

**FREE LEGAL AID IS NOT A MATTER OF CHARITY BUT A
MATTER OF RIGHT**

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Introduction:

Right to provide legal assistance or Legal aid was recognized as implicit in article 21. In Maharashtra Hosket V/s State of Maharashtra¹, Justice Krishan Iyer observed that article 37-A Which provides for equal justice and free legal aid is an interpretative tool of Art. 21. Partial statutory implementation of the mandate is found in Sec 304 Cr.P.C. Legal aid strives to ensure that constitutional pledge fulfilled in its letter and spirit and equal justice is made available to the poor, down trodden and weaker or sections of the society. According to Sec 304 Cr.P.C., the constitutional duty to provide legal aid arises from the time the accused is produced before the magistrate for the first time and continues whenever he is produced for Remand.

In 1980 a committee at the national level was constituted to over see and supervise legal aid programmes, through out the country under the Chairmanship of Hon'ble Mr. Justice P.N. Bhagwati. This committee came to be known as CILAS and started monitoring legal aid activities through fut the country. on 1987 Legal Servia authority act was enacted to give a statutory base to legal aid programmes through out the country on a uniform manner. This act was finally enforced on 9th Nov. 1995 after some amendments were introduced by the Amendment act of 1994.

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The linkage between Art. 21 and right to free legal aid was forged in the decision of Hussainara khaton V/s State of Bihar². Bhagwati J observed

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that free legal service was an inalienable element of "Reasonable, fair, and just procedure for a person accused of an offence and implicit in Art. 21 of the constitution. In *khatri V/s State of Bihar*³. The Court held that the state is constitutionally bound to provide such aid not only at the state of trial but also when they are first produced before the Magistrate or remanded from time to time and such right can not be denied on ground of financial constraints or administrative inability or the accused did not ask for legal assistance. Magistrate and sessions judge must inform the accused of such right. But the cases involving economic offences, absences as against law prohibiting prostitution or child abuse where social justice may require that free legal services need not be provided by the State.

Legal aid is in fact the delivery system of equal justice as well as social justice. Of free services are not provided to such accused the trial it self may be run the risk of being Vitiated as contravening of Art. 21 which was held in the case of *sukh das V/s Union of India*⁴. In *State of Maharashtra V/s Mannu bhai Pragji vashi*⁵ the SC held that the constitution mandates a duty on the State to offord grant in aid to recognized private law colleges and they can not refuse by pleading paucity of funds. Free legal aid is very essential for maintaining the right to equality before the law⁶. Equal justice demands access to law and justice to both poor and rich otherwise Art 14 will become futile and mockery⁷. The legal right to poor is a fallacy which cause suffering and hardship to the poor⁸. The state is under constitutional mandate to provide free legal aid to an indigent person⁹.

In *sukdas and others V/s territory of Arunachal Pradesh*¹⁰ the SC laid down that free legal assistance at state cost is a fundamental right implicit under Article 21 of constitution which provide "just fair and reasonable". The old view of SC in *Janardhan V/s State of Hyderabad*¹¹ was that this Article 39-A does not guarantee any absolute right to supply a lawyer by state was discarded in *Hussainara Khatoon V/s State of Bihar*¹². The SC held that it is

the duty of the state provide a counsel to a person who cannot afford to envisage any lawyer. This newly added Article 39-A obligating the state to provide legal services, impelled the court to specify the way in which prisoners right in this regard were to be protected¹³ Article 39-A is an interpretative tool for Art.¹⁴ that no writ can be granted to enforce this right. In Rajan Dwivedi V/s Union of India SC closely laid down that the writ of mandamus for the enforcement of Article 39-A can not be granted. The court took the cognizance of Article 39-A in administering justice in criminal cases. Under Sec. 340 (1) of old Cr P.C. an accused has a right to be defended by a pleader, while interpreting the section SC held¹⁵ that the accused has no absolute right to be supplied with a lawyer by a state.

In Moti Bai V/s State of Rajasthan¹⁶ the SC held the wide ambit of the right to counsel written in the constitution which is apparent under Art 22 (1). The dictum laid down in Tarasingh and Janardhan case has been rendered nugatory by the newly added Sec 304 of Cr P.C. which provide the right to be defended by a lawyer of his own choice extended not only to trial but also to appeal. The right to be defended by a legal practitioner does not extend to have a lawyer of his choice at the expense of the state but the state should provide the sufficient, experienced counsel before the commencement of trial. When the accused wants to argue his own case, no one can be appointed against his will. The remedy of free legal aid led by way of making an application before the judge under Sec 304(1) of Cr.P.C. and not by way of petition.

The success of legal aid programme requires the maximum participation by all persons, including bar, bench and the general public. It is desirable that all persons connected with the administration of justice make vigorous effort in this mass movement. Judicial tribunal have to change their traditional out dated and technical approach. In order to eradicate social disabilities of the poor. Judges have to adopt more active and innovative

approach in the administration of justice. It is absolutely essential that people should involve in the legal aid programme because the legal aid is not a charity or bounty but is a matter or right and social entitlement of the poor people. The SC held that voluntary organization and social action groups must be encouraged and supported by the state in active participation of people in free legal aid. They have their ringer on the pulse of the people, they know their unmet legal needs of people and the necessary measures to be taken for the purpose of ending such exploitation and injustice.

Though Article 39-A of the constitution provides fundamental right to equal justice and free legal aid and the state provides amicus curie to defend the indigent accused. It is the high time that senior counsel practicing in the court should defend such indigent accused as a part of their professional duty by taking these remedial steps, in honest and objective investigation was done it will enhance a sense of confidence on the public and in the investigating agency.

Conclusion:

The Legal aid is taken to mean the free legal assistance to the poor and weaker sections of the society with the object to enable them to exercise the rights given to them by law. The object of legal aid is to ensure legal justice . Legal aid is provided to ensure that the opportunities for securing justice are not denied to any person by reason of poverty illiteracy .The constitution of India emphasizes on the equality of justice. The preamble of the constitution secures to all its citizens social, economic and political justice. Art 14 of the constitution makes it clear that state shall not deny to any person equality before law equal protection of the lawswith in the territory of IndiaThe guarantee of equal justice will be meaning less if the poor or illiterateor weak persons can not enforce their rights because of their poverty or illiteracy.The

legal aid should be provided to such persons so that the guarantee of equal justice may be meaningful.

If legal aid is provided to such persons he may be able to file petition in the court and if the petition is filed the court may be in a position to do justice and punish the persons who have violated the constitutional provisions. The legal aid thus provides assistance to the court in discharging its function as protector and guarantor of fundamental rights

Foot Notes And References :

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