Courts and Other Appellate Courts” (1979).

Apart from pending cases, which have formed up in all these years, there is still a part of the country which is still unaware of the legal aid services. Given the nature, structure, procedures and methods of this justice delivering system, it becomes extremely difficult for the individuals of the weaker sections of the society to approach them since they are quite gullible. Therefore, these individuals are extremely likely to be exploited at the hands of any common legal professionals filled with unethical values and intentions. Neither these professionals are checked nor there is any statutory body to keep a check on these things. If any individual would make an attempt at getting justice, he / she would not know what to do next if they get wrongly crossed at the initial stage of their maiden pursuit for justice.

Concluding, these are the problems which are faced by the weaker sections of the society at mass, as they remain uneducated, poor and with no access to the remedy. Education and more institutions are required at district level with ethical and integrated individuals who are ready to carry out the work of legal awareness and help with complete honesty.