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RESEARCH ARTICLE

ROLE OF JUSTICE P. N. BHAGWATI IN SHAPING UP 'LEGAL AID' IN INDIA.

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Abstract

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"The first duty of society is justice"

-Alexander Hamilton

Justice P. N. Bhagwati (PrafullachandraNatwarlalBhagwati) born on 21st December 1921 in Gujarat. He started his legal profession from the year 1946 from Mumbai High Court. Later in the year 1967, he was appointed as judge of Gujarat High Court. In the year 1973, he was elevated to Supreme Court and was appointed as 17th Chief Justice of India in the year 1985. At the age of 95, he died on 16th June 2017.

Justice Bhagwati is considered to be the father of Public Interest Litigation in India. it is not easy to assess the contribution of a Judge like Justice Bhagwati who served the legal services in a different capacity for almost 3 decades. The Indian Judiciary has reached its peak through judicial activism in the form of social interest litigation or public interest litigation in the era of Justice Bhagwati. Most of the provisions of Constitution especially fundamental rights expanded its contours and derived altogether different interpretation to meet the justice and to benefit the downtrodden during this period. The blossoming of human rights in Indian Constitutional law through the pen of Justice Bhagwati has few parallels in the annals of judicial law making and policy development.¹ From the many feathers of judicial transformation, the present paper attempted to analyze his role in shaping up 'legal aid movement' in India, which is considered to be very close to his heart.

Legal Aid:-

The Preamble of the Constitution of India envisages that 'We, the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and the integrity of the Nation'.²

¹MenonMadhava N. R., "The Dawn of Human Rights Jurisprudence: A Tribute to The Judicial Statesmanship and Activism of Chief Justice P.N. Bhagwati", (1987)1 SCC J-1.

²Preamble of Constitution of India.

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The framers of the Constitution elaborated this guarantee in the body through Article 14, 21 and 22. This was the position and it is considered that the philosophy of legal aid is an inalienable element of fairness and justice. The term "Legal Aid" has not been defined in any statutes. However, it is generally defined that; "Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial."³ As per State of Gujarat Report "*Legal Aid, in its common sense, conveys the assistance provided by the society to its weaker members in their effort to protect their rights and liberties, bestowed upon them by the laws.*"⁴ It includes representation by a lawyer, legal advice, legal awareness, developing mechanism for outside court settlement etc., in order to develop and maintain a just and fair legal system.

Evolution of Legal Aid:-

We can trace the philosophy of legal aid in India even from the ancient Indian Society, which is known to have systematically commenced with Vedic age. In India, Vedas are considered to be a source of all knowledge. We can find legal aid traces in the social practice and the elements of dharma itself. Rig Veda the earliest of the four Vedas does contain such elements of legal aid or social aid as we may name it. The 36th and 42nd slokas under chapter 12 refer to the need for saving people from 'rakshas' and violent people, procuring strength for such protection alongside praying the Almighty to bless those who donate. Rig Veda provides for mustering the strength, including monetary assistance, i.e. 'Dann' for extending aid and assistance to those fearing or facing attacks.⁵ In the medieval period especially in the reign of Shahjahan and Aurangzeb, Chief Qazi or Qazi-ul-Quzat were in the custom of appointing vakil-e-sarkar or vakil-e-sharai for the purpose of giving free legal advice to poor.⁶ Later during the time of King Vikramaditya common man was not supposed to spend anything for seeking justice. Even in princely state system through the village and community panchayats justice reached the doors of the poorest sufferers. Pre-British India had practiced "Constitutional Monarchy" and the days of the Hindu and Muslim rulers had witnessed unsophisticated methodology of dispensing justice to the poor. In short, justice to the citizens, high and low has been an Indian creed of long ago. British brought with them an expensive system of Administration of Justice, which has made Legal Aid to poor an obvious necessity.⁷ During British regime in the year, 1924 Bombay Legal Aid Society (BLAS) was formed. The main object of the society was to make justice accessible to the poor and reducing the cost of litigation. The committee wrote to the then Government for following the recommendation of the Rushcliffe Committee.⁸ After independence, various committee was appointed by Government of India to improve the condition of legal aid. On 23rd March 1949 Government of Bombay under the chairmanship of Justice N. H. Bhagwati, Trevor Harris Committee, Gujarat Committee in the year 1970 under the Chairmanship of Justice P. N. Bhagwati and finally the Expert Committee on Legal Aid in the year 1972. Finally, the (CILAS) Committee for Implementing Legal Aid Schemes was formed to initiate concrete action on the subject of Legal Aid.⁹ However, even after the formation and recommendation of the various committee at the ground level, there was no change and most of the poor were suffering due to lack of proper legal aid mechanism in India.

Around the same time, there was an increasing realization on the part of the sitting judges in the Supreme Court that the Judiciary was commonly perceived as an elitist body which would dispense justice only to those who could afford it.¹⁰ Justice P. N. Bhagwati was amongst the most vocal judge who took the lead in raising concerns about improving access to justice for the underprivileged. In a report on legal aid published in 1971, Justice P N Bhagwati observed:¹¹

³Encyclopedia Britannica.

⁴Government of Gujarat, Report of Legal Aid Committee, 1971.

⁵ Singh Govind, *Hindi Translation of Important Parts of Rig Veda*, Sadhna Pocket Books, New Delhi, p. 31, (1992).

⁶ Report of Expert Committee on Legal Aid, Processual Justice To The People, May (1973) 43.

⁷ Johri S. N., "*Programme and Movement of Legal Aid to Poor*", AIR 1981 Journal. 28.

⁸ 4th Report of the Law Commission of India, Reforms in the Administration of Justice (1958, Appendix iv) 621.

⁹ Evolution of Legal Aid, available at <http://shodhganga.inflibnet.ac.in>

¹⁰ KonakuppakatilGopinathanBalakrishnan*, "*Growth of Public Interest Litigation in India*" (2009) 21 SAcLJ 1 Singapore Academy of Law Annual Lecture 2008.

¹¹ Cited from: Ashok Desai & S Muralidhar, "Public Interest Litigation: Potential and Problems" in *Supreme but not infallible* (B N Kirpal *et al* eds) (Oxford University Press, 2000) pp 159-192.

Even while retaining the adversary system, some changes may be effected whereby the judge is given a greater participatory role in the trial so as to place the poor, as far as possible, on a footing of equality with the rich in the administration of justice.

The Committee on Judiciary, consisting of Justice V R Krishna Iyer and Justice Bhagwati, referred to Social Action Litigation as a supplemental tool to grassroots legal services programs, in their report published in 1977. Soon after, these two judges took the lead in promoting the same by taking *suomoto* cognizance of matters on the basis of letters addressed to them.¹²

The most representative right that can be examined to illustrate this change is Art 21 of the Constitution of India.¹³ Article 21 reads as follows: "No person shall be deprived of his life or personal liberty except according to procedure established by law." The understanding of Art 21 in the early years of the Supreme Court was that "personal liberty" could be curtailed as long as there was a legal prescription for the same.

Milestones of judgments on Legal Aid by Justice P.N. Bhagwati:-

One of the earliest cases of Public Interest Litigation that raised the issue of 'Legal Aid' was *Hussainara Khatoon and Others v. Home Secretary, State of Bihar, Patna*.¹⁴ The case exposed the plight of undertrial prisoners in the State of Bihar. A writ petition was filed by an advocate drawing the court's attention to the deplorable plight of these prisoners. Many of them were lunatic and had been in jail for longer periods than the maximum permissible sentences for the offenses they had been charged with. Justice Bhagwati held that "*it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under a constitutional mandate to provide a lawyer to such accused person if the needs of justice so required*".¹⁵ Justice Bhagwati by quoting a poem:

*"Bowed by the weight of centuries he leans
Upon his hoe and gazes on the ground,
The emptiness of ages on his face,
And on his back the burden of the world"*¹⁶

Held that "Let it not be forgotten that law is not only to speak justice but also deliver justice." In this case, right to have free legal aid on state's expenses was held to be a fundamental right under Article 21 and not merely a Directive Principle under Article 39A. In another judgment *Khatri and Others vs. State of Bihar and others*¹⁷, also known as *Bhagalpur blinding case*, it was observed by Justice Bhagwati that 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 court also stated that on financial or administrative grounds cannot avoid this obligation. It was directed to Magistrate and Session Judge to inform the indigent person about their right to legal aid. In the same year another case *Kadra Pahadiya and Others vs. State of Bihar*,¹⁸ where a minor boy aged 12 years was arrested and forced to work in leg irons for over 8 years without trial. The court directed that the petitioner must be provided legal representation by a fairly competent lawyer at the cost of the State since legal aid in a criminal case is a fundamental right implicit in Article 21. In *Munna & Others vs. State of Uttar Pradesh & Others*,¹⁹ under-trial juvenile prisoners below 16 years were jailed instead of sending them to Juvenile homes. It was alleged that juveniles were sexually exploited by adult convicts in

¹² Supra note. 9.

¹³ Abram Chaves, "The role of the judge in Public Law litigation" (1976) 89 Harvard Law Review 1281

¹⁴ (1980) 1 SCC 108.

¹⁵ Ibid.

¹⁶ A poem by the American poet Edwin Markham, inspired by Jean-François Millet's painting *L'homme à la houe*. The poem was first presented as a public poetry reading at a New Year's Eve party in 1898.

¹⁷ (1981) 1 SCC 627.

¹⁸ (1981) 3 SCC 671.

¹⁹ (1982) 1 SCC 545.

jail. The order directed the State Legal Services Authority to take appropriate action and provide legal aid to the under-trials. In the same year Supreme Court take *Suo moto* action in *Mrs. Veena Sethi vs. State of Bihar & Others*,²⁰ in this case, the Free Legal Aid Committee, Hazaribagh, Bihar addressed a letter to a judge of Supreme Court drawing the Court's attention to unjustified and illegal detention of certain prisoners in Hazaribagh Central Jail for almost two or three decades and most of them were mentally unstable. Treating this letter as a writ petition, the Supreme Court issued a notice to the State of Bihar for the purpose of ascertaining the facts in regard to these prisoners. The court also ordered for their release and to provide proper legal aid to under-trials. Soon thereafter, two noted professors of law filed writ petitions in the Supreme Court highlighting various abuses of the law, which, they asserted, was a violation of Art 21 of the Constitution.²¹ These included inhuman conditions prevailing in protective homes, the long pendency of trials in court, trafficking of women, importation of children for homosexual purposes, and the non-payment of wages to bonded laborers, among others. The Supreme Court accepted their *locus standi* to represent the suffering masses and passed guidelines and orders that greatly ameliorated the conditions of these people. In another matter, *Suk Das vs. Union Territory of Arunachal Pradesh*,²² where the appellant was a government servant was tried and convicted to suffer imprisonment for two years for offenses under Section 506 read with Section 34 IPC. He was not represented at the trial by a lawyer by reason of his inability to afford legal representation. On appeal, the High Court held the trial not to be vitiated since no application for legal aid was made by them. On appeal, the Supreme Court held that free legal assistance at State cost is a fundamental right of a person accused of an offense which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21. The exercise of this fundamental right is not conditional upon the accused applying for free legal aid and hence cannot be denied if the accused failed to apply it. Illiteracy, poverty, and ignorance of rights and entitlements under the law abounds leading to deception, exploitation and deprivation of rights and benefits under the law. It would be a mockery of the legal aid program if it were to be left to the poor, ignorant and illiterate accused to ask for free legal services.²³ To streamline the functioning of Legal services Authorities Justice Bhagwati in the case of Centre for Legal Research and Another vs. State of Kerala,²⁴ the Supreme Court laid down norms or guidelines for State to follow in giving support and cooperation to voluntary organizations and social action groups in operating legal aid programme and organizing legal aid camps and Lokadalats or niti melas. In the same year in the matter of *Sheela Barse and Another vs. Union of India and Others*,²⁵ the plight of women prisoners who were confined in the police jails in the city of Bombay was taken up by a journalist. She asserted that they were victims of custodial violence. The court took cognisance of the matter and directions were issued to the Director of College of Social Work, Bombay. He was ordered to visit the Bombay Central Jail and conduct interviews of various women prisoners in order to ascertain whether they had been subjected to torture or ill-treatment. He was asked to submit a report to the court in this regard. Based on his findings, the court issued directions such as the detention of female prisoners only in designated female lock-ups guarded by female constables and that accused females could be interrogated only in the presence of a female police official.

Thus the entire movement can be summarized from the time of emergency. During the emergency in 1975 then Prime Minister Mrs. Indira Gandhi made legal aid a part of the 20 point program. The program was given true meaning only by Justice Bhagwati who readily embraced the concept. He adopted a different strategy to promote the concept of legal aid in India. The first strategy was the promotion of legal literacy and creation of legal awareness among the people. The main reason for the failure of legal aid program (even today) in our country is due to the lack of awareness about legal aid schemes stated by the government for the benefit of indigent people. Justice Bhagwati for the purpose of raising awareness firstly imposed a duty on Magistrate and Session Judge to inform the accused of their right to legal aid and secondly directed all the Legal Service Authority, Court, Social Action Group the launch door to door campaign, LokAdalat, NitiMela, Legal AwarenessCamp etc. to make citizen aware about their rights.²⁶ At last the spirit of Justice Bhagwati runs from his own words: "We felt that if we really wanted to reach the people then we had to work through social action groups. We have a large number of young men and women, full of idealism and enthusiasm, who have given up a life of comfort and luxury in order to go to the rural areas to work

²⁰(1982)2 SCC 583.

²¹*UpendraBaxi (Dr) v. State of UP* (1986)4 SCC 106

²²(1986) 2 SCC 401.

²³*Ibid.*

²⁴(1986) 2 SCC 706.

²⁵(1986) 3 SCC 596.

²⁶Mukherji, Devesh Chandra, "Legal Education and Services to the Poor", AIR 1982 Journal 650.

among the poor at the grass root level. We found they were scattered, isolated and one group did not know what the other was doing. We started forming centers where social action groups operating within a geographical area would come together. My organization, the committee for implementing Legal Aid Scheme, would find them and provide them with a lawyer. They carry out social-legal surveys and we started holding camps for training social workers as a paralegal.”