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An Overview of the Legal Aid in India

"I had learnt the true practice of law. I had learnt to find out the better side of human nature, and to enter men's hearts. I realized that the true function of a lawyer was to unite parties given as under. The lesson was so indelibly burnt unto me that the large part of my time, during the twenty years of my practice as a lawyer, was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby not even money, certainly not my soul." - Mahatma Gandhi

INTRODUCTION ::

Article 39-A, inserted by the Constitution (42nd Amendment) Act, 1987 obligations the State to secure that "the operation of the legal system promotes justice, on basis of equal opportunity, and shall, in particular provide free legal aid by suitable legislation or schemes or in other way, to insure that opportunities for securing justice are not denial to any citizen by reason of economic or other disabilities. It imposes an imperative duty upon the State to provide free legal aid to the poor. It is with a view to enable to poor litigant to have an easy access to a birth of law to invoke legal right and to secure him equal protection of laws against his well to do opponent, that the scheme of affording legal aid and assistance to the poor has been conceived. In pursuance of this Parliament passed the Legal Services Authorities Act, 1987.

Free and Competent Legal Services to the Weaker Section ::

Under Sections 2(1)(c), the term 'Legal Services' is defined. It includes the rendering of any services in the conduct of any case or other legal proceeding before any Court or other authority or tribunal and the giving of advice on any legal matter. Criteria for giving legal service and entitlement thereof are provided in sections 12 & 13 respectively. It includes a member of S.C. or S.T., victim of trafficking in human being or beggar, woman, a child, mentally ill, a victim or mass disaster, ethnic violence, caste atrocity flood, drought, earthquake or industrial disaster, any industrial workman, a person in custody, which includes custody in protective home in a juvenile house or in psychiatric hospital or psychiatric nursing home; and a person of a prescribed limited income. It is clearly provided in section 13 that an affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal service under the Act, Thus, the Government undoubtedly has under obligation of Article 39-A of the Constitution which embodies a directive principle of State policy set up a comprehensive and effective legal aid programme in order to ensure that the operation of legal system promotes justice on the base of equality.

Statutory base on Lok-Adalat ::

The Act besides providing a comprehensive plan for legal aid and legal services has also provided for the establishment of 'Lok Adalat' for quick and cheap justice. It is a welcome step and will go a long way, if properly implemented, in mitigating the hardships of the people in seeking justice. Section 19 of the Act provides for the organisation of Lok Adalats and Section 20 provides for matter of cognizance by Lok Adalats. Now Lok Adalats are statutorily recognised. Section 21 of the Act declares that every award of (a) Lok-Adalat shall be deemed to be decree of Civil Court, (b) Every Order made by the Lok-Adalat shall be final and binding on the all the parties, (b) no appeal shall lie form the order of Lok-Adalat.

Ways and Means to put those on Regular and Permanent Basis ::

At present the Lok Adalats are generally, organised on weekends and public holidays. The cases disposed of are of petty nature. If the Lok Adalats are to stay and serve the real purpose of delivering justice to the people it should not be taken casually and organised on the weekends. It must be organised on a permanent basis and have regular courts with a permanent structure

including staff and funds. The major drawback of the present functioning of the Lok Adalats is that the Government do not take part and co-operate in disposal of case wherein the Government is one of the parties. Many cases could not be settled in Lok Adalats, only on this court. The provisions should be made in the Act which obliges the Government. It self to take part and co-operates in deciding such cases.

Chapter VI-A was newly added by Amendment Act, 2002, introducing the concept of Permanent Lok-Adalat. The Central or State Authorities may establish by notification, Permanent Lok-Adalats at any place, for determining issues in connection to Public Utility Services.

Public Utility Services include:

1. Transport service,
2. Postal, telegraph or telephone services,
3. Supply of power, light and water to public,
4. System of public conservancy or sanitation,
5. Insurance services and such other services.

However fact is that people in India are now not interested in Lok-Adalat though large number of cases have been solved through Lok-Adalat. In the beginning there was great flow of cases towards Lok-Adalat, this is not wholly because of its efficiency, because there is no alternative left with the people to redress their dispute other than Lok-Adalats. Presently it is evident that Lok-Adalat is not safety value against the drawbacks of Ordinary Courts, as people were also felt dissatisfied with the working of Lok-Adalats, to common man Lok-Adalat is no different than Court except some procedural relaxation, in fact when the case is long pending Lok-Adalat will be last resort at least to weak party (economically) to get relief (form being litigant).

Litigant is mere spectator here though there is absence of Procedural Law, it is still not open to him, opinion of Lawyer and the Judges consider being monolith he feels uneasy to say actually what he want. The study points out that in Lok-Adalats, justice has fallen victim to the desire for the speedy resolution. Instead of trying genuine compromise, in some cases Lok-Adalats try to force an adjudicatory decision upon unwilling litigants. The right to fair hearing, which is one of the basic principles of natural justice, is denied to the people. Many sitting and retired judges while participating in Lok-Adalats as members, tend to conduct the Lok-Adalats like courts, by hearing parties and by imposing their views as to what is just and equitable on the parties. Sometimes they get carried away and proceed to pass order on merits even though there is no consensus or settlement. The presiding officers should resist from the practice of making adjudicatory decisions in the Lok-adalats. Such acts instead of fostering alternative dispute resolution through Lok-Adalats will drive the litigants away from the Lok-Adalats.

How to make these Legal Services meaningful and effective and Suggestions for Improvement ::

The following steps should be taken:

Sufficient funds should be available to every Court to order aid.

1. The scale of advocate's fees should be fixed at such a rate that the service of eminent learned senior advocate can be made available.
2. The aid must be given in all type of cases irrespective of the nature of the case, with a provision that if after the trial of case it is found that the person concerned has vexatiously initiated the proceeding necessary criminal action should be taken against such person.
3. The monetary ceiling for the entitlement should be enhanced up to Rs. 1,50,000/- irrespective of caste, creed, gender etc.
4. Grants-in-Aid should be provided to various voluntary social service institutions for the implementations of legal services.
5. Legal services clinics and Legal aid clubs to be established in the universities, law colleges and other institutions.

Legal Literacy Camps::

Due to holding of legal literacy camps, the awareness regarding their rights, benefited and privileges have been brought to the weaker section of the society. Such camps should be held in rural areas, slums and labour colonies regularly.

What Role NGO's can play?

If we want to secure people's participation and involvement in the legal aid programme, the best way of securing it is to operate through non-government organizations. These organizations are working amongst the deprived and vulnerable sections of the society at the grass-root level and they know what are problems and difficulties encountered by the weaker sections. They have their finger on the pulse of the people and they know from their own experience as to what are the unmet legal needs of the people, what are the sources of exploitation and injustice to the weaker section and what measures are necessary to be taken for the purpose of ending such exploitation and injustice and reaching social or distributive justice to them.

Preventive Legal Aid ::

Prevention is better than cure. Therefore passing of the present act the sphere of legal aid was limited. Now, the present act, legal services have been made available for the advices before the initiatives of legal proceedings. The people can be made aware of their rights and duties, privileges and obligations through the legal literacy camps. They can be persuaded to resolve their disputes through reconciliations before the legal proceedings taken place.

References ::

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