



## Constitutional mandate for free legal aid in India

Ragini Jangam<sup>1</sup>, Sanjay Deshpande<sup>2</sup>

<sup>1</sup> Scholar Researcher, Yashwantrao Chavan Law College, Pune Savitribai Phule Pune University, Maharashtra-India

<sup>2</sup> Yashwantrao Chavan Law College, Pune, Savitribai Phule Pune University, Pune, Maharashtra, India

### Abstract

Everyone is hungry for the bread of justice. State as a dispenser of the justice needs to provide equal opportunity for everyone. Justice cannot be denied on the ground of economic inadequacy. As a welfare state it is duty of the State to provide the free legal service to the needy person for achieving the justice. Art. 39A of the Indian constitution imposes duty on the state to provide free legal aid. Basically this article has placed in Part- IV of the constitution which is not enforceable one. No one is allowed to file a writ of mandamus against the State for free legal aid. Because no express provision is there in our Indian constitution stating legal aid is a fundamental right. The bread of justice is meaningless if it is not enforceable. So the Supreme Court of India has read out the provisions from Part –IV into Part- III of Indian constitution on the basis of liberal and expansive interpretation. The Supreme Court of India has played the role of protector and guarantor of the fundamental rights of the Indian citizens. This research paper highlights the interpretation given by the Supreme Court for the constitutional provisions which directly or indirectly protect and enforce the right of the free legal aid.

**Keywords:** constitution of India, legal aid, fundamental rights, directive principles of state policy etc

### Introduction

#### Objectives of the research paper

The researcher has selected the present research topic with various objects, some of the prominent one are-

- To study the concept of legal aid.
- To revise constitutional provisions for legal aid.
- To recollect the views of Indian judiciary towards the legal aid.
- To find out the real obstacles towards the implementation of Legal aid.

### Introduction

In a democratic country the rule of law is the policy and as per this policy equal opportunities should be given to everyone. The equal opportunity should not be denied to the citizens on the ground of economic incapacity. In 1976 the Constitution of India has been amended and inserted an Art.39A by 42<sup>nd</sup> amendment with a view to achieve the social justice. To give effect to the provisions of the Constitution government has enacted Legal Services Authorities Act, 1987. This Act has introduced various authorities for rendering free legal services up to grass root level. The researcher has collected all the provisions of the Constitutional Law for legal aid in India and that are explained along with the landmark judgments of the Supreme Court.

### Material and Method

#### Preamble

The preamble of Indian Constitution is started with the words of “We the people of India” wherein the word we includes poor, backward and weaker sections of the society. The objectives of the preamble stated that social, economic and political Justice is available to everyone. Social justice means particular section of the society needs to be protected

adequately in legal field. Economical justice means free legal aid is essential to poor and weak person who is unable to come before the court of law on ground of their poverty.

#### Art. 14

Article 14 of Indian constitution provides provisions for equality before law and equal protection of law. It means everybody should be treated equal before the law and discrimination is not allowed on any basis. Second part treats that equality is always in favor of similar treatment in similar circumstances. Discrimination on the ground of the poverty is called as a violation of the Art.14. The court held that the State is under the constitutional mandate to provide free legal aid to an accused that is unable to secure legal services on account of indigent. Further it has stated that "It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence <sup>[1]</sup>.

The free legal aid is important for maintaining just, fair and reasonable procedure which facilitates the rule of law <sup>[2]</sup>. The right to hearing is essential part of the natural justice. If the right to counsel is essential to fair trial it is equally important to see that the accused has the necessary means of his defense <sup>[3]</sup>.

#### Art.21

Now the Supreme Court of India has laid down that the right to free legal aid service is an essential ingredient of reasonable fair and just procedure for a person accused of an offence and it is implicit in the Art.21. The right to life includes right to free legal aid. Art. 21 is fundamental right conferred under Part- III of the constitution whereas Art.39A is one of the directive principles of the State Policy under Part-IV of the constitution. The Constitutional Bench of the SC held that –“while rights conferred under Part-III are fundamental, the directive given under Part-IV are

fundamental in governance of the country. They are complementary and supplementary to each other.”<sup>[4]</sup> It is established by the decisions of the court that the provisions of Part-III and Part-IV are supplementary and complementary to each other and the fundamental rights are but a means to achieve the goal indicated in Part-IV. It is also held that fundamental rights should always be construed in the light of the directive principles<sup>[5]</sup>.

#### **Art. 22(1)**

The constitution provides that no person shall be denied the right to consult and to be defended by legal practitioner of his choice. When a person is arrested he has right to consult a legal adviser of his own choice and also effective interview with the lawyer out of hearing of the police<sup>[6]</sup>. Supply of lawyer is not an absolute right under the heading of the legal aid. It is available only to the person who cannot afford lawyer<sup>[7]</sup>.

#### **Art.39A**

It is added by the 42<sup>nd</sup> Constitutional Amendment Act 1976. The court has specifically mentioned the objectives of the Art. 39A and object behind insertion of this section is nothing but to ensure social and equal justice<sup>[8]</sup>. But the petitioner does not have right to file writ petition of mandamus for the enforcement of Art.39A. The court held right to free legal aid is essential in speedy trial as it is mandate of Art.39A<sup>[9]</sup>. The Supreme Court of India held that voluntary organizations and social action groups must be encouraged and supported by the State in operating legal aid programmes. Chief Justice Bhagwati through the guideline which has been laid down by him allows State to fix the norms for supporting the cooperation of voluntary organizations and social action groups in operating legal aid programmes and organizing legal aid camps. He further clarifies that public participation is required for the legal aid programme. It is the duty of State Government under Article 39-A of the Constitution to provide legislation and also set up a comprehensive and effective legal aid programme in order to ensure that the operation of the legal system promotes justice on the basis of equality. Free legal aid is not government's charity but it is paramount duty of the state to provide it to poor people in the country<sup>[10]</sup>. Main concept that legal aid under Art.32 and 226 is only by the judicial order means they can give remedy in the form of the mandamus to provide free legal aid but the parties or on behalf of them they cannot file a writ on ground of providing legal aid

#### **Art. 38**

It provides that the State shall strive to promote the welfare of the society by securing and protecting as to maintain social order which includes social, economic and political justice.

#### **Art. 41**

It is the foundation of the concept of legal aid. Art 41 of Indian Constitution provides that within the limits of its economic capacity state shall make effective provisions for the development and also secures the right to work, right to education. State is also empower to provide provisions for public assistance in case of unemployment, old age sickness and disablement and in other cases of undeserved want<sup>[11]</sup>.

#### **Entry No.3 of State list**

It empowers State to enact laws related to the procedure in rent and revenue courts and fees taken in all courts except Supreme Court and High Court.

#### **Obstacle for the implementation of free legal aid in India**

It has been seen that the Indians have reluctant approach towards the legal area. Corruption, bribery are the main reasons for that. Delayed justice is also another reason. They are unaware about their own rights. There is lack of faith in judiciary because people feel that order of the judiciary is only on the paper and equal efforts needed for the execution. Illiteracy ignorance and lack of awareness, fear of the society, lacy of guidance are some of the obstacles in the implementation of free legal aid in India.

#### **Conclusion**

In light of the above discussion it is necessary to highlight that the Constitution of India has given an opportunity to every individual to exercise their fundamental rights against the State and also imposed negative duty on the State that is not to violate it. Indian Judiciary has made it clear that the free legal aid is a fundamental right enforceable by the judiciary. The legal aid movement in India would be successful when public participation is there.

#### **References**

1. Sukhdas vs. Union Territory of Arunachal Pradesh AIR 1981
2. Khatri vs. state of Bihar AIR 1981
3. Hussainara Khatoon Vs State of Bihar AIR 1979
4. Chandra Bhawan Boarding and Lodging, Bangalore v. State of Mysore AIR 1970. 5
5. Unni Krishnana v. State of AP 1993 SCC 645
6. Motilal Vs State AIR 1954
7. Janrdhan Vs. State of Hyderabad AIR 1951
8. Rajan Dwivedi Vs. UOI AIR 1983
9. State Maharashtra Vs. Manubhai AIR 1996
10. M.H.Hoskot Vs .State of Maharashtra, 1978 3 SCC
11. Dr. S.S. Sharma, „Legal Services, Public Interest Litigations and Para-Legal Services“, 1<sup>st</sup> Ed. (2003), Central Law Agency.