



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B.

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SUBJECT: Alternative Dispute

Resolution

SUBJECT CODE: BAL803

NAME OF FACULTY: Mohammad Aqib

Lecture-32



LECTURE 32: History of Legal aid in India and Legal provisions for providing for legal aid

The concept of legal aid has spanned across centuries, going back to the year 1919, when Reginald Heber Smith, in his book *Justice and Poor*, promoted the concept of legal aid and disparaged the legal profession saying that access to justice should be open to all without any obligation to pay. Without equal access to law, he wrote, the system robs the poor not only of their only protection but places it in the hands of the oppressors, the most powerful weapon ever invented.

Even the code of Hammurabi attempts to limit the charges paid for services to poor men. The code described three processes, by way of which the society can move towards social engineering through free legal aid.

The first step of free legal aid was to grant assistance to the vulnerable communities, the second was to put restrictions upon the exercise of privileges accorded by law to those who are well off, and the third was to strip the rich of their amenities and put the rich and poor on the same footing.

Mosaic Law gave to the poor many privileges, for he was poor. For example, if the creditors took a poor man's cloak as a pledge, then he must return it by nightfall otherwise he wouldn't have anywhere to sleep. Prompt payment of wages to the poor was also seen as essential.

History of Legal Aid in India :-

The adversarial system that came in India, with the advent of the British ended the informal dispute resolution system. This new system was more complex and required prior knowledge to be used.

In M.H Hoskot v. State of Maharashtra, the Supreme Court held that our legal system that has been mounted by the Anglo-American models which heavily uses legal technology, compel the collaboration of lawyer power or steering the wheels of equal justice under law. The adversarial model has been characterized by the technical nature of law, because of proper proceedings in court and the prevalence of lawyers and subsequent fee, hence it became imperative for the proper and fair adjudication of justice that Legal Aid be incorporated into the Constitution.

The 42nd Amendment Act inserted Article 39-A to the Constitution, hence making equal justice and free legal aid a directive principle of state policy. As pointed out by Granville Austin, the portions dealing with Fundamental Rights and Directive Principles of State Policy are meant for social revolution.

The working of Article 39-A reiterates that kind of social justice being prevalent in society.

Free Legal Aid in India:-

The 14th Report of the Law Commission of India mooted the idea of providing free legal aid to the poor by the State. The Report highlighted the responsibility of the legal community to administer the legal aid scheme and the State to fund legal representation 174 to the accused in criminal proceedings, appeals, and jails. In 1960, the Union Government initiated the national legal aid scheme which faced financial shortages and died a natural death. In 1973, in the second phase, the Union Government constituted a committee under the chairmanship of Justice Krishna Iyer to develop a legal aid scheme for states. The Committee devised a strategy in a decentralized mode with legal aid committees in every district, state, and center. A committee on judicature was set up under the chairmanship of Justice P N Bhagwati to implement the legal aid scheme.

This Committee suggested legal aid camps and nyayalayas in rural areas and recommended the inclusion of free legal aid provision in the Constitution. In 1980, the Committee on National Implementation of Legal Aid was constituted with Justice Bhagwati as its head. Subsequently, the Parliament enacted the Legal Services Authorities Act, 1987.

Legal provisions providing for legal aid:-

Section 340(1) of the Code of Criminal Procedure, 1898, provided that when a man was charged with an offence punishable with death, the court could provide him with counsel upon his request.

This was subject to twisted interpretation by the court, as the court regarded this as a privilege rather than a right in Tara Singh v. State of Maharashtra. However in the Code of Criminal Procedure of 1973, this was made a statutory rule and it was provided that in a trial before a session Judge if the accused does not have sufficient means to employ pleaders, the court shall do so at its own expense.

