

CONCEPT OF FREE LEGAL AID- A COMPARATIVE ANALYSIS FREE LEGAL AID IN INDIA, UNITED KINGDOM AND AUSTRALIA

Dolly Choudhury¹

Abstract:

To have the capacity to convey proper legitimate administrations to the rustic and tribal communities, we require an option conveyance framework with an alternate model of legal service providers. Legal aid is the procurement of help to individuals generally not able to bear the cost of lawful representation and access to the court framework. Legal aid is viewed as focal in giving access to equality under the watchful eye of the law, the right to counsel and the right to a fair trial. Various models for legal aid have developed, including duty lawyers, community legal clinics and the payment of lawyers to deal with cases for individuals who are entitled to legal aid.

Keywords: Equality, Legal Aid, Right to Counsel, Right to Fair trial, Payment of Lawyers.

1. Introduction

In the epoch where mainstream of the populace is finding it difficult even to meet the expense of the elementary facilities of life, it is next to impossible for them to represent themselves in the Court of law through a good lawyer. Efforts of International society i.e. U.N.O., this concept has extended its shape and established by the municipal court in different countries. Legal Aid denotes giving free legal services to the poor and needy who cannot manage to pay for the services of a lawyer for the bearing of a case or a legal proceeding in any court, tribunal or before an authority. Legal Aid is the system adopted to ensure that no one is deprived of professional advice and help because of lack of funds. Therefore, the main objective is to deliver equal justice which is to be made accessible to the poor, down trodden and weaker section of society. Legal aid endeavors to safeguard 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 well-intentioned 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.² Constitution of India also makes it mandatory for the State to confirm equality before law and a legal system which upholds justice on a basis of equal opportunity to all.³

¹ Gujarat National Law University

² The Constitution of India, Article 39A

³ The Constitution of India, Article 14 and 22(1)

The unification of the system of legal aid in a particular state advances the idea of welfare state. Legal aid is a welfare establishment by the state to its public at large who cannot meet the expenditures of legal aid. The structure of legal aid safeguards welfare provisions that are beholden to the people, such as social housing, with access to legal aid and the courts. Generally, the provision of legal aid has played an imperative role in safeguarding socio-economic and cultural rights in relation to social security, housing, social care, health and education service provision. Jurists such as Mauro Cappelletti emphasized that legal aid is indispensable in providing individuals with access to justice, by permitting the individual legal enforcement of economic, social and cultural rights. His opinions were recognized in the second half of the 20th century, when egalitarianisms with capitalist economies accepted liberal welfare states that focused on the individual. States acted as contractors and service providers within a market-based philosophy that highlighted the citizen as consumer. This focused prominence on individual enforcement to achieve the recognition of rights for all.

In the 19th century, the continental European republics navigated a movement for right to counsel and right to a fair trial. Attorneys were engaged for the poor people who could not pay their courts. And the solicitors acted on a pro bono basis. During the 20th century, in most of the European countries, the poor people relied on the charity of the lawyers. Laws were established that the solicitors should be paid a moderate sum of fees for assisting the poor people. Different approaches in regard to legal aid were taken by the countries following civil law principles and common law principles. Civil law countries emphasized right to counsel only in civil proceedings and provided lawyers where required. Common law countries accentuated to be responsible for legal aid in criminal proceedings. With the rise of industrial development during the 19th century, the European trade unions and workers necessitated for different strategies. To deliver workers with legal rights in the event of accidents or illness, laws were enacted and implemented to prevent any kind of industrial action. By the early 20th century, there was an ardent to provide legal aid services by the government. Human rights and human dignity form the basis of free legal aid.

As the conception of welfare state reached its epoch in 1940s, it was taken into deliberation that the state should provide aids and services to those who are underprivileged of their socio economic and political rights. It was a collective action rather than an individual legal action. The establishment of legal aid system advanced gradually but it mainly concentrated on family laws and divorce cases. In the years between 1950 and 1960, the social stratagem and which was called to be individual action was taken not into contemplation. Individuals were given importance and were permitted to seek out their own goals. During this period the provision of legal aid extended so with the emergence of legal profession and lawyers. During the period between 1970 and 1980, the socio economic rights were lawfully prescribed to each individual to guarantee that the necessities of welfare state are being effectively implemented. The provisions of legal aid were long-drawn-out from family law to a varied range of economic, social and cultural rights. Therefore, during the period of 1980, the concept of the classic welfare state relinquished gradually and the private entities provided the necessary welfare necessities but it mainly concentrated on providing assistance in court cases. Citizens were endorsed to select their own services and in respect to any discontent, were allowed to lodge complaints through administrative procedures which further created bedlam as legal aid

establishment were not implemented to those who looked for relief over and done with administrative complaint processes. Further apportionment of funds for legal aid was abridged.

2. Legal Aid in India

The impression of legal aid is considered under Article 39A of the Constitution of India. Consequently, legal aid is not a philanthropy or abundance, but rather is a constitutional prerequisite of the state and right of the citizens. In this way, legal aid endeavors to shield that the constitutional pledge is satisfied in its letter and spirit and equal justice is made open to the intimidated and weaker areas of the general public. It is the obligation of the State to see that the legal framework maintains justice on the premise of equal opportunity for every one of its nationals.

Since the 1952, the Government of India got to be quick to give legal aid to poor people and various conferences of Law ministers and law commissions were accounted for. In the year 1960, a couple of rules were set up by the legislature. In various states of the nation, the provisions of legal aid were lifted through Legal Aid Boards, Societies and Law Departments.

In the year 1980, a Committee known as Committee for Implementing Legal Aid Schemes (CILAS) was constituted under the Chairmanship of Honorable Justice P.N. Bhagwati to oversee and regulate legal aid programs all through the nation. The formulation of Lok Adalats added another domain to the justice dispense system of India which remained as a supplementary forum to the litigants. In the year 1987, the Legal Services Authorities Act was established to give a statutory acknowledgment to legal aid programs all through the nation. It was implemented on 9 November 1995. "The Act endorses the criteria for giving lawful administrations to the eligible persons. It makes an individual qualified for assistance under the Act in the event that he is

- a. A member of a Scheduled Caste or Scheduled Tribe;
- b. A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- c. A woman or a child;
- d. A mentally ill or otherwise disabled person;
- e. A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- f. An industrial workman; or
- g. In custody, including custody in a protective home or in a juvenile home;
- h. Of in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or
- i. A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government. This limit on income can be increased by the state governments. Limitation as to the income does not apply in the case of persons

belonging to the scheduled castes, scheduled tribes, women, children, handicapped, etc. Thus by this the Indian Parliament took a step forward in making the legal aid possible in the country. According to the Act the 'court' is a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions.⁴

The Code of Criminal Procedure, 1973 provides statutory implementation of free legal aid under Section 304(1) which states that in a trial before the sessions judge, if the accused has no sufficient means to engage a pleader, the court should assign a pleader for his defense at the expense of the state.

2.1. Contributions of the Judiciary

The Supreme Court of India made an ardent announcement with regard to the rights of the poor and destitute people in judgment of *Hussainara Khatoon*⁵ where the petitioner conveyed to the notice that most of the trials have already experienced the punishment much more than what they would have got had they been convicted without any delay. The delay was triggered due to unskillfulness of the persons convoluted to engage a legal counsel to defend them in the court of law and the main reason behind their inability was their poverty. Thus, in this case the Supreme Court pointed out that Article 39-A emphasized that free legal service was an inalienable element of reasonable, fair and just procedure and that the right to free legal services was implicit in the guarantee of Article 21.

Two years later, in the case of *Khatri v. State of Bihar*⁶, the Supreme Court held that the state is constitutionally bound to provide legal aid not only at the stage of trial but also when they are first produced before the magistrate or remanded from time to time and that such a right cannot be denied on the ground of financial constraints or administrative inability or that the accused did not ask for it. Magistrates and Sessions Judges must inform the accused of such rights. The right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require... The State cannot avoid this obligation by pleading financial or administrative inability or that none of the aggrieved prisoners asked for any legal aid.

In *Suk Das v. Union Territory of Arunachal Pradesh*⁷, Justice P.N. Bhagwati, highlighted the necessity of constructing the legal awareness to the poor as they do not know their rights more particularly right to free legal aid and further observed that in India most of the people are living in rural areas are illiterates and are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness they are not approaching a lawyer for consultation and advice. Moreover, because of

⁴ Legal Service Authority Act, 1987, Section 2(1) (a)

⁵ *Hussainara Khatoon v. State of Bihar*, [1980] 1 SCC 98

⁶ *Khatri v. State of Bihar*, AIR [1981] SC 262

⁷ *Suk Das v. Union Territory of Arunachal Pradesh* AIR [1986] SC 991

their ignorance and illiteracy, they cannot become self-reliant and they cannot even help themselves. That is why promotion of legal literacy has always been recognized as one of the principal items of the program of the legal aid movement in the country.

Justice Krishna Iyer, who is supporter of social justice in India, in *M.H. Hoskot v. State of Maharashtra*⁸ 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 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 trust with the constitution by making rules to effectuate legislation meant to help the poor.⁹ The same was observed by Supreme Court in *State of Haryana v. Darshana Devi*¹⁰, that "the poor shall not be priced out of the justice market by insistence on court-fee and refusal to apply the exempted 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, articulated in Article 14 and stressed in article 39A of the constitution, has sought after leave to appeal against the order of the high court which has rightly extended the 'pauper' provisions to auto-accident claims. Order XXXIII of Code of Civil Procedure will apply to tribunals, which have the trappings of the civil court...even court also expressed its poignant feeling that —no state has, as yet, framed rules to give effect to the benignant provision of legal aid to the poor in order XXXIII, Rule 9A, Code of Civil Procedure, although several years have passed since the enactment. Parliament is stultified and the people are frustrated. Even after a law has been enacted for the benefit of the poor, the state does not bring it into force by willful default¹¹

'On August 11 2012, the Supreme Court has reigned that free assistance must be on condition that to all poor accused, irrespective of the severity of the crime attributed to them, at every stage of the three-tier justice delivery system and could not be restricted to the trial stage only. Justice Lokur, writing the judgment for the bench, said when the Supreme Court Legal Services Committee provided assistance to eligible persons in the apex court, how could there be a bar on providing free legal aid to accused in the high courts.

"It is important to note that Section 12 and 13 of the Legal Services Authorities Act do not make any distinction between the trial stage and the appellate stage for providing legal services. In other words, an eligible person is entitled to legal services at any stage of the proceedings which he or she is prosecuting or defending," the bench said.

⁸ [1978]3 SCC 81

⁹ Code Civil Procedure 1908, Order 33, Rule 9A

¹⁰ AIR [1972] SC 855

¹¹ Varun Pathak, 'A Brief History of Legal

Aid' (*Legalserviceindia*) <<http://www.legalserviceindia.com/articles/laid.htm>> accessed 7 October 2015

It disagreed with earlier judgments which hinted at carving out exceptions for providing free legal assistance to accused facing trial in economic offences or offences against law prohibiting prostitution or child abuse.

"We have some reservation whether such exceptions can be carved out particularly keeping in mind the constitutional mandate and the universally accepted principle that a person is presumed innocent until proven guilty," the bench said.

"If such exceptions are accepted, there may be a tendency to add some more, such as in cases of terrorism, thereby diluting the constitutional mandate and fundamental right guaranteed under Article 21 of the Constitution," it said.

The bench said it was obligatory for every court, from trial court to the Supreme Court, to inquire whether the accused or convict required legal representation at the government's expense so as not to deprive the person a "fair trial or hearing".

"We are of the opinion that neither the Constitution nor the Legal Services Authority Act makes any distinction between a trial and an appeal for the purpose of providing free legal aid to an accused or person in custody," a bench of Justices A.K Patnaik and MadanLokur said.

The bench ordered fresh hearing of appeal of one Rajoo, whose conviction in a gang rape case was upheld by the Madhya Pradesh High Court even though there was no legal assistance provided to the accused in the appeal stage. He had got free legal aid during the trial proceedings.¹²

2.2. Objective Behind Under Article 39A

GRANVILLE AUSTIN¹³ said "Seeking justice in court was expensive for the common man, often prohibitively so. Two reasons were the cost of the lawyer, and the existence of the fee system under which the litigant had to pay a fee to register his case. This had to change-

The law commission said indicating out that that India was the lone countries under the modern system of government that prevents a person who has been deprived of his property or whose legal rights have been encroach on from seeking recompense by imposing tax on the remedy he seeks. Fees for the petitioner acting under Article 32 and Article 226 of the Constitution ought to be low, if not minimal, the Commission suggested, but did not recommend stopping the practice altogether. Fees calculated according to the damages sought are still charged, with the exception of the fee of the two hundred and fifty rupees charged for approaching the Supreme Court under Article 32 – its original jurisdiction over the fundamental rights.

¹² TNN, 'Poor accused must get free legal aid at all levels: SC' Times of India (Delhi 11 August 2012) <<http://timesofindia.indiatimes.com/india/Poor-accused-must-get-free-legal-aid-at-all-levels-SC/articleshow/15441640.cms>> accessed 7 October 2015

¹³ Austin Granville, *WORKING A DEMOCRATIC CONSTITUTION* (2003 edn, Oxford University Press, USA 2000)

The Law Commission advocated legal aid, so that the poor could afford a lawyer. Citing the Preamble's pledges and Article 14's assurance of equality before law and equal protection of the law, the Commission said that "In so far as a person is unable to obtain access to a court of law for having his wrongs redressed, or for defending himself against a criminal charge, justice becomes unequal and laws meant for (The poor man's) protection having no meaning. Legal aid should be available for all and not be confined to those "normally closed" as poor. Those unable to pay should get aid free; others would pay on the graduated scale. With this recommendation, as with many others, the Fourteenth Report would be far ahead of its time- and consequently ignored"¹⁴

The scope of Article 39A is envisaged by the Supreme Court of India in *Air India Statutory Corporation v. United Labour Union*¹⁵, that Article 39A furnishes beacon light that justice is done on the basis of equal opportunity and no one is denied justice by reason of economic or other disabilities. Again in *Abdul Hasan v. Delhi Vidhyut Board*, AIR 1999 Del.80 it was held that "it is emphasized that the legal system should be able to deliver expeditiously on the basis of equal opportunity and provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."¹⁶

2.3. NALSA Regulations, 2010.

In the year 2010, the National Legal Services Authority (hereinafter referred to as NALSA) of India executed the National Legal Services Authority (Free and Competent Legal Services) Regulations in usage of its mechanism under Section 29 of the Legal Services Authorities Act, 1987. The Regulations are applicable to the Legal Service Committees of the Supreme Court, High Courts, the States, regions and taluks. A portion of the expansive components of the Regulation are as per the following:

i. Selection of Panel

The legal aid services are endowed with the privilege to request applications from legal practitioners with mandatory proficient knowledge to determine the sort of cases they might be depended with. The panel will be set up by the Executive Chairman or Chairman of the legal services institution in counsel with the Attorney-General (for Supreme Court), Advocate General (for High Courts), Government pleader (for districts/Taluks) and the Bar association President. The legal practitioner should have three years or a greater number of involvements with the bar for being considered for empanelment. The individual attributes like competence, integrity, suitability, and experience should be given due thought. Separate panels might be kept up for various sorts of cases. The Regulations likewise accommodate retainer legal advisors. The Panel must be reconstituted every three years

¹⁴Durga Das basu, *Commentary on the Constitution of India(a comparative treatise on the universal principles of justice and constitutional government with special reference to the organic instrument of india* (8 edn, LexisNexis) 4097

¹⁵ AIR[1997] SC 645: [1997] 9 SCC 377: [1997]1 LLJ 113

¹⁶ Ibid 14, pp 4097,4098

without aggravating the work of panel lawyers already representing on-going cases. In such situations where the panel lawyers wishes to pull back from a case depended to him, he might convey this to the Member Secretary and the latter may allow him to do as such. The panel legal lawyer is banned from taking any expense, compensation or other profitable thought from any individual for whom legal services are rendered under the Regulations or Act. The panel lawyer might be pulled back from a case or his name expelled from the panel by virtue of non-execution of obligations satisfactorily or for activities against the object and reason of the Act or Regulations.

ii. Monitoring Committee

The Regulations make procurement for constitution of Monitoring Committees and their functions. These Committees are required to submit by-month to month reports to the Chairman of the legal service establishment. The report should gain an autonomous evaluation of the ground in each legal aid case and the execution of the panel lawyer or retainer lawyer.

iii. Payment of Fee

The Regulations indicate the guidelines in regards to payment of fees for panel lawyers which should be as per the State regulations immediately on receipt of fulfillment of procedures from them. It proposes periodic revision of honorarium for the distinctive sorts of administrations gave by panel lawyers in legal aid cases.

iv. Senior Advocates

The administrations of senior advocates might be profited if the Chairman of the legal service institutions shapes an assessment to that impact in instances of great public significance and where a genuine danger to life and liberty of the applicant exists.¹⁷

3. The Legal Services Authorities (Amendment) Act, 2012

The Parliament of India realized that litigation oriented legal services cannot bring out desired result, therefore, for encouraging pre-litigation legal services specially in public utility services, the Parliament has made certain amendments in Legal Services Authorities Act by passing an Act known as the Legal Services Authorities (Amendments) Act, 2002. The purpose of this amendment is to bring out certain changes in the legal Services Act, 1987 (hereinafter referred to as the principal Act)

¹⁷Raman Mittal , K.V. Sreemithun (eds), *Legal Aid Catalyst for Social Change Aid*(Satyam Law International)
<https://books.google.co.in/books?id=al6y7aEgqzsC&pg=PA3&source=gbs_toc_r&cad=4#v=onepage&q&f=false
>accessed on 8 October 2015

especially for the establishment of permanent Lok Adalats to settle disputes concerning public utility services at pre-litigation state.

The amendment has made the following changes in the Principal Act:

1. In the Legal Services Authorities Act, 1987 in Section 11A in sub-section (2) in clause (a), for the words “senior Civil judge”, the words “senior most Judicial Officer” has been substituted.
2. In Section 22 of the principal Act, for the words “ LokAdalat”, wherever they occur, the words” LokAdalat or permanent LokAdalat” shall be substituted.
3. After Chapter VI of the principal Act, a new Chapter VIA has been inserted.
4. In section 23 of the principal Act, for the words “members of the LokAdalat” the words “members of the Lok Adalats or the persons constituting Permanent Lok Adalats” shall be substituted.
5. In section 27 of principal Act, in sub- section (2), after clause (1), the following clause shall be inserted namely: “(1a) the other terms and conditions of appointment of the Chairman and other persons under sub- section (2) of Section 22B”.

Chapter VIA provides certain provisions dealing with pre-litigation conciliation and settlement pertaining to public utility services. Section 22A provides that in this Chapter and for the purposes of sections 22 and 23 unless the context otherwise requires: “permanent LokAdalat” means a permanent LokAdalat established under sub- section (1) of Section 22 B. “Public utility service” means any

1. Transport service for the carriage of passengers or goods by air, road or water; or
2. Postal, telegraph or telephone service; or
3. Supply of power, light or water to the public by any establishment; or
4. System of public conservancy or sanitations; or
5. Service in hospital or dispensary; or
6. Insurance service.

It also includes any service which the Central Government or the State Government, as the case may be, may in the public interest, by notifications, declare to be a public utility service.

4. Free Legal Aid under International Law.

To ensure justice there should be equality and human rights should be protected. International law provides for free legal service from the viewpoint of human rights.

4.1. The UN Covenant on Civil and Political Rights.

It affords some sustenance on free legal aid to the poor and impoverished persons precisely in criminal proceedings. Article 14 of said covenant clearly states followings-

- i. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
- ii. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
- iii. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - c) To be tried without undue delay;
 - d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - g) Not to be compelled to testify against himself or to confess guilt.
 - h) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

When an individual has by a final verdict been sentenced of a criminal offence and when consequently his conviction has been reversed or he has been pardoned on the ground that a new or anew discovered fact shows convincingly that there has been a breakdown of justice, the person

who is grieved by punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Therefore, under Para 3(d) of Article 14 person shall be entitled to present his case by himself or by legal assistance of his own choice and in this regard if he has no such means to pay the fees for legal assistance the state should provide such assistance as required to the person.

Jurist Mathews and Outton were of the opinion that “Whatever standards a man chooses to set for himself, be they religious, moral, social or purely rational in origin, it is the law which prescribes and his rights and duties towards the other members of the community. This somewhat arbitrary collection of principles he has very largely to take as he finds and in a modern society it tends to be so diverse and complex that the help of an expert is often essential not merely to enforce or defend legal rights but to recognize, identify and define them”.¹⁸

There are a number of declarations and principles adopted by the United Nations which help to operative legal aid, for example, the Universal Declaration on Human Rights (UDHR) in Article 8 and Article 10 provides that ‘everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by constitution or by law and everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against him’¹⁹

4.2. League of Nations and Legal Aid (1924)

In the first half of the Twentieth century, at the end of the First World War, international concern for human rights found expression in certain provisions of the Covenant of the League of Nations. It was also realized that universal peace could be established only by imparting social justice to all. There was a necessity of legal aid, because without legal aid social justice to all was not possible. Therefore, after due advance preparation under the auspices of the League of Nations, International Committee of Legal Aid experts met at Geneva from 30th July to 31st August 1924. France, England, Norway, Italy, Poland, Spain, U.S.A, and Japan sent their representatives to participate in the conference. Justice for the poor was the primary issue in those meetings. The League of Nations submitted a report in 1927 on the survey regarding legal aid in various countries.²⁰

¹⁸Souvik Dhar, ‘Necessity of Legal Aid - International Provisions’ (*Speakingtree*, 27 July 2015)

<<http://www.speakingtree.in/blog/necessity-of-legal-aid---international-provisions>> accessed 10 October 2015

¹⁹ ‘The Universal Declaration of Human Rights’ (UN) <<http://www.un.org/en/documents/udhr/index.shtml>> accessed 11 October 2015

²⁰ ‘UN Chronicle’ (*UN Chronicle.un*) <<http://unchronicle.un.org/article/international-human-rights-law-short-history/>> accessed on 9 October 2015

5. Legal Aid in Other Countries.

5.1.1. Legal Aid in United Kingdom:

In U.K, the scheme of legal aid is controlled by the Legal Service Commission, and is subjected to most of the criminal and civil cases but with exceptions such as libel, most personal injury cases (which are now dealt with under Conditional Free Agreements, interests of contingency fee) and cases associated with the running of a business. Family law cases are also covered.

In the year 1903, the first state funding for legal representation under Poor Prisoners Act was enacted which provided for legal counsel in murder cases and other serious cases. Earlier, prisoners relied on pro bono representation.

The modern system related to civil aid was created by the Legal Advice and Assistance Act 1949 on the recommendations of the Rushcliffe Committee of 1945. It provided that lawyers in private practice should be paid to undertake cases on behalf of people of small or moderate means. This system came into effect in the year 1950.

At present, The Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012 was enacted which came into effect on 1st April 2013. It has initiated the deepest cuts to the legal aid scheme since it began. The \$2.2 billion legal aid bill has been reduced by \$350 million. The consequence of this is that legal aid has stopped being available in many areas of law.

The provision of Legal Aid is now not available for employment law cases, except for cases which include a contravention of the Equality Act 2010 or cases which includes exploitation of an individual who is a victim of trafficking in human beings.

Legal Aid is no longer available for welfare benefit cases except for appeals to the Upper Tribunal or higher courts.²¹

5.1.2. Legal Aid in Australia:

There are eight legal aid commissions in Australia, one in each state and territory. The purpose of legal aid commissions is to provide helpless and underprivileged Australians with access to justice.

Our democratic society therefore depends on the premise that all Australians are equal before the law, a premise which needs to be understood in relation to the question of access. Legal Aid commissions play a defining role in achieving equality before the law by striving to ensure that all

²¹ Jon Robins, 'Legal aid in 21st-century Britain' (*The Guardian*, 12 March 2009) <<http://www.theguardian.com/money/2009/mar/11/legal-aid-justice-gap>> accessed on 8 October 2015

citizens, including those who cannot afford to pay, have access to the legal services they need to obtain justice.

Commissions provide access to justice by providing the following types of legal assistance: Financial assistance to enable people who cannot afford a lawyer to be legally represented in court proceedings and other cases; Information and advice about legal rights, responsibilities and remedies; Education programs to inform the community about the law and legal remedies.²²

6. Comparison

As the countries like India, Australia, U.K are parties to the International Covenant on Civil and Political Rights, each of these countries provide the scheme of free legal aid to its citizens.

Under the Constitution of India, Article 39-A emphasize that free legal service is an inalienable element of reasonable, fair and just' procedure and that the right to free legal services was implicit in the guarantee of Article 21. Article 39A states that "The 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 disabilities." Further, the Code of Criminal Procedure, 1973 provides statutory implementation of free legal aid under Section 304(1) which states that in a trial before the sessions judge, if the accused has no sufficient means to engage a plea, the court should assign a pleader for his defense at the expense of the state. Also, Order 33, Rule 17 of Code of Civil Procedure provides for suit by or against an indigent person. The Supreme Court has ruled that free assistance must be provided to all poor accused, irrespective of the severity of the crime attributed to them, at every stage of the three-tier justice delivery system and could not be restricted to the trial stage only. National Legal Services Authority Act is the statutory recognition of India to provide free legal aid to the poor and indigent people in the country.

In U.K, the scheme of legal aid is controlled by the Legal Service Commission. But in U.K legal Aid is no longer available for welfare benefit cases except for appeals to the Upper Tribunal or higher courts. In England legal aid is represented by "Legal Services Commission" which guarantee that individuals get the right information, counsel and legal assistance they have to manage a series of problems, for example,

- i. Criminal cases
- ii. Civil cases - with special cases including libel, most personal injury cases, associated cases with the running of businesses, and family cases.

²²'Legal Aid in Australia' (*Legal.aidact*)

<<http://www.legalaidact.org.au/aboutus/otherlegalservices/legalaidaustralia.php>>accessed 12 October 2015

The LSC is in charge of the Community Legal Service (civil) and Criminal Defense Service (criminal) legitimate guide schemes. Contingent upon the sort of case, legal aid might be means tried.

LSC works in association with solicitors and non-profit organisations. Their key work is to give social and legal justice to the helpless and socially backward individuals. Their job is to ensure that applicants can get to the help they require to address their issues. Legal Aid in United Kingdom can be acquired through the web and/or via phone. Here legal aid is controlled by the Legal Services Commission, and is accessible for most criminal cases, and numerous types of civil cases with exemptions including libel, most personal injury cases (which are now dealt with under Conditional Fee Agreements, a species of contingency fee) and cases associated with the running of a business.

Criminal legal aid is for the most part given through private firms of solicitors and advocates in private practice. Civil legal aid is provided through solicitors and barristers in private practice but also non-lawyers working in law centers and not-for-profit advice agencies.

In Australia, Legal Aid commissions play a defining role in achieving equality before the law by striving to ensure that all citizens, including those who cannot afford to pay, have access to the legal services they need to obtain justice.

In Australia, Legal Aid commissions demonstrates a critical part in accomplishing fairness in the witness of the law by endeavoring to guarantee that all nationals, including the individuals who can't stand to pay, have admittance to the legal service. The Australian Government and most State and Territory Governments additionally subsidize community legal centers, which are free, non-profit organizations that give referral, counsel and help to individuals with legal issues. Also, the Australian Government reserves financial assistance for legal services under certain statutory plans and legal services for Indigenous Australians.

The Australian Government made its first real stride towards a national arrangement of legal aid when it built up the Legal Services Bureaux in 1942. Be that as it may, there was a move in the late 1970 to give administration conveyance by the States and Territories (not the federal arm of government). In 1977, the Australian Government instituted the Commonwealth Legal Aid Commission Act 1977 (LAC Act) which set up cooperative arrangements between the Australian Government and State and Territory governments under which legal aid would be given by independent legal aid commissions to be built up under State and Territory enactment. The procedure of setting up the LACs took various years. It initiated in 1976 with the foundation of the Legal Aid Commission of Western Australia and finished in 1990 with the foundation of the Legal Aid Commission of Tasmania. The cooperative arrangements that were built up by the LAC Act accommodated Commonwealth and State and Territory legitimate guide financing understandings, which started in 1987.

In July, 1997 the Australian Government changed its arrangements to specifically finance legal aid services for Commonwealth law matters. Under this course of action the States and Territories reserve legal aid with deference of their own laws.

7. Methodology

The methodology used in accomplishment of this research paper is a doctrinal one.

8. Observation

The fundamental objective of the legal services authority Act is to secure justice to the weaker areas of the general public, especially to poor people, oppressed, socially backward, women, children, debilitated etc. Steps are should have been taken to guarantee that no one is denied of a chance to seek justice just for need of funds or lack of knowledge.

To guarantee this, firstly, appropriate legal awareness must be made among our kin by making them legally proficient and legally educated. The thought behind the spread of legal knowledge is to legally empower individuals before the need to look for legal aid emerges. Also, if the requirement for legal aid arises then in any event the general population equipped with newly acquired legal information, and can utilize the information in the most ideal way. Despite the fact that legal aid has not been depicted as a Fundamental Right in the Constitution yet, the decisions set around the Supreme Court of India now and again, particularly in appreciation of the nature and extent of Article 14 and Article 21 have made legal aid very nearly a Fundamental Right for poor people and the destitute.

9. Conclusion

The idea of legal aid is an old one, yet the way in which we comprehend it today is a late marvel. Legal aid is envisioned to afford the cost of poor people and vulnerable segments of the general public, the support to look after themselves in admiration of the activity and implementation of their legal right. Legal is thought to be an instrument to accomplish equality in the witness of law as given in our Constitution and in addition diverse in the constitution of different nations as well.

'Keeping in mind the end goal to keep that the underprivileged, oppressed and weaker areas of the general public are not denied of the advantages, there ought to be appropriate consciousness of law and lawful procedures. Pandit Jawaharlal Nehru opined that 'the rule of law must run close to the rule of life. It cannot go off at a tangent from life's problems.....It has to deal with today's problems'. The law is intended to serve the general population and maintain the spirit of the Constitution which can be managed by social justice. Regardless of innumerable disadvantages, the legal efficiently abstained from matters identifying with such defenseless groups with a practical methodology in securing their interests. The natives of India have put the judiciary on a high platform. In the process the legal framework has possessed the capacity to reach to the poorest of

the poor by empowering and demonstrating free legal aid to them. Yet, it can likewise be found that various individuals are being denied of it as they need legitimate mindfulness.²³

In this manner it can be concluded with the expressions of Dr. Manmohan Singh, the ex-Prime Minister, who has said 'the rule of law can become a living reality for millions and millions of our people, only if the rights of law-abiding citizens are effectively protected and safeguarded, only if justice is seen to be delivered and delivered in time, only if right of the weak and dispossessed are protected'. India being inequitably graded society, Dr. Ambedkar recognized the need for a three-fold strategy:

- a) Provision of equal rights (overturning the customary framework of caste system based on principle of equality and denial of equal rights, particularly, to untouchables).
- b) Provision of legal safeguards against the violation of these rights in terms of laws
- c) Pro-active measures against discrimination for fair share and participation in legislature, executive, public services, education and other public spheres for discriminated groups (in the form of reservation).

10. References

10.1. Primary Sources

10.1.1. Cases

- [1] HussainaraKhatoon v. State of Bihar, [1980] 1 SCC 98
- [2] Khatri v. State of Bihar, AIR[1981] SC 262
- [3] Suk Das v. Union Territory of Arunachal Pradesh, AIR [1986] SC 991
- [4] M.H. Hoskot v. State of Maharashtra, [1978]3 SCC 81
- [5] State of Haryana v. Darshana Devi,AIR [1972] SC 855
- [6] Air India Statutory Corporation v. United Labour Union,AIR[1997] SC 645: [1997] 9 SCC 377: [1997]1 LLJ 113
- [7] Abdul Hasan v. Delhi Vidhyut Board, AIR 1999 Del.80

10.2. Secondary Sources

10.2.1. Books

- [1] BasuDurga Das, Commentary on the Constitution of India(a comparative treatiseon the universal principles of justice and constitutional government with special reference to the organic instrument of india (8 edn, LexisNexis)
- [2] Austin Granville, Working A democratic Constitution (2003 edn, Oxford University Press, USA 2000)

²³ Ibid 17

10.2.2. Links

- [1] VarunPathak, 'A Brief History of Legal Aid'(Legalserviceindia) <<http://www.legalserviceindia.com/articles/laid.htm> accessed> 7 October 2015
- [2] TNN, 'Poor accused must get free legal aid at all levels: SC' *Times of India* (Delhi 11 August 2012) <<http://timesofindia.indiatimes.com/india/Poor-accused-must-get-free-legal-aid-at-all-levels-SC/articleshow/15441640.cms> >accessed 7 October 2015
- [3] Raman Mittal , K.V. Sreemithun (eds), Legal Aid Catalyst for Social Change Aid (Satyam Law International) <https://books.google.co.in/books?id=al6y7aEqgzsC&pg=PA3&source=gbs_toc_r&cad=4#v=onepage&q&f=false >accessed on 8 October 2015
- [4] SouvikDhar, 'Necessity of Legal Aid - International Provisions'(Speakingtree, 27 July 2015) <<http://www.speakingtree.in/blog/necessity-of-legal-aid---international-provisions>> accessed 10 October 2015
- [5] 'The Universal Declaration of Human Rights' (UN) <<http://www.un.org/en/documents/udhr/index.shtml>> accessed 11 October 2015
- [6] 'UN Chronicle' (UN Chronicle.un) <<http://unchronicle.un.org/article/international-human-rights-law-short-history/> >accessed on 9 October 2015
- [7] Jon Robins, 'Legal aid in 21st-century Britain' (*The Guardian*, 12 March 2009) <<http://www.theguardian.com/money/2009/mar/11/legal-aid-justice-gap>>accessed on 8 October 2015
- [8] 'Legal Aid in Australia'(Legal.aidact) <<http://www.legalaidact.org.au/aboutus/otherlegalservices/legalauidustralia.php>>accessed 12 October 2015