

2023

ACCESS TO FREE LEGAL AID: A HUMANISTIC APPROACH

Kamlesh Vishnoi

Recommended Citation

Kamlesh Vishnoi, 'Access to Free Legal Aid: A Humanistic Approach' (2023) 2 IJHRLR S.I. 109-113.

Available at www.humanrightlawreview.in/vol-2-special-issue/.

This Art. is brought to you for free and open access by the International Journal of Human Rights Law Review by an authorized Lex Assisto Media and Publications administrator. For more information, please contact info@humanrightlawreview.in.

ACCESS TO FREE LEGAL AID: A HUMANISTIC APPROACH

Kamlesh Vishnoi¹

INTRODUCTION

The 42nd Amendment Act of 1976 includes Free Legal Aid as one of the Directive Principles of State Policy under Article 39-A of the Constitution of India. Although it is the most important and direct Constitutional provision pertaining to Free Legal Aid, this provision is not quite enforceable by courts.

Legal aid is of major significance under the Indian Human Rights law, and it is not just available in criminal cases, but also in civil, financial, and regulatory issues.

As exemplified in *Madhav Hayawadan Rao Hosket vs. State of Maharashtra*², a three-judge bench of the Supreme Court reading Articles 21 & 39-A of the Constitution of India, along with Article 142 and Section 304 of the Code of Criminal Procedure, 1973, ruled that the government was required to provide legal assistance to the accused. This is a prerequisite of the right of appeal granted by the Code and recognized by Article 136 of the Constitution.

RELEVANT LEGAL PROVISION

The right to be defended by a lawyer, derived from Article 22 (1) of the Constitution, has been further strengthened by the introduction of the Directive Principles of State Policy enshrined in Article 39 A of the Constitution by the 42nd Amendment Act of 1976 and by the enactment of subsection (1) of Section 304 of the Code of Criminal Procedure. Not only is it required by the Constitution and the Code of Criminal Procedure, but also by the International Covenants and Human Rights

¹ Law Student, 5th Year, B.A.LL.B. (Criminal Law Hons.) National Law University, Jodhpur.

² 1978 AIR 1548,

Declarations, that a poor person facing trial whose life and freedom are at risk have legal representation.

Article 39 A expounds that it is the State's responsibility to ensure that the judicial system promotes justice based on equal opportunity for all its citizens. *“Therefore, it must provide for free legal assistance for people who cannot access justice owing to economic or other barriers.”* A fair trial involves the right to legal representation. This is part of the right to life guaranteed by Article 21 of the Indian Constitution.

Section 304 of the Criminal Procedure Code of 1973 permits the Session Courts to appoint the pleader for the defence of the accused at the cost of the state if the accused is unrepresented and the court determines that he lacks the financial resources to engage a pleader. The appointment of such a pleader, the courtroom facilities to be provided to him, and his salary must be determined by regulations that the High Court may formulate with the prior permission of the State Government. As it pertains to trials before Sessions Courts, this provision also applies to any kind of criminal trial held by other state courts.

INTERNATIONAL PERSPECTIVE

Article 14 (3) (d) of the International Covenant on Civil and Political Rights enables individuals facing a criminal charge to defend themselves in person or with the help of a counsel of their choice, and if he does not have legal representation, to be notified of his right and to get legal representation without payment if he does not have sufficient means to pay for it. As per ICCPR Article 10. All persons deprived of their liberty must be treated with humanity and respect for the inherent dignity of the human being.

Article 8 of the Universal Declaration of Human Rights acknowledges the right to free legal aid. In the event of a breach of Fundamental

Rights, it states that everyone has the right to approach the National Tribunal for an appropriate remedy. While Article 10 of the Declaration affirms the human right to full equity, it emphasizes the need of a fair public hearing and independent and impartial courts in determining rights. Furthermore, Article 10 of the UDHR declares that everyone is entitled to a fair and public hearing before an independent and impartial tribunal in determining their legal rights and obligations, as well as any criminal charges brought against them.

JUDICIAL PERSPECTIVE

In India, the judiciary has always been a significant proponent and promoter of free legal assistance. History demonstrates that the Hon'ble Justices P.N. Bhagwati and Krishna Iyer have played a significant role in the legal aid movement and have underlined the significance of free legal assistance in India. Several judicial decisions have been useful in advancing the legal assistance programme

The right to a fair trial encompasses several aspects. In the case of *Zahira Habibullah Sheikh & Anr vs. State of Gujarat*³, the Supreme Court of India ruled that the idea of a fair trial today informs and energizes numerous areas of the law. A fair trial certainly would entail a trial before an unbiased Judge, a fair prosecutor and an environment of judicial calm. A fair trial is one in which bias or prejudice against the defendant, the witnesses, or the cause being tried is eliminated.

In *Sukh Das v. State of Arunachal Pradesh*⁴, the Supreme Court ruled that an accused's conviction in a trial where he was denied legal representation will be overturned as a violation of Article 21 of the Constitution. But where the defendant pleaded guilty without the assistance of a lawyer under the legal aid scheme and was subsequently convicted by the Magistrate, it was determined that the trial and

³ 2004 (5) SCC 353.

⁴ 1986 AIR 991.

conviction were not tainted because the Magistrate was fully convinced that the plea was voluntary, true, and genuine.

Judges are obligated to designate personnel for the defence of poor defendants who are facing trial for a grave offence but cannot afford representation. It goes without saying that a judge is not a prosecutor and that his responsibility is to determine the truth so that he may reach the proper decision. A defence lawyer plays a crucial role in revealing the truth to the court by cross-examining witnesses and introducing pertinent documents or evidence. Inadequate cross-examination may sometimes result in a miscarriage of justice, and the court must protect against this possibility.

The conviction of an appellant who was not represented by a lawyer violated the appellant's basic rights under Article 21 of the Constitution. Therefore, the trial was deemed unlawful, and the appellant's conviction and sentence were overturned.

CONCLUSION

The preamble of the Indian constitution aspires to guarantee socio-economic and political justice for the people. His Lordship Justice P.N. Bhagwati rightly noted that legal assistance is a social structure that makes the mechanism of administration of Justice conveniently available and within the grasp of those who must use it to vindicate their legal rights.

“Equality, Justice, and Liberty” is the recognized trinity of a fair trial in the administration of justice in India, where the wealthy and the “lowly and lost” have equal access to justice in the administration of the court and the criminal justice system. This basic concept of a fair trial is the foundation of the International Covenants and is enshrined in the Constitution of India and the criminal statutes that comprise India's criminal justice system.