

**BEFORE THE ACT OF 1987 -----**

**R. R. GANDHI**  
**Principal District Judge,**  
**CHAIRMAN MACT, MUMBAI.**

1. On one fine morning, I was reading the Newspaper at my Bungalow. I saw that one old person was reading my board hanged on Parapet Wall of the Bungalow. After some time I saw that he wanted to open the gate of my Bungalow to enter in. Looking to his age I personally went to open the door and took him inside the Bungalow. I asked him whom he want to meet. He told me that he wanted to meet adv. Mr. R. R. Gandhi. So I told him that I am the same person, what is his work? He told me that he want to sit in the office and have a talk. I told him that I had no office at my residence but I took him to porch area and offered him chair. He asked me whether I will charge him fees if he want some advise. I said I will not charge, but let me know the problem. He told me that his relative was a successful businessman and has left a will but his elder brother is not giving him the property of his share as per the will and therefore, he wanted to file a case for getting the share in the property left by his relative who died issue less. Then I asked him what was the problem. He told me that he was having no funds for fighting litigation/ legal battles. He wanted to fight litigation without payment of fees to the advocate and without payment of court fee stamp. I was knowing provisions under Civil Procedure Code where person can file a suit if he has no funds and assets as provided under order 33 of CPC.

2. Similarly, on another Sunday morning in rainy season, I was sitting in my office and was referring some law books. At that time, one senior woman came to my office and asked me whether she can file case against her son and daughter for her maintenance without spending any amount towards lawyer's fees and stamp duty. I gave appropriate advise to her, accepted her case and fought in the Court.

3. These two incidents compelled me to recollect the Constitution of India and particularly Article-39 A which provided that State shall secure the operation of legal system, promotes, spreads justice on the 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.

4. Our Indian Constitution was drafted in the year 1950 and in the Constitution itself provision was made as mentioned hereinabove, but we took 37 years to make a law on the subject. No doubt, the law was on statute but it was in the form of procedure i.e. Order 33 of CPC. I found that how the Founder of Constitution had broad vision to prove equality.

5. Accordingly, in the year 1987, The Legal Services Authorities Act, 1987 was brought on record. Prior to the said Act, States were enforcing the Constitutional provision by issuing some orders. I remember there was an order by the State of Maharashtra in the year 1979 which provided legal aid to the needy persons but it was not full fledged statute and there was no full fledged provisions. Not only that but the provisions were not known to needy persons. There was no proper propaganda or publication of said provision. Very recently, the said orders were implemented. Even the lawyers in the city like Pune (M. S.) were not aware about this provision. Lateron, the scheme was also given the name Maharashtra Legal Aid Rules, etc., but when the word 'Aid' was also considered under different concept, under medical terminology the word "aid" was substituted by "**services**" and ultimately the Legal Services Act, 1987 came in force.

6. If we see in the provisions, we do not find that in reality, the lawyers are discharging their duties towards society. We have heard so many eminent persons saying that the profession of a lawyer is a social profession. The lawyers have social obligation, lawyer s have to discharge the duties towards the society. Lawyers are the important factors of the society but in fact, very few lawyers are there who are discharging their duties towards the society as expected. The profession of a lawyer is a noble profession, as of doctor. However, to give appropriate weight to the said proposition , ultimately the above Act was incorporated in the year 1987.

7. Now the Provisions of Act 1987 have made it clear that there should be implementation of said Act through the judiciary and therefore, the appropriate provision is made in the Act precisely. The authorities are appointed under the said Act from Taluka level upto National level. The scheme is operated right from Taluka level to National level.

8. Many of us are not aware about the scheme of Legal Services Act, 1987. In the said Act, the legal service is defined which in any instance referred to any service in the conduct of any case or other legal proceedings before any Court or other Authority or Tribunal and giving of advise on any legal matter. The Act also defines the word "case" which includes suit or any proceeding before the Court.

9. Sec-12 of Act makes the provision by saying that who are entitled for Legal Services. The said section 12 is inclusive of different catagories of person in the society. Very few from legal faculties knows the said provision. It is stated in Sec-12 that every person who has to file or defend the case shall be entitled for Legal Services under the said act if that person is from SC or ST. Friends, even the members from SC and ST society are not aware about the said provision especially made for them. The Hon. SC and High Court have taken tremendous efforts for awareness of these provisions for needy persons.

10. Second Category who are entitled for free Legal Services are victims of trafficking in human being or beggar as referred to in Article-23 of Constitution.

11. Similarly, women or children are also entitled for free Legal Services under this Act. Friends, woman whether she is earning or not whether she is a poor or rich, still she is entitled for free Legal Services under this Act. But friends, even this class of society is not aware that free legal services are available to women or children. I had an occasion to address the gathering of 400-500 women while acting as District Judge at Aurangabad and at different places in Mumbai also. To my surprise, not one 1% of audiences were aware that there is such provision for women.

12. It is surprising to note that person with disability as defined in Clause-I of Sec-2 , persons with disabilities (Equal opportunity protection of life and full participation Act 1995) are also not aware about the said provision under the said Act.

13. The person under the circumstances of undeserved want such as victims of mass disorder, violence, cast atrocity, flood, drought, railway or unnatural disaster are also entitled for free Legal Services but not a single person to my knowledge has come forward from category for any legal services. When Industrial Workmen included in Sec-12 who are entitled for legal services, also have not come forward for asking the legal services. It is my own experience that for about 2 years, I presided over the Industrial Court in Industrial Belt but not a single person came forward and asked for the Legal Services. My endeavor is to see that persons who are entitled for said Legal Services should be made aware of the said provisions. Considering the said fact, I organised 5-10 workshops in the city of Aurangabad and particularly in Industrial belt with co-ordination of Bar Association of Industrial Court, Aurangabad. It was sheer surprise for me that even lawyers practising in Industrial and Labour Court were also not aware of this provision. I made my due efforts to see that said Scheme and object thereof and efforts taken by the Apex court and Hon. S. C. and H. C. percolate amongst the persons who are entitled for said free Legal Services.

14. The Provision is also made for providing free Legal Services to persons in Custody including custody in protective home within the meaning of Clause -G of Sec-2 Immoral Traffic Prevention Act, 1956 or in Juvenile Home within the meaning of Clause J of Sec-2 Juvenile Justice Act, 1986 or in the Psychotic hospital or Nursing home within the meaning of Clause- G of Sec-2 of Health Act of 1987. It is surprising that though these Protective Home, Juvenile Home and Psychotic hospitals and mental hospitals run by the Government, the present scheme has not been brought to the notice of inmates of said homes. I made due efforts to spread awareness amongst these institutions also with the help of my few superiors from the Hon. High Court.

15. It is surprising that economically weak persons are also entitled for said free Legal Services and the provision is made in Clause -21 of Sec.12 that a person in receipt of annual income less than Rs. 48,000/- or such other higher amount as may be prescribed by Govt. if comes before the Court other than S. C. and less than Rs. 12,000/- or such other higher amount as prescribed by Central Government, if case is before S. C. now though such vast group of society is included in Sec.-12, they are not still aware about their rights. It is our duty to see that the scheme is properly implemented as desired by Hon. Apex Court and Hon. H. C. of each state. It is always asked whether in all

cases or in all legal matters, free Legal Service can be provided by the authorities ? Answer to that is in Sec-13 of the said Act where it is provided that for entitlement to the Legal Services persons should satisfy all or any of the criteria specified in Sec-12, shall be entitled to receive Legal Services provided that the concerned authority has satisfied that such person has prima facie made out a case to prosecute or to defend. Similarly, in affidavit made by the person about his income may be recorded as sufficient for making him eligible to the entitlement of Legal Services under this Act, unless the concerned authority has reason to disbelieve the said affidavit. So ultimately, the powers are vested with the authorities to find out whether the person to whom legal services are asked for has prima facie case to prosecute or defend. Mere legal services asked for is not sufficient to provide legal services. So ultimately, the discretion is kept with the authorities.

16. Now how the said Act functions is also very material to note. The authority works at Taluka Level, District level at State Level and at National level, means the provision is made that a person in remote area should also get legal services at his Taluka place. Similarly, if the said person requires legal assistance at National level, provision is also made to ensure that he should get the services at National level i.e. in Supreme Court also. It is material to note that Chief Justice of India and Chief Justice of State monitor the Scheme if I say in plain and simple language. Therefore, this scheme has derived excellent confidence in the minds of people at large. Under the said Act, few additional forums are provided for disposal of cases. The appropriate amendment is also made in Sec-89 of CPC. The said Forums are Lok Adalat, Mediation, Conciliation, and Arbitration. Once upon a time, there was criticism from the Legal fraternity that Indian Judiciary is not able to cope up the burden of legal battles and therefore, these substitutes are provided. However, Judicial authorities have made it clear and emphasised that modes provided in statute are not substitute to the main pillar of judiciary but they are additional modes provided for disposal of cases which helps to reduce the burden on the main pillar of judiciary. Litigation in each country though said to be expensive has not been reduced till now and therefore the forums provided under the said Act is getting good response at all levels. Because of this scheme lots of cases before coming to the Court are being settled in pre-litigation Lok Adalats. The entire scheme under the said Act is result oriented, if we implement it properly. It is my experience that in the Metro City as well at Village place, the implementing authority is taking due efforts. We are getting good response and matters are being settled and disposed of in Lok Adalat and by conciliation before Mediator and Arbitrator.

17. The Hon. Bombay High Court and Their Lordships have taken utmost interest in formulating and implementation of said schemes and various modes of settlement and disposal of cases. The physical participation of Hon. Chief Justice and other Hon. Judges have made it successful and all the schemes are result oriented.

18. It is also surprising to note that in recent years, the Bar Association even from Taluka level till National level also supporting for implementation of scheme for disposal of cases. I am not here to give statistics but because of the Act of 1987, the above modes for disposal of cases have become more popular and successful. Public at large now

came to know that if the cases are settled through the above modes, they are saving money, time, energy and relationship between the litigants. Advocates/ legal fraternity have also come to know that by implementing the modes of disposal as mentioned hereinabove, they are not going to loose fees. Admittedly, the senior most and successful lawyers having glamour, are coming forward at all levels and are co-operating Hon. Apex Court and High Court in implementing the scheme. This is my personal observation. Since 1997, I am personally involved in the implementation of Schemes and therefore, in few words, I expressed myself on the subject.

**(R. R. GANDHI)**

**Principal District Judge**

**CHAIRMAN MACT, MUMBAI.**

**Presiding Officer, State Transport Appellate Tribunal, M. S. Mumbai.**