



## CONSTITUTIONAL AND LEGAL FRAMEWORK OF THE RIGHT TO FREE LEGAL AID IN INDIA



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### ABSTRACT

The present paper explores the constitutional and legislative provision for legal aid. It attempts to provide the various provision of legal aid, which is provided in constitutional and legislative acts. The number of acts provides not only right of legal aid but also provides how and who provide the legal aid. It also explains what the various problems, reasons for awareness and not accepting the free right legal aid.

**Keywords :** Constitution, legislature, legal Rights, Problems, provisions

## Research Paper

### Introduction

India is a modern state that has accepted the concept of 'welfare state'. Hence it has to work for the welfare of the general public. It is the function of the State to establish a just social order by enacting just laws and by providing equal opportunity to all to grow. Every Government is constituted to respond to the needs and aspirations of the people and to remove social inequalities among its citizens. This promotes social justice among Poor and the downtrodden. The concept of social justice must be the underlying principle in the administration of justice in the country. Today with the plethora of legislative enactments, statutory rules and regulations, and judicial precedents, Courts are a maze not only to the poor but also to a large number of persons who may not be poor financially but so intellectually on account of the lack of knowledge of the relevant laws and of the procedure for obtaining benefit thereof. Resultantly, to make available the law channels of justice to the poor, free legal services have been incorporated in the legal system. The concept of legal aid to the indigent has its roots in the well-settled principle of natural justice: By the constitutional 42nd Amendment Act of 1976, a new provision was included in the Constitution under Article 39A, for dispensing free Legal Aid. To uphold the democratic values and attain social justice Article 39A which was included under Directive Principles of State Policy. Legal aid strives to ensure 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.

### LEGAL AID MOVEMENT IN INDIA

The concept of equal justice was not unknown in ancient India. Manuscript casts a duty on king to administer justice ignoring his whims emphasizing on the religion, Manu states that it includes administration of justice in social, economic and political aspects, whose sanctity has to be preserved and developed.

In the medieval period, though the king was required to administer Islamic law in deciding all cases irrespective of religion of the parties to the suit. Yet Hindus were administered by Hindu Law in deciding civil and religious of which the parties were Hindus. It was Jahangir who took the credit for dispensing even-handed justice to all irrespective of birth, rank of the official position. He used to say that God forbid to

favour nobles or even princes in that matter of dispensation of justice. Because of his fair hearing, the justice was known as "Jahangiri Nyaya".

In the modern period, the earliest Legal Aid movement appears to be of the year 1851 when some enactment was introduced in France for providing legal assistance to the indigent. By the constitutional 42nd Amendment Act of 1976, a new provision was included in the Constitution under Article 39A, for dispensing free Legal Aid. To uphold the democratic values and attain social justice Article 39A which was included under Directive Principles of State Policy (part IV).

### **CONSTITUTIONAL COMMITMENT TO LEGAL AID**

Under, Art. 14 fundamental rights of the constitution of India provide that the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India. Equality before law necessarily involves the concept that all the parties to a legal proceeding must have an equal opportunity of access to the court and of presenting their cases to the court. Therefore, under Article 14, rendering legal services to the poor litigant is not just a problem of procedural law but a question of a fundamental character.

Under Art. 21 of the constitution of India provides the fundamental right including the protection of life and personal liberty. This right cannot be taken away except by procedure established by law. A procedure is fair and just only when it follows the principles of natural justice. Right to hearing is an integral part of natural justice. If the right to counsel is essential to fair trial then it is equally important to see that the accused has sufficient means to defend themselves. Further counsel for the accused must be given time and facility for preparing the defence. Breach of these safeguards of fair trial would invalidate the trial and conviction, even if the accused did not ask for legal aid.

Article 22(1) provides that a person arrested should not be detained in custody without being informed of the grounds for such arrest and should not be denied the right to consult and be defended by a legal practitioner of his choice.

Article 38 provides that the State should strive to promote the welfare of the people by securing and protecting as effectively as it may be a social order in which justice: social, economic and political shall inform all the institutions of national life.

Art. 39 (A) is inserted by constitution (forty second amendment) Act, 1976, it provides equal justice and free legal aid. It states that the state shall secure that the operation of the legal system promote justice, on a basic of equal opportunity and

shall in particular, provide free legal aid, by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economics and other disabilities. Article 39 A of the Constitution of India provides for equal justice and free legal aid. It is, therefore clear that the State has been ordained to secure a legal system, which promotes justice on the basis of equal opportunity.

### **LEGISLATIVE METHODS OF PROVIDING FREE LEGAL AID**

Government has shown its concern over the existing position of justice delivery system. It has acknowledged the fact the poor and underprivileged sections of society have suffered the worst under the present system. Need for free legal aid to poor has been realized. Therefore it has incorporated legislative actions such as The Legal Services Authorities Act, 1987 and set up bodies such as National Legal Services Authority (NALSA) and Supreme Court Legal Services Committee (SCLSC) to ensure free legal aid to poor and under privileged. By the constitutional 42nd Amendment Act. A new provision was incorporated in the Constitution under Article 39A, for providing free Legal Aid and concept of equal justice found a place in our constitution Article 39A which was incorporated under part IV-Directive Principles of State Policy. With the object of providing free legal aid, the Government of India had, by a resolution dated 26th September, 1980 appointed a Committee known as "Committee for Implementing Legal Aid Schemes" (CILAS) under the chairmanship of Mr. Justice P.N. Bhagwati to monitor and implement legal aid programmes on a uniform basis in all the States and Union Territories. CILAS evolved a model scheme for legal aid programmes applicable throughout the country by which several legal aid and advice Boards were set up in the States and Union Territories. National Legal Services Authority (NALSA) has been set up under section 3 of the Act to monitor and over see the legal aid programmes throughout the country. In every State, a State Legal Services Authority has to be setup for implementation of the legal aid programmes. At District and Taluka levels also, Legal Services Authorities are being established to ensure that Legal services are easily available even to the poorest amongst the poor throughout the country.

### **OTHER PROVISIONS RELATING TO LEGAL AID**

#### **1. Criminal Procedure Code, 1973**

Section 304 provides that where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the court that the accused has not

sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State; and the section further empowers the State Government to extend the application of the above provision in relation to any class or trials before other Courts in the State.

## **2. Civil Procedure Code, 1908**

Order 33 provides for filing of suits by indigent persons. It enables persons who are too poor to pay court-fees and allows them to institute suits without payment of requisite court fees.

## **3. Universal Declaration of Human Rights:**

Article 8 everyone has the right or an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.

## **4. International Covenant on Civil and Political Right**

Article 14(3) guarantees to everyone: The right 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 his right; and to have legal assistance assigned to him in any case where the interests of justice shall require, and without payment by him any such case if he does not have sufficient means to pay for it.

## **ROLE OF JUDICIARY**

Judiciary plays a key role in protecting the rights of the people in plethora of Cases. The objectives and functions of the judiciary are providing legal aid. Maneka's case Article 21 was construed narrowly only as a guarantee against Executive action unsupported by law but in Maneka's case a limitation was imposed upon legislations while depriving a person of his life or liberty it must prescribe procedure which is reasonable, fair and just. Justice Bhagwati, pronounced that the procedure by which a person is deprived of his life or personal liberty must be reasonable, fair and just.

In Madhav Hayawadanro Hoskot v/s State of Maharashtra, the S.C applying the rule of Manaka Gandhi's case has laid down that personal liberty cannot be cut out or cut down without fair legal procedure a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim, as part of his protection under Art. 21 and as implied in his statutory right to appeal, the necessary concomitant of right to counsel to prepare and argue his appeal.

The Supreme Court of India in Rajan Dwivedi v/s Union of India, clearly laid down that petitioner is not entitled to the grant of writ of mandamus for the enforcement of Article 39A. By ordaining the Union of India to give financial assistance to him to engage a counsel of his choice on a scale equivalent to or commensurate with the fees that are being paid to the counsel appears for the state. As is clear from the terms of 39A, the social objective of equal justice and free legal aid has to be implemented by suitable legislation or by formulating scheme for legal aid. The remedy of the petitioner, if any, lies by way of making an application before the learned Assistant session judge under sub-section of Sec 304 and not by a petition under Article 39A.

### **CONCLUSION AND SUGGESTIONS**

Numerous efforts made by the Government in regards of providing free legal aid and hence ensure the true prevalence of welfare state in India; there are many problems in implementing it in true sense in the Indian society. The major obstacles to the legal aid movement in India are the lack of legal awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness, which leads to exploitation, and deprivation of rights and benefits of the poor. Thus it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. Because if the poor persons fail to enforce their rights because of poverty etc. they may lose faith in the administration of justice and instead of knocking the door of law and Courts to seek justice, they may try to settle their disputes on the streets or to protect their rights through muscle power and in such condition there will be anarchy and complete dearth of the rule of law. Thus legal aid to the poor and weak person is necessary for the preservation of rule of law which is necessary for the existence of the welfare society. Until and unless poor illiterate man is not legally assisted, he is denied equality in the opportunity to seek justice. The number of clients who visited the offices was also more. The Legal Aid offices were put in place to deal with both civil and criminal cases. It emerged that the department dealt with all the types of cases. The offices are situated in the District a situation which could mean that most of the indigent who are found in poor neighbourhoods are reached. This means that its work is clearly addressing the problem of legal aid for the majority of the poor who live in the rural areas.

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