

Right to Free Legal Aid

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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 law" – Charles de Montesquieu

A person is born with same natural and civil right that needs to be protected as the life goes on with the span of time. They are every important for the overall development of the human being. It is the primary duty of the state to make legislation and introduce such policies which would provide free legal aid and will promote justice on the basis of equality of unity. The state can adopt other methods also by which it can be ensured that no person is denied access to justice just because of his economic disabilities or other kind of difficulties. This paper deals with the right to legal aid as a human right, various provisions of legal aid and the practical difficulties confronted in the implementation of right to legal aid.

Introduction

The man of early age had no idea of human rights. With the passage of time, as the civilization developed, one might have expected that human rights will find their recognition. Yet, human rights eluded him. It seems that the era of human rights started with the industrial revolution. It was cleared that a person is endowed some inalienable rights with the birth which cannot be snatched in any circumstance of which right to life, liberty and property are sacrosanct. However, soon it was found that human rights were the privilege of rich and human right of a poor man could be trampled upon with no liability. When poverty deprives a person of the human existences. The human dignity and human right loses their importance. Still the strive for human right should not be discontinued. It is true fact that most of the population of the India is residing in rural areas which is illiterate and which is not aware of the right conferred by the parliament to them. The non-awareance of the legal rights on behalf of the people is the main cause of explanation and preventing benefits from them. Consequently, it leads in exchanging the problems of poor people as they would not consult a lawyer in time of trouble. The law no more remains their protector because of their illiteracy. They are not aware that they are entitled to the protection of law and they can avail the legal service programme, this they can put an end to their exploitation.

Meaning of legal aid

Legal aid is the legal services which is given to the needy or poor who are not in position 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 in the terms of article 7 and 8 of Universal Declaration of Human rights, legal aid is a human right. Article 7 provides "All are equal before law and are entitled without any discrimination to equal protection law". Article 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".

In clause 3(d) of Art. 14 of the International covenant on Civil and Political Rights, 1996, it is clearly mentioned that "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 justices so requires 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 as a part of access to justice to a person charged with criminal offence to defend him. Sub-clause (3) of the article 6 of the convention states-

"Everyone charged with the 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 if free when the interest of the justice so requires".

International conventions and Declarations have also recognised the legal aid as a human right. The international law provides that the legal aid should be accepted as an essential part of justice of every nation.

The constitution of India and Right to legal aid

The forefather of the Indian Constitution has embedded the sufficient scope for legal aid by making social, economic justice as the sacred aim of the constitution. The constitution of India through the preamble says that "we the people of India" having solemnly resolved, "to secure all citizens justice, social, economic and political" and equality of status and opportunity". However, there is no specified mention about the legal aid in the preamble of constitution, yet the idea of concept of legal aid can be deduced from it by giving it a purposive interpretation.

Article 14 of the Indian Constitution contains the principal of "equality before law" which runs as-

"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 idea enshrined 'equality of status and opportunity' in the preamble of constitution of India, so in this way they are supplementary to each other. The spirit of article is maintained when equals are treated equally but if unequal are treated equally then certainly it would lose its spirit.

Article 22(1) also 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".

However, the Indian constitution does not incorporate the right to free legal aid as the fundamental right but article 39-A of the Directive principles of State policy contains the provision for free legal aid. Article 39-a reads as-

"The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or scheme or in any other way, to ensure that 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 Code of Criminal procedure, 1973 provides for the free legal aid.

Section 303 provides "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 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".

Judiciary and right to free legal aid:-

The supreme court in the catena of judgements has held that free legal aid to the needy and indigent persons is the part of the personal liberty under article 321 of the constitution.

In the case of M.H. Hoskot V. State (AIR, 1981) of Maharashtra, Krishna Iyer, J.m observed:-

"It 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 constitution under article 14 read with article 21 and 39A, power to assign counsel for such imprisoned individual for doing complete justice".

In Sheela Barse V. Union of India, 1983, SC, Bhagwati, J., clearly emphasised on 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, ignorant, illiterate, unaware of the legal rights and who, when they are put in crises 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 coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and the people will lose faith in lawyers and that would be detrimental to the democracy & the rule of law".

In State of Maharashtra V. Monubhai Pragaji Vashi, the Court said that it is well settled that article 21 of the constitution envisages the right to free legal aid and speedy trial to protect the human rights of the citizens.

In Sukh Das v. Arunachal Pradesh, 1986, the Supreme Court gave a reminder to the state about its constitutional obligations to provide free legal aid. The Supreme Court went on further and stated that it is the duty of the state to provide free legal aid to the needy persons as a matter of right even if it is not demanded by them.

Supreme Court legal Services Committee-

A committee is constituted by the central authority that is known as the Supreme Court legal Services committee. The purpose of constitution of this committee is the exercising those powers and performing those functions that are specifically determined by regulations made by the central authority.

The main purpose of NALSA is to spread legal literacy and legal awareness among the people. 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.

Present Scenario

If we look at the present situation we would know that here is a huge gap between the goals that are set and met. The legal aid campaign, in India, is not properly organised. There is an absence of coordination in it. The idea of equal opportunity to access justice is a far more distant dream. "We never do pro-bono work; we are too busy in earning for our own survival". Lawyers, for various reasons do not allow themselves to be in the social activities. One of the reasons is the lack of financial resources. Lawyers are least concerned about providing free legal aid to the needy. 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-

From the above discussion, we conclude that the major hurdle to legal aid is the illiteracy. More than 65% of the population of the rural areas in India is illiterate and it is not well aware about its rights provided by the various laws. The actual reason behind the deprivation of such rights is the lack of legal awareness.

Moreover, here is no need of enacting any new legislation for the free legal aid rather there are already various laws and provisions which impart this right. The only need of the hour is the proper and effective implementation of the laws in existence.

References

1. Legal services india.com
2. AIR 1983 SC 378
3. AIR 1981 SC 1548

4. KamalkarPandit 2010, Human rights and criminal justice, Asia law House
5. Sinha Manoj Kumar, 2015, Implementation of Basic Human Rights, Lexis Nexis, Gurugram
6. Nayadeep 2017, The official journal of NALSA
7. DiwanParas, DiwanPeeyushi, 1988, Human Rights and His Law
8. Www. Livelaw.com
9. Criminal Procedure code, 1973