# RIGHT TO FREE LEGAL AID AS HUMAN RIGHT

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***Abstract*** **:**"*In the state of nature...all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law.*" Charles de Montesquieu

Nature and nurture are man's conceptual manifestations. Both these inflows operate on him that is biological and situational. They correspond to natural and civil rights that is needed to be protected. They are quite significant for the overall personality of a human being. It is the preliminary duty of the State to see that the legal system of the country promotes justice, on the basis of equality of opportunity, and shall particularly provide free legal aid by enacting suitable legislation and schemes. The state can also adopt other methods so that the opportunities for securing justice cannot be taken from the citizens by the reasons of their economic disabilities or other difficulties. The present paper deals study of right to legal aid as a human right, various provisions of legal aid and the difficulties of practical implementation of right to legal aid.

***Index Terms*****- Human Rights, Legal Aid, Constitution, Legal Service Authority, Judiciary.**

**Introduction**

The primitive man had no idea like human rights. With the beginning of civilization one might have hoped that some respect for human rights would emerge. Yet, Human rights eluded him. It seems that the era of human rights dawned with the industrial revolution. A clarion call was given that man is endowed by birth with certain inalienable rights of which right to life, liberty and property are sacrosanct. However, soon it was discerned that human rights were privilege of the rich, and the poor man's human rights could be trampled upon with impunity. When poverty deprives one of the human existences, then human right and human dignity dwindle into insignificance. Yet the struggle of the human rights has to be continued (Diwan Paras et al.1). It is a very apparent fact that about 70% of the people living in the rural areas are illiterate and even more percentage of the people are not aware of the rights provided to them by the legislature of the country. The absence of the legal awareness among masses is a prime factor that is responsible for the exploitation and deprivation of rights and benefits to the poor people. Their ignorance prevents them from forestalling legal troubles and consulting a lawyer for consultation and taking legal advice in time. Their poverty multiplies the impact of legal problems and difficulties. The law no more remains their protector because of their illiteracy they are not aware that they are entitled to the protection of the law and they can avail the legal service programme, thus they can end to their exploitation and captivating their rights.(Sen A.N 46)

***Meaning***

The literal meaning of the Legal Aid is to give free legal services to the poor and the needy who are unable to afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before a Judicial authority.

***Legal Frame work of Right to Legal Aid***

Right to legal Aid and International Conventions

Legal Aid as a human right can be understood in Articles 7 and 8 of Universal Declaration of Human Rights 1948, Article 7 provides, "All are equal before law and are entitled without any discrimination to equal protection of law". Art 8 provides, "Everyone has the effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law".

It is clearly mentioned in clause 3(d) of Art 14 of the International Covenant on Civil and Political Rights 1996, "To be tried in his presence and to defend himself in person or through legal assistance assigned to him, in any case where the interest of the justice so require and without payment by him in any such case if he does not have sufficient means to pay for it".

Article 6 of the European Convention for the protection of Human Rights and Fundamental Freedoms, 1953, provides the legal aid as a part of access to justice to a person charged with criminal offence to defend him. Sub clause (c) of the Article 6(3) of the Convention states:

"Everyone charged with criminal offence has the following minimum rights.

c) To defend himself in person or through legal assistance of his own choosing for if he has no sufficient means to pay for legal assistance to be given it free when the interest of the justice so require".

The legal aid as a human right has been recognized by International Conventions and Declarations. The international Law provides that the legal aid should be accepted as an essential part of justice of every nation (Kamalkar Pandit 347).

***Right to Legal Aid and Constitution of India***

The founding fathers of the constitution have created sufficient scope for legal aid by making social economic justice as the sacred objective of the constitution. The Constitution of India through the provisions of the preamble indicates that, "we the people of India" having solemnly resolved, 'to secure to all citizens justice, social, economic and political' and 'equality of status and of opportunity". Though the preamble does not specially mention Legal Aid, it is implicit in its broad phraseology. These provisions should be interpreted and implemented in such a way that the legal justice may be made available to the people of India. Article 14 of the constitutions enshrines the principle of "equality before law", it runs as under:

"The State shall not deny to any person equality before law or equal protection of laws within the territory of India".

Article 14 corresponds to the equality of status and opportunity as provided by the Constitution of India and therefore both are complementary as well as supplementary to each other. Equality is possible only among equals but if unequal are treated equally then it is certainly the violation of Article 14.

Article 22(1)also provide the similar provision and clearly states that, "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice".

Although the Constitution of India does not clearly provide Right to free legal Aid as a Fundamental Right, but Article 39-A of the Directive Principles of State Policy envisages the provision of free legal aid to the indigent persons. Article 39 A of the constitutions states as under:

"The State shall secure that the operation of the legal system promotes justice, on a 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."

Section 303 and Section 304 of the Criminal Procedure Code 1973 also incorporate the provisions of the right to free legal aid.

Section 303 states that, "Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice."

Section 304 provides the Legal aid to accused at State expense in certain cases. It lays down 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."

***Judicial Perspective of Right to free Legal Aid***

The Supreme Court of India has explicitly held that the Legal Aid to the indigent and deserving persons is part of the personal liberty as provided under Article 21 of the Constitution.

In *M.H Hoskot v. State* (AIR 1981) of Maharashtra, the Supreme Court observed that the free legal for the citizen is the inherent part of Article 21 and an essential ingredient of a reasonable, fair and just procedure. In this case Krishna Iyer,J., observed:

"If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, there is implicit in the court under article 14 read with article 21 and 39-A of the Constitution, power to assign council for such imprisoned individual for doing complete justice."

In another case, *Sheela Barse v.Union of India*, (AIR 1983) the Supreme Court stated that Article 14,21 and 39-A clearly lays down the Constitutional obligations of the State to provide free legal aid. In the present case the Court also showed its unhappiness on the attitude of some Lawyers. Bhagwati J., clearly stressed the duty of the lawyers to help the people in distress. He said:

"The lawyers must positively reach out to those sections of humanity who are poor, illiterate and ignorant and who, when they are placed in the crisis such as accusation of crime or arrest or imprisonment, do not know what to do or where to go or to whom to turn. If lawyers, instead of A coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and rule of law."

In *Sukh Das v. Arunachal Pardesh*,(AIR 1986)the Supreme Court went a step ahead and gave a reminder to the State about its Constitutional obligations to provide free legal aid. The Supreme Court further stated that it is the duty of the State to provide free legal aid to the poor persons as a matter of their right even if it is not demanded by them. The trial is vitiated if the free legal aid is not provided to the accused person even in the cases where the legal aid was not demanded by the accused.

In State of *Maharashtra vs. Manubhai Pragaji Vashi* the Court said that It is now fairly settled that Article 21 of the Constitution of India envisages the right to free legal aid and speedy trial as guarantee to protect the human rights of the citizens.

***Evolution of the Statutes of Legal Aid***

U.K – In 1945 during the regime of King Henry VIII the doctrine form pauperism was evolved and the destitute and penniless fellow was allowed to sue without payment of any court fee. On 13th July 1949 free Legal Act was enacted in England and under such legislation no poor person was to pay litigant expenses

U.S.A- Similarly in 1958 National Bar Association in United States made sincere efforts to defend poor persons free of cost. The United States of America enacted Legal Services Corporation Act 1974 to afford legal aid to the persons who are not able to access justice because of poverty and the right to legal aid has been made fundamental right in United States.

India- Similarly in India some counsels in erstwhile Bombay in1924 defended the penniless accused persons free of cost by forming Bombay Legal Aid Body. Later on in year 1950 Bombay committee was constituted to provide the legal aid free of cost to Aid and Advice indigent persons. When the situation became grim in 1957 the Conference of Law ministers of the States was convened by central government and in this conference an important decision was taken every member of bar has to take at least six cases without any fee. To find out the means and ways for providing free legal aid and advice to the poor persons Law commission was constituted in 1978. Free legal aid scheme was drafted in 1960 and in 1970 before the actual constitution of Law

Commission. Under the Chairmanship of Justice P.N. Bhagavati a committee was constituted to examine that how Government can help the poor and protect their human rights by providing them free legal aid and advice. In 1973 Justice V.R. Krishnayar also acquiesced the report to the Government that provided that the right to access justice is a legal right and therefore should be provided to the persons who are poor, oppressed and needy (NyayaDeep July 2015).

Therefore so as to provide the need for protection of the legal rights of poor people the 42nd amendment was brought under Article 39. Article 39 A was added which explicitly directed the Government to enact a free legal Aid Scheme. In this preview central government established a committee for implementation of legal aid scheme to add pace to the legal aid movement. The main object was not only to provide free legal services but also at the same time to established Lok Adalats for the resolution of disputes. In furtherance of the motive to provide free legal aid in 1987 National Legal Services Authority Act was enacted and in 1995 on 9th November it came into force.

Provisions for legal aid have been enshrined in Article 12 of National Legal Services Authority Act, which provide the categories that are entitled to free legal aid:

(a) Woman;
(b) Child;
(c) Labourer;
(d) SC and ST people;
(e) Persons suffering from Natural Calamity such as flood, drought, land slide, earthquake and such other Act of God;
(f) Persons suffering for communal violence;
(g) Persons suffering from mental disability, mental disorder and mental health
(h) Persons suffering from physical disability;
(i) Persons in custody in a protecting home within the meaning of Clause(g) of section 2 of immoral trafficking prevention Act 1956 or in a juvenile home or in a psychiatric hospital.
(j) A victim of trafficking or beggar.

Besides, above group of people, the persons having annual income of less than one lakh is entitled to get free legal aid in the District Courts.

According to section 2(1) (a) of the Act, legal aid can be provided to a person for a 'case' which includes a suit or any proceeding before a Court of Law.

Section 2(1) (aaa) defines the word 'Court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions.

As per section 2(1)(c) 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.

After duly examining the eligibility criteria of an applicant and the existence of a prima facie case, the Legal Services Authorities provides him counsel in his favour at State expense. The legal services authority also pays the required Court Fee in the matter and bears all the expenses incidental to the case. Once the Legal Service Authority agrees to provide the legal aid the person he is not called upon to spend anything on the case.

***Hierarchy of Bodies created under the Act***

For providing legal aid and assistance to the needy a nationwide network has been proposed under the Act. On the top is the National Legal Services Authority, whose prime object is to lay down rules and principles for making legal services available under the provisions of the Act. The other function is to frame up most effective and economical schemes for legal aid services. I Funds and grants are also distributed to various State Legal Services Authorities and NGOs for the implementation of legal aid programmes and schemes.

Every State constitutes State Legal Service authority to implement the policies and directions of the National Legal Services Authority (NALSA) and legal services are provided to the people. The Lok Adalats are also conducted in the State. The Chief Justice of the State High Court is the head of the State Legal Service Authority, who is also its Patron-in-Chief. Executive Chairman of the State Legal Service Authority is either a serving or retired Chairman.

On the District level, District Legal Services Authority is constituted for the implementation of the Legal Aid Programmes and Schemes in the District. The District Judge of the District Court is its ex-officio Chairman.

Legal Services Committees are also constituted for each taluk or there is a constitution of Mandal or for group of Taluk or Mandals to organize the activities of legal services in the Taluk. Lok Adalats are also organized by the legal Service committees. A senior Civil Judge operating within the jurisdiction of the Committee is the head of the taluk legal Service Committee, who is also its ex-officio Chairman.

***Supreme Court Legal Services Committee***

A Committee is constituted by the Central Authority that is known as the Supreme Court Legal Services Committee. The committee is constituted for the purpose of exercising those powers and performing those functions that are specifically determined by regulations made by the Central Authority.

The main agenda of NALSA is to spread legal literacy and legal awareness among the masses. Work has been given to almost all the State Legal Services Authorities to identify suitable and trustworthy NGOs through whom legal literacy campaign may be carried out. The efforts are being made to spread awareness about various available legal aid schemes among the target groups, provided by the Legal Authorities Act, so that they may come to know and approach the concerned legal services functionaries.

Legal aid cells are also set up in jails on the guidelines of NALSA so that the prisoners who are lodged therein are provided with the quick and effectual legal aid as provided under section 12 of Legal Services Authorities Act, 1987.

***Present Scenario***

If we see the present scenario we come to know that there lays a wide gap between the goals that set and met. The legal aid movement in India today to a large extent is not properly organized; it is rather diffused and sporadic. There is huge lack of co-ordination among it. The idea of right to equality and equal opportunity to access justice is in a distant dream and it has reached almost at the breakdown point. “We no longer do pro bono work; we are too busy trying to survive” is a recent comment made by a legal firm in a survey. For various reasons Lawyers do not involve themselves in social activities. One of the reasons is lack of financial resources. Moreover they are primarily busy in money making. There are least interested in providing a social service which they can do on being the vital part of legal institutions. The reason behind the non-sympathetic attitude adopted by the Lawyers toward the society is because we hardly provide them the legal education imparting social education and moral values. Thus they neither accept nor understand or accept their obligation to render any legal help or service. Last but not the least reason is that the members of the profession seldom come into contact with the community who actually are in the need of legal-aid and advice.

***Conclusion***

On deeply analyzing the problem we realize, the major obstacle to legal aid is the illiteracy. More than 70% of the population living in rural areas are illiterate and are not aware of the rights provided to them by the law. The actual reason behind the exploitation and deprivation of rights and benefits of the poor is the lack of legal awareness. As already discussed in this area we have a large number of laws not only in the form of the philanthropic judgments and legislations, but they all have proved to be myth because of their ineffective implementation for those who need them utmost. Thus effective and proper implementation of the laws is the need of the hour, instead of enacting any new legislation. Only implementation of present laws can pave a way to legal aid in the country as a reality rather than just a myth in the minds of the countrymen.

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