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LACK OF LEGAL AID AWARENESS AND SERVICES: A CRITICAL STUDY ON ACCESS TO JUSTICE IN INDIA

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Abstract

Legal aid is a critical component in the operation of a democratic justice system and therefore must ensure everyone has a right to obtain justice and access to the legal system regardless of the income they earn or their education level in the law. Many developing countries have large gaps between their poorest citizens as well as high rates of illiteracy. Thus, legal aid has been implemented as a way to give access to the law for those living in poverty or who do not have an education on the law. The country of India provides two avenues of free legal assistance through their institutional framework: the Constitution and with legislative provisions found primarily within the Legal Services Act of 1987 (Act). Although these plans were put into place and thus it still does not provide the sufficient numbers of persons obtaining legal aid due to persons either not knowing they are entitled to it or created many deficiencies in the delivery of the system of available legal services.

This paper will look at the issues associated with low legal aid awareness and the service the legal aid system provides. This research will look at and define what is meant by legal aid, the legal basis/constitutional underpinnings of our legal aid system, the goals of a legal aid system, and how those goals are achieved in practice. This research will point out the reasons some people have limited access to legal aid due to social, economic, education and political systems modes of administering justice and affecting access. The research will also identify barriers that limit some vulnerable populations including women, rural communities, workers and the economically disadvantaged people from accessing legal aid services.

This paper will also review issues related to the following four components of legal aid: legal

literacy; legal aid providers; participation of the community and the use of technology to improve access to the justice system. Finally, the research will recommend numerous practical reforms that could be implemented to increase legal aid awareness and improve the quality of services provided by the legal aid system.

Introduction

The idea of justice is a foundational principle in any judicial system, where the purpose of creating laws is to protect individual's rights, maintain order and establish peaceful methods by which to settle disputes. The important point is that these legal rights must have meaning to the individuals protected by them and this occurs through access to the justice system without any barriers. Most often, access to the judicial system and the ability to have one's legal rights enforced is not equal among individuals.

A multitude of barriers such as economic disparity, lack of education, social oppression and confusion over complicated procedures related to the law, serve to prevent ordinary citizens from enforcing their legal rights through the courts and therefore many individuals experience injustice due to their inability to seek legal representation or due to lack of knowledge of their legal rights.

The purpose of legal aid has been to eliminate these barriers. Legal aid represents the core principle that individuals should not be relied upon to enforce their legal rights based on their wealth or social status. Therefore, if only wealthy individuals could afford to retain a lawyer and be heard in a court of law then the principle of equality before the law would be meaningless. Therefore, legal aid works to provide free and to those individuals who cannot afford to pay for attorneys and to ensure that every individual has an equal opportunity to enforce their legal rights.

The Constitution of India recognizes and provides Constitutional recognition to the concept of Legal Aid. There are also provisions for a comprehensive statutory framework for Legal Aid in India. There are various institutions at both the State and National level which provide free legal assistance and promote the awareness of Legal Aid among the citizens. The institutions such as: National Legal Services Authority (NALSA), State Legal Services Authority (SLSA's) and District Legal Service Authority (DLSA's) promotes legal awareness.

Despite these initiatives, there remains a significant problem with respect to the lack of awareness about Legal Aid and the effectiveness of Legal Aid.

Most people in society are unaware that they can get free legal help from attorneys. However, those who do know might find that they run into practical difficulties when attempting to access these services including long wait times and poor communication. Because of these barriers, there is a large gap between the legal system's promises about providing justice for all citizens and what is actually delivered to individuals in practice.

The establishment of legal aid agencies does not ensure that anyone has access to justice unless they are aware of the existence of the legal aid agencies and know how to properly use them to obtain justice.

The purpose of this paper is to investigate why individuals are unaware of their ability to access legal assistance and how that lack of awareness contributes to the inability of legal agencies to provide effective service. In doing so, this paper will present analyses of the ramifications of both conditions and will propose reforms which will increase access to justice in substantive ways.

Research Methodology

The methodology was a combination of doctrinal and analytical research methodology. The majority of this research was conducted through secondary sources including, but not limited to statutes, constitutions, governmental records, legal scholars and the documents of organizations providing legal aid to persons. The basis for this course of action was built upon an analysis of the current legal structure providing for the delivery of legal aid services and the manner in which those services are provided by the organizations that provide them. In addition, the study included an analysis of the reasons contributing to the overall lack of knowledge and effectiveness of legal services.

The overall goal of establishing a methodology to be utilized in the research process is to combine the philosophical understanding of the legal model with the acknowledgement that there are two major components that must be accounted for when they attempt to analyze the other field which is impacted by the legal model. The legal field and the social element involved in interpreting the law. The interaction of these two different areas in reference to this

study provides the foundation for organizing, analyzing and disseminating the data that was collected through this study. Further, the interaction of these areas in relation to this study allows for the analysis of the problem and would assist in providing practical recommendations for addressing the issue.

Concept and Meaning of Legal Aid

Legal aid is an essential principle underpinned by values such as equity, justice, and human dignity in society today. At its most basic level, legal aid consists of providing free legal assistance to those who cannot afford to hire an attorney for the purpose of obtaining access to justice on equal terms as others can access the justice. The principle extends much further than simply providing free attorneys. It denotes a commitment of society to ensure every citizen regardless of his/her financial situation, social background or gender and has the ability to enjoy the access to justice.

As a basic principle of the rights of individuals under the law, the legal aid should be available to all individuals. If there are situations like a person not being able to afford an attorney and where an individual's right is denied because that person is unable to obtain a legal representative to enforce his/her legal rights and then all persons will not have equal access to justice. Legal aid is therefore a tool for decreasing the inequities that occur within the justice system and it turns theories about individual's legal rights into realities through the availability of legal representation to those in need of justice.

The traditional concept of the Courts and the Law has always been very complex and expensive. Court costs, attorney fees, the amount of paperwork and length of time it takes to litigate have made it impossible for those who cannot afford inappropriately have these rights enforced. Thousands of individuals will never pursue the courts for money or other benefits because they do not have means to afford it and thus they suffer through injustices but at least in silence. Legal aid has been designed to eliminate the barriers to access to the courts by providing legal advice completely free of charge, providing legal representation, preparing documents for clients, paying for court costs and providing assistance during the course of the legal process.

The definition of legal aid has evolved over time. In the past, legal aid was strictly limited in definition to the provision of legal representation in court. Today, the concept of legal aid

encompasses many more dimensions than at any other time. The definition of legal aid today includes legal counselling, mediation and assistance with achieving out of court settlements, programmes to raise awareness of the law, legal education and training programmes and many other services. The modern view of legal aid is that knowledge of rights and freedoms is as important as legal representation because an individual cannot seek justice unless they know the rights they are entitled to.

Access to Justice and Legal Aid are closely related as access to justice allows people to go to the legal system either formally or informally when their rights have been violated. Legal Aid helps the individual and make sure that the access to justice is achievable rather than being merely an idea. Legal Aid promotes the rule of law by ensuring that everyone including marginalized or vulnerable groups can access the justice system.

Legal Aid also plays an important role in promoting social justice. The justice system acts as a vehicle for protecting people in society who have less power than others such as women, children, workers, people with disabilities and low-income people. Legal Aid provides these people with an opportunity to have a legal voice and facilitates the balancing of the current power imbalances in our society.

Contemporary legal scholarship views legal aid as an integral part of welfare governance and an obligation of the State to provide social equity. Legal aid isn't a benefit or a gift, it is an obligation of the law and morality which comes from the Constitution's basic principles of equality and justice.

Therefore, we can define legal aid for all people to include all components of a total system that provides legal representation, educates people about the law, provides them with guidance, resolves disputes and empowers individuals to be able to access justice equitably at the same time.

Constitutional and Legal Framework of Legal Aid

Legal aid in India has its foundation in statutory law and constitutional principles. The Constitution of India envisages a welfare state and socio-economic justice as important goals and also the Constitution's drafters recognised the requirement of true democracy as requiring equal access to justice. As a result, a number of provisions within the Constitution both

indirectly & directly provide support for the concept of legal aid.

The principle of equality before the law and equal protection of the laws establishes a right to treat everyone equally in the legal system. Thus, this principle prohibits economic inequalities from preventing equal access to justice. Similarly, courts have interpreted the right to life and the right to liberty very broadly to include fair processes and access to legal representation. Through time, courts have interpreted the guarantees of the Constitution to include a right to free legal aid as an element of fair justice.

Article 39A is one of the most significant provisions in the constitution to support legal aid and was added via the 42nd Amendment Act in 1976. Article 39A provides that the State will provide free legal aid to ensure that the legal system works to secure justice and guarantee access to the law equally for all. Therefore, no person will be denied access to justice on the grounds of financial inability or any other disadvantage. This provision is included in the Directive Principles of State Policy but it has been relied upon as a major source of guidance for making laws and developing policies.

Judicial rulings have had a significant impact in developing Legal Aid rights. The Supreme Court of India has consistently held that free legal aid is a fundamental principle of a fair trial and due process. Courts have determined that it is the state's constitutional duty to provide legal assistance to poor defendants. Consequently, these decisions have transformed Legal Aid from a policy concept into an enforceable element of Fundamental Rights.

The Legal Services Authorities Act, 1987 was passed by Parliament to effectively implement constitutional principles through legal aid in India. This established a structured framework for voluntary and professional legal aid services for those in need of justice. It was developed in order to offer both competent and free access to the courts to the not-so-privileged and to ensure the delivery of justice on a basis of equality.

As a result, this legislation has provided the means for creating a multi-layered institutional structure for providing legal aid services.

This includes:

- National Legal Services Authority (NALSA) - The national organization responsible

for developing policy and providing coordination for legal aid services provided by State and District Legal Services Authorities.

- State Legal Services Authorities (SLSAs) - this organization operates at the state level by developing policies and monitoring the provision of legal aid services by District Legal Services Authorities.
- District Legal Services Authorities (DLSAs) - this organization provides legal aid services within their jurisdiction and carries out public awareness activities.
- Taluk or Sub-Divisional Legal Services Committees - this provides access to legal services at the grassroots level.

The Act identifies the various categories of applicants eligible for free legal services. These include women and children, members of the Scheduled Castes and Scheduled Tribes, victims of trafficking, persons with disabilities, industrial workers and individuals who are detained and have incomes of less than the maximum limit of income prescribed in accordance with the law. The broad scope of applicants is intended to achieve equitable representation of vulnerable populations.

The other important aspect of the legal system is that various forms of Lok Adalat are being instituted as courts and will serve as an alternative forum for resolving disputes between two parties. The purpose and function of Lok Adalats is to provide expeditious resolution of disputes so that the burden on the regular Courts is decreased. The Lok Adalat are informal and inexpensive sources of justice and especially for all civil and compounded criminal cases.

Legal aid is supported by many things including legal aid clinics, legal awareness or education programs and campaigns run by legal services providers with the help of schools and non-profit organizations in the community.

Challenges remain with regard to the delivery of legal aid and reaching out to people who need assistance. And while there is a solid legal basis for providing access to justice through legal aid, it is very clear from looking at the constitutional and the statutory framework created by the legislature that India is committed to providing equal access to justice for all people living in India.

The combination of legal aid is a reflection of the constitutional vision to bring about social

change through a well established process that consists of constitutional, judicial and legislative action.

Objectives of Legal Aid

The purpose of legal aid is to provide free representation for low income individuals, but its ultimate goal is to fulfill Equal Justice Under Law in India. Legal Aid tries to eliminate the cost prohibitive barrier which prevents the people from accessing the courts for justice.

Another objective is Legal Empowerment by creating public education programs like Legal Aid programs to inform individuals about both their legal rights and responsibilities in order to help them with the tools needed to prevent future legal disputes or to peacefully resolve conflicts.

Legal Aid also helps to decrease the time and cost associated with litigation through facilitating settlement alternatives to litigation and to promote social cooperation through encouraging mediation and other forms of compromise when appropriate.

The ultimate objective is to convert the Law from an overriding complex system for the few into a functional tool that all the citizens can access as a social service.

Importance of Legal Aid Awareness

Awareness serves as the basis for success in accessing legal aid, whereby all systems of legal aid will fail without it. Many people incorrectly think that legal aid is expensive and that only rich people can afford the court access. This misconception stops many individuals from obtaining help from the court.

Legal awareness is the ability to understand when your rights have been violated, as well as what institutions offer free or low-cost legal assistance. Citizens with legal awareness are better able to make informed decisions regarding how they should proceed with possible violations of their rights by reducing opportunities for exploitation.

In rural areas, people who lack a formal legal education will rely more frequently on informal dispute resolution processes, such as local power structures, rather than utilising the court system to resolve their problems which can lead to undesirable outcomes. Thus, the

development of legal awareness can support the rule of law.

Reasons for Lack of Legal Aid Awareness

The legal system is hard for an average person to understand. A person usually won't know about his or her rights and a lot of people don't know that free legal help exists. Because many people have never been in a courtroom and don't know what it's like to work with a lawyer. They often feel very intimidated by the legal system. When people are faced with legal issues they often won't seek help from a lawyer.

The lack of legal aid services and programs for lower-income people is compounded by a lack of outreach and education about legal aid services in both rural and remote communities. Although rural and remote communities have some form of legal service or program offered through Legal Aid, their outreach programs are limited to urban areas. There are very few legal aid communities whose outreach programs are established in rural areas, so outreach efforts conducted in those communities are long and arduous. Thus, many of these communities have not developed a true understanding of what legal aid is and how to utilize or access it to get justice.

In addition to these contributing factors like social and cultural factors play a major role in why many people use informal settlement methods rather than legal processes to solve their disputes. Traditional or cultural practices, as well as social expectations may cause many of the people in certain communities to prefer using informal settlement methods for their disputes. Many women, particularly in conservative or highly populated neighbourhoods, can be reluctant to access the courts because of the fear of being considered outcasts or facing family opposition.

Language and communication barriers may also affect people's ability to obtain legal information. Legal information is frequently presented in technical or officially defined terms which are not easily understood by most people. The inability to provide simple or practical forms of legal communication prevents many people from understanding how to access legal assistance.

Reasons for Ineffective Legal Aid Services

Although there is a regulation for legal support. There are many obstacles that exist which make legal support less effective. One major issue is that there are not enough skilled and motivated

attorneys to assist with legal support. Many attorneys are not as motivated to assist with providing legal support as they are by taking private cases due to much lower monetary rewards for taking legal support. As a result, these attorneys may be less invested in the cases which can influence the quality of the representation provided.

There are also obstacles caused by the administrative processes involved with providing and obtaining legal support. Applicants for legal support will often experience obstacles obtaining the requisite documentation to apply for legal support, receive inadequate assistance or experience delays in the approval process. Because of these types of delays many people will lose the desire to continue the process to receive legal support.

Another issue is poor coordination and communication between beneficiaries and legal aid providers. Clients do not receive proper information about their case progress which results in dissatisfaction and loss of trust in the system.

Geographical barriers further weaken service delivery. Legal aid offices may be located far from rural areas which creates travel difficulties for poor individuals who need to travel multiple times. Women elderly persons and daily wage workers face accessibility challenges because of physical distance constraints.

The absence of effective monitoring and the evaluation systems leads to diminished accountability. The assessment of legal aid services and lawyer performance needs to occur regularly to maintain service quality and operational efficiency.

Role of Legal Literacy and Community Participation

To make sure that legal aid reaches to those who need it the most and legal literacy is crucial. Legal literacy is the provision of fundamental information about laws, rights and legal processes so that people can recognize when their rights are being infringed upon and know how to pursue legal redress. People who are aware of the law are less likely to be taken advantage of the legal services and feel more comfortable approaching legal institutions. By educating people about the appropriate behavior and available legal protections. Legal literacy also aids in the prevention of conflicts.

Legal literacy serves as the cornerstone for access to justice in the context of legal aid. Even if

there are free legal services, they cannot be used effectively unless the people are aware of them. Therefore, legal education camps, workshops, awareness campaigns and legal aid clinics are important tools for educating the public and particularly in rural and economically disadvantaged areas.

Participation from the community increases the efficiency of legal literacy initiatives. Social leaders, non-governmental organizations, educational institutions and local communities all contribute to bridging the divide between the general public and legal institutions.

Information becomes more relatable and reliable when community members participate in legal awareness campaigns. Participation from the community also aids in identifying the local legal issues and promotes the use of legal means to settle conflicts.

Therefore, community involvement and legal literacy work together to create a more informed society where people are aware of their rights and they actively participate in the legal system. In the end, this advances the more general objective of giving everyone equal access to justice.

Conclusion

Legal aid is crucial for helping create equal access to the law and it helps facilitate equal access to justice. In terms of creating social welfare in a democratic setting, it plays an essential role in realizing those shared ideals. In essence, the basic premise of legal aid is that everyone should have the same chance to access the law and this is especially true for individuals who cannot afford private legal representation. All individuals, regardless of financial status or class background must be given an equal opportunity to protect their rights or to seek legal remedies. Only when the legal system is able to be reached by the poorest and most disadvantaged people can it be said to be functioning successfully.

The absence of legal aid awareness and legal aid services as shown by this study demonstrates that despite India having established a strong constitutional and statutory framework. There are still numerous obstacles to achieving practical implementation of these laws and procedures. The Constitution describes and provides procedures to guarantee equality and justice can be provided to everyone. The Legal Services Authorities Act, 1987 provides institutional mechanisms to assist in collecting and delivering free legal services.

However, having laws and institutions does not ensure that people will obtain fair and adequate access to justice. People still suffer from the gap between the legal provisions available and the lack of legal knowledge they possess as a result of a combination of the lack of access to the law, lack of legal literacy, institutional and infrastructural barriers and deficiencies in service delivery.

The most important finding in this study was that awareness is critical to successful legal service access. The study found that many people are still unaware of free legal assistance.

Socio-economic factors and economic barriers such as illiteracy as well as language may also adversely affect the ability of legal services to reach eligible individuals. Additionally, there were a number of barriers to effective delivery of legal services that included lack of available trained lawyers, delays in the courts, no tracking of cases submitted to the courts and lack of care to ensure the courts are accessible. These barriers combined to create doubt about the justice system and its accessibility for people of limited means.

Emerging from the research study was the importance of community involvement and legal education in improving legal service access. Based on community involvement and citizen understanding of their rights. The legal service providers will be able to increase the effectiveness of providing these services. Legal service access initiatives such as legal education programs, legal aid clinics, educational institutions and community based organizations can have a collective impact on reducing the barriers to legal services between the legal systems and the community. In addition, legal services access initiatives may leverage technology and digital tools to enhance the proliferation of the legal knowledge within and access to legal services. However, technological solutions must also be coupled with personal outreach and visibility of the legal systems for these technologies to fulfill their potential.

There are social ramifications associated with not having sufficient access to remedies through legal aid. The lack of access to legal aid contributes to deepening inequality and threatens the rule of law and allows for the perpetuation of injustice. Legal aid is particularly inaccessible for vulnerable populations such as women, workers, rural populations and marginalized communities. Therefore, improving access to legal aid is a necessary step toward achieving equitable social development and social justice.

In conclusion, legal aid should be viewed as a continual process rather than a one-time service. It is important that steps are taken to promote awareness campaigns and improve the quality of legal aid advocates, and also focus on simplifying the procedures for obtaining legal assistance and expanding outreach programs for rural and remote areas and to implement effective monitoring and accountability mechanisms for the legal aid programme. Legal aid will only be considered a viable option to citizens if it is practical, accessible and trustworthy. When legal aid has reached these conditions the constitutional idea of equal justice can be realized. A durable and effective legal aid system is one of the pillars of a more equitable, just and democratic society. The law is transformed from a tool to empower the disenfranchised into an impediment to the opportunities of the impoverished.

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