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# Free Legal Aid: A Human Right, not “Charity”

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## ABSTRACT

*Legal aid means assisting the people who are unable to afford the legal services and who face problem in getting access to judicial system. Legal aid plays a very necessary role by ensuring equality before law, protection of rights to life and personal liberty, the right to fair trial. Every nation should follow the concept of legal aid and it is specifically mentioned in Universal Declaration of Human Rights (UDHR),1948 and International covenant on Civil and Political Rights (ICCPR), 1966*

*This research paper hereby answers the question such as What is free legal aid?, To whom it shall be given? Is legal aid a charity or a basic human right?, What are the constitutional provisions related to legal aid?, What are the types of legal services provided?*

*This research paper describes legal aid in broadest sense as a fundamental human right, which is providing public access to legal representation, legal institutions, legal information, legal advice, legal education and knowledge.*

*The major objective of writing this research paper is to understand the role of state from a human rights perspective rather than of a charity one.*

*This paper will conclude various case reviews along with human rights treaties and conventions.*

*Keywords : Legal Aid, Human Right, Legal Representation*

## I. INTRODUCTION

Before understanding free legal aid as a human right rather than charity, we need to define “legal aid”. We may refer “legal aid” as “legal assistance”. There are various definitions of legal aid which are as follows : (1) Legal aid is the professional legal assistance given to indigent persons in need of such helps either free or for a nominal amount of money. (2) The International Commission of Jurists defines legal aid as legal advice and representation given in the Court for the threatened people to protect their life, liberty, property or reputation of the persons who are unable to pay for it.

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In this modern developing world, to make uniformity of law for the poor and the privileged people of the society, the provision of legal aid is introduced. Legal professionals use the phrase or term “legal aid” which means - (a) Giving monetary aid, (b) Legal Counselling; and (c) Defending a person in Court

In wider sense, the phrase “legal aid” often used by the legal professionals, individuals and legal organisations may describe legal aid as -

(a) A system of providing free legal advice or legal help or counselling the peoples who are too poor to pay for it.

(b) Money or monetary aid given by the government or another organisation to the people who cannot afford a lawyer.

(c) Financial assistance for the persons who are unable to fulfill the full cost requirement of any law suit.

Therefore, the legal aid is a means of legal assistance, social security, special assistance and counselling for the poorer, threatened and weaker members of the society who are unable to afford and to enable them to enforce their basic & legal rights through the legal process.

If legal aid means nothing more than legal representation in court or legal assistance, then to that extent there is a right to legal aid. This is a right which has been mentioned or stated in various legal systems and in human rights also. Hence, legal aid in broader sense is defined as a fundamental human right guaranteeing public access to legal representation as well as legal institutions, legal information, legal advice, legal education & knowledge. For describing legal aid as human right, we need to understand the role of state from a human rights perspective rather than of charity or welfarist one.

Based on these points of “legal aid”, we need to justify it as charity or as human rights. The basic safeguards for the citizens of a democratic country are “equality before law”, “equal protection of law” and “rule of law”. Unfortunately, all persons of a society are not equal and hence they don’t get same benefits of law. The economically backward people of society in the world do not enjoy equal and fair justice due to many reasons such as social inequality, lack of financial resources etc. So, some of the people needs either free or state sponsored legal aid to get justice and promote equality among society. Without equal access to law and courts, it will not be possible to ensure equality and equal protection of law.

Therefore, “legal aid” can’t be charity but a Human right that ensures protection of law.

## II. INTERNATIONAL RECOGNITION OF LEGAL AID AS HUMAN RIGHTS

About seven centuries ago, the beginnings of equal justice under the law were marked by the inscription in the 40th paragraph of the Magna Carta:

“To no one will we sell, to no one will we deny or delay right or justice.”<sup>2</sup>

Afterwards, the international concern for human rights is raised, after the 1st World War in covenants of the League of Nations and further in Universal Declaration of Human Rights (UDHR), which incorporated the concept of legal aid. It recognises equal rights of all human beings to promote respect for the rights of each other.

In early 20th century, the provisions for legal aid were introduced in most of the states of the world. Afterwards, it is treated as a necessary condition of economic and social justice for their citizens. So, it was realised that the backward sections of people need either free or state sponsored legal aid to get justice. Therefore, legal aid is considered as a rule of law for any society.

The basic ground or reason for legal aid finally come into realisation of majority states, non-governmental organisations and other persons in modern world that it can help in advancing rule of law and justice for all citizens.

The “United Nations Conference on Human Rights<sup>3</sup>” in Iran in 1968 declared that :

- Each and every state will form a state authority to provide legal assistance for ensuring human rights and fundamental freedom of people.
- The victims of rights violation will get economic, professional or legal assistance.
- The government will also resolve individual’s rights violation issues with the legal assistance and if necessary, will take all necessary steps to protect the rights of individuals.
- If required, United Nations will arrange human advisory program or expert support to the state efforts.

After few years, the provisions of legal aid expanded internationally by forming an “International Advisory Service Association” in 1970. This association stated that to make the legal aid programme effective for everyone, the national government should develop some basic principles and eligibility criteria. Based on these principles and eligibility criteria,

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<sup>2</sup> [www.archives.gov/exhibits/featured-documents/magna-carta](http://www.archives.gov/exhibits/featured-documents/magna-carta), Browsed on 1st February 2020

<sup>3</sup> [www.unfpa.org/events/international-conference-human-rights](http://www.unfpa.org/events/international-conference-human-rights), Browsed on 2nd Feb 2020

necessary initiatives will be taken by the government to start the legal aid program for the backward sections of society in dealing with their legal matters.

As a reference of the International recognition of legal aid, we have defined some international and regional human rights instruments which justifies the importance of legal aid as a supplement of human right. While considering broader view, the UN, regional and national human rights regimes do not proclaim “Legal Aid” as civil or political right but the human rights regimes confers on individuals certain rights in civil disputes and criminal proceedings.

### **III. RECOGNITION IN THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

The following UN instruments significantly recognised the importance of “legal aid” in protection of individual’s rights.

#### (1) Universal Declaration of Human Rights<sup>4</sup> (UDHR), 1948

- Article 7 of UDHR recognises all are equal before law and are entitled to equal protection of law without any discrimination.
- Article 8 recognises everyone’s right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
- Article 10 entitled everyone rights to a fair and public hearing by an independent tribunal.
- Article 11(1) refers everyone’s rights to be considered innocent until proven guilty according to law in a public trial.

#### (2) International Covenant on Civil and Political Rights<sup>5</sup> (ICCPR), 1966

- Article 14(1) recognises that all persons are equal before the courts and tribunals in the hearing of civil actions and criminal charges. It is ratified by 120 of the 192 UN member states.
- Article 14(3)(d) provides provisions of “legal assistance” to defend himself in criminal matters.

### **IV. RECOGNITION IN THE REGIONAL HUMAN RIGHTS INSTRUMENTS**

The following regional instruments also recognised the need of “legal aid” for securing justice-

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<sup>4</sup> [www.un.org/en/universal-declaration-human-rights](http://www.un.org/en/universal-declaration-human-rights), Browsed on 2nd Feb 2020

<sup>5</sup> [www.ohchr.org/en/professionalinterest/pages/ccpr.aspx](http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx), Browsed on 2nd Feb 2020

- The Fourteenth Amendment to the US Constitution (13 June 1966) ensures equal justice under law.
- Article 6(3)(c) of the “European Convention on Human Rights, 1950” recognises that everyone charged with a criminal offence have the right to defend himself through legal assistance of his own choice or, if he has not sufficient means to pay for it, to be given free of cost.
- Article 7(1) of the African Charter on Human and Peoples Rights was ratified by 53 countries entitles everyone to try any accused within a reasonable time by an impartial court.
- Article 13(a) of the revised Arab Charter on Human Rights, 2004 proclaims that everyone is entitled to a fair trial that affords adequate guarantee before a competent, independent, impartial, lawfully constituted court to hear any criminal charge.
- Section 7 of the Canadian Charter, 1982 entitles individuals to right to life, liberty and security of the person.

Therefore, it is clear that the international and regional instruments of most of the countries in the world recognises (i) the equal status of all people before the law; (ii) the presumption of their innocence; and (iii) everyone’s right to legal representation in the court of law

All these above stated guarantees or rights become meaningless without providing any legal aid to the indigent persons.

## **V. “LEGAL AID” AS RIGHTS: INDIAN PERSPECTIVE**

The Constitution is the supreme law of India. It incorporated various provisions of UDHR, 1948 for streamlining (i) human rights and fundamental freedom, (ii) civil and political rights and (iii) economic, social and cultural rights for its citizens.

Part - III of Indian Constitution recognises the fundamental rights and also contains the civil and political rights of the people that are guaranteed are judicially enforceable. The fundamental rights provides a number of safeguards to the society.

Some of them are -

- Equality before the law
- Right to protection of law
- Right to life and personal liberty

- Safeguards as to arrest and detention
- Right to speedy & fair trial - Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court established by law.
- No person in a case against him can be his own witness.

Article 39(A) of the Indian Constitution states that, “ The state shall secure the operation of the legal system that shall promote justice, on the basis of equal opportunity, and shall especially, provide free legal aid, by appropriate legislation or schemes, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.”

Articles 14 and 22(1) of Indian Constitution also make it obligatory for the State to ensure equality before law and a legal system which shall promotes justice on a basis of equal opportunity to all. In that sense “Legal aid” strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor as well as downtrodden and weaker sections of the society.

**Example:** Justice P.N. Bhagwati, who appointed as Chairman of State Legal Aid Committee, Gujarat made an unanimous decision that the State should regard it as an obligation to provide legal assistance to the poor and indigent. It stated that the obligation of the State was not merely, socio-economic or political but is also constitutional by reason of Articles 14 and 22(1) of Indian Constitution.

## VI. CONCLUSION

In earlier time period, there was no special effort of the states to ensure constitutional remedy and legal assistance through “legal aid” for the protection of people in most of the states. In absence of the legal aid, the majority of the people who are indigent had no access to the judicial system to protect their legal and even fundamental rights. To address this issue, the awareness for necessary legal aid is spread quickly over nations in order to promote justice. Every nations started framing the rules for the legal aid and some nations even passed a special act for legal aid such as in India, Legal Services Authority Act is passed in 1987 which can further help the people to defend their cases.

The legal aid provisions under the acts are justified as fundamental and legal rights of the people, which is not a charity, but is a constitutional obligation of the state and rights of the citizens.

In spite of constitutional guarantees and legal obligations, some of the people in some developing countries are facing difficulties which can be resolved by an enactment of a particular act for legal aid and by making people aware of their rights.

Hence, “legal aid” is human rights because they are guaranteed to every citizens who in need of legal aid and not charity.

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