

JUDICIAL APPROACH TOWARDS FREE LEGAL AID IN INDIA

Kamal Singh¹, Prof. (Dr.) Richa²

¹Research Scholar, School of Law, Maharaja Agrasen University, Baddi, Distt. Solan

²Professor, School of Law, Maharaja Agrasen University, Baddi, Distt. Solan

Email : kamal.nalsa@gmail.com

Abstract:

The constitution of India has characterized and announced the shared objective for its residents as "to get to every one of the residents of India, equity - Social, Economic and Political". The everlasting worth of the constitutionalism is law and order which has three features for example rule by regulation, job under regulation and rule as per regulation. Under our constitution, it is the essential obligation of the state to keep up with the rule of law so the residents can appreciate harmony and security. The preface discusses equity, social monetary and political and of fairness of status and opportunity. It brings up that safeguarding the interest of the less fortunate part of the general public is the established objective. So this general concept of safeguarding destitute individuals can't be advanced without the successful, effective elements of the legitimate guide programs and lawful proficiency program. The paper connects with the Legal Aid arrangements in code of common and criminal strategies. Legal executive assumes a critical part in safeguarding the privileges of individuals in plenty of cases.

Keywords : Constitution of India, Judiciary, Social, Economic, Political.

1. Introduction

Section 304 of the Criminal Procedure Code, 1974 confers the accused the right of legal aid at the expense of the State in cases triable by court of sessions and appeals. Prior to the amendment of Cr. P.C. section 340 of the Cr.P.C. provided that a pleader may represent the accused. It did not give him any right to legal aid at the expense of the state. Assistance of counsel at the expenses of the state was provided under section 304 Cr. P.C. Legal aid in criminal cases applies at trial and appeal, Special leave to appeal, to Prisoners in jail whether under -trial or convicted prisoners, representation by a counsel of his choice Produced before Magistrate and in period of remand.

The echo of the provisions contained in section 304, Cr. P.C. now finds place in Art 39-A of the Constitution which forms a part of Directive Principles of State policy. Court should administer the provisions of Sec 304, Cr. P.C. with zeal and interpret the same liberally in favour of the citizen seeking legal aid. Sec 304 Cr. P.C. is a right step in the right directions of providing free and competent legal aid to the accused who are unrepresented. The ambit of providing legal aid to an accused at the state expense has been enlarged by the provisions of Sec 304.¹

This Section, embraces not only a case which the accused is tried be for an offence punishable with death but also other kinds of cases which are tried before a court of sessions.

Section 340(1) of the old Cr. P.C. provided that an accused has a right to be defended by a pleader. But while interpreting the said section the Supreme Court never cast positive duty on the State to provide counsel at its expenses.² The Rule laid down in Tara Singh case, Janardhan Reddy case etc., has been rendered nugatory by section 304 of new Code of Criminal Procedure. Therefore, now when an accused is produced or appears before

¹ Sohonis: The code of Criminal procedure 1973, 18th edition, The Law Book Company Pvt. Ltd. (2) Sec. 304 of Criminal procedure code: Legal aid to accused at State expense in certain cases.

² State v. Tikaram Haneri 1970 Cr.L.J. 780

a court, the court should inform the accused that he has a right to be represented by a lawyer. If the accused cannot afford a counsel for him then the court will have to provide him a lawyer for his defence.

2. Objectives:

- To find out the judicial approach towards free legal aid in India.

3. Research Methodology:

The paper is based on primary data collected from Books & Articles and secondary data collected from internet, newspapers, magazines and journals.

4. Counsel of accused choice at state expense

There was no provision in Sec 303, of Cr. P.C. Art 22(1) of Constitution of India and Sec 304 of Cr. P.C. that accused to be represented by a counsel at his choice. The Supreme Court has held that the declaration in Art 39-A of the Constitution as regard legal aid cannot be enforced by the issue of a writ of mandamus to the State. The Court observed that when an accused is unable to engage a counsel owing to poverty, he has to make an application under Sec 304(1) of Cr. P.C. for the grant of legal aid and it is for the Sessions or Assistant Session Judge to make necessary directions if he is satisfied that the requirements of Sec 304(1) satisfied, when it appears to the court of sessions that the accused has no sufficient means to engage a pleader and is unrepresented by a pleader, the court should assign a pleader for his defence at the expense of the State. If an Advocate accepts an assignment made by the Court of Session to defend an accused under section 304 Cr. P.C. is it mandatory that such pleader should file Vakalatnama, even though he is assigned by the Court of Session.

3. Counsel for Accused in Capital Cases

Whenever an accused is tried for an offence punishable with capital sentence, he must not remain undefended. No person shall be allowed to lose life in an established court of law under any civilized system without affording an opportunity of defence. Provision is invariably made under the rules applicable for his defence at State expense. In such a case it is the duty of the session Judge to see that a lawyer is so appointed. Failure to appoint lawyer would result in vitiating the trial. In different states for a lawyer being engaged in undefended cases for the accused at the state expense. The accused may not know such rules and may not ask for a lawyer being appointed. Legal Aid to the indigent accused will be of little use if competent lawyers are not selected to defend accused. Session Judges should see that raw and inexperienced juniors are not appointed to defend an accused in capital case. The Court held³ advocates to be represented by accused must be experienced and skilled. A duty is cast upon the session Judge while selecting and appointing legal practitioners as standing counsel (duty counsel), to appoint legal practitioners of real and marked ability and of sufficient experience to defend an accused in a trial before the court of sessions. This is not mere formality for the sake of complying with provisions of Sec 304 of the Code but one of the real substance and genuine assistance for an accused who is not in a position to defend himself by engaging a suitable lawyer of his choice in serious offences tribal by the session court An Application for legal aid in such a case cannot be rejected on the ground that the accused initially had managed to engage a counsel.

Reasonable opportunity has to be given to the accused to get the benefit defending himself by a counsel. The accused was convicted for various offences and was in custody for entire period of one and half years and no counsel was provided to him at the expense of the state. Supreme Court held to be a case of grave illegality and therefore while considering the recession application seeking modification of sentence period already undergone

³ Annu Pujary v. State of Karnataka 1984, Cr. L.J. 294

the court preferred to the grant the relief prayed for instead of ordering fresh trial⁴. Where in a criminal appeal to *State of Haryana v. Ram Divya*⁵ the counsel appointed by the court for the accused was not present at the time of hearing and the appeal was disposed of without hearing it was held that the case must be remanded for fresh hearing. The accused pleaded guilty for charge of possessing brown sugar and he was convicted without appointing a counsel for him under the legal aid scheme. It was held that the trial not vitiated as the trial judge was satisfied about the plea of the accused being voluntary, genuine and true.⁶

4. Legal Aid in Appeal Cases

There was no any specific provision in the code for giving legal aid to indigent accused person in appeal proceedings. The Supreme Court expanded the provision of appointment of counsel in appeal cases as it is essential component of reasonable, fair and Indigent accused person, be he the respondent or the appellant, if he is unable to engage one due to his poverty or indigent. First it is not easy for just procedure in appellate proceedings it is mandatory on state to provide a lawyer to an a layman to understand all the legal implications of the judgment of the trial court in the context of the appellate proceedings Secondly, in such proceedings, quite often, intricate questions of law and fact are involved. They would require the skillful and careful handing by a competent lawyer. Thirdly, the State is represented in appeals by well qualified and experienced Public Prosecutors. Therefore, for the proper and just working of the adversary system at the appellate stage, it is necessary that the indigent accused person is represented by a competent lawyer.

The code has made provision to provide a lawyer at State expense to an indigent accused person in a trial before a court of session; the Code also enables a State Government to extend this right to any class of trials before other courts in the State. If in any such trial the accused is acquitted and the State prefers an appeal against the order of acquittal, even in such a situation, the Code surprisingly fails to make any specific provision for providing a lawyer to the indigent accused person to defend himself. The Supreme Court in *M.H. Hoskot v. State of Maharashtra*⁷ Held that the right of appeal is implicit in Article 21 of the Constitution and in the Code.

Therefore, the accused is entitled to free legal aid and advice for filling and arguing appeals including special leave to appeal. Legal aid must be made available to prisoners in jail whether they are under-trial or convicted prisoner. The Supreme Court, *Bhuaneshwar Singh V Union of India*⁸ have had an opportunity to express is difficulty in processing an appeal when the petitioner in person appeared and argued his case. The court suggested that such persons should be provided legal aid and it indicated various agencies offering legal aid to poor. In the implementation of this section several problems are bound to arise. It is not easy to determine whether the accused is not having sufficient means to engage a pleader. The High Court is to frame rules in respect of matters referred to in sub-sec (2) above. Selection of pleaders will indicate the high importance that should be attached to selecting the right type of lawyers to handle such cases.⁹ Legal aid to the indigent accused will be of little use if competent lawyers are not selected for the work. The observations of the Supreme Court in this context Court should appoint amicus curiae, where the accused was not represented by counsel.¹⁰

The Apex Court¹¹ held that Right to be defended is essentially connected with Right to Life. There was a refusal to pay fees of advocates appearing for accused as quantified by court by Accounts Department of Governmental on pretext that the High Court did not have power to quantify fees. It has resulted in denying opportunity to

⁴ Mool Chand v. State 1990 Cr. L.J. 682

⁵ State of Haryana v. Ram Divya 1990 Cr. L.J. 327

⁶ Tyron Nazardth v. State of Maharashtra 1989 Cr. L.J. 123

⁷ M. H. Hoskot v. State of Maharashtra 1978, 3 SCC 544b.

⁸ Bhuaneshwar Singh v. Union of India 1993 4 SCC 327

⁹ R.V .Kelkar: Criminal procedure, , Eastern book company,2004, P 636

¹⁰ Dilwar Singh v. State of Delhi AIR 2007 SC 3234

¹¹ Sanjay Khan Derao Dore v. State of Maharashtra 2007 criminal Law journal 545 Bombay

accused to get himself defended by adequately competent Advocate. It had resulted in violation of Article 21. Government was required to take steps in that regard to do the needful without requiring any mandate from court.

5. Legal Aid and the Code of Civil Procedure

The Indian Legislature first dealt with the subject of Legal Aid (Act 9 of 1839) in 1839 and the provisions have, with necessary additions and modifications found a place in successive Codes of Civil Procedure.¹² The Law Commission in its 14th report recommended to replace the word “pauper” by the word “poor person” or “assisted persons.” Since the expression “pauper” is used in English Statutes also and the expression had come to acquire special meaning in legal parlance and had become familiar, the Law Commission In its 27th Report did not suggest for the change and considered it as unnecessary to disturb existing term. But the Law

Commission in its 54th Report recommended¹³ that the present expression “indigent person” should be used throughout the Code in place of the expression “pauper” which is not in harmony with modern attitudes. The original marginal note “Suits may be instituted in forma Pauperis” is however not changed. Generally, a plaintiff suing in a court of law is bound to pay court fees prescribed under the Court Fee Act .But in view of the fact that there may be persons who by reason of their poverty are unable to pay the fee. Provisions have been enacted in civil procedure code exempting such persons from paying in the first instance the court prescribed and allowing them to prosecute their suits in forma Pauper is provided he satisfied certain conditions laid down in the orders. By virtue of civil procedure code (Amendment) Act XXXIII deals with suits by indigent persons. Rules 1 to 18 of this order contain the various provisions regarding the object, procedure, examination of the applicant and rejection of the applicant to suit as an indigent person. The object of Order XXXIII is to enable persons who are too poor to pay court fee to institute a suit without payment of it. Neither party evades the payment of court fee nor no genuine cause of litigant should fail for want of funds. This order has been enacted to save triple purposes: To protect the bona-fide claims of indigent persons, To safeguard the interest of revenue, and To protect the defendant’s right not to be harassed. The defendant has also right to contest application to sue as indigent. Ultimately by the Civil Procedure (Amendment Act), 1976 the word “pauper” was substituted by the term “Indigent”. Basing on the recommendation of 14th, 27th and 57 Law Commission Report to enhance the financial limit for indulgency from Rs. 100 to Rs. 1000 the Civil Procedure (Amendment Act) 1976, Rule 1 Order XXXIII was amended and eligibility limit for indigence has been raised to Rs.1000.The order deals with 18 rules.

6. Cases related to Free Leal Aid

In *Madhav Hayawadanro Hoskot v. State of Maharashtra*¹⁴ 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.

In this case petitioner who was a Reader holding M.Sc. and Ph.D. Degrees was convicted for the offence of attempting to issue counterfeit university degree. The scheme was, however, foiled. He was tried by the Sessions Court which found him guilty of grave offences but took a very lenient view and sentenced him to simple imprisonment till the rising of the court. The High Court allowed the State appeal and enhanced punishment to three years. The High Court Judgment was pronounced in November, 1973, but the special leave petition was filed in the Supreme Court by the petitioner after 4 years. The petitioner had undergone his full

¹² Sanjiva Row The Code of Civil Procedure P 2152

¹³ Law Commission’s 54th Report, 237

¹⁴ M.H Hoskot v. State of Maharashtra 1979 (1) SCR 192

term of punishment. The explanation given by him for the condonation of delay was that he was given the copy of the judgment of 1973 only in 1978. It was disclosed that although a free copy of the order had been sent promptly by the High Court meant for the applicant, to the Superintendent of the Jail but he claimed that he never received it. The Supreme Court, dismissed the special leave application and held that a single right of appeal on facts, where the conviction is fraught with long loss of liberty, is basic to civilized jurisprudence, "One component of fair procedure is natural justice". Every step that make the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and therefore offends Article 21 State responsibilities under 21 is to provide a right of appeal consisting of (1) service of a copy of a judgment to the prisoner in time to enable him to file an appeal, and (2) provision of free legal service to a prisoner who is indigent or otherwise disabled from securing legal assistance. The Supreme Court further observed if a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142 read with Art. 21 and 39-A of the constitution, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by art. 136 of the Constitution. The inference is inevitable that this is a State's duty and not Government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise, that discretion resides in the court.

While dismissing the special leave petition Hon'ble Supreme Court laid down the following guidelines:

1. Courts shall forthwith furnish a free transcript of the judgment when sentencing a person to prison term;
2. In the event of any such copy being sent to the jail authorities for delivery to the prisoner, by the appellate, provisional or other court, the official concerned shall, with quick dispatch, get it delivered to the sentence and obtain written acknowledgment thereof from him;
3. Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the Jail Administration;
4. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner's defence.
5. The State which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum as the court may equitably fix;
6. These begin prescriptions operate by force of Article 21 strengthened by Article 19(1)(d) read with sub-article (5) from the lowest to the highest court where deprivation of life and personal liberty is in substantial peril.

Again two Years later in *Sunil Katri v. State of Bihar*¹⁵ The Supreme Court held that the right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it is implicit in the guarantee of Article 21.

The state is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state.

¹⁵ Sunil Katri v. State of Bihar AIR 1981 SC 928

The Magistrate or the session's judge before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of state.

The Supreme Court observed that free legal aid under 39-A starts as soon as the person is arrested and is produced before magistrate. This is the stage at which accused person needs competent legal advice and representation. No procedure can be said to be just fair and reasonable which denies legal representation to accused at this stage, that the accused gets the first opportunity to apply for bail remanded from time to time and this is stage which accused person. In this case the accused was poor to afford for bail he is unaware of legal services or provisions under 39-A or under 304 of Cr.P.C. The court observed that the state is under constitutional obligation to provide free legal aid services not only at the time of arrest, bail, until the judgment is pronounced it further extends to appeal to High court.

In *Kadra Pabadiya and others v. State of Bihar*¹⁶ the Supreme Court held that an under-trial prisoner should be provided with a fairly competent Lawyer at state Expense. The state should provide legal assistance to the poor and indigent accused (male and female) whether they are under-trial or convicts. In *Sheela Barse V State of Maharashtra*¹⁷ a journalist complained of custodial violence to women prisoners whilst confined in the police lock-up in the city of Bombay through a letter addressed to the Supreme Court. The Court treated the letter as a writ petition.

The Supreme Court held that legal aid should be provided to a poor or indigent accused whose life and personal liberty is in peril. It is the duty of the State to provide legal assistance to the poor and indigent accused (male and female) whether they are under-trial or convicted persons.

Delivering the judgment of the Court Bhagwati, J, observed, Legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39-A but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and rule of law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests. It is therefore absolutely essential that legal assistance must be made available to prisoners in jails whether, they be under-trial or convicted prisoners.

Thus there should be no doubt that legal aid is now available as matter of right immediately on arrest land whether the accused is in police lock-up or in jail either as a under – trail or as a convicted prisoner. In Central coal Fields case⁷¹⁸ the effective access to justice provided for by Article 39-A was considered to be basic human right. Thus legal aid has now been transformed in to a human right. In *Gopalachari v. State of Kerala*¹⁹ the right to legal aid was extended even to proceeding under section 110-crp c, the U.S Supreme Court in *Johnson v. Zerbes*²⁰, for the first time had interpreted the fight to counsel to an indigent person in federal criminal proceedings. In *Zea Powell v. state of Alabama*²¹ it was held that failure of according benefit of counsel would

¹⁶ Kadra Pabadiya and others v. State of Bihar AIR 1981 SCC 939

¹⁷ Sheela Barse v. State of Maharashtra AIR 1983 SC 378

¹⁸ AIR 1980 SC 2125

¹⁹ Gopalachari v. State of Kerla 1981 AIR 674

²⁰ Johnson v. Zerbes 304 US 458 (1938)

²¹ Zeva Powell v. state of Alabama 287 US (1932)

amount to denying the “due process law”. The same view was stated in *Belts V Brandy*²², *Robert Galloway white v. State of Maryland*.²³

The court in *Nandini Satpathys v. State of Bihar*²⁴ case reiterated the same rule in Katri case. The apex court in *D.K.Basu v. State of West Bengal*²⁵ held that indigent litigant may be permitted to meet his lawyer during interrogation though not throughout the interrogation.

The Supreme Court had widened the ambit of legal aid free or otherwise, right up to the stage of custodial or near Custodial interrogation by the Police and nor made it contingent on the production of the accused before the magistrate. In Nandini Satpathys case the court held that it would be the prudent for the police to permit the Advocate of the accused, if²⁶ here be one to be present at the time he is examined.

In *Kuthu Goala v. State of Assam* and *Gendra Braham v. State of Assam*²⁷ K. Lahiri has very aptly observed, that if free legal aid enshrined in the Constitution and also in the code of criminal procedure means anything to a needy person it should begin from the moment when a poor and needy person is apprehended by the police. It is useless to roots to dry and thereafter to water the plant legal aid at a later stage when the fate of the accused had been sealed is an empty for malty. (Right to get legal aid while in police custody) The court further stated “whenever a person is arrested by the police and taken to the lock-up, the police will immediately give intimation of the fact of such arrest to the nearest legal Aid Committee and such legal Aid Committee will take immediate steps or the providing legal assistance. Ashok Kumar V State of Rajasthan²⁸ the Supreme Court held that the right of free legal aid shall be rendered to the indigent persons and it shall not be extended to the rich persons, who can employ advocates with their own expenses. In this case, the petitioner was a rich man, but contended that free legal aid should be provided to him. The Supreme Court dismissed his petition.

*T. Suthenraja v. State of Tamil Nadu*²⁹ In the famous case of Late Rajiv Gandhi’s murder case. The State Government provided free legal aid to some of them, entitled for the free legal aid. The State Government fixed a sum of Rs.50/- to every advocate for everyday attended for the case under Rule 9 of legal Aid to poor Accused Rules, 1976. The petitioner was one of the advocates appointed for the said purpose. He contended that the sum paid Rs.50/- was not appropriate. The Madras High Court held that equal pay for equal work’ rule was not attracted as the criteria in the appointment of prosecution lawyers was different from those of the defense as free legal aid to indigent persons. It held that remuneration fixed was reasonable, fair and just in the circumstances.

*Sugreev alias Jagadish and others v. Smt. Sushila Bai and others*³⁰. The Supreme Court held that where an application filed by litigant of poor economically weaker section of society to sue as indigent person, it is the duty of the Court either to send the matter to the concerned authority under Act of 1987 or the concerned authority under R.18 of o.33 of C. P.C to grant free legal Services, where despite having been made known of her or his this legal right under the Act of 1987, the litigant of the category enumerated under sec 12 of the Act, 1987 does not desire to get the free legal services the Advocate concerned should mention and bring it to the notice of the court concerned in the form of formal declaration of his own or of the litigant concerned to be enclosed to the petition, suit, application, revision and appeal etc as the case may be. Which is presented in the Court. If the litigant desires, the court direct the party to approach authorities, if the litigant is not desirous to avail of his/her right, the court may have to record this fact in the proceedings.

²² Belts V Brandy 316 U.S 455 (1942)

²³ 373 U.S 59 (1963)

²⁴ Nandini Satpathys v. State of Bihar AIR 1978 SC 1025 Para 58 & 59 of the Report

²⁵ D.K.Basu v. State of West Bengal 1997 Cr. L.J. 743 SC para 38 (10) of the Report

²⁶ Kuthu Goala v. State of Assam 1981 Cr. L.J. 424

²⁷ Gendra Braham v. State of Assam 1981 Cr. L.J. 430

²⁸ Ashok kumar v. State of Rajasthan 1995 Cr.L.J. 1231 Raj.19

²⁹ T.Suthenraja v. State of Tamil Nadu 1995 Cr. L.J. 1496 Madras

³⁰ Sugreev alias Jagadish and others v. Smt. Sushila Bai and others AIR 2003(5)Raj.149

*Centre for Legal Research and another v. State of Kerala*³¹. The petitioner is Voluntary Social Organization. Its main function are to spread legal awareness among the people, and to render legal services to the poor and needy people, The court held that the state government undoubtedly has an obligation under Article 39- A of the Constitution which embodies Directive principles of state policy to 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. Bhagawati C.J observed “The Voluntary organization and social action groups must be encouraged and supported by the state in operating the legal aid programmes. It is acknowledge that the legal aid programme which is needed for the purpose of reaching social justice to the people cannot afford to remain confined to the traditional or litigation oriented legal aid programme but it must, taking into account the socio-economic conditions prevailing in the country, adopt a more dynamic posture and take within its sweep what may be called legal aid schemes or the State Legal Aid and Advice Board, , but such Voluntary organization or Social action group must not be under to control of direction or Supervision of the State Government or the State Legal Aid and Advice Board because Voluntary Organizations and social action groups operating these programmes should be totally free from any Governmental control”.

In *Kishorechand v. State of Himachal Pradesh*³² the apex Court has observed: “Though Art 39-A of the Constitution provides fundamental right to equal justice and free legal aid and though the state provide amicus curiae to defend the indigent accused, he would be meted out with unequal defense if, as is common Knowledge, the youngster from the bar, who has either a little experience or no experience or is assigned to defend him. It is high time that senior counsel practicing in the court concerned, volunteer to defend such indigent accused as a part of their professional duty. The right of defense includes the right to effective and meaningful defense at the trail and nor a more show of it which undoubtedly occurs when an inexperienced lawyer is engaged by the state to defend an indigent against an experienced and able public prosecutor or counsel for the state obviously, it is an unequal battle in which the poor accused cannot defend himself effectively and adequately the greater the need for caution and higher the responsibility for the law enforcement agencies of the state to provide experienced counsel.

*The Supreme Court legal Aid Committee v. Union of India and others*³³. The petitioner filed a writ petition contending that several state Governments and the Central Government did not constitute legal services Authorities under the L.S.A Act, 1987. The petitioner named that legal services Authorities have not been constituted for Arunachal Pradesh, Kerala, Maharashtra, Nagaland, Tripura, Pondicherry, Union Territories In Chandigarh, Daman & Diu, Dadra & Nagar Haveli, and Lakshadweep. The Supreme Court directed that Central Government and that State Government to constitute the Legal Service Authorities within two months.

7. Conclusion

To execute the pledge of justice as in the Preamble i.e., socio-economic to provide equal opportunities and to avoid socio-economic imbalances, the Constitution mandates the state to accord justice to all citizens. Social justice is the key note of the constitution, democratic obligation of the state to make the legal process a surer means to social justice. It includes legal justice which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realization of justice by all section of the people irrespective of their social or economic position. Legal Aid in India has comprehensive constitutional status and being found in the group of articles. The three Golden Articles of the Constitution incorporates the principle of legal aid i.e. article 14, 21 and 22.

³¹ Centre for Legal Research and another v. State of Kerala AIR 1986 SCC 1

³² Kishore chand v. State of Himachal Pradesh 1990 Cr. L.J. 2289 (SC) Para 12&13

³³ The Supreme Court legal Aid Committee v. Union of India and others 1998(5) SCC 762

The principle of equality in article 14 assures equal justice. It guarantees that no person shall be denied equal protection of laws because he is poor, provides accessible to court at free of cost. States he is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services.

Justice Bhagavathi extended legal services to the accused by laying down that right to free legal services is an essential ingredient of reasonable fair and justice and it is implicit in guarantee of Art. 2. State cannot avoid it, by pleading financial or administrative liability. Judiciary recognized fair trial including constitutional right of every accused person right to consult and be defended by a legal practitioner of his choice under Art.22. Right to access to justice is a fundamental right and it has been reinforced by 39-A with object to mitigate inequalities so that justice reaches to door steps of the poor and weaker sections of the society. As a part of fair trial procedure, legal aid provisions are dealt under Sec-304 of criminal procedure code. The code cast an obligation on the court to inform the accused about his right to be represented by a lawyer in cases triable by court of sessions and also in appeal cases. The code of civil procedure enables an indigent person to institute a suit exempting from payment of court fee and process fee and to assign a pleader to an unrepresented indigent person. It can not be denied that the ambit of Free Legal Aid in India has been substantially increased by Judicial intervention and interpretation. The research supports the objective mentioned in the paper.

Suggestions:

The judicial interpretation need to be more comprehensively implemented by the lower courts. This will remove the disparity that exists at some levels of judicial relief. Also, we need to take Kishore Chand's judgment to every corner of the nation so that this approach of treating free legal aid as a fundamental right is implemented in full spirit.

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25. D.K.Basu v. State of West Bengal 1997 Cr. L.J. 743 SC para 38 (10) of the Report
26. Kuthu Goala v. State of Assam 1981 Cr. L.J. 424
27. Gendra Braham v. State of Assam 1981 Cr. L.J. 430
28. Ashok kumar v. State of Rajasthan 1995 Cr.L.J. 1231 Raj.19
29. T.Suthenraja v. State of Tamil Nadu 1995 Cr. L.J. 1496 Madras
30. Sugreev alias Jagadish and others v. Smt. Sushila Bai and others AIR 2003(5)Raj.149
31. Centre for Legal Research and another v. State of Kerala AIR 1986 SCC 1
32. Kishore chand v. State of Himachal Pradesh 1990 Cr. L.J. 2289 (SC) Para 12&13
33. The Supreme Court legal Aid Committee v. Union of India and others 1998(5) SCC 762