Right to Legal Aid: An integral Part of Social Justice.

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Access to Legal Services Continues to be a challenge for Substantial segments of the Indian Population due to geographical, resource and infrastructure constraints. Since Legal representation is costly and out of reach for the disadvantaged, the need for legal aid arises. The Constitution of India articulates the significance of broadly accessible Legal Aid. Under Article 39-A of the Constitution of India Part IV (Directive Principle of State Policy) inserted by the Constitution of India by 42nd Amendment Act 1976, and the state is committed to ensuring that “the operation of legal system promotes justice on a basis of equality” and providing free legal aid “to ensure the Opportunities for securing justice are not denied to any citizen by reason of economic and other disability. The object of this provision is to promote equality so that no citizen is denied the right to seek justice because of economic incapacity to bear the cost of Legal Aid.

With the growing awareness of public welfare, the term social justice has assumed global significance because the societies over the world have been expressing oppression, exploitation and inequalities in varying forms. Consequently, there have been distinct classes of rich and poor as also the privileged and unprivileged. The human civilization has been striving to create a social order which may ensure justice equality and fraternity through socio legal measures but we have to achieve more to provide legal aid to the poor in the light of Constitutional spirit and other relevant Statutory Provisions.

Access to justice is universally recognised as one of the most valuable human rights and this right has been included in article 39-A of the Constitutions as a Directive Principles of State Policy with a view to ensure equal access to the people. The philosophy of legal aid is an essential corollary of the concept of fair legal procedure in a modern democratic welfare state like India. Legal aid movement in India has been considerably influenced by contemporary legal development in foreign countries and especially in England. The Law Commission of India which has made valuable suggestions for making the legal aid Programme an effective instrument for social justice. On the basis of these suggestions necessary legislative measures were introduced in the Constitutional Law and other Statutory Laws. Undoubtedly the year 1987 is remarkable in the history of Legal Aid movement in India, as the legal services authority Act 1987 was passed. The aim of the act is to constitute legal services authorities to provide free legal services to the weaker section of the society and to ensure that opportunities for securing justice is not denied to any citizen by reason of economic and other disabilities and to organise Lok adalats to secure that the operation of legal system promotes justice on the basis of equal opportunity.

Legal Aid: The Concept

Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. Legal Aid is the method adopted to ensure that no one is deprived of professional advice and help because of lack of funds. Therefore, the main object is to provide equal justice is to be made available to the poor, down trodden and weaker section of society. In this regard Justice P.N. Bhagwati rightly observed that:

“The legal aid means providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law, the poor and illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts. Legal aid

2. Speaking through the Legal Aid Committee formed in 1971 by the State of Gujarat on Legal Aid with its Chairman, Mr. P.N. Bhagwati along with its members, Mr. J.M. Thakore, A.G., Mr. VV Mehta, Deputy Speaker, Gujarat Vidhan Sabha, Mr. Madhavsinh F. Solanki, MLA, Mr. Girishbhai C. Patel, Principal, New Lal College, Ahemdabad. His Lordship answered to the question of inequality in the administration of justice between the rich and the poor.
should be available to the poor and illiterate, who don’t have access to courts. One need not be a litigant to seek aid by means of legal aid. "

Therefore, legal aid is to be made available to the poor and needy by providing a system of government funding for those who cannot afford the cost of litigation. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. It is worthy to mention that 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 citizen by reason of economic or other disability. 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.4

Free Legal Aid in India: The Positive Contribution of Judiciary
The Supreme Court has interpreted the object of free legal aid as rendering equal justice and equal protection of law as an integral part of Article 21 of the Indian Constitution in numerous judgement rendered by it. In Hussainara Khatoon v. Home Secretary, State of Bihar,5 Justice Bhagwati observed that a procedure which did not make available the legal services to an accused, who was too poor to afford a lawyer could not be regarded as responsible, fair and just. Thus, the fundamental right of legal aid was held to be implicit in the procedural requirements of Article 21 of the Constitution.

In Khatri v. State of Bihar,6 it was held that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence as it is imperative in the guarantee of Article 21. Further the Apex Court imposed a duty to the Trial Court to make aware the accused about his right of legal aid. Even the Apex Court opined that it would make a mockery of legal Aid if it were to be left to a poor ignorant and illiterate accused to ask for legal aid.

We know that no right can be absolute and the same principle should be applied to the right of legal aid. In Suk Das v. Union Territory of Arunachal Pradesh,7 the Supreme Court was confronted with the balancing the right to legal aid with social interest. The Supreme Court observed: “There may be cases involving offences such as economic offences as offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal service need not be provided by the State.

In the case of Centre for Legal Research v. State of Kerala,8 Apex Court held that “The Voluntary organisations and social action group must be encouraged and supported by the state in operating the legal aid programme. It is Now acknowledged throughout the country that the legal aid programme which is needed for the purpose of reaching social justice to the people cannot afford to remain confined to the traditional and obligation oriented legal aid programme but it must taking into account the socio economic conditions prevailing in the country, adopt a more dynamic posture and take within its sweep what may be called aid Schemes. It is true that Article 39-A of the Constitution of India finds its place under the Directive Principles of State policy. But the directive principles of state policy, though not strictly enforceable in Courts of Law, are yet fundamental in the Governance of the Country. But while considering the question of enforcement of fundamental rights of citizen, it is open to the Court to be Guided by the Directive Principles to ensure that in doing justice the principles contained therein are maintained. Fundamental Rights and Directive Principles constitute conscience of the constitution. They constitute the true conscience and without faithfully implementing the Directive Principles, it is not possible to achieve the welfare state contemplated by the Constitution.(Markendeya v. State of U.P.)9 Justice Krishna Iyer, who is crusader of social justice in India, had rightly said that if a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to the Supreme Court for want of legal assistance, there is implicit in the Court under Article

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4. Article 14 and 22(1) of the Indian Constitution.
5 AIR 1979 SC 1369.
7. AIR 1986 SC 991.
8. AIR 1986 SC 1322.
142 read with Articles 21 and 39-A of the Constitution, the power to assign counsel for such imprisoned individual for doing complete justice'.

It is a statutorily recognized public duty of each great branch of government to obey the rule of law and uphold the tryst with the constitution by making rules to effectuate legislation meant to help the poor. Though the law has been enacted to protect the poor the governments are lazy to implement the enacted law. The same was observed by Supreme Court in State of Haryana v. Darshana Devi, that "the poor shall not be priced out of the justice market by insistence on court-fee and refusal to apply the exemptive provisions of order XXXIII, CPC. The state of Haryana, mindless of the mandate of equal justice to the indigent under the magna carta of republic, expressed in article 14 and stressed in article 39A of the constitution, has sought leave to appeal against the order of the high court which has rightly extended the 'pauper' provisions to auto-accident claims. Order XXXIII will apply to tribunals, which have the trappings of the civil court"…

Conclusion and Suggestions:
The concept of Legal Aid is rightly stated to be the spirit of equality and its movement is dedicated and devoted to the philosophy of equal justice to the indigent. Equal justice is a fair treatment within the purview of judicial process. Equal Justice is therefore, corrective of inequalities that cause social imbalance without it justice in society cannot be translated in reality. It may be said that the introduction of legal service authorities Act 1987 and the creation of State Legal Service authority has brought about a welcome change in the litigation rate as well as in the rate of disposal of cases and providing legal aid to the needy to ensure justice. This message has to be taken to the books and corners of the state through books, cassettes and by every available means of technology should be made use of to spread awareness among people of the state to reap the benefits of Legal Services Authorities Act. However, additional support and Co-operation by the members of the Bar and the Public would go a long way to make the legal aid and legal literacy movement in the state more meaningful and purposeful for ensuring social justice.

Suggestions:
1. It is suggested that it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. For that judiciary needs the support from state administration to conduct legal literacy programme.

2. There are number of precedents as well as legislations to uphold the right to free legal aid but they have just proven to be a myth for the masses due to their ineffective implementation. Thus the need of the hour is that one should need to focus on effective and proper implementation of the laws which are already in place instead of passing new legislations to make legal aid in the country a reality instead of just a myth in the minds of the countrymen.

3. A scheme has to be formulated for accreditation of voluntary Social Services institution to establish a nationwide network of voluntary agencies in order to spread legal literacy, legal awareness and publicity for legal services throughout the nook and corner of the Country.

4. We have to conduct awareness Programme and Seminar with the involvement of National Women’s Commission, Ministry of Social Welfare, Ministry of Child Welfare and development and Ministry of Rural Development.

5. Establishment of Legal Aid Clinics in all Gram Panchayet by engaging competent lawyer as legal consultants in clinic.