

Free Legal Aid under Indian Constitution

Swastik Panda

Student,
School of Studies in Law,
Pt. Ravishankar Shukla University,
Raipur

Jayant Minj

Research Scholar,
School of Studies in Law,
Pt. Ravishankar Shukla University,
Raipur

Abstract

The Indian Constitution played an important role in providing free legal aid to the needy and economic backward citizen. Its article 39A, which was inserted by 42nd Constitutional Amendment 1976. Article 39A was inserted with the effect of International Covenant on Civil and Political Rights, 1966, article 14 (3) (d) which speaks for the legal aid to the needy people. The same provision of International Covenant on Civil and Political Rights 1966 was adopted by the Indian Constitution, 1950 in the form of article 39A, which was placed in the Directive Principle of State Policy. Equal justice and free legal aid is rights of citizen of the needy and the duty of the state to provide legal aid through suitable legislation and other laws.

The preamble of Indian Constitution speaks for the justice, and justice should be in the form of "social, economic and political". Fulfilling the goals of the preamble by 42nd amendment 1976 article 39A was inserted in the Constitution to bring justice, with the aim to bringing social justice in the nation. The object of the article is that "no person shall be deprived of justice on the grounds of economic backwardness." It is also a well established principle of natural justice "*Audi Alteram Partem*" means hear the other side. Article 39A is based on this principle, it provide the party right to heard and for this state has duty to provide legal aid to the needy people.

Keywords: Constitution, Natural Justice, Social, Economic, Political, Preamble, Legal Aid, Economic Backwardness.

Introduction

Under Indian Constitution it's now Constitutional and legal right of citizens to access to free legal aid under Article 39A¹. Legal aid means legal assistance to the poor and needy, to defend them in legal proceedings.² The origin of free legal aid can be traced down from the Magna Carta in its 40th paragraph that "*to no one will sell. To no one will we deny, or delay, right or justice.*"³ In year 1966 International Covenant on Civil and Political Rights 1966 laid down the provision for the protection of justice article 14 (3) (d) that persons shall be given right to defend himself through the legal assistance in the assess of justice without the payment of fees where he has no sufficient menace to pay.⁴ Equal justice and free legal aid, the Indian Constitution, 1950 makes the provision for free legal aid by article 39A which lays down duty on the state to provide legal system for promotion of justice by providing free legal aid to the people who are unable to secure justice due to economic or any other disability.⁵

In year 1987, Legal Service Authority Act came to provide legal service to needy and poor citizens of the country. Article 39A says that "provide free legal aid by suitable legislation or schemes or in any other way," To fulfill the goals of article 39A of the Indian Constitution. Legal Service Authority Act, 1987 was brought in with the object to provide free and competent legal service to the weaker section of the society. For getting justice which shall not be denied to any people by way of any economic or any other disabilities. Further the act lays down provision for the establishment of Lok Adalat for the operation to promote justice in the country.

Objective of the Study

The object of study is how the right to legal aid granted under Indian Constitution has been enforced in the country. The scope of free legal aid and interpretation of article 39A by the means of various cases laws. According to article 39A "Equal Justice and Free Legal Aid" what are the obstacles in the ensuring equal justice and free legal aid in the country. Finding out any amendments in the existing law regarding free legal aid in the country.

Review of literature

Legal Aid Movement: Its Development and Present Scenario, Written by Swati Vijayvergiya- 2nd year Law Student, Institute of Law Nirma University of Science & Techololgh: - the study was covered with the development of Legal Aid movement in India and its development along with the growth of legal aid at present scenario⁶.

A Brief History of Legal Aid, Written by Varun Pathak 4th year Student, Amity Law University, New Delhi:- Brief history of legal aid was persented in this paper. 39Aand provision of Legal Service Authority Act, 1987 was explained along with the provision for getting legal aid⁷.

An Introduction to the Legal Services Authorities Act, 1987, Written by Divyam Agrawal. In this paper Article 39 A was explained along with Article 14 and 22(1) of the Indian Constitution. Different Committees for the implementation of Legal Aid were discussed⁸.

Legal Aid – A Myth or Reality, Written by Himani Kaul and Deepika Singh- 2nd year Law

student, GGSIPU University, Delhi: - the paper was based on the myth and reality of legal aid in India and its present day position. Stabilizing the scale for poor and suggestive measures was given. Finally compilations of the suggestive measures for legal aids were given the paper⁹.

Hypothesis

Making a step to find out the aims and object of Article 39A inserted in the Constitution of India by 42nd Constitutional Amendment, 1976 and the working of Legal Service Authority Act, 1987.

Research Methodology

The present research is based on the article 39A of the Indian Constitution, Article 14 (3) (d) of International Covenant on Civil and Political Rights 1966, report of Committee for Implementing Legal Aid Scheme and Legal Service Authority Act 1987 by secondary source of information. Various leading cases regarding free legal aid by Supreme Court and other case laws and Acts.

Development of Legal Aid

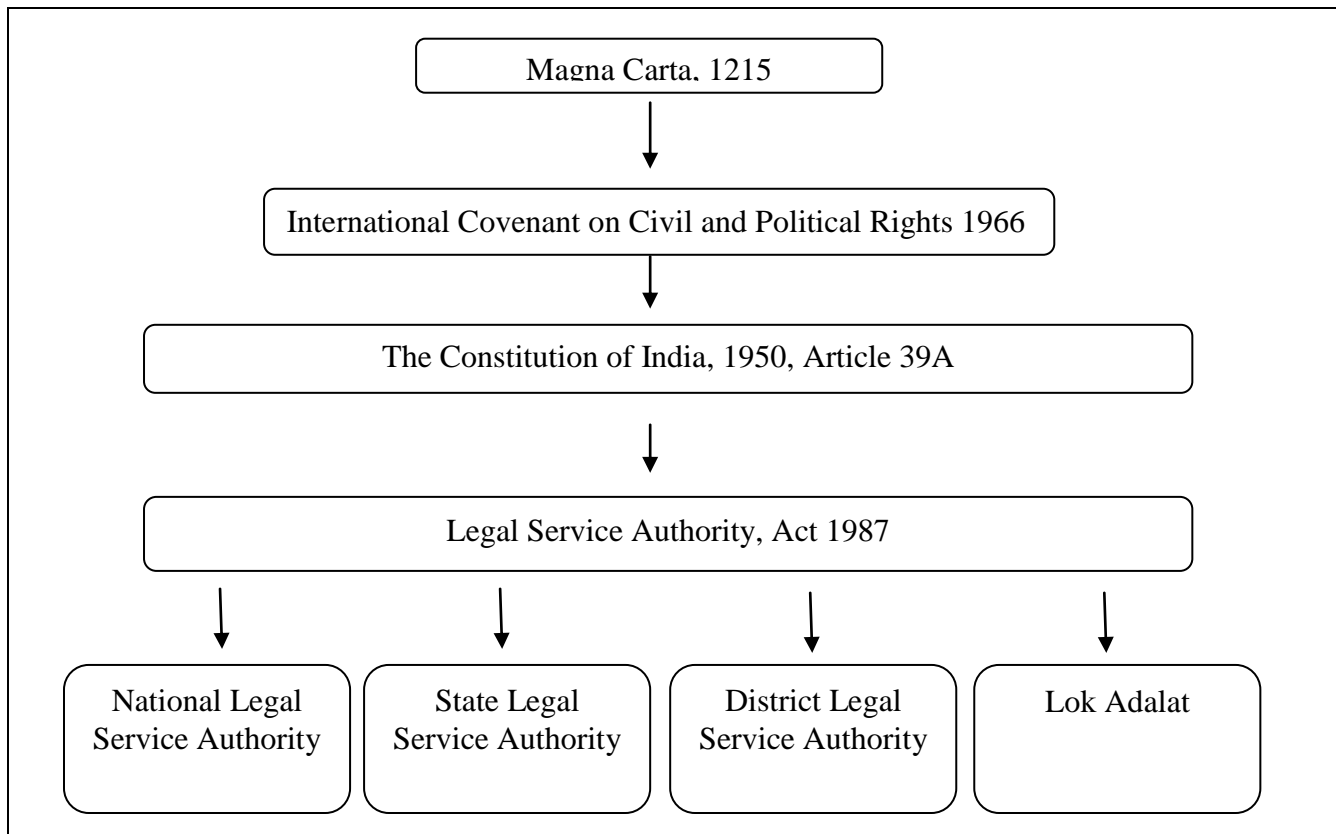


Table showing the Document,Articles/Section/Order and provisions of free legal aid.

S. No.	Name of documents	Article /section	Provisions
1.	International Covenant on Civil and Political Rights 1966.	Article 14 (3) (d)	<ul style="list-style-type: none"> To defend himself or through legal assistance. Right to be informed if he does not have legal assistance. Without payment by him.
2.	The Constitution of India, 1950	Article 39A	<ul style="list-style-type: none"> State shall secure the operation. By way of legal system promotes justice. Provide free legal aid. By suitable legislation, schemes or any other way. To any citizen by reason of economic backwardness and disabilities.
3.	Legal Service Authority Act, 1987	Section-3	National Legal Service Authority.
		Section-6	State Legal Service Authority.
		Section-9	District Legal Service Authority.
		Section-11A	Taluk Legal Service Committee.
		Section- 19	Lok Adalat.
4.	Code of Criminal Procedure, 1976	Section 304	Legal aid to accused at state expenses in certain cases.
5.	Civil Procedure Code, 1908	Order XXXIII	Suit may be instituted by indigent person.

Article 39A

By 42nd Constitutional Amendment Act 1976 Article 39A was inserted in the Constitution of India which lays down for the provision for providing free legal aid to people who are unable to access justice by the reason of economical backwardness and other disabilities. Article 39 A provides for the establishment of various authorities for providing legal assistance to the needy privileged people by suitable legislation or scheme or through any other ways.

In the case of *Jakson Vs. Bishop*,¹⁰ Justice Blackmun said that "justice can't be evaluated on basis of Dollars and money thus no place in the administration of justice under the social justice system." Justice P.N. Bhagwati observed that "poor should also give opportunity to seek justice and economic backwardness should not become reason for denying justice." *M.H. Hoskot Vs. State of Maharashtra*,¹¹ Justice Krishna Iyer observed that "it is duty of the state to provide free legal aid to the needy people, this act of government is duty not a charity." *Bachan Singh Vs. State of Punjab*,¹² it was said that "Promotion and operation of legal system should be vested on the state for ensuring justice. The citizen should deny from accessing to justice by reason economic and other disabilities."

Article 39A and Article 21 of The Constitution of India

"no person shall deprived of his life and personal liberty" article 21 lays down that no person shall be deprived form his life and word "Life" has been explained in the case of *Kharak Singh Vs State of Uttar Pradesh*,¹³ the Supreme Court quoted that

"the word under article 21 used something more than mere animal existence." If any citizen of the country who is deprived from access to justice due to the reason of economic and other disability shall fall under the preview of article 21 i.e. violation of fundamental rights of life and liberty of the citizen. In the case of *Suk Das Vs. Union Territory of Arunachal Pradesh*,¹⁴ it was observed that "legal aid is not for the illiterate or poor accused to insure the justice but it is the responsibility of judge to make the accused aware about the right of free legal aid from the state side where the accused is unable to engage lawyer himself." In *Rajan Dwivedi Vs. Union of India*, it was held that the implementation of Article 39A can be secured only by suitable legislation and scheme as in cooperated under 39A, no writ of mandamus can issued for the enforcement of article 39A.

Legal aid under Legal Service Authority, Act 1987

According to section 304 (1) of Code of Criminal Procedure and Order-33 of Civil Procedure provides for free legal aid¹⁵ by way of appointment of advocate for defending and exempting them from court fees. The Legal Service Authority Act 1987 provides criteria for giving legal service to the eligible person and they are followings:-

- Scheduled Cast or Scheduled Tribe members,
- Disabled persons,
- A child or women,
- Victims of
 - Mass disaster
 - Ethnic violence
 - Cast atrocity
 - Flood drought

- v. Earthquake or
- vi. Industrial disaster
- 5. Victim of trafficking in human beings or beggar,
- 6. Industrial workmen,
- 7. Person in custody and
- 8. Economically vulnerable person.¹⁶

Types of Legal Services

- 1. Payment of court fess,
- 2. Other charges payable or incurred in connection with any legal proceedings,
- 3. Process fees,
- 4. Providing Advocate in a legal proceedings,
- 5. Obtaining legal documents in legal proceedings,
- 6. Preparation of appeal paper, books including printing and translation of document in legal proceedings.

Conclusion

The concept of legal aid was developed on the doctrine of "Audi Alteram Partem" with a view to provide legal assistance to the needy people who are seeking justice in the court. Because it is seen that people are deprived of justice due to the reason of economic backwardness. Free legal aid is a step towards providing economic and social justice in the country. To provide free legal aid to the citizens machinery has been setup by the way of suitable legislation i.e. the Legal Service Authority Act, 1987. But it is not sufficient in way of providing legal assistance to the needy people. The role of law students and law school is also very important they should organize legal aid camps, promotes legal aid center and also setup clinical education to encourage the legal aid program country wide.

References

1. *Inserted by the Constitution (Forty-second Amendment) Act, 1976, section 8(w.e.f. 3-1-1977).*

2. *Common Wealth Human Rights Initiative, Legal Aid and Advice, available at <http://humanrightsinitiative.org/publication/police/pdf> (Last visited on April 13, 2018).*
3. *Multiple Action Research Group (MARG), Need Assessment Study of Legal Service Authority, iv (2012) available at <http://www.undp.org/content/dam/india/docs/DG/needs-assessment-study-of-selected-legal-services-authorities.pdf> (Last visited on April 14, 2018).*
4. *International Covenant on Civil and Political Rights, 1966, Article 14 (3) (d).*
5. *Article 39A of Indian Constitution 1950.*
6. *<http://www.legalserviceindia.com/article/I361-Legal-Aid-Movement.html>, (Last visited on April 14, 2018).*
7. *<http://www.legalserviceindia.com/articles/laid.htm>, (Last visited on April 14, 2018).*
8. *<http://www.legalserviceindia.com/articles/legaut.htm>, (Last visited on April 14, 2018).*
9. *<http://www.legalserviceindia.com/article/I240-Legal-Aid.html>, (Last visited on April 14, 2018).*
10. *Jackson Vs Bishop 404 F 2d 571 (8th Cir, 1968).*
11. *M.H. Hoskot Vs. State of Maharashtra AIR 1978 SC 1548.*
12. *Bachan Singh Vs. State of Punjab AIR 1981 SC1325.*
13. *Kharak Singh Vs. State of Uttar Pradesh AIR 1963 Sc 1295.*
14. *Suk Das Vs. Union Territory of Arunachal Pradesh AIR 1986 SC 991.*
15. *Section 304 (1) of Code of Criminal Procedure and Order 33 Rule 17 of Code of Civil Procedure.*
16. *Section 12 of the Legal Service Authority Act, 1987.*