



Contribution of Law Commissions in framing the mechanism of Legal Aid in India

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Abstract: *After the independence of India, it was a great challenge to ensure justice for all citizens due to constitutional mandate. The main aspiration of the framers of the constitution was to build confidence among the citizens regarding justice. It was the reason behind the adoption of the term justice in the preamble of the constitution. The central government had appointed a number of Law Commissions to find out a suitable mechanism for ensuring equal accessibility of justice among all its citizens. The government of Bombay and the government of West Bengal appointed two committees namely Mr. Justice Bhagwati Committee and Sri Arthur Trevor Harries committee respectively to frame some mechanism to provide legal aid to the needy poor litigants. The first government of India appointed a Law Commission known as the 14th law commission, under the chairmanship of Mr. M.C. Setalvad, emphasized the fact that a modern welfare state had to accept the obligation to provide legal aid to the poor persons and persons of limited means through the execution of the recommendations of Mr. Justice Bhagwati Committee and Sri Arthur Trevor Harries committee. After the 14th law commission, the government of India appointed another law commission to get the review on the existing provisions of the Code of Criminal Procedure. The government of India appointed the 41st law commission under the chairmanship of K.V.K. Sundaram in which it was recommended that some provisions should be introduced in the Code of Criminal Procedure to provide legal aid to the accused in all sessions court at the expenses of the State and for enabling the State Government to extend such rights. After this 14th Law Commission's report 48th Law Commission's report was published which pointed out that representation by a counsel is a basic ingredient in a criminal trial. Another law commission report was published viz. 'Processual Justice to The People' in which it was elaborately described about the mechanism to provide legal aid in Civil and Criminal cases as well as for the working class and recommended to formulate a separate mechanisms regarding legal aid for the Schedule Tribe, Schedule Caste, women, children, other disabled groups and other minorities. In the 42nd amendment of the constitution, Article 39-A was inserted in 1976 and Legal Services Authorities Act-1987 was enacted. 131st law commission report was published on the Role of the Legal Profession to recommend about the duty of the state to legislate suitable enactments or schemes or to find out any other way for securing justice to all since the legal profession is a monopoly to the state.*

Keywords- *Legal Profession, Constitution, Justice*

Introduction

After the independence of India, it was a great challenge to ensure justice for all citizens because it was the constitutional mandate. The main aspiration of the framers of the constitution was to build confidence among the citizens regarding justice. It was the reason behind the adoption of the term justice in the preamble of the constitution in the year 1949. Since great economic differences among the inhabitants of India was prevailing for a long time, it was a great challenge for a newborn India to fulfill the aspiration of the common people. The central government had appointed a number of Law Commissions to find out a suitable mechanism for ensuring equal accessibility of justice among all its citizens. Finally,



in 1976 in the forty-second amendment of the constitution, Article 39 A was introduced for ensuring justice for the poor and weaker section of the society by providing legal aid, and as a result of that, a new Act was enacted in the year 1987 which is known as Legal Services Authorities Act-1987. In this article it has been discussed regarding the contribution of different Law Commission in the development of the concept of Legal Aid in India.

Law committees' view on Legal aid

After the independence of India, the government of Bombay and the government of West Bengal appointed two committees namely Mr. Justice Bhagwati Committee and Sri Arthur Trevor Harries committee respectively in the year 1949 to frame some mechanism to provide legal aid to the needy poor litigants having no means. After that, the central governments also felt the necessity to find out a mechanism to ensure justice for all citizens of India to fulfill the constitutional commitment. For this, the consecutive central governments organized national level commissions and appointed such commissions to conduct research on the issue of legal aid and to give recommendations accordingly. The Mr. Justice Bhagwati Committee in his report namely "*Report of the committee on legal aid and advice*", recommended to hand over the administration of the legal aid scheme to the legal aid committee. The Taluk Legal aid committees should be formed in Taluk, civil and criminal courts, and District Legal aid committee should be formed at headquarters in the district court. Moreover, for the appellate and original side of the High Court, the city civil court, Presidency Town Court and Presidency Magistrate court should have their own Legal Aid Committee. Mr. Justice Bhagwati Committee had given the guidelines for the constitution of each level committee and their functions. This committee suggested to provide legal aid to all litigants including plaintiffs, petitioners. Complainants, defendants, respondents and accused in all courts after applying three tests namely (i) Means Test (ii) The test of Prima facie case and (iii) other tests and safeguards. This committee had also given suggestive guidelines regarding the types of cases in which legal aid could be granted. Regarding the cost of the litigation, the committee suggested that the cost should be recovered from the successful or unsuccessful unassisted litigants. This committee further emphasized the publicity of the legal aid among the litigants by attaching information regarding legal aid with the notice, summon etc. The information regarding legal aid should also be available to all the police stations.³

Sri Arthur Trevor Harries committee had recommended to provide legal aid to the classes of persons figuring as plaintiffs, defendants, appellants or respondents who do not have sufficient means to pay the legal fees in civil cases. Similarly, for criminal cases, the committee had recommended to provide legal aid to the persons having no means to defend themselves to exercise the right to private defense of persons or property or who were charged with or sentenced for offences punishable with death or imprisonment for 5 or more than 5 years. Even this committee had recommended to provide legal aid to the informant in cognizable cases where police cooperation is unavailable. This committee has further recommended constituting an authority in all district courts, city courts and appellate and original Side of the High Court to look after the matter of eligibility for providing legal aid. Regarding the cost of the expenses the committee had recommended to be provided by the State Government.⁴

Law Commissions' views on Legal Aid

After realizing the need for legal aid to indigent people to ensure the constitutional mandate provided under article 14 and the preamble of the constitution regarding justice. To ensure



this fundamental right it was pertinent to engage skilled lawyers on one hand and on the other hand there should be an executive authority to look after the matter related to Legal Aid. This was a very important task for the then government as it was a great challenge to provide equal protection to the citizens and treat all equally before law. The socio-economic condition of all the citizens are not the same and the majority of the citizens of India are below the poverty line, so from the constituent assembly to till date it is a great matter of concern to secure equal treatment in the common law legal system. When the first government of India was formed in India there was great pressure from all corners of the society to ensure equal access to the justice delivery system. Ultimately the then government of India appointed a Law Commission in the year 1956 to submit a report on Judicial Administration in which Legal Aid for the litigants who are not able to access their legal rights was an important subject. The first law commission appointed in independent India is known as the 14th law commission under the chairmanship of Mr. M.C. Setalvad. The commission emphasized the fact that a modern welfare state had to accept the obligation to provide legal aid to the poor persons and persons of limited means through the execution of the recommendations of Mr. Justice Bhagwati Committee and Sri Arthur Trevor Harries committees, appointed by the Government of Bombay and the Government of West Bengal respectively in the year 1949, would cause a huge burden for the State. The commission perused the recommendations made by these two committees and opined that those outlines in the recommendations should be modified in the light of local needs and conditions, so far as financial conditions of the state permit. Apart from the state obligation the commission further expressed the view regarding the moral and social responsibility of the legal professionals to render legal aid services and representation in the courts for poor persons and persons of limited means. In respect of the social and moral obligations of the legal professionals, the commission advised all Bar Associations to take immediate measures voluntarily to render legal aid. The Law Commission had more relied upon Mr. Justice Bhagwati Committee than Sri Arthur Trevor Harries committee as it was comparatively easy to implement the recommendations made by the former one. In order to execute the mechanism of providing legal aid expeditiously, the law commission had made some amendments to the recommendations of the committees. In criminal cases, there were three recommendations made by this 14th Law commission in which the first recommendation was to provide lawyers at the cost of the state for representation in session courts or any other criminal courts for accused litigants, who don't have any means to bear the litigation expenses. The second recommendation was to provide lawyers at the cost of the state for representation in session courts or any other criminal courts for any applicant having no means to bear the litigation expenses. The third recommendation regarding criminal cases was to provide lawyers to an accused person at the cost of the state during the time of admitted final hearing and jail appeal. Similarly, in civil cases the law commission had given four recommendations in which the first recommendation was to amend some of the provisions of the Civil Procedure Code to avail legal aid to sue as the pauper who didn't have any means other than the subject matter in question, the second recommendation was to provide legal aid to the pauper not only to sue but also to defend the case as well as other proceedings, the third recommendation was to amend the word pauper by the expression poor person in the Civil Procedure Code and the fourth recommendation was to give power to the High Courts and other subordinate courts to create a panel of counsels to provide assistance to the pauper litigants. The commission had advised the High Courts for making appropriate changes in their rules to give effect to their recommendations.⁵

After the 14th law commission, the government of India felt the necessity to appoint another law commission to get the review on the existing provisions of the Code of Criminal



Procedure. The government of India appointed the 41st law commission under the chairmanship of K.V.K. Sundaram in 1961. In this law commission report, the commission pointed out that though Section 340 of the Code of Criminal Procedure 1898 is dealing with the provisions for the representation of an accused by a pleader but it does not confer any right to the accused to get legal aid at the expenses of the state. The commission observed that in capital cases almost all the states were providing pleader at their own expenses. Moreover, Gujarat and Maharashtra were providing legal aid in all session cases while Kerala was providing legal aid for the cases in the magistrate's court also. This commission strongly pointed out that it⁵ should be the right of the accused person to get legal aid and for this, the commission strongly recommended that some provisions should be introduced in the Code of Criminal Procedure to provide legal aid to the accused in all sessions court at the expenses of the State and for enabling the State Government to extend such rights. The commission had recommended for introducing new sections in which the session court would assign a pleader at the expense of the State to the accused for his defence who was unable to be represented by a pleader. The commission further recommended that the High Court would make rules regarding the selection of the pleader, the facilities to such pleader by the courts and their fees, with the previous approval of the state government.⁶

The 48th law commission report published in the year 1972 recommended in the proposed Cr.P.C. bill 1970 that the session court should assign a pleader where the accused is not able to appoint a pleader during the trial in the session court and the State Government would have the power to make this provision for any class of cases. The commission emphasized the fact that mere poverty should not stand in the way of adequate defence in a proceeding that may result in the deprivation of liberty or property or loss of reputation, so representation by a counsel is a basic ingredient in a criminal trial. The commission had recommended for providing assistance of counsel in every step of a criminal trial irrespective of the nature of the offence. The commission opined that the spirit of the Constitution of India demanded the defence of poor persons by a counsel. The commission had recommended a wide provision with the hope that the legal practitioner would come forward to appreciate the scheme for defending poor persons who could not afford to pay. The commission observed that in maintenance cases ordinarily, the opposite party used to be rich enough to engage a counsel as compared to the applicant who in most of the cases unable to engage a counsel, so the commission recommended to extend legal aid in such cases.⁷

Again in the year 1973, another law commission report was published in the name of 'Processual Justice to The People'. The main objectives of this law commission were to find a way of legal awareness about the legal and constitutional rights and just obligations and for the avoidance of vexatious and unnecessary litigation among the socially and educationally backward classes of people. To make justice more available in respect of civil, criminal and revenue cases, this law commission's objective was to formulate schemes for legal aid and advice. In this report it was elaborately described about the mechanism to provide legal aid in Civil and Criminal cases as well as for the working class. After thorough discussion it was recommended to formulate a separate mechanisms regarding legal aid for the Schedule Tribe, Schedule Caste, women, children, other disabled groups and other minorities. This law commission made an elaborate discussion regarding the role of legal aid in panchayat and miscellaneous forms of legal aid. In this report the law commission emphasized for conducting research related work in the field of legal aid.⁸

In the year 1988 one hundred thirty-first law commission report was published on the Role of the Legal Profession. This law commission emphasized the intentment of the constitutional provisions enshrined in Article 39-A that no one should be deprived of justice due to poor



economic conditions or any social disabilities. It is the duty of the state to legislate suitable enactments or schemes or to find out any other way for securing justice to all since the legal profession is a monopoly to the state. As the court is the fulcrum of the administration of justice so the court must ensure equal opportunity to all litigants. Thus the commission expected from the legal profession to ensure that no one should be turned out of justice due to economic or social disabilities.⁹

Government Response upon these Law Commission Reports

The Government of India since 1952 started its initiatives to raise the question of free legal aid, to the poor, in different law ministers' conferences. In the year 1960 some guidelines were formulated in the form of legal aid schemes by the Govt. of India which were being followed by different state governments and executed by different legal aid boards, societies and Law Departments.¹⁰ In response to the recommendation provided by different law commissions the parliament amended Part IV of the Constitution of India in the year 1976 and inserted Art. 39-A as a directive principle of state policy so that justice is not denied to any citizen for his poor economic condition or any other disabilities¹¹ otherwise it will not be possible to provide equal opportunity to promote justice to all citizens. The insertion of this article strengthens fundamental rights like Art.14 and Art.21¹² of the constitution. Thus the free legal aid to the indigent has been declared to be a State duty and not government charity,¹³ since free legal assistance to the poor or indigent accused was a sine qua non of justice.¹⁴ By enacting this Article, the parliament made the constitutional provision to provide free legal aid, to enact suitable legislation or schemes or any other way to secure justice by providing equal opportunity to the litigants. This constitutional amendment opened the door to the parliament to enact a separate legislation to provide legal aid to the indigent and the people having any other disabilities.

With the intention to enact a separate legislation the Govt. of India constituted a national level committee named CILAS (Committee for Implementing Legal Aid Schemes) in the year 1980 under the chairmanship of Justice P.N.Bhagwati to supervise legal aid and programmes throughout the country.¹⁵ Ultimately in the year 1987 The Legal Services Authorities Act was enacted by the Parliament¹⁶ which came into force on 9th November, 1995¹⁷ to legalize a structure and mechanism to ensure legal aid. This act prescribed to provide free legal aid to the members of Schedule Caste, Schedule Tribe, victims of trafficking, begar, women, child, mentally ill or other disabled persons or victims of any disasters, etc. To achieve the goal on 9th November 1995 the National Legal Services Authority (NALSA) was established whose office is at New Delhi¹⁸. The NALSA started its functioning in the year 1998 with some objectives like constitution of permanent and continuous Lok Adalats in every district for disposal of cases in old pattern, accreditation of NGOs for legal literacy and legal awareness camp, appointment of legal aid counsels in all courts, to aware people regarding legal aid through publicity and campaigning, legal aid facilities in jail, setting up of counseling and conciliation centers in all districts, fund allocation for state legal services authorities, organizing sensitization program for judicial officers regarding legal aid programs and schemes, etc.¹⁹ In order to give effect to the policies and direction of NALSA, state legal services authority had been constituted in every state in which the honourable Chief Justice of the High Court is the patron-in-chief. Similarly, the District Legal Services Authority had been established in every district court complex under the chairmanship of honourable District & Session Judge of the respective district court.²⁰ Upto year 2020 it has reported that one Supreme Court Legal Services Committee, 36 State Legal Services Authorities, 39 High Court Legal Services Committees, 670 District Legal Services Authorities and 2277 Taluk



Legal Services Committees have been established in India.²¹

Conclusion and Suggestion

All the Law Commissions appointed by the Government have shown the responsibility to ensure justice to all. The commission appointed from time to time has discussed the necessity of free legal aid to the indigent people. Law Commissions have pointed out the responsibility of the State as well as the judiciary and legal practitioners towards the litigants having no means to bear the expenditure of the legal proceedings or any other social disabilities. The law commissions had given their recommendations for formulating the mechanism of legal aid and its implementation. It is true that appointment of experienced legal aid counsel by the state may increase the expenses of the state but this has to be borne by the state to ensure justice to all. The fund allocation in providing legal aid must be bifurcated in such a way that a separate fund to be allocated for running the office expenses, for providing fees for legal aid counsel, for the cost of litigation and for the awareness of legal aid. Apart from the state responsibility there is a concept of *pro bono publico* which is not a new concept in the modern justice delivery system but this type of social service will be effective when experienced lawyers will come forward to provide such service. For this *pro bono publico* the government and judiciary have to find out a mechanism to encourage it.

In response to the Law Commissions reports, the Central Government, as well as State Governments, have taken initiatives to provide legal aid by establishing NALSA, SALSA, DLSAs and Taluk Legal Services Committees. To run such a huge structure and its mechanism more funds have to be allocated. A mechanism should be evolved to find out the effective implementation of the schemes which are already available. Project-based research work should be conducted to find out the problems which are facing by different stakeholders in the implementation of the objectives of the Legal Services Authorities Act, 1987. A legal aid clinic as a counselling center is required to be established in every Jail and police station.

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